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EARLY MARRIAGE AS A VIOLATION OF HUMAN RIGHTS:

A PROPOSAL FOR CONSTRUCTIVE ENGAGEMENT IN NON-WESTERN COMMUNITIES

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Although most countries have instituted minimum age laws for marriage, so that legal marriage can only occur after an age set by law, early marriage is still practiced for tradition, control, security, and other reasons. In other words, the phenomenon of early marriage is not unusual, but has become more of an issue in the modern era. In the first place, this article sets out to assess the harms of early marriage by using legal anthropology and critical feminist intersectional theory as its theoretical lenses. Moreover, in light of international law, early marriage is a clear violation of universal human rights norms. There is an urgent need to develop a viable approach to reconciling the tensions between the preservation of the right of communities to social and cultural autonomy on the one hand, and the protection of individual human rights on the other. By using the incidence of early marriage in Romanian Roma, or “Gypsy,” communities as a case study, this article proposes respectful, culturally competent ways to reduce early marriage by engaging communities.

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Keywords: Children’s Rights, Human Rights, Feminism, Legal Pluralism, Foreign Laws, Gender Studies, Cultural Relativism, Critical Intersectional Feminist Theory, Legal Anthropology, Women’s Rights, Legal Pluralism, Roma, Gypsy, Cultural Relativism.

Note. The author lived and worked in the Republic of Moldova for a total of six years between 1999-2009, including two years as the Anti-Trafficking and Gender Adviser for the OSCE Mission to Moldova. This article grew out of a paper for Professor Susan Hascall’s Emerging Legal Systems course at Duquesne University. The author is grateful to Professor Hascall and to the editors at THE INDONESIAN JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW for their remarks and suggestions.



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Every year, an estimated 14 million girls are married before they turn 18. Robbed of their childhood, denied their rights to health, education and security.

Girls Not Brides: The Global Partnership to End Child Marriage¹

Exercis[ing] some restraint before interfering with others is of benefit to any culture, the Gypsies' as well as the culture in which we live."

Walter O. Weyrauch²

I. INTRODUCTION

This article sets out to understand why early marriage is a practice that makes sense within the communities that practice it, and how to use that knowledge to respectfully support communities to raise the age of marriage where early marriage is practiced. Early marriage takes place for a broad range of rational and seemingly irrational reasons, sometimes for the child's best interest, and sometimes the good of the family is the central consideration. Early marriage occurs in both more and less developed places around the world, and can increase and decrease, or decrease then increase, over time.

By using legal anthropology, legal pluralism, and critical feminist intersectional theory to understand this phenomenon, this article looks at how to help communities raise the marriage age. Legal anthropology is helpful to understand different cultures and laws, and how they function. Legal pluralism is useful for understanding how multiple legal systems coexist, in varying degrees of conflict and collaboration. Finally, critical feminist intersectional theory looks at multiple forms of oppression to help the reader understand the complexity of a legal (or socio-legal) problem in order to develop realistic, operational solutions.

Overall, this article hopes to support and advance critical feminist intersectional theorists' work in and about marginalized and non-Western communities, including Romanian Roma communities, in order to

1. GIRLS NOT BRIDES: THE GLOBAL PARTNERSHIP TO END CHILD MARRIAGE, *available at* <http://www.girlsnotbrides.org/> (last visited Aug. 3, 2013).
2. WALTER O. WEYRAUCH, GYPSY LAW 269 (2001).

increase culturally competent and sustainable social change, to make our world a safer and better place to live.

A. Map of Article

First, to frame the issue, Part II establishes that early marriage is widely practiced in many contexts and cultures, and briefly examines rationales for early marriage in cultures where it is practiced. Early marriage is not rare or isolated, nor is it confined to less developed places, although rising income and education, urbanization, and socio-economic stability correlate with higher marriage ages.

Next, Part III uses three legal theories to deconstruct the phenomenon of early marriage: legal anthropology, legal pluralism, and critical feminist intersectional theory. This part begins with an introduction to the legal anthropology concepts of insider (“emic”) and outsider (“etic”) perspectives for a comparative analysis. Next is legal pluralism, or the analysis of coexisting law or law-like systems,³ that is, different and sometimes conflicting laws or law systems within one socio-political space.⁴ Once these two theories are laid out as a foundation, the article presents intersectional feminist analysis as an ideal framework to understand interconnected forms of oppression in order to respectfully engage in cultures to support sustainable change.

Bringing in the legal norms and standards within which these theories operate, Part IV examines the harms of early marriage from a human rights perspective, and summarizes the international human rights standards that are meant to protect girls.

Laying the groundwork for the analysis in Parts VI and VII, Part V presents a case study of Romanian Roma (“Gypsy”)⁵ culture, and ear-

3. Susan Caffrey & Gary Mundy, *Informal Systems of Justice: The Formation of Law Within Gypsy Communities*, 45 AM. J. COMP. L. 251, 251-2 (1997) (discussing Weyrauch & Bell’s, *infra* note 28, presentation of the concept of “autonomous lawmaking,” the use of informal controls to maintain social order through social shame and for extreme cases relying, for example, in some Roma communities on a tribunal system of justice, and in other communities relying on bloodfeuds for conflict resolution).
4. Franz von Benda-Beckman, *Citizens, Strangers, and Indigenous People*, 9 LAW & ANTH. 1 (1997).
5. “Gypsy” is widely considered a pejorative term for several distinct and sometimes

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ly marriage practices within that culture, which is particularly isolated and marginalized. Few people know about Roma law systems, much less about marriage customs in Roma communities. This part applies legal anthropology theory to reach a fuller understanding of this culture and its early marriage practices.

As an extension of the case study, Part VI analyzes how human rights laws and standards have been used to help, and harm, the communities and individuals that these instruments were drafted to protect. This Part touches upon how national laws and international European human rights laws interact with customary Roma laws that allow or require early marriage, and examines some of the challenges in implementing the legal framework. These challenges include reports that efforts to uphold broader human rights may further marginalize vulnerable communities.

In Part VII, this article applies the comparative legal theories of legal anthropology, legal pluralism and critical feminist intersectional analysis to early marriage practices and interventions in Romanian Roma communities. By applying these theories to the case study, this paper is able to examine the practice of early marriage in Romanian Roma communities. Continuing with analysis of the case study of Romanian Roma communities, this Part suggests ways to support internal community change and the empowerment of Roma communities generally.

To that end, this last substantive Part presents recommendations and good practices based on critical feminist intersectional theory, as well as recent field reports and studies, that address early marriage laws or norms and practices in Romanian Roma communities. This Part concludes with a review of practical analytical tools, including top-down and bottom-up approaches, distinguishing cultural practices from values, mainstreaming,

overlapping groups of peoples, including Beash, Gitans, Gitanos, Kalderash, Kale, Manush, Roma, Romnichal, Sinti, Travellers, and other groups originating from India now living in Europe, North America, and around the world. See IAN HANCOCK, A HANDBOOK OF VLAX ROMANI 17 (1995); Glossary entry for Gypsy, *The Patrín Web Journal—Glossary*, PATRIN, <http://www.reocities.com/~patrin/glossary.htm> (last visited Apr. 6, 2013) (“Gypsy (or Gipsy). Corruption of ‘Egyptian.’ Popular, yet pejorative, term for the Roma, or Romani people; originating from the mistaken belief that the Roma were from Egypt.”); see also WEYRAUCH, *supra* note 2, at vii, 1; PETER VERMEERSCH, THE ROMANI MOVEMENT: MINORITY POLITICS & ETHNIC MOBILIZATION IN CONTEMPORARY CENTRAL EUROPE 10, 13-14, 159 (2007) [hereinafter Vermeersch].

and Asset Based Community Development, to implement respectful social change in marginalized and vulnerable communities. First, however, this article begins by looking at the phenomenon of early marriage in general.

II. EARLY MARRIAGE: AN OVERVIEW

The term “early marriage”⁶ is used throughout this article, except in quoted language, although many works use the term “child marriage”⁷ or use both terms. The term child marriage is sometimes used in an inflammatory, ethnocentric manner to objectify cultural differences, and this article seeks to acknowledge but not perpetuate such attitudes while promoting

6. See, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE—OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, POSITION PAPER AWARENESS RAISING FOR ROMA ACTIVISTS ON THE ISSUE OF TRAFFICKING IN HUMAN BEINGS IN SOUTH-EASTERN EUROPE (Apr. 2006), *available at* <http://www.osce.org/odihr/18813> (Section on Early Marriage, at 13) [hereinafter *OSCE Awareness Raising for Roma Activists*]; UNITED NATIONS DEPT. OF PUBLIC INFORMATION, WOMEN AND VIOLENCE, *available at* <http://www.un.org/rights/dpi1772e.htm> (last visited Feb 23, 2013) (“Violence against women takes a dismaying variety of forms [including] . . . child marriages [which is a] violation[] . . . of the most fundamental human rights . . . Early marriage, especially without the consent of the girl, is another form of human rights violation.”); Angela Kocze, *United Nations Commission on the Status of Women, Key policy initiatives to eliminate all forms of discrimination and violence against the girl child: “Breaking the Silence”—Romani Girl Child Access to Quality Education*, (2007), *available at* http://www.un.org/womenwatch/daw/csw/csw51/panel1/Angela%20Kocze_FINAL.pdf (using “early marriage”); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, THE GENDER MONITOR, (Nov. 2010), *available at* <http://www.osce.org/gender/73640> (discussing “early marriage”).
7. See Alexandra Oprea, *Child Marriage a Cultural Problem, Educational Access a Race Issue? Deconstructing Uni-Dimensional Understanding of Romani Oppression*, EUROPEAN ROMA RIGHTS CENTER (July 21, 2005), *available at* <http://www.errc.org/article/child-marriage-a-cultural-problem-educational-access-a-race-issue-deconstructing-uni-dimensional-understanding-of-romani-oppression/2295>; UNICEF Programme Brief: *Child Marriage* (Oct. 2012), *available at* http://www.unicef.org/gender/files/Child_Marriage_Programme_Brief.pdf; Jenni Millbank & Catherine Dauvergne, *Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law*, 19 COLUM. J. GENDER & L. 898, 906-908 (2010) (discussing “child marriage, also known as ‘forced marriage’ or ‘early marriage’”); International Child Marriage Prevention and Assistance Act of 2006, S. 3651, 109th Cong. (2006) [hereinafter International Child Marriage Act].

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an inclusive and respectful dialogue. Therefore, the term early marriage is used for consistency in both terminology and in advocating for a respectful approach.

A. Common Law Marriageable Age

The phenomenon of early marriage is not unusual, and has become more of an issue in the modern era. Early marriage is widespread in over twenty countries, mostly less developed nations,⁸ but is not isolated to remote places. For example, the common law age of marriage in the U.S. was historically twelve for females and fourteen for males,⁹ and has been raised by state statutes only in approximately the past hundred years.¹⁰ As recently as 1957, prominent American musician Jerry Lee Lewis married a thirteen-year-old girl.¹¹ Most U.S. states still allow marriage at age sixteen, and a few states also permit marriage under the age of sixteen with parental, guardian, or judicial consent.¹² Early marriage has been

8. INT'L CENTER FOR RESEARCH ON WOMEN, PREVENTING CHILD MARRIAGE, *available at* <http://www.icrw.org/preventing-child-marriage> (last visited Dec. 13, 2012); INTERNATIONAL CENTER FOR RESEARCH ON WOMEN, CHILD MARRIAGE FACTS AND FIGURES, *available at* <http://www.icrw.org/child-marriage-facts-and-figures> (last visited Dec. 13, 2012) (listing the 20 countries which are *Child Marriage Hot Spots* and citing the United Nations Population Fund (UNFPA) database using household surveys (DHS and MIS) completed during the period 2000-2011. All of the countries are outside of Europe and almost all are in Africa and Asia.).
9. 55 C.J.S. Marriage § 14 (2013) (citing *State v. Wade*, 766 P.2d 811 (Kan. 1989), *Peefer v. State*, 182 N.E. 117 (Ohio Ct. App. 1931), *State v. Ward*, 28 S.E.2d 785 (S.C. 1944), and *Needam v. Needam*, 33 S.E.2d 288 (Va. 1945)).
10. See Frank H. Keezer, *The Law of Marriage and Divorce: Giving the Law in All the States and Territories with Approved Forms*, § 32 22 (1906) (photo. reprint 1991) (showing age of marriage for males is 18-21 in 34 of 52 states and territories, for females is 13-16 in 37 of 52 states and territories).
11. Sanford Levinson, *Thinking About Polygamy*, 42 SAN DIEGO L. REV. 1049, 1050 (2005) (referencing "Jerry Lee Lewis's marriage . . . to a thirteen-year-old cousin" and citing Jerry Lee Lewis, ROTTEN.COM, *available at* <http://www.rottent.com/library/bio/entertainers/music/jerry-lee-lewis/> (last visited Aug. 14, 2013).
12. Lynn D. Wardle, *What Is Marriage?*, 6 WHITTIER J. CHILD & FAM. ADVOC. 53, 81 (2006) ("the age of marriage has changed from 12 for girls and 14 for boys at common law, to 18 to 21 years in most American states") citing Kathleen A. Portuan Miller, *The Other Side of the Coin: A Look At Islamic Law As Compared to Anglo-American Law—Do Muslim Women Really Have Fewer Rights Than American Women?*, 16 N.Y. INT'L. L. REV. 65, 76-77 (2003); see also Ruth Gaffney-Rhys,

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practiced in the U.S. as recently as the 2000's by the fringe Mormon group known as Fundamentalist Church of Jesus Christ of Latter Day Saints.¹³ The (non-Fundamentalist) Church of Jesus Christ of Latter Day Saints ceased practicing polygamy officially in 1890, yet several splinter groups, including this Fundamentalist group, have continued to practice polygamy¹⁴ with adult women as well as young adolescent girls.¹⁵

Outside of the U.S., India provides another example of early marriage. The Indian penal code was amended in 1891 to change the age of consent for girls to marry from ten to twelve years of age.¹⁶ The legal age of marriage in India is now twenty-one for men and eighteen for women; marriages under the age of sixteen are void and marriages between the ages sixteen to eighteen are voidable.¹⁷ Nevertheless, 47% of children are

The Law Relating to Marriageable Age from a National and International Perspective, INT'L FAM. L., Nov. 2009, at 228, 229 (providing an overview of National Laws Relating to Age at Marriage); see also e.g. Kan. Stat. Ann. § 23-2505 (West 2012) (permitting marriage at age fifteen with judicial consent, and at age sixteen or seventeen with parental or guardian consent, or judicial consent in the case that no parent or guardian is living).

13. See generally, Marci A. Hamilton, *The "Licentiousness" in Religious Organizations and Why It Is Not Protected Under Religious Liberty Constitutional Provisions*, 18 WM. & MARY BILL RTS. J. 953 *passim* (2010); Brienne M. Billie, *The "Lost Boys" of Polygamy: Is Emancipation the Answer?*, 12 J. GENDER RACE & JUST. 127 *passim* (2008).
14. Billie, *supra* note 13, at 128 ("Though the Church officially denounced polygamy in 1890, splinter groups, such as the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS), continued the practice.").
15. Shayna M. Sigman, *Everything Lawyers Know About Polygamy Is Wrong*, 16 CORNELL J.L. & PUB. POL'Y 101, 141, 167, 177-180 (2006). Sigman discusses the harms resulting from the fact that "the average age that women marry is younger [in polygynous societies] than it is for monogamous societies," *id.* at 178, and cites cases with adolescent women as young as thirteen and sixteen, *id.* at 179 (citing Richard A. Vazquez, *The Practice of Polygamy: Legitimate Free Exercise of Religion or Legitimate Public Menace? Revisiting Reynolds in Light of Modern Constitutional Jurisprudence*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 225, 240 (2002)).
16. 3 D. E. CRANENBURGH, UNREPEALED ACTS OF THE GOVERNOR-GENERAL IN COUNCIL CONTAINING ACTS FROM 1883 TO 1893 864 (1894) (detailing that Act X § 1 of 1891 amended Act XLV § 376 of 1860 to this effect).
17. INDIA GOV'T, L. COMM'N OF INDIA, PROPOSAL TO AMEND THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 AND OTHER ALLIED LAWS, REPORT NO. 205 (Feb. 2008), available at <http://lawcommissionofindia.nic.in/reports/report205.pdf>.

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married before the age of eighteen in India.¹⁸ This is due in part to the fact that Muslims in India can follow Shariah law, which can permit marriage at an earlier age but requires the consent of both partners.¹⁹ However, there is also an urban-rural split regarding early marriage in India generally, with data indicating that nearly twice as many early marriages occurred in rural areas as in urban areas.²⁰

B. Recent Developments in Early Marriage

Other examples of early marriage span the globe, and include traditional cultural arrangements as well as modern responses to new crises. In 2013, Spain raised the age of consent for marriage from fourteen to sixteen and is considering raising the age of consent for sex, which is thirteen, to increase protection against child sexual abuse.²¹ Romania promulgated a new civil code in 2011, which raised the legal age of marriage in Romania to eighteen for both men and women, with an exception for youth aged sixteen to eighteen who obtain parental or guardian's consent.²² Recent

18. UNICEF, STATE OF THE WORLD'S CHILDREN REPORT 2009: MATERNAL AND NEWBORN HEALTH 150 (Dec. 2008), *available at* http://www.unicef.org/sowc09/docs/SOWC09_Table_9.pdf [hereinafter UNICEF, *World's Children 2009*].
19. Gaffney-Rhys, *supra* note 12, at 231 (noting that Shariah or Islamic law allows earlier marriages in, as examples, India and Nigeria).
20. UNICEF, *World's Children 2009*, *supra* note 18 (Data from 1998 to 2007 showing that 47% of women aged twenty to twenty four years were married or in union before they were eighteen years old, with 29% of early marriages in urban areas and 56% in rural areas.)
21. Abdul Ahad, *Spain Raises Marrying Age from 14 to 16*, BUS. RECORDER (Apr. 5, 2013, 8:38 pm), *available at* <http://www.brecorder.com/world/europe/113929-spain-raises-marrying-age-from-14-to-16.html>.
22. Daniel Buda, *The Administrative Reform in Romania: The New Civil Code and the Institution of Marriage*, TRANSYLVANIAN REV. OF ADMIN. SCIS, No. 36 E 27-28, 31 (2012), *available at* <http://rtsa.ro/en/files/TRAS-36E-2012-3BUDA.pdf> ("The New Civil Code replaces the Civil Code adopted in 1864, a code that regulated the entire Romanian society between 1865 and 2011"); *see also* THE CENTER FOR REPRODUCTIVE LAW AND POLICY, WOMEN'S REPRODUCTIVE RIGHTS IN ROMANIA: A SHADOW REPORT 23 (2000), *available at* http://reproductiverights.org/sites/default/files/documents/sr_rom_0600_eng.pdf ("Girls may legally marry at sixteen years of age. For boys, eighteen is the legal minimum age for marriage."), citing Romanian Family Code, Ch. I Formation of Marriage, Art. 4 (1954), *available at* <http://e-juridic.manager.ro/articole/codul-familiei-incheierea-casatoriei-1047.html> [hereinafter Romanian Family Code] ("Barbatul se poate casatori numai daca

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news has reported on a range of problematic early marriage practices. Report of a marriage between a ninety-year old man and a fifteen-year-old girl in Saudi Arabia,²³ and in Yemen an “eight-year-old girl [who] reportedly died of internal injuries that she suffered on her wedding night” by her 40-year-old husband,²⁴ sparked national and international outrage. More complicated cases include news of teenage female Syrian refugees forced to marry Jordanian or other men for protection from the increased risk of rape and the general lack of economic security and personal safety in Syrian-populated refugee camps.²⁵

a implinit varsta de optsprezece ani, iar femeia numai daca a implinit saispzece ani. Cu toate acestea, pentru motive temeinice, se poate incuviinta casatoria femeii care a implinit cincisprezece ani.” Translation by article author: Men may marry at the age of 18, but women only at the age of sixteen years. In special circumstances, women may marry at the age of fifteen years.).

