

Relativism versus Universalism in Human Rights: A Construction in Contemporary Feminist Thought

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Feminism does not impose Western values upon societies in third world countries;¹ rather it opens up options that enable women (in both Western and other countries) to become “cultural participants” rather than cultural victims. Feminism empowers women, thus enabling them to participate in the culture rather than simply being subject to it. By examining the place of women in society, feminism changes the cultural context in which women live. It provides a theoretical framework within which women can challenge oppressive cultural practices. Feminism shifts the focus of women from that of object to one of subject. The rhetoric of cultural relativism, by depriving women of their ability to challenge existing systems of domination, effectively forecloses any opportunity that women might have to fully participate in their culture.

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Neither feminism, cultural relativism nor human rights theory is easily summarized. Each theory contains strains of thought that are often contradictory or inconsistent.

Different authors have pointed out that the two connections involve the contradiction of simultaneously affirming the right to be different from men and the right to be equal to them before the law. In fact, the inevitable tension between the principle of equality and the right to be different Among the contingencies that feminist platforms must confront is the western culture's discomfort with the right to be different, and that is being interpreted as being equivalent to the women's lobby. The emphasis on the principle of equality is a cultural imperative and, consequently, any enunciation of rights that fails to take it into account is perceived as illegitimate to some degree. In order to be acceptable under these terms, the right to be different has to be enunciated in the context of indeterminate or universal rights. This context not only introduces a contradiction to feminist enunciation, but also to the enunciation of these universal rights.²

Debate: Universality or Relativity

The debate about the universality or relativity of human rights is not only highly antagonistic, but it also takes place at an extremely abstract level at this metagenral level of

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² Mireya Suárez , Gender And Law: The Social Science Perspective, American University Journal of Gender, Social Policy and the Law Summer (1999)

analysis, almost all arguments become plausible, or equally true or false. One glosses over a multitude of cultural particularities such as those in Islam or traditional Africa, in a few pages, just for the sake of creating an argument about the presence or absence of human rights, an argument that can be contradicted the next moment with just as many convincing arguments... . When the debate on the universalism or relativism of human rights is so radically removed from the cultural “realities” it alleges to speak about, it hardly creates anything but its own impasse.³

Recent literature in the human rights area, which has explored areas such as the treatment of women's rights as human rights, the status of indigenous peoples and other minority groups, and the special vulnerability of children and persons with disabilities, has led to a heightened awareness of the complexities involved in any attempt to define “human dignity”, and an acceptance of the need to contextualize such inquiries in order to see human beings in their multidimensionality. At the same time, there has been a marked reluctance to abandon the notion of universality without which, it is argued, no coherent conception of international human rights law can exist. Feminist analyses of international human rights law offer some important insights in this regard.

Claims of cultural relativism have frequently been invoked to justify practices that are problematic from the perspective of gender equality. However, the response of women's rights advocates to the challenge posed by cultural relativism has been complicated by the fact that feminist scholarship has had to critique universality, by arguing that the abstract conceptualization of human rights reflects only the “human” experience of males, while at the same time maintaining some ground for making a cross-cultural critique of practices that have a negative impact on women.⁴

Many writers who have taken the view that women's rights are universal have posited that the denial of those rights stems from oppressive systems that reflect male bias and are structured so as to marginalize and exclude women. Some writers have gone so far as to argue that a feminist approach to human rights can in fact sidestep the debate about relativism, because feminism offers a “multi-cultural response to the oppression of women.”⁵

cultures or for the particular kinds of oppression that women experience in their daily lives.

The approach is particularly appealing because it avoids the antagonistic rhetoric that has characterized so much of the universality versus particularity debate. It attempts to find a middle ground within which human rights are seen as being defined by the interplay between international standards and particular cultural/societal values. In an essay in the same collection, Richard Falk criticizes the “all-or-nothing view of the relevance of culture” which has characterized many human rights scholars. He argues:

³ A