23. See, e.g., *Anger Online as Saudi in his 90s marries 15-year-old*, BBC.CO.UK (Jan. 7, 2013, 12:30 pm), available at <http://www.bbc.co.uk/news/world-middle-east-20936800> (last visited Aug. 14, 2013); *Marriage or Rape? 90-year-old Saudi Weds 15-year-old Girl*, AL ARABIYA NEWS (Jan. 7, 2013 11:29 am (GMT)), available at <http://www.alarabiya.net/articles/2013/01/07/259048.html>.
24. Mohammed Jamjoom & Hakim Almasmari, *Yemen minister on child marriage: Enough is enough*, CNN.COM (Sept. 16, 2013 7:16 AM EDT), available at <http://www.cnn.com/2013/09/15/world/meast/yemen-child-bride/index.html>.
25. See Arwa Damon, *No Sanctuary for Syria's Female Refugees*, CNN.COM (June 26, 2013, 4:32 PM (EDT)), available at <http://www.cnn.com/2013/06/26/world/meast/syria-refugees-child-brides> (“Families who feel like they are unable to safeguard their female family members, their daughters, are marrying them off to protect them. In a culture where conserving honor is central, everyone says they had no other choice.”); Syrian women refugees face forced early marriages and restricted mobility: UN WOMEN, UN WOMEN REPORT (June 19, 2013), available at <http://www.unwomen.org/en/news/stories/2013/6/syrian-women-refugees-face-forced-early-marriages-and-restricted-mobility-un-women-report/> (“The report finds widespread child marriage—more than 33 per cent of participants . . . were married when they were still children . . . and [h]alf of all respondents believed that the normal age of marriage for girls is under 18. Many also perceived that the marrying age has further decreased since their displacement to Jordan, as impoverished refugee families seek dowries and one less mouth to feed.”); *Early, Forced Marriages Haunt Jordan's Syrian Refugees*, AL ARABIYA NEWS (June 12, 2013, 10:49 (GMT)), available at <http://english.alarabiya.net/en/perspective/features/2013/06/12/Early-forced-marriages-haunt-Jordan-s-Syrian-refugees.html> (“With no end in sight to Syria's conflict, some refugees in Jordan are offering their daughters for early marriage in the hope of securing them protection as they face growing economic pressure. . . . ‘Syrians have reported that though

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C. Early Marriage as a Function of Culture

As documented in the Syrian refugee camps, even where early marriage is not traditionally practiced, early marriage can emerge as a rational response to an irrational or dangerous context.²⁶ Many traditional cultures may have social pressure for early marriage because of the importance of virginity and purity, for both men and women but often focused more on women.²⁷ While early marriage is not a rare practice, it often declines as a culture modernizes and urbanizes, and as education increases.²⁸ In addition, it is important to note that not all individuals in a culture that practices early marriage necessarily agree about the practice.

- early marriage was common in Syria prior to the crisis there have been changes in practices since their arrival in Jordan. Most notably, wide spousal age gaps.”).
26. *Early Marriage: Child Spouses*, UNICEF INNOCENTI DIGEST NO. 7, (Mar. 2001), at 1, *available at* <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [hereinafter UNICEF *Child Spouses*] (“[T]he marriage of children [is] often seen as a strategy for economic survival. In addition, it is perceived as a way to protect girls and to provide some stability in situations where societies are under extreme pressure.”).
 27. Walter O. Weyrauch & Maureen A. Bell, *Autonomous Lawmaking: The Case of the “Gypsies”*, 103 YALE L.J. 323, 342 (1993) (also appearing as chapter two in WEYRAUCH, *supra* note 2); Selvijan Rašidova, *Challenging Taboos: Testimony*, EUROPEAN ROMA RIGHTS CENTRE (July 22, 2005), *available at* <http://www.errc.org/article/challenging-taboos-testimony/2353> (a young Roma woman and law student discussing her project to analyze the Roma cult of virginity, female obedience, and family reputation); Cheryl Thomas, *United Nations Division for the Advancement of Women, Forced and Early Marriage: A Focus on Central and Eastern Europe and Former Soviet Union Countries with Selected Laws from Other Countries* 9 (2009) *available at* http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Cheryl%20Thomas%20revised_.pdf (discussing the importance of “the traditional expectation that women are virgins when they marry” as a factor in forced and early marriages); Nicoleta Bitu & Crina Morteau, *Are the Rights of the Child Negotiable? The Case of Early Marriages within Roma Communities in Romania*, UNICEF-ROMANIA (2010), *available at* http://www.unicef.org/romania/Early_marriages_Romani_CRISS.pdf. Among other factors, “forced or early marriages can [be motivated by] . . . the importance of preserving girl’s honor and virginity,” *id.* at 29, because “[t]he most important asset of the Roma marriage is the girl’s virginity,” *id.* at 34.
 28. Barbara S. Mensch, Susheela Singh, & John B. Casterline, *Trends in the Timing of First Marriage Among Men and Women in the Developing World* 15-20 (2005) *available at* <http://www.popcouncil.org/pdfs/wp/202.pdf>.

III. EARLY MARRIAGE IN PERSPECTIVE

A. Legal Anthropology

This article acknowledges that “unconscious ethnocentrism cannot be eliminated.”²⁹ But by undertaking a comparative cultural study using legal anthropology,³⁰ which is especially valuable in combination with critical feminist intersectional theory,³¹ this article helps the observer to acknowledge and value the perspectives of the people studied. Legal anthropology provides two intentionally different perspectives through which to ex-

29. WEYRAUCH, *supra* note 2, at 243; *see generally* Project Implicit—IAT Home, IAT CORP., HARVARD UNIVERSITY, (last visited Oct 18, 2013), *available at* <https://implicit.harvard.edu/implicit/demo/> (This project researches and documents human responses which “demonstrate[] the conscious-unconscious divergences” of our biases, whether or not we are aware of our them.).
30. *See generally* Myres S. McDougal, *The Comparative Study of Law for Policy Purposes: Value Clarification As an Instrument of Democratic World Order*, 61 YALE L.J. 915, 916-917, 925 (1952) (discussing the importance of comparative studies and comparative cultural studies to promote security including what is today called human security, that is, health, dignity, freedom from discrimination, positive opportunities, etc., as well as safety); Melissa Harrison & Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/constructing Identities in Re/constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 400 (1996) (Using the concept of borderlands to engage in comparative cultural studies to explore essentialism and anti-essentialism, and describing “gender essentialism” as a concept that “has been used to critique the practice of some feminists who have described women’s experience as unchanging across ‘race, class, sexual orientation, and other realities of experience.’ This critique asserts that first men, and then women, of privilege have ‘erase[d] or appropriate[d] the experiences of those unlike themselves.’”) (alteration in original) (citing Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in the United States*, 45 STAN. L. REV. 1525, 1538 (1993); Judith Resnik, *Visible on “Women’s Issues”*, IOWA L. REV. 41, 48 (1991)).
31. *See generally* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 89 U. CHI. LEGAL FORUM 139 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STANFORD L. REV. 1241 (1991) (also appearing as Kimberlé Crenshaw, *Mapping the Margins*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 357 (Crenshaw, Gotanda, Peller, Thomas Eds., 1996); *see discussion infra* Part III. C.

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plore a culture, the “emic” and the “etic.”³² The purpose of the emic (insider, or internal) approach is to put aside or work past the ethnocentrism of the observer by taking on the perspectives of the observed, and making the observed objects into the subjects of the study.³³ On the other hand, the etic (outsider, or external) perspective is inherently comparative: the reader or observer identifies reactions and responses to a culture or practice from an outsider or external position.³⁴

The emic perspective is an anthropological term defined as conveying “to the reader the way in which the studied culture views itself . . . through the eyes of a member of that culture.”³⁵ It is comprised of the diverse viewpoints of all participants and experts within a culture.³⁶ According to Dorothy H. Bracey, “[t]his approach values depth and context” and is useful for understanding how and why a culture structures or participates in a practice in some communities and some families. This in turn helps to understand how a phenomenon might be changed from within or from outside of a culture. By understanding a culture, outsiders and insiders may be able to work together to identify what needs to change, and why, while leaving intact the cultural traditions and practices which do not need to change.

Paul Bohannan, an early legal anthropologist who wrote extensively using the emic perspective, defines two types of law: the lawyers’ law, which is a “highly refined system of ideas and practices; and [on the other hand] the ethnological or comparative jurists’ law,” which is “any system . . . which controls, wholly or in part, the ‘force’ inherent in any ‘politically organized society.’”³⁷ In a later work, Bohannan defines law by explaining how norms and customs can be a society’s law:

32. DOROTHY H. BRACEY, *EXPLORING LAW AND CULTURE* 17 (2006) (summarizing MAX GLUCKMAN, *THE IDEAS IN BAROTSE JURISPRUDENCE* (1965) and PAUL BOHANNAN, *JUSTICE AND JUDGMENT AMONG THE TIV* (1989)).

33. Beth Ann Wright, *Preserving the Social Contract: Translating Academic Education into Professional Practice through Contemporary Cognitive Theories*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 17, 47 (2008) (describing the “subject (individuals or groups that act, and whose agency is selected as the point of view for the analysis) and an object (that which is acted upon)”).

34. *Id.*

35. Bracey, *supra* note 32, at 17.

36. SALLY FALK MOORE, *LAW AND ANTHROPOLOGY: A READER*, 99 (2009).

37. BOHANNAN, *supra* note 32, at 4.

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A norm is a rule . . . which expresses 'ought' aspects of relationships between human beings. Custom is a body of such norms . . . that is actually followed in practice most of the time . . . A legal institution is one by means of which the people of a society settle disputes that arise . . . and counteract any gross and flagrant abuses of the rules.³⁸

Bohannan practiced and advocated for studying legal systems by striving to understand them as the actors involved understood their work—from an insider or internal perspective.³⁹

In contrast to the “emic” perspective, an “etic” perspective is not just an outsider view of a culture or cultural phenomenon. It is a “deliberatively comparative” approach that looks for cross-cultural variables and seeks generalizations, and may more openly acknowledge the different social, cultural, and other biases and perspectives that any researcher brings to his or her work.⁴⁰ Max Gluckman, a legal anthropologist and contemporary of Bohannan, worked to understand legal systems as they compared to other legal systems, especially his own culture.⁴¹ Bohannan and Gluckman debated the value of their respective frameworks for understanding law over the decades of their careers.⁴² Gluckman focused his legal anthropological “analysis on untangling the structure of specific situations against the general social background . . . marked in political science,[] economics,[] and sociology.”⁴³ Gluckman understood legal anthropology as a study of “two kinds of norms, ideal norms and behavioural norms, and a discussion of the relation between them.”⁴⁴ Gluckman defined law

38. FALK MOORE, *supra* note 36, at 73 (quoting PAUL BOHANNAN, *LAW AND WARFARE: STUDIES IN THE ANTHROPOLOGY OF CONFLICT* 45 (1967) (internal citations omitted)).

39. *Id.* at 72-73.

40. BRACEY, *supra* note 32, at 17 (citing GLUCKMAN, *supra* note 32; BOHANNAN, *supra* note 33).

41. FALK MOORE, *supra* note 36, at 71-72 (discussing MAX GLUCKMAN, *THE JUDICIAL PROCESS AMONG THE BAROTSE OF NORTHERN RHODESIA* (1955), GLUCKMAN, *supra* note 32).

42. John M. Conley & William M. O'Barr, *A Classic in Spite of Itself: The Cheyenne Way and the Case Method in Legal Anthropology*, 29 *LAW & SOC. INQUIRY* 179, 211 (2004).

43. Max Gluckman, *Limitations of the Case-Method in the Study of Tribal Law*, 7 *LAW & SOC'Y REV.* 611 (1972-1973).

44. *Id.* at 620.

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as “the conformity of upright people to norms.”⁴⁵ At the center of his work was a comparison of the law systems he studied to the Anglo-American courts.⁴⁶ Although he was criticized for describing the cultures he studied by comparing them to his own English culture, he is also credited with contributing to the creation of the emic analysis to the field of legal anthropology.⁴⁷

Addressing both the insider-participant and the outsider-observer perspectives creates a comparative framework that supports a richer, more realistic, and more respectful framework to analyze social, cultural, and legal phenomena of early marriage. Using this combined comparative perspective to look at a legal and cultural phenomenon from both emic (insider) and etic (outsider) frameworks allows for a more comprehensive analysis. Yet neither is complete or definitive.⁴⁸

B. Legal Pluralism

Comparative studies of different legal systems provide an opportunity to understand how people develop “practical arrangements, given their circumstances, and [make] what seem[] to them, very practical decisions.”⁴⁹ It is not only “fascinating” but also “rewarding”⁵⁰ to engage in comparative study in at least two ways. First, this analysis contributes to demystifying a subsection of egregiously marginalized social groups in general. Second, it contributes to understanding why early marriage occurs in order to further develop safe, respectful measures to reduce the harms that early marriage can cause.

Legal pluralism is defined in many ways; it is “the coexistence of different normative orders within one socio-political space;”⁵¹ the interaction of official and unofficial legal systems;⁵² a definition of law as a

45. *Id.*

46. *Id.*

47. FALK MOORE, *supra* note 36, at 71-72; Conley & O’Barr, *supra* note 42, at 210.

48. *Id.*

49. FALK MOORE, *supra* note 36, at 100.

50. WEYRAUCH, *supra* note 2, at 243.

51. von Benda-Beckman, *supra* note 4, at 1.

52. Susan Hascall, Duquesne University, *Emerging Legal Systems Course Lecture* (Nov. 20, 2012).

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system of social rules⁵³ or a structure of social relations [and] power.⁵⁴ The seminal work on legal pluralism⁵⁵ summarizes legal pluralism as the presence in a social field of more than one legal order, or more than one source of law or legal order.⁵⁶ It defines law as “the self-regulation of a semi-autonomous social field” and notes that these laws are dynamic.⁵⁷

Conflict among multiple uncoordinated, coexisting, and overlapping bodies of law can manifest in a number of ways⁵⁸ to find an uneasy coexistence.⁵⁹ It is “not unusual for a state legal system to explicitly condemn . . . a customary or religious or community norm, but take no action to repress it.”⁶⁰ Alternately, “the official legal system [may] endorse the competing system . . . yet do nothing to support it.”⁶¹

Suppression is used as a tactic to address contrary norms and institutions, by declaring them illegal and working to eliminate them.⁶² Strategic actors from an informal system may enlist the support of existing official legal systems, for example women’s rights or human rights groups, which seek aid against harmful customary practices. Legal pluralism recognizes the barriers such as geography, culture, language, access to information, and financial resources which may bar members of an informal or unrecognized system from seeking assistance from a formal system to recognize or protect their rights.⁶³

53. *Id.* (Sept. 6, 2012) (citing H.L.A. Hart generally).

54. *Id.* (Aug. 30, 2012).

55. Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 SYDNEY L. REV. 375, 392 (2008) (“John Griffiths, whose 1986 article ‘What is Legal Pluralism?’ is the seminal piece in the field . . .”).

56. John Griffiths, *What is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1, 1, 38 (1986).

57. *Id.* at 38 (internal quotations omitted).

58. Tamanaha, *supra* note 55, at 375.

59. *Id.* at 403.

60. *Id.* at 404.

61. *Id.*

62. Tamanaha, *supra* note 55, at 404.

63. *Id.* at 406.

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C. Critical Feminist Intersectional Theory

In 1989, African-American legal scholar Kimberlé Crenshaw published an article discussing the effects of the combined discrimination of being female, minority, and living with historical discrimination.⁶⁴ She “introduced the legal world to intersectionality”⁶⁵ with her writing, which crystallized a new body of critical feminist legal thought and scholarship. Crenshaw builds on feminist theory and critical theory, which both “focus on social and economic inequalities, and both have an agenda of promoting system change.”⁶⁶ Crenshaw writes of “law as a system and law as a medium . . . a medium not only of dominant policy-makers but also as a tool in social and political struggle, i.e., in the hands of oppressed societal groups.”⁶⁷

Sarah Song, in newer writing on intersectional work, explores whether the cultural rights of minorities should be accommodated because of “present discrimination, historical injustice, and state establishment of culture.”⁶⁸ However, Song asserts that accommodations must not come at the expense of individual minority group members’ rights, and therefore accommodations must be limited in some circumstances as “rights-respecting accommodationism.”⁶⁹ This approach seeks justice both

64. Crenshaw, *supra* note 32. Kimberlé Crenshaw teaches Civil Rights and other courses in critical race studies and constitutional law at UCLA School of Law. Her primary scholarly interests center around race and the law, and she was a founder and has been a leader in the intellectual movement called Critical Race Theory. See also e.g. Devon Carbado, *Colorblind Intersectionality*, 38 SIGNS 811, *passim* (2013).

65. Robert S. Chang & Jerrome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485 (2002).

66. Joanne Martin, *Feminist Theory and Critical Theory: Unexplored Synergies*, RESEARCH PAPER NO. 1758, 1 (Feb. 2002) available at <https://gsbapps.stanford.edu/researchpapers/library/RP1758.pdf>.

67. Konstanze Plett, *Rights Discourse and Social Change: A Comment on Kimberle W. Crenshaw*, 12 GERMAN L.J. 285, 289 (2011).

68. SARAH SONG, JUSTICE, GENDER, AND THE POLITICS OF MULTICULTURALISM, 9 (2007). Sarah Song is a political and legal theorist with a special interest in issues of citizenship, immigration, religious and cultural pluralism, and feminism. She teaches courses in contemporary political and legal philosophy, the history of American political thought, and citizenship and immigration law at the University of California, Berkeley Law.

69. SONG, *supra* note 68, at 9.

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for minorities and for women, and the analysis can expand to children and minor youth. Her analysis navigates the tension between group justice and individual justice, which requires interaction between minority and dominant cultures, state and minority communities, and individuals within minority groups and communities.⁷⁰ In working through these competing and overlapping interests, critical feminist intersectional analysis can advance human rights and help build a capacity to reduce early marriage in a safe, respectful, and sustainable way. At the core of this work is “the protection of the basic rights of individual members of minority groups,”⁷¹ working to address both “inegalitarian”⁷² practices within minority cultures and inegalitarian aspects of Western majority cultures and how they may interact.”⁷³

Tensions between minority rights and women’s rights, which often ignore both minority women’s rights and minority children’s rights, are rooted in the unity required within each respective rights movement. This single-issue or essentialist approach neglects the other barriers a real person can face, which may include race, gender, ethnicity, and class.⁷⁴ However, it is impossible to completely separate these issues in reality. A systemic approach to “intersectionality”⁷⁵ is nascent but appears to be

70. Jinee Lokaneeta, *Justice, Gender, and the Politics of Multiculturalism* (2007), available at <http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/song0108.htm> (last visited Dec. 13, 2012) (book review).

71. SONG, *supra* note 68, at 9.

72. *Inegalitarian*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <http://www.merriam-webster.com/dictionary/inegalitarian> (last visited Aug. 19, 2013) (“marked by disparity in social and economic standing”).

73. SONG, *supra* note 68, at 170.

74. Camilla I. Ravnbøl, *The Human Rights of Minority Women: Romani Women’s Rights from a Perspective on International Human Rights Law and Politics*, 17 INT’L J. ON MINORITY & GROUP RTS. 1, 41 (2010); see also Crenshaw, *supra* note 31 (see especially n.9 at 1244, “intersectionality a provisional concept linking contemporary politics with postmodern theory. In mapping the intersections of race and gender, the concept does engage dominant assumptions that race and gender are essentially separate categories. By tracing the categories to their intersections, I hope to suggest a methodology that will ultimately disrupt the tendencies to see race and gender as exclusive or separable.”).

75. Ravnbøl, *supra* note 74, at 38, n.145 (defining intersectionality “as the meeting point and overlap of . . . racial, gender, class, and other forms of discrimination” and referring to Kimberlé Crenshaw’s analysis of black women in the US); see Crenshaw, *supra* note 31.

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growing especially with the increase of mainstreaming⁷⁶ in both human rights theory and fieldwork.⁷⁷ Respect for children's rights is another layer of experiences to navigate, respect, and learn to understand. Recognizing and analyzing the unique experiences of girls (as unique from the experiences of adult women) is also necessary in order to promote their rights.⁷⁸

IV. WHY IS EARLY MARRIAGE A VIOLATION OF HUMAN RIGHTS?

A. Research-Based Evidence of the Harms of Early Marriage

Early marriage is physically, psychologically, emotionally, educationally, and economically harmful; early marriage violates girls' human rights.⁷⁹

76. Mainstreaming is implementing the principal that "women's rights are human rights." Ivana Radacic, *Feminism and Human Rights: The Inclusive Approach To Interpreting International Human Rights Law*, 14 UCL JURISPRUDENCE REV. 238, 261 (2008); UN GAOR, Report of the Economic and Social Council for 1997, 52nd Session A/52/3 (Sept. 18, 1997), *available at* <http://www.un.org/documents/ga/docs/52/plenary/a52-3.htm> ("Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.")
77. Ravnbøl, *supra* note 74, 41-44. (2010); *see generally* EUROPEAN ROMA RIGHTS CENTER, *Roma Rights: Multiple Discrimination*, 2 J. THE EUROPEAN ROMA RIGHTS CENTER (2009), *available at* <http://www.errc.org/cms/upload/file/roma-rights-2-2009-multiple-discrimination.pdf>.
78. Nura Taefi, *The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child*, 17 INT'L J. CHILD. RTS. 345 (2009) Girls' perspectives, experiences and rights are inadequately addressed because "children's rights scholarship takes a gender-neutral approach . . . and . . . women's rights discourse is overwhelmingly concerned with the experiences of adult women." *Id.* at 349. "The participation of girls in women's rights discourse is a precursor to ensuring their inclusion." *Id.* at 364.
79. STOP VIOLENCE AGAINST WOMEN, FORCED AND CHILD MARRIAGES, *available at* http://www.stopvaw.org/forced_and_child_marriage (last visited Nov. 17, 2012) [hereinafter *Forced and Child Marriages*].

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“Human rights” is an inherently Western, individualistic construct,⁸⁰ and most writing that criticizes or even discusses early marriage is based on a human rights approach.⁸¹ However, while the definition for early marriage is based on the rights of individual girls and on both social and scientific research, these definitions and approaches do not take into account the culture of a girl’s community. Askari points out that Western conceptions of human rights focus on individualism, while more traditional societies interpret the child’s best interest as requiring families’ preferences to overrule the individual child’s preferences.⁸² Clearly a tension exists between respect for community and the often-severe harms that befall very young brides.

Data shows that girls who marry during childhood and adolescence face much higher rates of physical and mental problems.⁸³ Young brides often face a wide array of health problems related to early sexual activity and early pregnancy.⁸⁴ These sex-specific harms include increased risk of

80. Ladan Askari, *Girls Rights Under International Law: An Argument for Establishing Gender Equality as a Jus Cogens*, 8 S. CAL. REV. L. & WOMEN’S STUD. 3, 19 (Fall 1998); Ravnbøl, *supra* note 74, at 35.

81. See Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter CRC]; EUROPEAN ROMA RIGHTS CENTER, ERRC SUBMISSION TO THE JOINT CEDAW-CRC GENERAL RECOMMENDATION/COMMENT ON HARMFUL PRACTICES: CHILD MARRIAGES AMONG ROMA (Sept. 9, 2011), available at http://www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/EuropeanRomaRightsCentre.pdf [hereinafter ERRC *Submission on Child Marriages among Roma*]; *Forced and Child Marriages*, *supra* note 79; UNICEF *Child Spouses*, *supra* note 26, at 2; UNICEF, *Early Marriage: A Harmful Traditional Practice: 2005 A Statistical Exploration*, (2005), available at http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf [hereinafter UNICEF *Harmful Traditional Practice*]; see also Sonja Grover, *Children’s Rights as Ground Zero in the Debate on the Universality of Human Rights: The Child Marriage Issue as a Case Example*, 2 ORIGINAL L. REV. 72 (2006) (examining “the debate on the validity of the notion of universal human rights in the context of the child marriage issue.”).

82. Askari, *supra* note 80, at 19.

83. EUROPEAN ROMA RIGHTS CENTER, FORCED ARRANGED MARRIAGE OF MINORS AMONG TRADITIONAL ROMANI COMMUNITIES IN EUROPE § c (Nov. 15, 2006), available at <http://www.errc.org/cms/upload/media/02/BA/m000002BA.pdf> [hereinafter ERRC *Forced Arranged Marriage*]; UNICEF *Harmful Traditional Practice*, *supra* note 81, at 22, 26.

84. UNICEF *Child Spouses*, *supra* note 26, at 9-12.

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maternal death and morbidity, infant death and morbidity, obstetric fistula (a rupturing of the walls of the vagina and colon or bladder, which causes incontinence and infection without access to advanced medical assistance), and sexually transmitted infections including HIV/AIDS.⁸⁵ The leading cause of death for women aged fifteen to nineteen in developing countries and areas without access to adequate medical care are complications during pregnancy and childbirth.⁸⁶

Girls can also suffer depression, anxiety, and other psychological ills due to early, and often unwanted, sexual contact for which they are not physically or emotionally prepared, sometimes with a partner who was forced upon them.⁸⁷ Early marriage is often defined as forced marriage because minors, as children, are not able to give consent to either sex or marriage.⁸⁸ Consummation of such marriages may be defined as statutory rape where sex with children is criminalized.⁸⁹

Early marriage reduces girls' access to education and opportunities for social development. Girls who are forced to marry lose autonomy, including their right to access education.⁹⁰ Married girls are expected to attend to household and childrearing duties, not their own education.⁹¹

85. Grover, *supra* note 81, at 74; Edwige Rude-Antoine, *Council of Europe Directorate General of Human Rights, Forced Marriages in Council of Europe Member States: A Comparative Study of Legislation and Political Initiatives* 31 (2005) available at [http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG\(2005\)1_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG(2005)1_en.pdf); Sanyukta Mathur, Margaret Greene, & Anju Malhotra, *International Center for Research on Women, Too Young to Wed: The Lives, Rights, and Health of Young Married Girls* 9, INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (2003).

86. UNICEF *Child Spouses*, *supra* note 26, at 11.

87. International Child Marriage Act, *supra* note 7, at 1, 2; ERRC *Submission on Child Marriages among Roma*, *supra* note 81, section on Health.

88. ERRC *Forced Arranged Marriage*, *supra* note 83, at § 1.

89. See Rude-Antoine, *supra* note 85, at 21; Gaffney-Rhys, *supra* note 12, at 229 ("If a person under the age of eighteen has been forced into a marriage and forced into a sexual relationship a breach of Art 34 of the Convention on the Rights of the Child, which provides a right to protection from sexual exploitation and sexual abuse, will also occur").

90. Thomas, *supra* note 28, at 8.

91. Mathur, Greene, & Malhotra, *supra* note 85, at 9-10 ("Young married girls are least likely to benefit from educational and economic policies and programs, such as those that encourage primary and secondary school enrollment or expand opportunities for credit or participation in the paid workforce. Indeed, many of

Lack of education in turn reduces employment opportunities, which causes economic insecurity and greater dependence on their husband's family. Because young brides are expected to remain at home, they also lose the opportunity to interact with their peers, make friends, and develop social support systems.⁹²

An extreme, though rare, outcome of early marriage is human trafficking.⁹³ Human trafficking, often referred to as modern-day slavery, is defined as movement of persons for purposes of exploitation including elements of force, fraud, or coercion.⁹⁴ Trafficking includes labor exploitation in, inter alia, industry, agriculture, domestic servitude, service work, forced begging, and criminal activities as well as forced prostitution and sexual exploitation of men, women, and transgender adults and minors.⁹⁵ Recruitment is often creative, and can occur through false offers for work, education, and marriage, including offers from relatives and community members.⁹⁶ Young girls may be especially susceptible to such recruitment when they are faced with early marriage. As an example of how trafficking can occur as a result of early marriage, the English Royal Courts of Justice recently heard a case in which a Nigerian girl who ran away from a forced early marriage, only to become trapped in a forced prostitution and debt

the basic resources and services available to other segments of the population are beyond the reach of young married girls. [Moreover, e]arly marriage sharply reduces girls' access to education, while anticipation of early marriage often precludes education." at 9) (internal citations omitted).

92. Mathur, Greene, & Malhotra, *supra* note 85, at 11.

93. ERRC *Submission on Child Marriages among Roma*, *supra* note 81 ("forced child marriages can result in the trafficking of the young bride and increase her and her children's vulnerability to trafficking. The barriers that Romani women and girls face, namely poverty, discrimination and marginalization, and the human rights violations that stem from child marriage place them in desperate situations which make them particularly vulnerable to being trafficked.").

94. United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000), *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff-eng.pdf.

95. U.S. DEPT OF ST., HUMAN TRAFFICKING AWARENESS TRAINING: "TIP 101", *available at* <http://www.state.gov/j/tip/training/index.htm> (last visited Apr. 6, 2013).

96. Laura Sheahen, *How Human Traffickers Recruit*, Caritas Internationalis (Feb. 13, 2012), *available at* http://www.caritas.org/activities/women_migration/HowHumanTraffickersRecruit.html.

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bondage situation,⁹⁷ as if jumping from the frying pan into the fire.

A World Bank study found a connection between early marriage and trafficking for sexual exploitation, and links the lack of birth and marriage registration to the increased risk for trafficking of both very young brides and/or a young bride's children from the early marriage.⁹⁸ However, birth and marriage registration as part of a solution to human trafficking ignores the tension between this facially simple practice on one hand, and on the other hand cultural practices, which do not include or contradict the practice of registering births and marriages with authorities. This tension will be further explored in the case study presented in Part V.

B. Early Marriage as a Violation of Human Rights

Because of the harms to children, and especially girls, from early marriage,⁹⁹ a number of international instruments exist which protect girls.¹⁰⁰ Encompassing varied approaches to protection and rights, these fit roughly into four overlapping categories: human rights, women's rights, child rights, and European rights.¹⁰¹ Many of these categories provide for negative protections, such as non-discrimination, as well as positive protections, such as special provisions, quotas, and increased opportunities in

97. *Regina v. O.*, [2008] R.C.J. No. 200802952/C1 (U.K.) (The case involved a minor from Nigeria who was arrested while attempting to leave England on a false passport. She successfully appealed the false-document conviction because she had fled a forced marriage in Nigeria to England but then was trapped into a sex trafficking and debt bondage situation, and had tried to use the passport in an attempt to reach a relative in France.).

98. OSCE *Awareness Raising for Roma Activists*, *supra* note 6 (citing unpublished research findings in Office for Democratic Institutions and Human Rights-Contact Point for Roma and Sinti Issues *Report: Assessment Trip to Albania on Trafficking in Children from Roma and Egyptian Communities* (June 2003), available at <http://www.osce.org/odihr/42549>).

99. UNICEF *Child Spouses*, *supra* note 26, at 3-4 (noting that fewer boys are impacted by child marriage and, moreover, that for boys early marriage often increases opportunity while for girls child marriage decreases opportunity and freedom, and is often exploitative and physically harmful).

100. *Id.* at 3 (Presenting a table of international human rights instruments related to early marriage.).

101. *Id.* European Roma rights will be addressed *infra* Part VI.

many spheres of life including health, education, and employment.¹⁰²

In international rights-protecting documents, the right to self-determination in marriage is guaranteed in multiple instruments. The Universal Declaration of Human Rights ("UDHR") (1948) states in Article (1) that "men and women of full age . . . have the right to marry" and in Article (2) that "[m]arriage shall be entered into only with the free and full consent of intending spouses."¹⁰³ The Convention on Elimination of All Forms of Discrimination against Women ("CEDAW") (1979) echoes the UDHR's rights to freely choose marriage. CEDAW adds in Article (16.2) that "the marriage of a child shall have no effect."¹⁰⁴ However, CEDAW does not define child, but rather calls for states to "specify a minimum age for marriage."¹⁰⁵ This ambiguity and other limitations, including opt-outs in CEDAW and its Optional Protocol (1999), weaken the protections that CEDAW aims to provide by creating opportunities in the docu-

102. Regarding positive and negative protections or rights, *see e.g.* Michael J. Perry, *Protecting Human Rights in a Democracy: What Role for the Courts?*, 38 WAKE FOREST L. REV. 635, 695 n125 (2003) ("[T]here are two basic kinds of human rights against government: 'Negative' human rights state what government ought not to do to any human being (because every human being is sacred); 'positive' human rights state what government ought to do for every human being (within its jurisdiction). Most human rights documents, national (constitutional) and international, articulate rights of both kinds."); David Marcus, *The Normative Development of Socioeconomic Rights Through Supranational Adjudication*, 42 STAN. J. INT'L L. 53, 60 (2006).
103. Universal Declaration of Human Rights, G.A. Res. 217/A (Dec. 10, 1948); similar provisions are in the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (Dec. 16, 1996); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966)); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3 (Apr. 30, 1957) (Article (1) defines any practice which does not allow a woman the right to refuse marriage or any marriage in exchange for payment to any family member as similar to slavery); Convention to Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231, (Dec. 9, 1964) (a woman's consent is required, the minimum age for marriage is fifteen years, and marriages must be registered).
104. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180, U.N. GAOR, 34th Sess. Supp. No. 46, U.N. Doc. A/34/46, at 193 (Dec. 18, 1979).
105. *Id.*

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ments themselves to not enforce the rights it creates or advocates.¹⁰⁶

The Convention on the Rights of the Child (“CRC”) (1989, ratified by 193 countries) is the most comprehensive document for the matter of early marriage.¹⁰⁷ The CRC defines children as people under the age of eighteen unless local law defines the age of majority as earlier,¹⁰⁸ and states that “the child, by reason of his [*sic*] physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.”¹⁰⁹ The CRC recognizes the harms explained previously;¹¹⁰ that early marriage subjects children to harmful traditional practices which often deny children access to education, equal opportunity, and decent health, while putting children at greatly increased risk of the many harms enumerated in the CRC. However, protecting children’s “best interests” could be an ambiguous provision (who determines a child’s best interests—the child, parents, community, or state?).¹¹¹

The European Convention on Human Rights (ECHR), the fundamental European human rights document, does not contain provisions relating to early marriage or child rights.¹¹² But, several other instruments

106. UNICEF *Child Spouses*, *supra* note 26; ANNE-MARIE MOONEY COOTER, GENDER INJUSTICE: AN INTERNATIONAL COMPARATIVE ANALYSIS OF EQUALITY IN EMPLOYMENT 61 (2004) (“[CEDAW] is essentially a weak and often ignored instrument among the States party to it, since signatories to CEDAW have made more reservations to its provisions than any other UN convention.”).

107. CRC, *supra* note 82; UNICEF, *Convention on the Rights of the Child* (Apr. 4, 2013), available at <http://www.unicef.org/crc/>; UNICEF Convention on the Rights of the Child, *Frequently Asked Questions* (Nov. 30, 2005), available at http://www.unicef.org/crc/index_30229.html. The CRC is rooted in the Geneva Declaration of the Rights of the Child, League of Nations O.J. Spec. Supp. 21, at 43 (Sept. 26, 1924) and the Declaration of the Rights of the Child, G.A. Res. 1386(XIV) (Nov. 20, 1959).

108. CRC, *supra* note 82, at Article 1.

109. CRC, *supra* note 82, at Preamble, *quoting* the Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386(XIV) (Nov. 20, 1959). (These protections include freedom from discrimination, physical and mental violence, injury, abuse, maltreatment, exploitation, sexual abuse, abduction, sale, trafficking, harmful traditional practices, and all forms of prejudice. The CRC also mandates protecting a child’s health, access to health services and education, and equal opportunity.)

110. See discussion *supra* Part IV.A.

111. UNICEF *Child Spouses*, *supra* note 26, at 3.

112. COUNCIL OF EUROPE, European Convention on Human Rights, 213 U.N.T.S.

are focused on the issue. The Council of Europe¹¹³ Parliamentary Assembly Resolution Forced Marriages and Child Marriages (2005) reflects much of the protective language of the CRC.¹¹⁴ Similarly, the Vienna Declaration and Programme¹¹⁵ of Action repeats and affirms the child protection language in the UN human rights documents.¹¹⁶ It calls for the “eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices [including] the remov[al of] customs and practices which discriminate against and cause harm to the girl child.”¹¹⁷ However, this declaratory language fails to consider cultural integrity and autonomy, or the need to respectfully support cultural change in marginalized communities.

While the ECHR does not contain provisions for child protection,¹¹⁸

221, E.T.S. 5, *available at* http://www.echr.coe.int/Documents/Convention_ENG.pdf [hereinafter ECHR].

113. COUNCIL OF EUROPE, COUNCIL OF EUROPE IN BRIEF: DO NOT GET CONFUSED, *available at* <http://www.coe.int/aboutCoe/index.asp?page=nepasconfondre&l=en> (last visited Nov. 17, 2012) and COUNCIL OF EUROPE, COUNCIL OF EUROPE IN BRIEF: WHO WE ARE, WHAT WE DO, *available at* <http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en> (last visited Aug. 14, 2013). The Council of Europe is the human rights body of the E.U. and includes E.U. neighbor states. The Council of Europe was established to “promote democracy and protect human rights and the rule of law in Europe.” Its 47 member countries include “E.U. neighbors” or countries which are adjacent to, but not members of, the E.U.
114. COUNCIL OF EUROPE PARL. ASS., *Forced Marriages and Child Marriages*, Res. 1468 (2005), *available at* <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1468.htm>. This Resolution recognizes the adverse affects of early marriage on children, especially girls; it calls for ratification of various protections including raising the marriage age to eighteen and registering all marriages, and complete freedom in choosing to marry and choosing a spouse. It also calls on member states to define sex within forced and early marriages as rape and to consider criminalizing such marriages.
115. European spelling is used in this article where it is the original spelling for names, titles, and quoted text.
116. WORLD CONFERENCE ON HUMAN RIGHTS, June 14–25, 1993, Vienna Declaration and Programme of Action, ¶ 18, 38, 49, U.N. Doc. A/CONF.157/23 (July 12, 1993), *available at* <http://www2.ohchr.org/english/law/pdf/vienna.pdf>. This declaration is based on discussions at the World Conference on Human Rights held in Vienna (1993), and states that “human rights of women and the girl-child are . . . universal human rights.”
117. *Id.*
118. ECHR, *supra* note 113.

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the European Court of Human Rights¹¹⁹ addresses cultural integrity:

there could be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.¹²⁰

Yet a Rapporteur for the Council of Europe Parliamentary Assembly has declared a deep concern “about the serious and recurrent violations of human rights and the rights of the child which are constituted by ‘forced marriages’ and child marriages” and is “appalled” and “outraged by the fact that, under the cloak of respect for the culture and traditions of the migrant communities, there are authorities which tolerate forced marriages and child marriages although they violate the fundamental rights of each and every victim.”¹²¹ Here the Rapporteur is objecting not only to

119. EUR. CT. H.R., THE COURT IN BRIEF, *available at* http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf (“The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998 it has sat as a full-time court and individuals can apply to it directly.”).
120. Claude Cahn, *Lawmaking in Traditional Romani Communities and International Human Rights Law and Norms: Case Study of the Real and Potential Role of the Romani Kris*, 7 EUROPEAN YEARBOOK OF MINORITY ISSUES 93, 114 (2007/8) (quoting D.H. and Others v. the Czech Republic, Eur. Ct. H.R. Grand Chamber (Nov. 13, 2007)).
121. Rosemarie Zapfl-Helbling (Rapporteur), *Forced Marriages and Child Marriages Report*, Council of Europe Parliamentary Assembly Committee on Equal Opportunities for Women and Men, Doc. 10590 (June 20, 2005) (“The rapporteur has no data on Roma child marriages although they indubitably exist. Apparently the childhood and adolescence of Roma children end when they found their own families. A Roma proverb says, ‘Put your daughter on a chair, and as soon as her feet reach the ground, she is mature enough to be married’. Tradition dictated that the Roma girl, on reaching ‘adulthood. ie [sic] adolescence, was entrusted by her mother, already caring for several other children, to her future husband who had the duty of ‘training’ her. Actually the parents entrusted their teenage daughters to the families of the husbands and the girls were often compelled to marry the husband chosen by their parents. Husbands were usually, though not as a rule, chosen by the fathers.” ¶ 25 and citing *Roma in the Czech Republic: Adolescence*, *available at* <http://romove.radio.cz/en/article/18091> (last visited Dec. 13, 2012) [hereinafter *Roma in the Czech Republic*].

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the young ages of brides but also to community-based decision making instead of individualist decision making for entering into marriage. The latter approach is the basis of international and European human rights law regarding marriage.¹²²

However, these instruments do not work because the incidence of child marriage continues.¹²³ Moreover, they cannot work or are destined to fail because they do not recognize cultural issues. Claude Cahn discusses how excluding traditional authorities hinders implementation of human rights goals,¹²⁴ while acknowledging that some cultures and laws can at times conflict with human rights laws.¹²⁵ Another scholar posits that rights-based claims should be analyzed within their cultural, social, political, and economic context and not “detached from . . . other dimensions of justice.”¹²⁶ She contends that “[t]he right to culture and to recognition is [key] to the arena of human rights.”¹²⁷

C. Onward from Harms and Rights

The benefits of marrying early must be understood in order to effectively address early marriage practices. Legal pluralism is key to understanding the benefits and functions of early marriage. Using legal anthropology, legal pluralism, and critical feminist intersectional theory provides a way to separate out what is helpful and what is harmful about the practice of early marriage for both a culture and for individual participants. Legal, human rights, and cross-cultural scholar Abdullahi Ahmed An-Na'im notes that:

122. See discussion of the individualist orientation of human rights as a concept, citing Askari, *supra* note 80, and Ravnbøl, *supra* note 74.
123. See e.g. *ERRC Submission on Child Marriages among Roma*, *supra* note 81, at 2 (“Despite the wealth of international legal provisions banning this practice, child marriage continues to be practiced in certain Romani communities around Europe.”)
124. Cahn, *supra* note 120, at 122. Claude Cahn has worked for close to two decades on human rights issues in Europe, in particular on matters related to systemic discrimination against Roma, and has worked for both the European Roma Rights Center (ERRC) and the United Nations on Roma rights matters.
125. *Id.* at 120-124.
126. Gila Stopler, *Contextualizing Multiculturalism: A Three Dimensional Examination of Multicultural Claims*, 1 L. & ETHICS HUM RTS. 309, 301-311 (2007).
127. *Id.* at 352.

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First, every society is dependent on individual members for the development of its institutions, norms, values, and action. Second, each individual is also dependent on society for his or her very existence and for the prospects of realizing a meaningful and gratifying life.¹²⁸

Focusing on their mutual interdependence in order to protect both individuals and community rights, An-Na'im posits that it is necessary to "mobiliz[e] and harness[] the relevant resources of society."¹²⁹ This is possible, he continues, where the purpose of these rights can be framed as "consistent with cultural ideals."¹³⁰ The analytical tools from critical feminist intersectional theory permit a deep and careful parsing of the culture and cultural practices that is necessary to identify what is essential and what can be changed in order to effect sustainable, respectful cultural change and raise the marriage age. An-Na'im concludes that "an internal value or norm can be used to develop or supplement the cultural legitimacy of any given human right"¹³¹ in order to identify support within a culture for human rights to be upheld, by seeking "values, norms, and processes" from the culture to support human rights observances within that culture.

V. ROMANIAN ROMA CULTURE AND EARLY MARRIAGE: A CASE STUDY

This Part presents a case study on the phenomenon of early marriage in some Roma communities in Romania, where it persists although it is not widely practiced,¹³² nor is it well studied.¹³³ Early marriage is not

128. ABDULLAHI AHMED AN-NA'IM, *MUSLIMS AND GLOBAL JUSTICE* 70 (2011). Mr. An-Na'im is a Professor of Law and Ethics at Emory University, and an internationally recognized scholar of Islam, human rights, and human rights in cross-cultural perspectives. He teaches courses in international law, comparative law, human rights and Islamic law and has directed research projects on advocacy strategies for reform through internal cultural transformation.

129. *Id.* at 71.

130. *Id.*

131. *Id.*

132. Alexandra Oprea, *The Arranged Marriage of Ana Maria Cioaba, Intra-Community Oppression and Romani Feminist Ideals: Transcending the 'Primitive Culture' Argument*, 12 EUR. J. OF WOMEN'S STUDIES 133, 136 (2005).

133. Alexandra Oprea, *Re-Envisioning Social Justice from the Ground Up: Including the*

unique to Roma peoples.¹³⁴ This section begins by looking at the context of Roma cultures because they are unusual, obscure, and exceptionally marginalized.

Roma cultures are particularly unique. Roma peoples are an “extremely heterogeneous group”¹³⁵ and speak many languages.¹³⁶ Roma people originated from present-day India or Pakistan and migrated over a thousand years ago to Europe and other regions of the world.¹³⁷ Some groups are nomadic, and others have been settled in communities of their own or of a dominant or host¹³⁸ culture for many generations.¹³⁹ Two interrelated themes about Roma culture are important to bear in mind.

Experiences of Romani Women, 1 ESSEX HUM. RTS REV. 29, 33 (2004) (“Disaggregated data, a primary tool in challenging such structural subordination [including early marriage and the factors which contribute to it], has been difficult to come by in the case of Romani women.”).

134. Oprea, *supra* note 132, at 136; *see also* Part II.

135. Ian Hancock, *The Patrín Web Journal—A Brief History of the Roma*, PATRIN, available at <http://www.reocities.com/~patrin/history.htm> (last visited Apr. 17, 1999) (“There are four Rom ‘tribes’, or nations (natsiya), of Roma: the Kalderash, the Machavaya, the Lovari, and the Churari. Other groups include the Romanichal, the Gitanoes (Calé), the Sinti, the Rudari, the Manush, the Boyash, the Ungaritzza, the Luri, the Bashaldé, the Romungro, and the Xoraxai.”); *see also* ERRC *Forced Arranged Marriage*, *supra* note 83.

136. Hancock, *supra* note 135 (“The Romani language is of Indo-Aryan origin and has many spoken dialects, but the root language is ancient Punjabi, or Hindi. The spoken Romani language is varied, but all dialects contain some common words in use by all Roma.”).

137. *Id.*; Weyrauch & Bell, *supra* note 27, at 386; Isabel Mendizabal *et al.*, *Reconstructing the Population History of European Romani from Genome-wide Data*, 22 CURRENT BIOLOGY 2343 (Dec. 18, 2012).

138. WEYRAUCH, *supra* note 2, at 245, n. 5 on 245 (discussing the use of host versus dominant culture to describe the wider society in which Roma people live, given the often extremely inhospitable nature of the “host” culture and suggesting further readings on the topic).

139. On Roma peoples being nomadic or settled, *see* CHRIS JOHNSON & MARC WILLIERS, *GYPSY AND TRAVELLER LAW* 12 (2nd ed. 2004); also based on the author’s observations of settled Roma communities in the Republic of Moldova, including the regional center (town) Soroca which is popularly referred to as the Roma capital of Moldova because of the large neighborhood of established permanent Roma homes there, *see also* Anna Alboth, *Meeting the “Gypsy King” and His People, The Family Without Borders* (June 9, 2010), available at <http://thefamilywithoutborders.com/roma-meetings-soroca-moldova-2010-06-09/> (last visited Apr. 6, 2013).

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First, Roma peoples have been and in many areas continue to be harassed, exploited, persecuted, enslaved, vilified, forcibly sterilized, and murdered by non-Roma peoples.¹⁴⁰ Second, Roma peoples generally deride assimilation and view themselves as separate to a degree that is unfamiliar to the dominant cultures in which Roma peoples live. Therefore, it is for both cultural preservation and basic survival that Roma cultures have developed as largely separatist.¹⁴¹

The two interrelated themes of exploitation and isolation, and the ways in which they have shaped Roma cultures, including Roma laws or informal rule systems, are a necessary foundation in order to understand Roma cultures' strengths and challenges. Separation or isolation is manifested in a number of ways in daily life and community structure, including social mechanisms to separate and protect women, and the concept of purity.¹⁴² Sex separation and purity both function to isolate, protect, and

140. ERRC *Forced Arranged Marriage*, *supra* note 83, at § 2; VERMEERSCH, *supra* note 5, at 51; Weyrauch & Bell, *supra* note 27, at 336; Alexandra Oprea, *Psychic Charlatans, Roving Shoplifters, and Traveling Con Artists: Notes on a Fraudulent Identify*, 22 BERKELEY J. OF GENDER L. & JUST. 31, 32-33 (2007) [hereinafter Oprea, *Psychic Charlatans*]; COUNCIL OF EUROPE COMM'R FOR HUMAN RIGHTS, HUMAN RIGHTS OF ROMA AND TRAVELLERS IN EUROPE (2012) [hereinafter *Human Rights of Roma and Travellers*].
141. See Weyrauch & Bell, *supra* note 27, at 333 (section 2. *Reasons for Selecting Gypsy Law*, "Gypsies have successfully maintained their invisibility"), 336-340 (section B. *Impact of Past Persecution*, "Fearing . . . persecution, the Gypsies are inclined to distrust all non-Gypsies"), 340-341 (Gypsy ethnocentrism has supported "cultural insularity. A history of persecution has further reinforced this isolationism."); see also Cahn, *supra* note 120, at 107 n.39 (referring violence against Roma people in Romania, including "30 episodes of mass community violence, including a number of instances in which entire Romani communities were burned to the ground, often with the assistance with the public authority, and a number of pogrom killings of Roma by non-Romani mobs.").
142. Ronald Lee, *The Rom-Vlach Gypsies and the Kris-Romani*, 45 AM. J. COMP. L. 345, 361 (1997) (Explaining purity as "a complicated system of taboos concerning areas of pollution and defilement [including] . . . personal behavior toward his fellows" and noting that "[t]he difference between the non-Gypsy concept of cleanliness and visible dirt and Gypsy purity and invisible pollution is difficult to explain to outsiders except those who have similar customs (Jews, Hindus, Muslims, etc.)," thus pointing out that these beliefs and taboos are not so strange because they appear in many better-known cultures and religions.); see also Ian Hancock, *The Patrin Web Journal—The Pariah Syndrome*, PATRIN, available at <http://www.reocities.com/~patrin/pariah-ch15.htm> (last visited Apr. 8, 2013) ("To a greater or

preserve Roma cultures. Women are particularly to be protected because they are almost solely responsible for raising children; as such, women are the propagators of culture.¹⁴³ In addition, many Roma refuse to register with any authorities or hold state identification documents, for reasons of survival, safety, and tradition.¹⁴⁴

Roma groups are many and diverse. “[N]ot all Romani groups practise arranged marriages[,] and the amount of choice given to the participants varies from group to group.”¹⁴⁵ While this Part focuses on Romanian Roma practices, some of the data presented is on early marriage

lesser extent all Gypsy groups have inherited from India concepts of pollution and cleanliness, and these form a powerful basis for maintaining social distance from non-Gypsies.”).

143. Weyrauch & Bell, *supra* note 27, at 386; WEYRAUCH, *supra* note 2, at 3 (Women are “the guardians of law, because they communicate the taboos to their offspring from early infancy.”); *The Patrín Web Journal—Romani Customs and Traditions: Marriage*, PATRÍN, available at <http://www.reocities.com/~patrín/marriage.htm> (last visited Apr. 7, 2013) [hereinafter Patrín, *Romani Marriage*] (“Roma women are the guarantors for the survival of the population.”).
144. See Lindsey Cameron, *The Right to an Identity*, EUROPEAN ROMA RIGHTS CENTER, (2003), available at <http://www.errc.org/article/the-right-to-an-identity/1066>; Anne Sutherland, *Gypsy Identity, Names and Social Security Numbers*, 17 POL. & LEGAL ANTHROPOLOGY REV. 75, 79 (1994); Anca Covrig, *Why Roma do not Declare their Identity—Careful Decision or Unpremeditated Refusal?*, J. FOR THE STUDY OF RELIGIONS & IDEOLOGIES 90, 98-99, (Summer 2004), available at http://www.jsri.ro/old/html%20version/index/no_8/ancacovrig-articol.htm (“The Roma have been especially sensitive about data collection of any kind since it was used against them by the Nazis during World War II.” The article concludes that harms perpetuated against Roma using data collected from and about them is a main reason for refusing to identify or register with the state or any non-Roma authorities.); Lee, *supra* note 142, at 356-357 (noting that “alien host-culture always demands that ethnic and linguistic minority-group members have a conventional surname that can be spelled and pronounced by bureaucrats,” so Roma people will provide any simple host culture name. “This non-Gypsy name is simply a rendering unto Caesar and has no significance whatsoever among the Rom. It can be discarded and replaced, and in fact, it is usually one of many names (aliases) that the Rom provide to Caesar or use for business purpose.”); David Friedman, *Gypsy Law*, DAVIDDFRIEDMAN.COM, available at http://www.daviddfriedman.com/Academic/Course_Pages/legal_systems_very_different_12/Book_Draft/Systems/GypsyLaw.html (last visited Mar. 10, 2013), (“Gypsies [*sic*] treat a name, more generally an identity, as fungible, property belonging to the extended family to be used by any member who finds it useful.”).
145. Oprea, *supra* note 132, at 136.

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practices generally, because most data on early marriage is gathered by region or poorly disaggregated.¹⁴⁶ Not enough research had been conducted and scant data is available to analyze a single Roma group without at times bringing in broader data.¹⁴⁷ This is compounded by resistance to data collection in Roma communities, which is rooted in good reason, as information gathered officially or by the state about Roma peoples has both historically been and is still used to harm Roma people and their communities.¹⁴⁸ Indeed, throughout history, Roma peoples have been criminalized by laws created to curtail their traditional lifestyle.¹⁴⁹

Finally, a note on terminology for this case study. This article uses the term Roma for several reasons. First, Roma is the word used for the peoples in Romania that are the subject of this article's case study.¹⁵⁰ As Cahn explains, "Romania has, broadly, three categories of people identified as 'Gypsies' . . . Kashtale, Beash, and Roma[.] Roma . . . speak Romani, follow Romani traditions and rules,[] are in around ten to fifteen subgroups, and would call themselves Rrom."¹⁵¹ According to Ronald Lee, "[t]he Rom-Vlach Gypsies are a widespread group of interrelated

146. Kocze, *supra* note 6, at 3-4, 6 (calling for increased collection of data on Roma children and data disaggregated by sex and ethnicity).

147. Claude Cahn, *The Unseen Powers: Perception, Stigma and Roma Rights*, EUROPEAN ROMA RIGHTS CENTER (Nov. 20, 2007), *available at* www.errc.org/article/the-unseen-powers-perception-stigma-and-roma-rights/2870 ("[D]ata on internal community human rights issues, such as domestic violence and child marriage in Romani communities, is missing or of very poor quality."); Alexandra Oprea, *The Erasure of Romani Women in Statistical Data: Limits of the Race versus Gender Approach*, ROMANO KOPACHI (Mar. 17, 2003), *available at* <http://kopachi.com/articles/the-erasure-of-romani-women-by-alexandra-oprea/>, *also available at* <http://www.opensocietyfoundations.org/sites/default/files/roma-data-20030403.pdf>.

148. Kocze, *supra* note 7, at para. 10.

149. Oprea, *supra* note 140, at 33-39; WEYRAUCH, *supra* note 2, at 6-10.

150. Cahn, *supra* note 120, at 96; Ian Hancock, *Glossary of Romani Terms*, 45 AM. J. COMP. L. 329, 341 (1997) ("Rrom[:] 'person of Romani descent.' However, because of their isolation, the Romani populations who were held in slavery for between five and six centuries in Romania have come to regard themselves alone as being the 'real' Rrom, distinct from other non-Rrom Gypsy populations such as the Sinti or the Basalde. Nevertheless all non-Rrom populations refer to their culture and language as Romani, and use the word Rom (rather than the specifically Vlach Rrom) to mean either 'Gypsy' or 'husband.' Pl. either Rrom or Rroma."); Hancock, *supra* note 135 (discussing the diverse groups of people known as Roma).

151. Email from Claude Cahn to author (Mar. 13, 2013) (on file with author).

clans and families who exist in Romania . . .”¹⁵² Cahn points out that Rom-Vlach is not an autochthonous¹⁵³ term for Roma people; Roma do not use this term for themselves.¹⁵⁴ Because this case study is focused on Roma peoples in Romania, Roma appears to be the most respectful and accurate term for this article.¹⁵⁵

A. Rationales for Early Marriage in Romanian Roma Communities

Romanian Roma feminist scholar Alexandra Oprea addresses the need to analyze current as well as historic “economic, social, and political fac-

152. Lee, *supra* note 142, at 345 n. 1 (noting that the term Rom-Vlach is used in studying the group to identify its members, but not used by the group members).
153. *Autochthonous*, MERRIAM-WEBSTER ONLINE DICTIONARY, available at <http://www.merriam-webster.com/dictionary/autochthonous> (last visited Aug. 19, 2013) (“1: indigenous, native <an autochthonous people>[.] 2: formed or originating in the place where found”).
154. Cahn, *supra* note 120, at 96 n. 14.
155. See generally IAN HANCOCK, AMES AM E RROMANE DZENE/WE ARE THE ROMANI PEOPLE 2 (2001); YARON MATRAS, ROMANI: A LINGUISTIC INTRODUCTION 5, 161 (2002); Alin Dosoftei, *Names of the Romani People* (Dec. 24, 2007), available at <http://desicritics.org/2007/12/24/012125.php> (last visited Apr. 6, 2013) (referring to Roma and Romani people, though calling for Romani as the common term); WEYRAUCH, *supra* note 2 *passim* (using Roma and Romani interchangeably to refer to Gypsy peoples); see also EUROPEAN ROMA RIGHTS CENTER, available at <http://www.errc.org/>; ROMA RIGHTS WATCH, available at <https://romarightswatch.crowdmap.com/>; OSCE Assessment of the Human Rights Situation of Roma and Sinti in Italy 4 n.1, available at <http://www.osce.org/odihr/36374> [hereinafter OSCE Roma and Sinti Action Plan] (“In line with OSCE practice, this report uses the term “Roma and Sinti” to describe the population that in official Italian documents are commonly referred to “nomadi”, [*sic*] or nomads. This population consists of several subgroups, chief among them the Roma, often migrants from Romania and the western Balkans, and the Sinti, most of whom have settled in Italy for a long time.” n. 1); and Council of Europe Committee of Ministers, 1119th Meeting (Sept. 11, 2011), available at <https://wcd.coe.int/ViewDoc.jsp?Ref=CM%282011%2999&Ver=add2&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FD-C864&BackColorLogged=FD-C864> (“in the present recommendation, the term ‘Roma’ includes not only Roma but also Sinti, Kali, Ashkali, ‘Egyptians’, Manouche and kindred population groups in Europe, together with Travellers, so as to embrace the great diversity of the groups concerned”).

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tors”¹⁵⁶ when studying Roma communities. Early marriage must be addressed in light of “the interplay between patriarchy, racism and economic stratification” from within the communities where it occurs,¹⁵⁷ and thus from a culturally competent perspective.¹⁵⁸ This framework for analysis will be used to look at the phenomenon of early marriage in Romanian Roma communities. Within the Roma communities in Romania that practice early marriage in some or all families,¹⁵⁹ marriage is not before

156. Oprea, *supra* note 7. Ms. Oprea is a Romanian Roma woman, academic, and activist. She writes about, *inter alia*, Roma feminist resistance within Romani communities from the perspective of “Romani women, who lie at the intersection of race, class and gender, [and] suffer from multiple burdens.”
157. Oprea, *supra* note 7.
158. Cultural competence or cross-cultural competence originated in the medical field and is a process as much as a skill, “an ability to understand, communicate with, and effectively interact with people across cultures.” Mercedes Martin & Billy Vaughn, *Cultural Competence: The Nuts & Bolts of Diversity & Inclusion*, 1 STRATEGIC DIVERSITY & INCLUSION MGMT. MAG. 2007, at 31-36; see Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 INT’L J. LEGAL INFO. 22, 24 (2011) (“Multicultural . . . competence is achieved by the [professional’s] acquisition of awareness, knowledge, and skills needed to function effectively in a pluralistic democratic society (ability to communicate, interact, negotiate, and intervene on behalf of clients from diverse backgrounds) and on an organizational/societal level, advocating effectively to develop new theories, practices, policies, and organizational structures that are more responsive to all groups.”) *citing* D. W. Sue & G. C. Torino, *Racial-Cultural Competence: Awareness, Knowledge, and Skills*, in *Handbook of Racial-Cultural Psychology and Counseling*, in 2. TRAINING AND PRACTICE 3 at 8, (R. T. Carter ed., 2005); Theresa Hughes, *The Neglect of Children and Culture: Responding to Child Maltreatment with Cultural Competence and A Review of Child Abuse and Culture: Working with Diverse Families*, 44 FAM. CT. REV. 501, 507 n.14 (2006) (“Over the last decade, there has been a host of cultural competence materials and research; however, this has been primarily in the mental health, not the legal, realm.”); Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1319 (2006) (“Cultural competence is a developmental process that evolves over an extended period.”); see also Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 34 (2001) (demonstrating “the importance of lawyers learning cross-cultural concepts and skills”).
159. Oprea, *supra* note 7 (“only some Roma arrange the marriages of their children, [and] it is also important to differentiate between arranged marriages and child marriages; not all arranged marriages involve underage actors”).

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puberty¹⁶⁰ and marriage may take the form of a betrothal early in life without consummation until the individuals are older.¹⁶¹

According to Jeff Timmerman, Roma communities “embrace[] juvenile arranged marriage as a protectionist strategy and means of cultural, economic, and societal preservation and autonomy.”¹⁶² Early marriage is perpetuated by tradition, which is demonstrated in the adage, “sit your daughter in a chair and if her feet touch the ground, she’s ready for marriage.”¹⁶³ Layers of reasons surround the practice of early marriage, which in some Roma communities is between the ages of nine and fourteen,¹⁶⁴ and in others between the ages twelve to fifteen, although some evidence suggests that marriage age may be dropping.¹⁶⁵ As a protectionist strategy, marriage is arranged to maintain Roma culture, social isolation, and purity.¹⁶⁶

The concept of purity is at the core of the diverse Roma cultures and laws, and involves elaborate taboos that entail never discussing lower body functions, especially all aspects of sexuality and sexual health (menstruation, sexual activity, birth control, childbirth).¹⁶⁷ Even opaque

160. PATRIN, *Romani Marriage*, *supra* note 143 (“Traditionally, marriages for Roma have occurred early, after age nine but usually before age fourteen.”); Walter O. Weyrauch, *The Romani People: A Long Surviving and Distinguished Culture at Risk*, 51 AM. J. COMP. L. 679, 683 (2003) (reviewing IAN HANCOCK, *WE ARE THE ROMANI PEOPLE: AME SAM E RROMANE DZENE* (2002)) (“The onset of menstruation . . . may legitimate marriage prior to puberty” indicating that marriage does not usually occur before puberty.).

161. Bitu & Morteau, *supra* note 27, at 29, 103.

162. Jeff Timmerman, *When Her Feet Touch the Ground: Conflict between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties*, 13 J. TRANSNAT’L L. & POL’Y 475, 479 (2004).

163. *Roma in the Czech Republic*, *supra* note 121; Timmerman, *supra* note 162, at 475, 476.

164. Weyrauch & Bell, *supra* note 27, at 348.

165. Cahn, *supra* note 120, at 120-121.

166. PATRIN, *Romani Marriage*, *supra* note 143; WEYRAUCH, *supra* note 2, at 3 (“Sexuality, procreation, and marriage seem to be perceived in Romaniya [Roma law or legal system] as fundamental notions that sustain law.”); *see also* Lee, *supra* note 142 (on purity); Cahn, *supra* note 120, at 98 (purity has been conflated with Roma law, or Romaniya, but purity is better described as only one part of Roma law which is focused on honor.).

167. Walter O. Weyrauch, *Oral Legal Traditions of Gypsies and Some American Equivalents*, in *GYPSY LAW: ROMANI LEGAL TRADITIONS AND CULTURE*, 254-55 (Walter

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references to sex are strictly prohibited between mother and daughter or husband and wife.¹⁶⁸ The result of these taboos is that Roma girls, who should be virgins at marriage,¹⁶⁹ know nothing about sex when they marry. This can be dangerous to a girl's health and well-being when marriage includes having sex to consummate the marriage as a part of the extended wedding customs.¹⁷⁰

To protect both partners, but particularly to protect girls, marriage occurs while both partners are young.¹⁷¹ Early marriage increases the chances that the bride and groom are pure when they marry.¹⁷² This in turn upholds the important cultural value of bodily purity,¹⁷³ which includes virginity.¹⁷⁴ One source explains that Roma family structure prepares girls socially to be mature and ready for marriage at an early age.¹⁷⁵ Another source points to the history of rape by non-Roma slave owners¹⁷⁶ as one of the root causes of early marriage, because this led to or reinforced early marriage as a tactic to protect girls from rape.¹⁷⁷ More

O. Weyrauch ed., 2001).

168. *Id.*

169. Weyrauch & Bell, *supra* note 27, at 349; *see also* Rašidova, *supra* note 27.

170. Lee, *supra* note 142, at 222 ("The mere fact that the young couple have slept together makes them automatically married in the eyes of the Rom.").

171. Timmerman, *supra* note 162, at 480.

172. *Id.*

173. Weyrauch, *supra* note 160, at 683 (2003).

174. Weyrauch & Bell, *supra* note 27, at 342; Rašidova, *supra* note 27; Bitu & Morțeanu, *supra* note 27, at *inter alia* 29, 34; *see also* Roberta Radu, *Romania's Child Brides*, THE GUARDIAN (July 19, 2011, 09:47 AM), available at <http://www.guardian.co.uk/journalismcompetition/roberta-radu-shortlist-2011> [hereinafter Radu].

175. *Roma in the Czech Republic*, *supra* note 121 (explaining that "... young Romani girls are more socially prepared for marriage than biologically. Because, soon as the girl 'grew up' and reached the critical adolescent age, which for most of us is connected to defiance and rebellion, her mother was having several other children and entrusting her daughter 'for upbringing' to her future husband.").

176. Elena Marushiakova & Vesselin Popov, *Gypsy Slavery in Wallachia and Moldavia*, in NATIONALISMS TODAY 23-25 (Tomasz Kamusella & Krzysztof Jaskulowski, eds. 2009) available at http://www.academia.edu/1132654/Gypsy_Slavery_in_Wallachia_and_Moldavia (last visited Aug. 16, 2013) (Roma peoples were enslaved in Romania from the 13th or 14th century until the mid-1800s).

177. Oprea, *supra* note 7 "The Roma found that marrying their daughters off while they were still very young was a good solution, as once married and no longer virgins, the girls were no longer 'clean' enough to rape," quoting Valeriu Nicolae,

urgently, as one contemporary Roma father asserted, marriage protects daughters from “abduction by potential suitors who wouldn’t wait for negotiation.”¹⁷⁸ This reflects the family- and community-centered decision making for determining a child’s best interest, which can conflict with the individualistic approach that is the basis for human rights law and standards.

The emphasis here is on protecting individuals in order to protect the community and promote the Roma ways of life,¹⁷⁹ which are threatened both directly¹⁸⁰ and by the specter of assimilation. Early marriage is rooted in Roma law systems, which, as the rules of Roma cultures, are “primarily concerned with the collective rights of the Gypsy community.”¹⁸¹ Early marriage functions to preserve Roma cultures and values by embedding youth in their culture before they might leave their community of origin.¹⁸²

Economic and educational factors also play a role. Many Roma peoples live in economic isolation and suffer widespread and deeply entrenched discrimination by the host culture, which bars participation in educational and employment opportunities that would bring economic security.¹⁸³ Lack of access to education is particularly entwined with ear-

Deputy Director of the European Roma Information Office in Brussels, *A Problem Brewing: Media Coverage of Roma in Romania*, available at <http://media-diversity.org/en/> (search for Valeriu Nicolae and follow article title hyperlinks).

178. George Jahn, *Forced to Wed at 15, Gypsy Teen Buries Dreams of Studying Medicine*, USA TODAY: WORLD (June 29, 2003, 8:20 AM), available at http://usatoday30.usatoday.com/news/world/2003-06-28-gypsy-bride_x.htm?POE=click-refer.

179. Timmerman, *supra* note 162, at 492.

180. *Human Rights of Roma and Travellers*, *supra* note 140, *passim* (overview of ill treatment of Roma and Travellers by law enforcement and judicial authorities; detailing racially motivated violence against Roma and Travellers; detailing ill treatment of Roma and Travellers by law enforcement and judicial authorities; describing barriers to respect for private and family life of Roma and Travellers including forced and coercive sterilization of Roma women, and incidence of removal of Roma children from the care of their biological parents).

181. Caffrey & Mundy, *supra* note 3, at 259.

182. Timmerman, *supra* note 162, at 492.

183. Simona Ilie, Rusu Mărioara, Stefănia Toma, Iulian Stoian, & Arsu Alin, *Roma Inclusion in Romania: Policies, Institutions and Examples*, Soros Foundation Romania 144, 188-195 (2012) available at http://www.romadecade.org/files/downloads/General%20Resources/Soros_Romania_Foundation_Report%20-%20

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ly marriage.¹⁸⁴ Education barriers for Roma children, especially girls, is complicated and not easily dismissed. There are many reasons behind this phenomenon. Many Roma parents did not go to school at all or dropped out early, and do not see its value.¹⁸⁵ Sometimes, more hands are needed to help with younger siblings at home or to work for money.¹⁸⁶ For many

Roma%20inclusion%20in%20Romania%20-%20Policies%20institutions%20and%20examples.pdf. "Reality shows that the vicious cycle of poverty continues to keep Roma in situation [*sic*] of social exclusion, with [the] utmost grave consequences – difficult[ies in] access to health and education services, low level of participation on the labour market, improper housing, decrease of community solidarity, etc." *Id.* at 144; Aram A. Schvey, Martin S. Flaherty, & Tracey E. Higgins, *The Children Left Behind: Roma Access to Education in Contemporary Romania*, 29 *FORDHAM INT. L. J.* 1155, 1228 (2006) (noting "that the problems of the Roma in the field of education stem from a variety of factors having economic, social, and cultural aspects, as well as from racism and discrimination," citing COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, Recommendation No. R 4 (2000), available at <http://www.hri.ca/forherecord2000/euro2000/documentation/comminister/r20004.htm>); *Human Rights of Roma and Travellers*, *supra* note 140 (generally, on systemic discrimination and exclusion of Roma peoples); see also OPEN SOCIETY INSTITUTE, MONITORING LOCAL IMPLEMENTATION OF THE STRATEGY—ROMANIA 42-44, available at www.opensocietyfoundations.org/sites/default_files_romaro_complete; Barbara Giovanna Bello, *Multiple Discrimination Between the EU Agenda and Civic Engagement: the Long Road of Intersectional Perspective*, in *ROMA RIGHTS 2, 2009: MULTIPLE DISCRIMINATION*, J. OF THE EUR. ROMA RIGHTS CENTER 11, 18-19 (Rob Kushen ed., 2009) available at <http://www.errc.org/cms/upload/file/roma-rights-2-2009-multiple-discrimination.pdf>. Discussing "good practice [in] tackling the multiple marginalisation of Romani youth . . . who face discrimination based on their ethnic origin and . . . age . . . in vocational training, accessing the job market and in educational structures." *Id.* at 18.

184. Oprea, *supra* note 7, Parental "decisions [to have youth marry at a young age] always take place within a larger context where educational and employment opportunities are lacking for both parents and children. Parents' educational level correlates with when and whether they choose to arrange their daughters' marriages," citing Hongbo Wang, *Impact of Family Background upon the Timing of First Marriage in Contemporary China and Russia* (Proposal), available at <http://paa2005.princeton.edu/papers/51522>).
185. Oprea, *supra* note 7 (noting that the "decision of some Romani parents to withdraw their daughters from school [is linked to] structural inequalities experienced by parents which have deprived them of education." Oprea describes multiple factors which "have affected child marriage practices directly as well as indirectly by limiting opportunities for Romani women while simultaneously making marriage seem like a sensible alternative to their parents (who are also education-deprived).")
186. *Id.* ("Economic concerns also figure into this debate. Patriarchy's fusion with pov-

marginalized families, education is simply an unaffordable luxury when faced with daily survival.¹⁸⁷

Schools are not safe or hospitable to many Roma children for two reasons. First, many Roma children face discrimination and harassment in schools, and Romania is no exception.¹⁸⁸ Schools also present the additional risk of pre-marital sexual activity for older girls.¹⁸⁹ Second, schools are designed to assimilate students, which is a threat to Roma communities and culture.¹⁹⁰ Some Romanian schools bar Roma children's enrollment outright,¹⁹¹ and many schools in Romania and neighboring countries place Roma students into classes for disabled and special needs students, denying them a regular educational experience and further marginalizing Roma children.¹⁹² Low educational attainment further limits

erty sometimes leads parents to remove their female children from school to care for siblings or to supplement the family's income.”).

187. *Id.* (“For many Roma living below the poverty line, sending children to school becomes a luxury, as opposed to a right.”).

188. *See generally*, Schvey, Flaherty, & Higgins, *supra* note 183.

189. Oprea, *supra* note 140, at 40 (“families are afraid that [young girls attending school and associating with non-Roma] will result in losing their values and virginity”).

190. Oprea, *supra* note 7 (“Even in cases where poverty is not an issue - as in the case of some middle-class Roma’s refusal to send their children to school - we must also keep in mind that educational institutions are aimed at assimilating minorities. They constitute the backbone of the state’s socialisation project. Educational institutions are not neutral. As elaborated by the term/s, institutionalized/unintentional racism [“institutionalized racism” and “unintentional racism”], institutions reflect the values, practices and preferences of the status quo. Accordingly, some members of minority groups, in an effort to preserve their distinct identity, object to sending their children to mainstream schools. This is not unique to Roma. (The establishment of Muslim, Jewish and Korean schools in the United States comes to mind.)”); WEYRAUCH, *supra* note 2, at 256 (noting “Romani objections to schooling may be related to . . . exposure of their children to courses on sex education and uninhibited communications with non-Gypsy children,” *citing* Vogel, *The Least Known Minority*, CIV. RTS. DIG. 37 (Fall 1978) (noting schooling as a source of pollution in the lunchroom, bathrooms, close contacts between boys and girls, and sex education)).

191. Kocze, *supra* note 6, at para. 13 (barring enrollment due to lack of formal paperwork or for pre-textual reasons).

192. Schvey, Flaherty, & Higgins, *supra* note 183, at 1171 (“Roma students are often significantly over-represented in schools for children with special needs, learning disabilities, or mental handicaps.”); Kocze, *supra* note 6, at para. 12 (Overview of the segregation of Roma children into education programs for mentally handi-

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economic opportunities. Finally, because many Roma marriages involve dowry,¹⁹³ dowry money may help a struggling family while providing a daughter with a new home.

B. Harms of Early Marriage in Romanian Roma Communities

General information on the physical and psychological consequences of early marriage was presented in Part IV.A. This Part will present details of the social consequences and harms of early marriage specific to the Romanian Roma communities that, to some extent, practice early marriage.

In many Roma communities, marriage is consummated during part of the wedding festivities, which occur when girls are aged nine to fourteen but not before the onset of menstruation.¹⁹⁴ Sometimes girls are married when they begin maturing visibly, and so marriage and inception of sexual activity often occur at puberty.¹⁹⁵ Roma girl brides face increased incidence of removal from school,¹⁹⁶ domestic violence,¹⁹⁷ and marital

capped children in Europe and “the increasing territorial segregation of the Roma, which leads to the ‘ghettoized’ schools[] . . . Romani children in these ‘segregated’ schools but also in the schools for mentally handicapped are provided standard education. All this causes a serious disadvantage for them and disqualifies Romani children from admission to certain secondary and tertiary educational institutions.”).

193. Weyrauch & Bell, *supra* note 27, at 348; Lee, *supra* note 142, *passim*; Mirjam Karoly, *How to Talk about this to the Outside*, EUROPEAN ROMA RIGHTS CENTER (July 21, 2005) available at <http://www.errc.org/article/how-to-talk-about-this-to-the-outside/2294> (especially n. 12, discussing “[w]ith regard to the customary marriage, the participants also referred to the terms arranged marriage, early marriage and dowry system, meaning the custom among some Roma groups to arrange the marriage of their children by choosing the partner for them and agreeing on a dowry. Usually the dowry is given by the family of the groom to the family of the bride. As virginity is an important value within the customary marriage, it can be interrelated with the arrangement of the marriage of a minor bridal couple.”).
194. Weyrauch & Bell, *supra* note 27, at 348; ERRC *Forced Arranged Marriage*, *supra* note 84, at n.14; Cahn, *supra* note 121, at 120-121.
195. Bitu & Morteau, *supra* note 27, at 29.
196. *ERRC Forced Arranged Marriage*, *supra* note 83, at § 3; International Protecting Girls by Preventing Child Marriage Act of 2011, S. 414, 112th Cong. at 4, 8, 9 (2d Sess. 2012).
197. *See, inter alia*, Weyrauch & Bell, *supra* note 27, at 348 (explaining that corporal

rape.¹⁹⁸ The health and medical repercussions of early sex and early pregnancy are exacerbated for Roma girls because of the taboos against talking about anything related to the lower body, especially sex and sexuality.¹⁹⁹ This creates a barrier between young brides and information about sex, birth control, sexual health, medical attention, and adequate health care.

All of this occurs in a context of inadequate access to health care for Roma peoples in general. Roma peoples already face extensive barriers to health care, including discrimination, exclusion due to lack of state identification documents, geographic isolation, and a lack of transportation to medical centers or hospitals.²⁰⁰ Mistrust of non-Roma medical care is another barrier. This mistrust is based on well-documented discriminatory treatment, which ranges from segregation, inadequate exams, and refusal of services to forced and coercive sterilization.²⁰¹ Early marriage exacerbates both the real and perceived dangers for Roma peoples in registering for state identification or registering marriage or birth with the

punishment is “typically used only in cases of a wife’s infidelity”); ERRC *Forced Arranged Marriage*, *supra* note 83, at § 3(e); UNICEF *Child Spouses*, *supra* note 27, at 6, 12.

198. Thomas, *supra* note 27, at 11.

199. See Lee, *supra* note 143, at 364 (“certain topics of conversation are taboo, such as terms describing the genitals, body waste, toilets, underwear and, of course, a person’s sex life.”).

200. Lydia Gall, *Coercive Sterilization: An Example of Multiple Discrimination*, in ROMA RIGHTS 2, 2009: MULTIPLE DISCRIMINATION, J. OF THE EUR. ROMA RIGHTS CENTER 53 (Rob Kushen ed., 2009) available at <http://www.errc.org/cms/upload/file/roma-rights-2-2009-multiple-discrimination.pdf>. (Roma women “are exposed to further discrimination both within their own communities and by the majority society due to their gender. Lower levels of education (or in some cases, complete lack of education) make the situation for Romani women worse than that of Romani men. In relation to their reproductive rights, Romani women find themselves in a vulnerable position when encountering medical professionals. Often, the paternalistic attitudes of medical professionals result in Romani women being excluded from decision-making processes concerning their treatment.”).

201. *Human Rights of Roma and Travellers*, *supra* note 140, at 93-108, 170-177; see also Marina Denysenko, *Sterilised Roma Accuse Czechs*, BBC NEWS (Mar. 12, 2007), <http://news.bbc.co.uk/2/hi/europe/6409699.stm>; Jeffrey Thomas, *Coercive Sterilization of Romani Women Examined at Hearing: New report focuses on Czech Republic and Slovakia*, WASHINGTON FILE, BUREAU OF INT’L INFORMATION PROGRAMS, U.S. DEP’T OF ST. (Aug. 16, 2006) available at <http://iipdigital.usembassy.gov/st/english/article/2006/08/200608171045451cjsamoh0.678158.htm-1#axzz2PxbbLmgX>.

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state.²⁰²

A less common yet severe problem has also been documented among European Roma. Early marriage can put girls at risk for human trafficking, wherein parents may be tricked into “selling” a daughter for a dowry, or, in a different situation, a husband’s parents may force a young daughter-in-law into prostitution.²⁰³ A few cases have been documented of Roma girls from poor Eastern European countries trafficked through enticement to enter into marriage with Roma “husbands” in western European nations; in these cases, the girls’ families were tricked. Their parents thought they were receiving a normal dowry and setting their daughter up to be in a family.²⁰⁴ However, the phenomenon is still inadequately studied.²⁰⁵

202. See discussion *supra*, note 108.

203. See ERRC *Forced Arranged Marriage*, *supra* note 83, at § 3(d)-(e) (citing OSCE *Awareness Raising for Roma Activists*, *supra* note 6), § 4 (noting the vulnerability of unregistered children to human trafficking); Bitu & Morteau, *supra* note 27, at 36; see also Mohamed Y. Mattar, *Access to International Criminal Justice for Victims of Violence against Women under International Family Law*, 23 EMORY INT’L L. REV. 141, 143 (2009).

204. ERRC *Forced Arranged Marriage*, *supra* note 83, § 3(e); Case of M. and Others v. It. & Bulg., 2012 Eur. Ct. H.R. App. No. 40020/03 (2d Sess.), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112576> (a Bulgarian Roma family accused a Serbian Roma man and his family who were living in Italy of enticement to marriage for purposes of trafficking and exploiting their minor daughter); see also Mattar, *supra* note 203, at 144-6 (2009).

205. See generally, Karoly, *supra* note 193; Rebecca Surtees, *Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005*, INTERNATIONAL ORGANIZATION FOR MIGRATION, *available at* http://lastradainternational.org/lisidocs/494%20iom_2005_second_annual_report_on_victims_of_trafficking_in_south_eastern_europe_2005_22.pdf. This report states that a disproportionate number of trafficking victims in South East Europe, including Romania, are Roma due to their vulnerability as a marginalized minority [not necessarily related to early marriage]. *Id.* at 321, 433. The report also points out that “[a] number of those recruited with marriage promises were of Roma or Egyptian ethnicity, a practice that, in some ways, meshes with the cultural traditions of arranged marriage. Still, many Albanian victims were also recruited in this way and so we must be cautious not to attribute this trend only to cultural tradition.” *Id.* at 70 n.65, 470; see also Cahn, *supra* note 120, at 105.

C. Resistance to Early Marriage in Romanian Roma Communities

In counterpoint to these interconnected reasons for early marriage, some Roma feminist activists want to change their culture, and work to bring this change from within their communities. Even within isolated Roma communities, cultures are not static or homogenous; they “do not exist in a vacuum: they undergo constant change and are in perpetual dialogue with the state.”²⁰⁶ Emic (insider) perspectives include multiple perspectives, and the etic approach recognizes the validity of all opinions and experiences, including those critical to their own culture.²⁰⁷ All Roma are expected to marry by adulthood; “[c]elibate adults are frowned upon, as are women who do not bear children” and homosexuals.²⁰⁸ Any sexual identity or activity other than heterosexuality is not accepted or tolerated in Roma communities.²⁰⁹

On an individual level, some Roma women, and men, resist by finding ways to escape the confines of an early and forced marriage.²¹⁰ Oprea

206. Oprea, *supra* note 7 citing Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1192 (2001) (“minority cultures, like all cultures, undergo constant transformation and reshaping”), citing Stuart Hall, *Cultural Identity and Diaspora*, in IDENTITY, COMMUNITY, CULTURE, DIFFERENCE 222, 225 (Jonathan Rutherford ed., 1990) (asserting that cultural identities undergo constant transformation through the play of history and power, rather than being eternally fixed in some essentialized past).

207. Oprea, *supra* note 7.

208. Lee, *supra* note 142, at 363 (Non-heterosexual Roma must “marry and put up the front of a heterosexual existence to remain in the Rom community or they leave and live in the non-Gypsy world.”); see also MIKEY WALSH, *GYPSY BOY: ONE BOY’S STRUGGLE TO ESCAPE FROM A SECRET WORLD* (2010).

209. Lee, *supra* note 142, at 363 (“Homosexuality is . . . taboo. At the pilgrimage to Sainte Anne de Beaupre in the late 1980s, I saw two gay Rom feasting at a small table on the church camping ground. They were shunned and avoided by all the other Rom pilgrims.”); WALSH, *supra* note 208; Dwight Garner, *Fighters and Lovers, All Misunderstood: ‘Gypsy Boy,’ a Memoir by Mikey Walsh*, N.Y. TIMES (Feb. 16, 2012), available at <http://www.nytimes.com/2012/02/17/books/gypsy-boy-a-memoir-by-mikey-walsh.html>.

210. Oprea, *supra* note 7 (noting anecdotally that some young Roma women or girls “escape [unwanted marriage] by acquiescing to marrying the partner of their parents’ choice only to separate within a couple of months or a year, after which, as nonvirgins, they face less restrictions.”).

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points out that resistance is creative and can be accompanied by great cost: for some, it is a choice between losing family and community, versus losing one's autonomy.²¹¹ Some manage to avoid marriage, or marry but separate within months.²¹² Early divorce brings a kind of freedom for young women in Roma communities.²¹³ After a period of adjustment, a young Roma woman may enjoy fewer restrictions on her life as a non-virgin.²¹⁴

Marika, a Hungarian Roma woman, was married at age fourteen and says that "early marriage is often a disaster for young women, but many are afraid to talk about it."²¹⁵ She and her husband campaign against the practice of early marriage in Roma communities.²¹⁶ Notably, the few scholars and activists who write about their own culture and experiences were Roma boys and girls who grew up in Roma communities and faced some expectations of early marriage, usually at or just after puberty. Their work is profoundly shaped by these intensely personal experiences.²¹⁷

While some adolescent Roma girls, or adolescent girls from any culture, may certainly want to get married, have sex, and have children, Roma taboos discourage and effectively limit much published information on this topic.²¹⁸ When Roma women do speak out, "they are portrayed as traitors to their communities."²¹⁹ The voices of Roma women speaking about or against early marriage are rare.

A group of female Macedonian Roma law students conducted a survey on the Roma "virginity cult."²²⁰ Their goal was to establish a basis for "activities directed towards overcoming [taboo issues of sex and sexuality] among Roma . . . [and] help us to raise awareness particularly of the young

211. Oprea, *supra* note 7.

212. *Id.*

213. *Id.*

214. *Id.*

215. Frank Browning, *Worlds of Difference: Local Culture in a Global Context*, ROMA LOVE STORY, available at <http://homelands.org/worlds/roma.html> (last visited Dec. 6, 2012).

216. *Id.*

217. Oprea, *supra* note 7; Browning, *supra* note 215.

218. Oprea, *supra* note 133, at 31.

219. *Id.*

220. Rašidova, *supra* note 27; see discussion *infra* and note 185.

girls of their right to decide about their own body, about the choice of the spouse and about their lives in general.”²²¹ This is the beginning of wider dialogue, study, and leadership on girls’ human rights work being done by young Roma women in and about their own communities.

The “virginity cult” phenomenon is not isolated to Roma communities. The U.S. and United Kingdom are currently seeing a virginity cult movement rising in popularity with the purity ring trend, which began in the early 1990s.²²² Youth wear a special purity ring to signify their promise to delay sexual activity until marriage, especially vaginal intercourse but may face other risks as a direct result.²²³ Special parties are held to mark their commitment to abstinence.²²⁴ This phenomenon also illustrates, in general, how heterogeneous any culture can be.

D. Internal Calls for Change

Roma feminist activists and scholars are working to change their communities from within. To engage respectfully and effectively in broader cultural change, these Roma change-agents need support from government, religious, and human rights agencies. Roma activist Letitia Mark, pres-

221. Rašidova, *supra* note 27.

222. Ceci Connolly, *Teen Pledges Barely Cut STD Rates, Study Says*, WASH. POST (Mar. 19, 2005) available at <http://www.washingtonpost.com/wp-dyn/articles/A48509-2005Mar18.html> (“Virginity pledges emerged in the early 1990s based on the theory that young people would remain chaste if they had stronger community support—or pressure—to remain abstinent . . . Often pledgers receive a pin or ring to symbolize the promise and team up with an “accountability partner.”); Luke Salkeld, *Teenager banned from wearing Christian chastity ring at school*, UK DAILY MAIL ONLINE (Dec. 4, 2008), <http://www.dailymail.co.uk/news/article-1091901/Teenager-banned-wearing-Christian-chastity-ring-school.html> (“A 12-year-old girl has been banned from wearing a silver chastity ring at school.”).

223. Connolly, *supra* note 222 (“young people who sign a virginity pledge delay the initiation of sexual activity, marry at younger ages and have fewer sexual partners, they are also less likely to use condoms and more likely to experiment with oral and anal sex, said the researchers from Yale and Columbia universities.”).

224. Montana Miller, *Vernacular Abstinence: Teenagers, Purity Rings, and Rites of (Blocked) Passage*, 2 PRACTICAL MATTERS 1 (Aug. 2009), available at http://www.practicalmattersjournal.org/sites/practicalmattersjournal.org/files/pdf/issue2/VernacularAbstinence_Miller_final.pdf (“In the past ten years, public ceremonies in which teenagers pledge to remain sexually abstinent until marriage have surged in popularity.”).

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ident of a Roma women's association in Romania called For Our Children, laments the lack of information and statistics on early marriage, acknowledging that "[i]t's a very sensitive topic."²²⁵ Roma activists need data to support their work.

Social and cultural change that is data-based, sustainable, and culturally appropriate is in the interest of both Roma communities and the dominant culture, "despite the fact that hundreds or thousands of girls will face early marriage [during the time it takes for] governments and communities [to] begin to engage in real change."²²⁶ This change can and must come from within, and receive external support. As Oprea notes, "[t]he realization that feminist dissent is not evidential of the erosion of Romani identity, but rather a natural outgrowth of it, is essential."²²⁷ Internal cultural change is necessary in order to achieve what outsiders think is right from an etic perspective: waiting to marry until age eighteen or older, eliminating early marriage in order to have safer, healthier families.

However, internal resistance is a further barrier to seeking external support to address, or even recognize, women's and children's rights. Roma women who fear that complaining to non-Roma authorities about gender-based violations committed by Roma men will bring racist repercussions against their men rather than increasing safety in their home or community.²²⁸ This is also complicated by the Roma cultural value of protecting the family from shame.²²⁹ Another internal barrier is male non-recognition or denial of domestic violence in Roma communities. Several Roma men have expressed that violence against women in Roma communities is "exceedingly rare."²³⁰

225. Radu, *supra* note 174.

226. *Id.*

227. Oprea, *supra* note 7.

228. Oprea, *supra* note 147; *Human Rights of Roma and Travellers*, *supra* note 140, at 13-15 (overview of ill treatment of Roma and Travellers by law enforcement and judicial authorities), 63-74 (detailing racially motivated violence against Roma and Travellers), 75-92 (detailing ill treatment of Roma and Travellers by law enforcement and judicial authorities).

229. Oprea, *supra* note 140, at 40.

230. WEYRAUCH, *supra* note 2, at 263 ("Murder, rape, or sexual abuse of a Gypsy woman by a Gypsy man is unlikely to occur and exceedingly rare because such unspeakable crimes under Gypsy law would lead to the automatic pollution of the

For example, Oprea, the only woman on a panel at a symposium about Roma peoples, suggested an action to address domestic violence on Roma communities.²³¹ Her suggestion was rebuffed completely. Another (male) panelist interrupted her to ask, "What does domestic violence have to do with Roma?"²³² He lacked the capacity to understand that domestic violence might be an issue, or that there may be problems of which he personally was unaware. Oprea also cites examples where Roma women were entirely absent from the discussion but present in the kitchen, and the observation that female Roma scholars are less valued or respected than male Roma scholars, even where female scholars such as Oprea are engaged in "groundbreaking" work.²³³ Internal change must therefore also overcome internal barriers, and external support can be

perpetrator," citing JOHN B. McLAUGHLIN, *GYPSY LIFE STYLES* 86 (1980)); Lee, *supra* note 142, at 370 (" . . . crimes among Rom-Vlach, however, are very rare. They are in general a peaceful, non-violent people. Whatever physical violence they do commit is usually abuse and other family violence."); Oprea, *supra* note 133, at 36 ("Male leaders also commented that 'violence against women was not a big problem,'" citing to discussions at the Open Society Institute Network Women's Program, in *Bending the Bow: Targeting Women's Human Rights and Opportunities*, available at http://www.soros.org/initiatives/women/articles_publications/publications/bendingbow_20020801).

231. Oprea, *supra* note 133, at 30 (During Sept. 22-23, 2002 in Carbondale, Illinois, at "a round table discussion during the Southern Illinois University Public Policy Institute's symposium on 'Addressing the Plight of the Romani People.'" The participants were Ronald Lee, Dr. Ian Hancock, four other men, and Oprea was the only woman. "The aim of the panel was to brain-storm recommendations to problems facing Roma, which were later to be published in a pamphlet and distributed to different government agencies. [Oprea] suggested that we include in the pamphlet a recommendation to the Department of Justice's Violence Against Women Office to initiate outreach to Romani women in an effort to curb the incidence of domestic violence in Romani communities. Matt Salo [of the Gypsy Lore Society] interrupted to ask: 'What does domestic violence have to do with Roma?' To him, domestic violence was not . . . relevant to Roma [but] only white families.").
232. *Id.* at 30.
233. *Id.* note 134, at 32 (Roma women "have not gained as much recognition in the context of Romani politics and have not yet reached the ranks of Romani male activists despite the fact that they are involved in ground-breaking work." Also pointing out that "Romani women activists working on gendered Romani issues are often ignored" and accused of being "gadzikanime" [an outsider, or not Romani enough].)

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important to supporting this change.

VI. ROMANIAN LAW AND INTERNATIONAL LEGAL PROTECTIONS: HELPFUL OR HARMFUL?

A. Laws Meant to Help

As a member of the E.U. since 2007,²³⁴ Romania is under the jurisdiction of the instruments of both the European Council (political) and Council of Europe (human rights).²³⁵ These rights-based instruments call for protection, but do not provide it. Romanian national laws²³⁶ and obligations as a member of the E.U. to some extent echo the protections of international human rights, women's rights, children's rights, and other rights-based law.

Multiple international instruments are available to protect minorities, including protecting Roma children from early marriage. However, criminalization of early marriage increases harm to already marginalized communities because it effectively adds another barrier to basic health, education, and social services. Where early marriage is criminalized, very young brides' or grooms' families may face criminal charges and adverse state action when they seek medical care or other services.²³⁷ This risk is

234. EUROPEAN COMMISSION, ENLARGEMENT: ROMANIA, *available at* http://ec.europa.eu/enlargement/archives/romania/key_documents_en.htm; EUROPEAN COMMISSION, Europa Press Release, *Commission confirms Bulgaria's and Romania's EU accession on 1 January 2007*, Ref. IP/06/1257 (Sept. 26, 2006), *available at* http://europa.eu/rapid/press-release_IP-06-1257_en.htm?locale=en.

235. COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS: ACCESSION OF THE EUROPEAN UNION (2012) *available at* <http://hub.coe.int/what-we-do/human-rights/eu-accession-to-the-convention> ("all member states of the EU, as parties to the Convention, have an obligation to respect the ECHR [European Convention on Human Rights] even when they are applying or implementing EU law").

236. Romanian Family Code, *supra* note 22 (allowing marriage at age eighteen for men and women, and from ages sixteen to eighteen with parental, guardian, or other special consent procedures).

237. *See* discussion *supra* Part V. A.-B.

compounded by the criminalization of Roma peoples.²³⁸

The International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") (1965) calls for an end to discrimination, including sex discrimination, and the creation of special measures to promote full equality and freedoms for all persons, although it has no specific protections for children or women.²³⁹ Council of Europe Parliamentary Assembly Resolution 1740 (2010) calls for additional protections against racism, discrimination, and marginalization of Roma peoples including, *inter alia*, supporting the implementation of Resolution 1468, Forced Marriages and Child Marriages.²⁴⁰

Another Roma-specific instrument, which was developed in response to the poor implementation of CERD, is the Strasbourg Declaration on Roma (2010).²⁴¹ The Strasbourg Declaration calls for the general protection of Roma peoples specifically.²⁴² This Declaration includes children's "right to education and protect[ion] against violence, including sexual abuse and labour exploitation."²⁴³ This provision can be interpreted to include protections against the harms of early marriage.²⁴⁴

The European Council of the European Union issued the Council Directive Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin.²⁴⁵ This directive, *inter alia*, provides for positive and negative protections from racism and discrimi-

238. Oprea, *supra* note 140, at 33-39; WEYRAUCH, *supra* note 2, at 6-10.

239. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, U.N. Doc. A/6014, at 47 (Dec. 21, 1965).

240. COUNCIL OF EUROPE PARL. ASS., The Situation of Roma in Europe and Relevant Activities of the Council of Europe, Res. 1740 (2010), *available at* <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta10/eres1740.htm>.

241. Council of Europe High Level Meeting on Roma, Strasbourg Declaration on Roma, CM (2010)133, (Oct. 20, 2010), *available at* <https://wcd.coe.int/ViewDoc.jsp?id=1691607> [hereinafter Strasbourg Declaration] ("Roma in many parts of Europe continue to be socially and economically marginalized" (emphasis added)).

242. *Id.*

243. *Id.* at *Children's Rights* (24).

244. *Id.*

245. Council Directive 2000/43/EC, 2000 O.J. (L 180/22) (The European Council is the political policy body of the E.U.).

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nation based on a human rights approach, and calls for monitoring by the European Monitoring Centre for Racism and Xenophobia.²⁴⁶

Despite this array of protections, Roma peoples are criminalized and terrorized to this day. Romani Rose, Head of the Central Council of German Sinti and Roma, has said that “[i]n Germany and in Europe, there is a new and increasingly violent racism against Sinti and Roma,”²⁴⁷ and German Chancellor Angela Merkel has acknowledged that “Sinti and Roma often suffer from marginalization, from rejection[.] Sinti and Roma have to fight for their rights even today[.] So it is a . . . European duty to help them in this, wherever and within whatever country’s borders they live.”²⁴⁸ But how to help, without further marginalizing Roma people or harming their culture, is a delicate path.

“Laws cannot themselves reduce the incidence of child marriage,” yet without laws the protection of children will be much more difficult.²⁴⁹ “[L]aws must be accompanied by appropriate local strategies to address the causes of early marriage.”²⁵⁰ Therefore, the “part [that] international law plays in the campaign against early marriage should not be underestimated.”²⁵¹

Some Romanian Roma communities and groups accept early marriage as an integrated part of customary law and religious practice.²⁵² Cahn discusses the tension between individual rights (the basis of human rights law), human rights, and traditional life-ways,²⁵³ especially life-ways that protect the traditions and lives of people who have faced historical

246. *Id.* at art. 17.

247. ASSOCIATED PRESS, *Germany Inaugurates Memorial to the Nazis’ Gypsy Victims, Pledges to Fight Discrimination*, WASH. POST (Oct. 24 2012, 9:41 am), available at http://www.washingtonpost.com/world/europe/germany-inaugurates-long-awaited-berlin-memorial-to-the-nazis-gypsy-victims/2012/10/24/4dd62acc-1da2-11e2-8817-41b9a7aabc7_story.html.

248. *Id.* (Rose and Merkel were speaking at the Oct. 2012 opening of the German Holocaust memorial to the Roma and Sinti. There had been no previous memorial in Germany to the Roma and Sinti lost in the Holocaust.).

249. Ruth Gaffney-Rhys, *International Law as an Instrument to Combat Child Marriage*, 15 INT’L J. OF HUM. RTS. 359, 370 (2011).

250. *Id.*

251. *Id.*

252. UNICEF *Child Spouses*, *supra* note 26, at 7-8.

253. Cahn, *supra* note 120, at 109-110.

discrimination.²⁵⁴

In fact, the existence of informal traditional legal systems is sometimes an excuse for local Romanian authorities to ignore human rights violations in Roma communities, dismissing problems such as human trafficking as “internal Romani community issues,” which has “very worrying human rights implications.”²⁵⁵ Oprea criticizes “Romania’s systematic lack of attention to the marriages of Romani minors” and points out that “[w]hen state actors participate in such acts [or omissions], they implicitly sanction the denial of Romani women’s rights.”²⁵⁶

The informality of many early marriages leads to difficulty in identifying occurrences and accounting for the scope of the phenomena because few (if any) Roma marriages, including early marriages, are registered with local authorities. This reticence among Roma to register births and marriages can be perceived as a barrier to regulating Roma communities in order to make them safer. The lack of registration or legally recognized (by host or Romanian authorities) union also can negatively impact women’s access to rights, redress, and property.²⁵⁷ Yet in a context of ongoing violence, harassment, and hate speech,²⁵⁸ and the long-standing and deeply ingrained tradition of living apart, it makes sense from the emic perspective to not provide the authorities with any bio-data or identifying information on oneself or one’s family members.²⁵⁹

254. *Id.* at 110 quoting Jurgen Habermas, *Struggles for Recognition in the Democratic States*, in *THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY* 206 (Ciaran P. Cronin & Pablo De Greiff, eds. 1998).

255. Cahn, *supra* note 120, at 105, 105 n.38.

256. Oprea, *supra* note 134, at 31.

257. UNICEF *Child Spouses*, *supra* note 26, at 7-8.

258. Tad Stahnke, Paul LeGendre, Innokenty Grekov, Michael McClintock, & Alexis Aronowitz, *Violence Against Roma: 2008 Hate Crime Survey*, HUMAN RIGHTS FIRST (2008), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/FD-081103-hate-crime-survey-2008.pdf> (documenting random and organized violent hate crimes and hate speech against Roma by individuals and governments in eleven European countries, including Romania, at 12).

259. See discussion *supra*, note 108 (discussion of historical and contemporary barriers to Roma using identification or registering with the state, citing Cameron, Sutherland, Covrig, Lee, Friedman); Oprea, *supra* note 132, at 134.

B. Laws Used to Harm

As a manifestation of this systemic discrimination, states can use human rights standards disingenuously to harass and perpetuate discrimination and other human rights violations against Roma communities.²⁶⁰ Banning or criminalizing practices without addressing root causes from both internal (Roma leaders, activists, and non-governmental organizations (NGOs)) and external (state) positions becomes another form of anti-Roma discrimination and persecution. Timmerman raises the question: “[a]t what point do tactics aimed at enforcing human rights standards themselves violate human rights?”²⁶¹ This is especially sensitive where many Roma communities are geographically isolated, linguistically separated from non-Roma peoples, and economically and socially marginalized.²⁶²

Returning to the emic (insider) perspective, looking at harm perpetrated by authorities against a marginalized, often hidden, and poorly studied ethnic group provides rich opportunity for further study and research. The criminalization or banning of early marriage itself can be interpreted as a way to harass and denigrate Roma cultural practices, akin to banning other Roma activities (such as criminalizing fortune telling because Roma peoples engage in this economic activity).²⁶³

A recent UNICEF-Romania²⁶⁴ report undertaken jointly with a Romanian Roma rights organization²⁶⁵ looked at early marriage in Romanian Roma communities.²⁶⁶ As an example, the report documented a case

260. Timmerman, *supra* note 162, at 493.

261. *Id.* at 495.

262. See discussion *supra* Part V. (especially discussion of barriers that Roma people and communities face).

263. See e.g. Oprea, *supra* note 140, at 34-39; Caffrey & Munday, *supra* note 4, at 251; see also WEYRAUCH, *supra* note 2, at 6 (discussion of criminalization of Gypsies presence and economic activities by dominant or host societies). (Author's note: investment bankers and weather forecasters also predict future events.)

264. UNICEF is the United Nations Children's Fund, see UNICEF, ABOUT US, *available at* <http://www.unicefusa.org/>.

265. The NGO, Romani C.R.I.S.S, is the Centrul Romilor pentru Intervenție Socială și Studii [Roma Center for Social Intervention and Study (translation by article author)], was founded in 1993 to promote Roma rights in Romania, *available at* <http://www.romanicriss.org/index.php> (last visited Dec. 13, 2012).

266. Bitu & Morteau, *supra* note 27.

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in which a pregnant thirteen-year-old Roma girl was removed from her family home. The municipality forced the girl to live in an institution before, during and after delivering her baby, instead of living at home with her family.²⁶⁷ The Romanian family code permits the courts to take away parental rights where it finds that parents are not raising their children in the children's best interests. However, was the removal action truly helpful or protective for the girl? The report also found that:

weak or lack of collaboration (and interest) between authorities in taking a common and coherent measure [inhibits efforts to reduce early marriage]. Although in the case of early marriages in Roma families there is a complex background (invoking tradition) and an important lack of data on the phenomenon, the hindrances in identifying and implementing the most efficient solutions are also caused by the difficult partnership / communication between competent authorities.²⁶⁸

This report also documents how authorities use inaction to allow harmful practices to continue, and when authorities do intervene it is often in a manner that can be more harmful than it is helpful to the young married Roma whom they are meant to protect.²⁶⁹

As Camilla Ravnbøl points out, the human rights perspective often holds that “group rights may violate the individual rights of the members within the group (such as women) and thus undermine the human rights [work].”²⁷⁰ She identifies this argument, which targets normative pluralism, to demonstrate how positive cultural norms or informal laws which are central to a culture or group seeking greater dignity and respect are also “tied to patriarchal traditions that limit women’s freedoms [such as] early marriage, virginity cults” and other traditions widely accepted as harmful to women.²⁷¹ Ravnbøl explains that individual rights are violated when “very traditional Romani communities . . . maintain family

267. *Id.* at 101.

268. *Id.* at 103.

269. *Id.* at 100, 101-103.

270. Ravnbøl, *supra* note 74, at 19. Camilla Ravnbøl is a lecturer at the University of Copenhagen. She holds a European Master’s Degree in Human Rights and Democratization (EMA), and a BA in Social and Cultural Anthropology. She has published on human rights, women’s human rights, children’s rights, gender analyses, intersectionality, non-discrimination, and Roma issues.

271. Ravnbøl, *supra* note 75, at 18-19.

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integrity above, and sometimes at the expense of, the rights and freedoms of individual community members,” for example by the use of informal traditional Roma tribunals of male elders, called a Kris.²⁷² Local law and authority’s deference to the Romani legal structures may then, under the guise of respect for minority culture, allow harms to continue instead of upholding international commitments to individual rights. This illustrates how external values and norms can function to harm members of minority communities under the guise of permitting autonomy.

The next Part analyzes the application of both legal pluralism²⁷³ and critical feminist intersectional theories to identify how international legal instruments, national laws and policies, normative or customary law, and community development projects can be leveraged to better protect Roma girls’ rights.

VII. RECONCILING CULTURAL AUTONOMY AND THE HUMAN RIGHTS IMPERATIVE: A PROPOSAL

A. Legal Pluralism, Critical Feminist Intersectional Theory, and the Case Study

As discussed in Part VI, existing approaches to raise the age of marriage are not working.²⁷⁴ This article proposes a culturally appropriate, human rights-oriented approach that would not undermine the autonomy of the group practicing early marriage. In application, this will work slowly by building knowledge and partnerships, and using trial and error.²⁷⁵ Future actions that could enhance this proposal include research to develop more

272. *Id.* at 19 and n.80; Caffrey & Mundy, *supra* note 3, at 255; Lee, *supra* note 142, at 370 (‘The kris-Romani exists to deal with specific breaches of Rom law that arise in a given Rom-Vlach community and to act as the only body capable of defining or redefining Romani law.’); *see also* Oprea, *supra* note 132, at 143; Cahn, *supra* note 120, at 103 (Women do not participate as judges on a Kris panel, nor do women usually speak at the Kris proceedings.).

273. *See* discussion of legal pluralism *infra* Part III.B.

274. Strasbourg Declaration, *supra* note 242; Gaffney-Rhys, *supra* note 12, at 258; Ravnbøl, *supra* note 74, at 278; Cahn, *supra* note 120, at 122.

275. An iterative process for community change is outlined *infra* in Part VII.D.

data, and more disaggregated data, work among non-Roma to address and eradicate racist/oppressive beliefs and practices, and empowerment of all members of Roma communities.

This Part uses Crenshaw's critical feminist intersectional work as applied by Oprea and other critical feminist intersectional writers to analyze efforts to reduce early marriage in Romanian Roma communities. Angela Kocze, another feminist Roma writer,²⁷⁶ notes the need for intersectional analysis in public policy and, arguably, applied social change movements.²⁷⁷ "Although the concept of intersectionality is increasingly used in gender studies, sociology, and economy, in public policy there has been no recognition and reference to it when multiple inequalities are being addressed. Romani girls face intersectional discrimination based on their race/ethnicity, gender, class, and age. These dimensions are not mutually exclusive, and may reinforce one another."²⁷⁸

In studying Roma women and children, who suffer the combined oppressions of race, gender, class, ethnicity, history, and age for children and young women, it is essential to understand their full context. As Oprea notes, "[t]hat is the point: to make central what has been marginal."²⁷⁹ She explains that "Romani women, who lie at the intersection of race, class and gender, suffer from multiple burdens."²⁸⁰ Thus, this article draws on two specific comparative perspectives in order to better understand Roma peoples and the practice of early marriage. Using the emic (insider) and etic (outsider) perspectives from legal anthropology, and then analyzing those perspectives with legal pluralism and critical

276. Oprea, *supra* note 132, at 32. Angela Kocze is an expert in Roma women's empowerment and participatory research in Roma communities, and has over ten years of experience as Roma activist and advocate for Romani rights with the Hungarian government, European Roma Information Office (ERIO), and the European Roma Rights Centre. She holds a PhD. in Sociology and Social Anthropology, an M.A. in Human Rights, and an M.A. in Sociology.

277. Kocze, *supra* note 6.

278. *Id.* at para. 7.

279. Alexandra Oprea, *Intersectionality Backlash: A Romani Feminist's Response*, in ROMA RIGHTS 2 2009: MULTIPLE DISCRIMINATION, J. OF THE EUR. ROMA RIGHTS CENTER 21, 22 (Rob Kushen, ed., 2009) *available at* <http://www.errc.org/cms/upload/file/roma-rights-2-2009-multiple-discrimination.pdf>.

280. Oprea, *supra* note 8, *citing* Crenshaw, *supra* note 32, discussed in more detail *infra* Part IV.B.

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feminist intersectional theories, the reader can begin to understand both why early marriage makes sense, and how to respectfully support internal efforts to end this practice.

The emic (insider) and etic (outsider) analysis from legal anthropology is useful to examine why a cultural practice makes sense, and also to identify the harms it causes and the gaps left by the legal framework. International, European, and Romanian laws and commitments are designed to address harms generally, but lack intent or capacity to address intersectional harms or adequately take culture into account. These legal instruments address a single harm at a time: race, or gender, or culture, or age, or marriage. This, combined with the essentialism of rights movements which focus on one single form of oppression for purposes of unity (only minority rights, or only women's rights, or only ethnicity, etc.), forces Roma women to face a ridiculous decision: she may access rights either as a woman, or as a Roma person.²⁸¹ Additionally, these protections are not written or used to address early marriage of cultural-minority girls, especially those living in disenfranchised communities that the authorities would rather ignore.²⁸² Intersectional analysis then becomes key not only to understanding the complexity of these combined oppressions, but also in formulating a useful response both on the ground and in the law.

To move beyond shallow, ineffective, and racist efforts to combat gender discrimination (against women), or sexist efforts to combat racism (against males), Oprea calls for an "intersectional framework where race, class, and gender are acknowledged."²⁸³ In doing so, current efforts against early marriage would separate patriarchy and culture to preserve non-oppressive practices by distinguishing them from oppressive practic-

281. Oprea, *supra* note 132, at 33 ("Challenging patriarchy is difficult precisely because women often share a life with the oppressor. For women of colour, racism serves as another impediment to challenging sexism within their communities. The ideology of unity in the face of oppression by majority society serves to hinder many women from speaking about internal community issues.") *citing* Crenshaw, *supra* note 32.

282. Discussed *passim* by, e.g., Cahn, *supra* note 120, at 105, 105 n.38; Oprea, *supra* note 133, at 31.

283. Oprea, *supra* note 8.

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es.²⁸⁴ Referring to the Decade of Roma Inclusion²⁸⁵ in an interim report, Iulian Stoian writes that “the real problem for the Roma community is the gangrene of the systemic discrimination they are subject to.”²⁸⁶ This posits that regardless of national or international laws, Roma peoples face barriers to any substantive cultural changes or empowerment until such Roma peoples are respected in the host or dominant societies where Roma peoples live.

B. Starting Points for Reconciliation

Improving the condition of Roma peoples, including women, youth, and children, is a complex undertaking. This Part is a compilation of recommendations and good practices for improving human rights observances for Roma girls and women with increasing success. The term good practices is preferred to “best practices” because it acknowledges that not all practices are best in all contexts; each situation, community, and culture must consider budgets, resources, infrastructure, and emergent problems to navigate the task of implementing laws. Solutions can be modified and selected based on how they will achieve specific goals in different contexts. And as Oprea notes, “[t]here is a need to examine the myriad of

284. Oprea, *supra* note 147.

285. The Decade of Roma Inclusion 2005-2015, *available at* <http://www.romadecade.org/about> [hereinafter *Decade of Roma Inclusion*] (“The Decade of Roma Inclusion 2005–2015 is an unprecedented political commitment by European governments to improve the socio-economic status and social inclusion of Roma. The Decade is an international initiative that brings together governments, intergovernmental and nongovernmental organizations, as well as Romani civil society, to accelerate progress toward improving the welfare of Roma and to review such progress in a transparent and quantifiable way. The Decade focuses on the priority areas of education, employment, health, and housing, and commits governments to take into account the other core issues of poverty, discrimination, and gender mainstreaming.” The Decade also has a Decade Trust Fund, administered by the World Bank, http://www.romadecade.org/decade_governance (last visited Apr. 9, 2013)).

286. ROMA CIVIC ALLIANCE OF ROMANIA, DECADEWATCH ROMANIA REPORT: MID TERM EVALUATION OF THE DECADE OF ROMA INCLUSION, 2010 5 (Iulian Stoian & David Mark, eds., Marius Wamsiede, translator 2010), *available at* <http://www.romadecade.org/files/downloads/Decade%20Watch%202010/Decade%20Watch%20Romania%20Report%202010%20EN.pdf>. Iulian Stoian, LLM, coordinated and co-edited the report. He is a Public Policies and Advocacy Expert with the Roma Civic Alliance of Romania (RCA).

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ways in which policies affect Romani communities by taking into account their diversity and proceeding with careful research and analysis on a case-by-case (community-by-community) basis.”²⁸⁷

The recommendations presented here are gathered from many of the resources cited in this work, many of which were operational, project-oriented, and/or activist-written works containing recommendations sections themselves, including field manuals and academic research on critical feminist intersectional theory as it relates to human rights work.

The conflict, tension, or non-implementation among multiple bodies of law is demonstrated, for example, where Council of the European Union²⁸⁸ directives to protect Roma peoples and children are not de facto implemented by Romania, an E.U. member country with a significant Roma population. Likewise, Council of Europe²⁸⁹ resolutions may fail to protect Roma peoples and children in member states that allow harmful practices to continue by taking no meaningful action to protect the intended beneficiaries. Some authors also allude to practices of harassing Roma communities because of their “harmful customs” as a guise to continue maltreating Roma communities as non-Roma have done for centuries, although this remains under-developed in the literature.²⁹⁰

Data on Roma communities, especially the practice of early marriage, is paltry.²⁹¹ The European Roma Rights Centre (“ERRC”), an international public interest law organization working to promote Roma human rights and dignity, has published one report focused on early marriage in Roma communities, although the issue is mentioned in nu-

287. Oprea, *supra* note 132, at 138.

288. THE COUNCIL OF THE EUROPEAN UNION, available at <http://europa.eu/about-eu/institutions-bodies/council-eu/>, (“[T]his is where national ministers from each EU country meet to adopt laws and coordinate policies.” This is not to be confused with the European Council, “another EU institution where EU leaders meet around 4 times a year to discuss the EU’s political priorities,” or the Council of Europe, which is “not an EU body at all.”).

289. See explanation, *supra* note 113 (The Council of Europe is a human rights organization that includes many countries outside of the E.U.).

290. See Timmerman, *supra* note 162, at 493-397; Oprea, *supra* note 140, at 38, 41; Caffrey & Mundy, *supra* note 3, at 266-267.

291. See Cahn, *supra* note 147, at § *Stigma and Internal Community Issues*; UNICEF *Child Spouses*, *supra* note 26, at 16-17; Oprea, *supra* note 147.

merous other reports and papers.²⁹² One of the first and key recommendations is that gathering data is a central component of further work.²⁹³

To work effectively, community and international actors need data on Roma minors disaggregated by sex, race, ethnicity, and geography.²⁹⁴ They need information on the prevalence of early Roma marriage, reasons for and results of early marriage, and related phenomenon including access to employment, housing, healthcare, education, and social services.²⁹⁵ Additional data is required, on promoting education and social inclusion of Roma communities, as well as the involvement of Roma communities, NGOS, and activists in all of these initiatives.²⁹⁶ The ERRC reports call for states to report on their compliance to international human rights bodies and to establish monitoring of early marriage and human trafficking, which would increase available data on these phenomena.²⁹⁷ The ERRC reports also call on states to actively promote social and economic inclusion of Roma people, including women and children.²⁹⁸

Research on many aspects of Roma peoples' human rights, including early marriage in Roma communities would also provide more than

292. ERRC *Submission on Child Marriages among Roma*, *supra* note 81; *see generally* <http://www.errc.org/> and search for "child marriage" in the search box.

293. Cahn, *supra* note 147, at § *Stigma and Internal Community Issues*; UNICEF *Child Spouses*, *supra* note 26, at 16-17; Oprea, *supra* note 147.

294. Oprea, *supra* note 147 (calling for data to increase the "understanding of the intersections between racism and sexism, and to design and analyse data accordingly"); OSCE, *Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, Ministerial Council Decision No. 3/03 at ¶ 15, 25, 128 (Dec. 1-2, 2003), *available at* <http://www.osce.org/odihr/17554>.

295. UNICEF *Child Spouses*, *supra* note 26, at 16-17 ("There are grounds for believing that the practice [of early marriage] is under-reported in areas where it is known to occur, especially for children under 14, who are virtually invisible in standard data recording. And there are grounds for believing that it is rising in highly stressed populations – contrary to general trends. More indicators may be needed for use in standard surveys; and existing research methodologies should be assessed for their usefulness in capturing necessary data."); Bitu & Morteau, *supra* note 27, at 18 ("the lack of specialized human resources and [clear] data in this field, [increases] the difficulty to correctly identify/approach the intersectionality").

296. ERRC *Submission on Child Marriages among Roma*, *supra* note 81; ERRC *Forced Arranged Marriage*, *supra* note 83.

297. ERRC *Submission on Child Marriages among Roma*, *supra* note 82 (*Recommendations* section).

298. *Id.*

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information necessary to support change. Thoughtful evaluation is needed to better explore how human rights laws, which were designed to protect children from harmful practices, conflict with traditional law and cultural norms to practice early marriage. The issue of early marriage also affords an opportunity to exercise the practice of using surveys as a tool to open cultures and communities to change. By designing surveys carefully, they can perform dual purposes of promoting awareness while gathering data. Respectful, culturally competent survey gathering can help toward this end.²⁹⁹ Oprea explains that a “multi-dimensional approach to the collection of data is an important facet to designing policies and programs to combat institutional discrimination against Romani women.”³⁰⁰ Thus, basic activities such as carrying out a carefully designed survey can be used to raise awareness at the community level while also informing leaders on how to formulate culturally appropriate initiatives to strengthen communities, increase the safety of individuals, and maintain cultural autonomy.

C. Integration and Involvement

The tension between the host or dominant culture and Roma communities is summarized in a report detailing barriers to anti-trafficking work, which found that “mutual distrust characterizes relations between Roma and non-Roma,” and “as a result of many cultural biases of non-Roma, Roma activists may have been hindered in their efforts to address human

299. WINROCK INTERNATIONAL & TEACH (TANZANIA EDUCATIONAL ALTERNATIVES FOR CHILDREN), TRAINING GUIDE ON COMMUNITY ASSET APPRAISAL (2008), available at <http://winrockteach.org/wordpress/wp-content/uploads/2010/08/Training-guide-Community-Asset-Appraisal.pdf> (describing Asset-Based Community Development as a way to assess both problems and resources to empower and mobilize communities to take ownership of solutions they choose); see also Alison Mathie & Gord Cunningham, *From Clients to Citizens: Asset-Based Community Development as a Strategy for Community-Driven Development*, THE COADY INTERNATIONAL INSTITUTE, ST. FRANCIS XAVIER UNIVERSITY (2002) available at <http://www.communityrestorationtrust.com/PDF/communitydevelopment.pdf> [hereinafter Mathie & Cunningham]; John. P. Kretzmann, *Building Communities from the Inside Out*, National Housing Institute (1995), available at <http://www.nhi.org/online/issues/83/buildcomm.html>; *Appreciative Inquiry and Community Development*, available at <http://www.iisd.org/ai/>.

300. Oprea, *supra* note 132.

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[rights violations].”³⁰¹ Indeed, Oprea notes that the “limited feminist and antiracist politics in Europe systematically ignore Romani women.”³⁰² Exclusion from even the movements which would ostensibly be champions for issues such as raising the age of marriage in Roma communities is not helpful.

Roma writers and advocates point out that meaningful change must come from within a culture.³⁰³ The Organization for Security and Co-operation in Europe (OSCE) Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area recommendations focus on school integration and access to medical care as good practices to ameliorate and reduce early marriage.³⁰⁴ Likewise, another OSCE report recommends different ways to improve Roma communities’ involvement, ownership, and empowerment to improve the observance of human rights.³⁰⁵ This report points out that empowerment must take place for Roma communities at all levels of society, both from within Roma communities and among non-Roma peoples working with Roma communities.³⁰⁶

These recommendations range from the personal to the political and policy levels. Roma persons must be included in capacity building, data collection, exchanges of information, building the inclusion of Roma participants in national and community initiatives, including mentoring programs.³⁰⁷ Non-Roma persons need training to work respectfully and effectively with Roma community members,³⁰⁸ including civil authorities who could work to improve Roma birth and marriage registration.³⁰⁹ Both grassroots projects and political will are needed to improve cooperation between Roma leaders and relevant experts, and to formalize col-

301. *OSCE Awareness Raising for Roma Activists*, *supra* note 6, at § IV.

302. Oprea, *supra* note 146.

303. See Oprea, *supra* note 132, at 39; WEYRAUCH, *supra* note 2, at 252-253; Cahn, *supra* note 121, at 122.

304. *OSCE Roma and Sinti Action Plan*, *supra* note 281; see also Mathur, Greene, & Malhotra, *supra* note 85, at 13-14 (describing success in delaying age of marriage by providing economic opportunities for girls, educating girls, creating safe social spaces, public education, and enforcement of existing laws and regulations).

305. *OSCE Awareness Raising for Roma Activists*, *supra* note 6, at 15-16.

306. *Id.* at 15-16.

307. *Id.* at 1, 3, 12, 13, 17.

308. *Id.* at 1.

309. *Id.* at 13, 16.

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laboration among NGOs and government agencies.³¹⁰ The participation of Roma people must be on an equal footing with non-Roma people in organizations and initiatives that affect Roma communities and needs.³¹¹ Essentially, these OSCE reports call for mainstreaming³¹² of both Roma peoples' rights and Roma persons' involvement at all levels of advocacy, promotion, and effectuation of Roma rights.

At the same time, women and children must be involved in changing their culture and communities. "The answer is not only to implement separate initiatives for [Roma women] but also to include them in existing programmes, in other words, to construct programmes for the Romani community and for women from the bottom-up" to effect respectful change.³¹³ This approach operationalizes legal anthropology, legal pluralism, and critical feminist intersectional theories to promote positive freedoms by applying Nura Taefi's analysis to distinguish "between cultural *practices* and cultural *values*."³¹⁴ Drawing on other feminist cultural writers and human rights writers, Taefi describes a four-step analysis for this critical feminist analysis of culture, by identifying (1) "the origin and value of the cultural practice;" (2) "the level of significance to the culture and within the community;" (3) the practice's "level of intrusion on a protected individual right;" and (4) "how significant . . . the human rights norm [is] to the international community."³¹⁵ This critical feminist analysis would aid in promoting "freedom [including] positive freedom" by promoting "an ethic of care and empathetic reasoning . . . in international human rights . . . and [adopting] the 'question of the marginalised'

310. *OSCE Awareness Raising for Roma Activists*, *supra* note 6, at 1, 2, 3, 5, 15, 17.

311. *Id.* at 15-17.

312. *See* discussion of mainstreaming *supra* note 270.

313. Oprea, *supra* note 133, at 36.

314. Taefi, *supra* note 78, at 368 (2009) (emphasis in original). Nura Taefi holds a BA/LLB and an LLM. She is a civil litigator and has published research and articles on the international human rights of girls.

315. Taefi, *supra* note 78, at 368 *citing* Amoah, J., *The World on Her Shoulders: The Rights of the Girl-Child in the Context of Culture and Identity*, 4 ESSEX HUM. RTS REV. 1 (2007); Berta Esperanza Hernández-Truyol, *Women's Rights as Human Rights - Roles, Realities and the Role of Culture: A Formula for Reform*, 21(3) BROOKLYN J. OF INT'L L. 609 (1996). Berta Esperanza Hernández-Truyol teaches International Law, International Human Rights, Issues of Gender/Race and Latinas/Latinos in the Law, Employment Discrimination at the University of Florida Levin College of Law. She holds an LL.M., J.D., and B.A.

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... as the main methodological tool.”³¹⁶ This analytical approach protects a culture’s integrity while addressing harms to individual members of the culture.

The emic (insider) and etic (outsider) analysis from legal anthropology used in Part III.A. is a cross-cultural lens which, used collaboratively, can enrich in this work. Hernandez-Truyol “emphasizes the importance of an analysis from the perspective of both ‘insiders’ and ‘outsiders,’ [because] ‘[i]nsiders’ are able to provide a contextual background and elucidation of the particular nuances of a given practice, while ‘outsiders’ bring a certain degree of objectivity” which any “insiders” would not naturally possess about their own culture of origin.³¹⁷ This emic and etic approach, implemented on a community-by-community basis in combination with analysis of how gender and age compound Roma girls’ oppression, “can counteract gender-bias and adult-dominance in the execution of human rights law.”³¹⁸ Using legal anthropology, legal pluralism, and feminist critical intersectional analysis to generate data and develop collaborative methodologies and strategies to promote girls rights will improve human rights observances while strengthening communities.³¹⁹

D. Top-Down and Bottom-Up

In this vein, UNICEF recommends ensuring access to sex education including contraception, and advocates an inclusive, top-down and bottom-up approach that spans policymakers, politicians, academics, parents, and teenagers as well as incentive programs to keep girls in schools.³²⁰ Likewise, Oprea calls it “essential” to include both progressive Roma male activists in challenging patriarchy and “promoting an intersectional, multi-faceted analysis of the problems affecting Romani communities today.”³²¹ She explains that countering patriarchy within Roma communities requires giving a central voice to Roma women in a “ground-up approach by consulting with those for whom race, gender, and class result in

316. Radacic, *supra* note 76, at 275-76.

317. Taefi, *supra* note 78, at 368 citing Hernandez-Truyol, *supra* note 315, at 609.

318. Taefi, *supra* note 78, at 372.

319. *Id.*

320. UNICEF *Child Spouses*, *supra* note 26, at 13.

321. Oprea, *supra* note 133, at 39.

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multiple forms of subordination.”³²² Including Roma women in broader social justice programming from the bottom-up would ensure including the “experiences of those multi-burdened, such as Romani women”³²³ in project implementation.

Another way to mainstream Roma perspectives and improve human rights observance is to include “the traditional [Roma] authority within the archipelago of institutions responsible for the implementation of international human rights law, rather than” excluding traditional Roma authority from these responsibilities and positing traditional authorities as “an implacable enemy of human rights.”³²⁴ Cahn suggests that recognition of informal Roma law to “foster compliance with human rights law [would also provide] much-needed strength to the [Roma] community and its institutions.”³²⁵

Several initiatives and resources are available to enhance child rights observances in Roma communities without creating harm. The International Roma Women’s Network was launched in 2003.³²⁶ This is a model good practice because it is both grassroots and international, and operated by Roma women who have at least some key demographic features in common with their beneficiaries.³²⁷ It is supported by the Advocacy Project, which provides capacity-building training and space online for activists to have a platform for exchanging ideas, resources, and reports.³²⁸ Another resource is the development of Asset Based Community Development.³²⁹ This provides a theoretical framework for community-based resource development, including social resources such as change-agents, or local leaders.³³⁰ This resource focuses on inclusive participation by “helping to identify a legitimate [respectful, helpful] role for external agencies[,] so that control stays within the communities themselves” and

322. *Id.*

323. *Id.*

324. Cahn, *supra* note 120, at 122.

325. *Id.* at 133.

326. INTERNATIONAL ROMA WOMEN’S NETWORK, <http://advocacynet.org/page/irwn> (last visited Nov. 20, 2012).

327. *Id.*

328. *Id.*

329. Mathie & Cunningham, *supra* note 299, at fig. 1.

330. *Id.*

leading “by stepping back.”³³¹

These efforts are positive, but much work remains. Harming by trying to help is endemic in international law and community development. The adage of “Do No Harm”³³² has room to grow. Incorporating Do No Harm into rights-based work is described as seven-step approach, beginning with understanding the context, analyzing dividers and tensions as well as connectors and local capacities, and then analyzing the assistance project or project plan.³³³ The fifth step involves analyzing the program in the context and considering resources and implicit ethical messages or assumptions.³³⁴ The last two steps are to generate program options and finally to test options and redesign the program.³³⁵

This iterative, process-based approach allows real inclusion and opportunities to involve community members—both insiders and outsiders. Listening is an important part of a good methodology to develop culturally appropriate programs and projects, instead of imposing outsider

331. *Id.*

332. Do no harm is a principal of medical ethics that translates well to legal and social or sociological work with children and other vulnerable members of communities. *See generally* Judge Thomas Frawley, *Opening Address: Do No Harm*, 2004 J. INST. JUST. INT’L STUD. 1, 2 (2004) (discussing the “physician’s oath, ‘Do no harm,’” as it applies to legal work.); *History of Medicine Division, National Library of Medicine*, NATIONAL INSTITUTES OF HEALTH (7 Feb. 2012), http://www.nlm.nih.gov/hmd/greek/greek_oath.html (The Hippocratic oath “does not explicitly contain the phrase, ‘First, do no harm,’ which is commonly attributed to it.”). This concept has been expanded as well to international development and human rights work. *See generally* Mary Anderson, *Do No Harm*, Conflict Sensitivity Consortium (2001), *available at* <http://www.conflictsensitivity.org/node/103>; ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *DO NO HARM: INTERNATIONAL SUPPORT FOR STATEBUILDING* (2010) *available at* <http://www.oecd.org/development/incf/44409926.pdf>; COLLABORATIVE FOR DEVELOPMENT ACTION, INC. & CDA COLLABORATIVE LEARNING PROJECTS, *The Do No Harm Handbook (The Framework for Analyzing the Impact of Assistance on Conflict)* (2004) *available at* <http://www.cdainc.com/dnh/docs/DoNoHarmHandbook.pdf> [hereinafter *The Do No Harm Handbook*]. “Do no harm helps us get a handle on the complexity of the conflict environments where we work. It helps us see how decisions we make affect intergroup relationships. It helps us think of different ways of doing things to have better effects.” *Id.* at 1.

333. *The Do No Harm Handbook*, *supra* note 332, at 3-5.

334. *Id.*

335. *Id.*

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or etic cultural norms onto a community. Working this way is harder and slower, but the effects are more welcome and more sustainable.

VIII. CONCLUSION

As Romani Rose and Angela Merkel pointed out,³³⁶ much work remains to be done for Roma peoples to live free, autonomous lives and for Roma children and girls to be safe and healthy. The Decade of Roma Inclusion will end in 2015,³³⁷ but this work will continue and hopefully increase in momentum. Early marriage is but one facet of the discrimination Roma women, youth and children face, and it is imbued with some important benefits of heritage and safety. Roma peoples face a multitude of discriminations, and ending that will entail changing centuries of hateful stereotypes. But Roma and non-Roma people are beginning to work for this much needed change. Organizations such as the ERRC, OSCE, and UNICEF support projects to help build bridges of education, understanding, and safety, and are increasing the involvement of Roma peoples and the incorporation of Roma perspectives. The Open Society Foundation Roma Initiatives Program provides grants to community activists to support work for inclusion and change through intercultural dialogue to challenge and change negative attitudes.³³⁸ By learning and continually refining good practices, and continuing to grow this collaboration, people and communities will change in a safe, respectful way that does not denigrate Roma cultures or force girls to choose either their life, or their family, community, and heritage.

This article hopes to continue and promote Oprea's and other Roma and critical feminist intersectional theorists' work to "foster critical conscious" and "prompt members of the legal profession to incorporate Romani struggles into broader gender and racial justice struggles."³³⁹ More research and documentation is needed, but researchers must do no harm

336. *German Memorial*, *supra* note 248.

337. *Decade of Roma Inclusion*, *supra* note 285.

338. *Programs: Roma Initiatives: Background*, OPEN SOCIETY FOUNDATION, *available at* <http://www.opensocietyfoundations.org/about/programs/roma-initiatives/background> (last visited Dec. 6, 2012).

339. Oprea, *supra* note 140, at 41.

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in gathering this information. And people using the data must do no harm as the data is used to work in marginalized communities and for marginalized peoples to ensure that “all people, irrespective of their ethnic origin, enjoy substantive and not only formal equality.”³⁴⁰ This approach is useful for identifying and leveraging culturally competent interventions to build internal community capacities’ to reduce early marriage and make communities safer for everyone, especially girls and women.

340. Darya Alekseeva, *Towards Substantive Equality*, in 2 J. OF THE EUR. ROMA RIGHTS CENTER 57, 58 (2009).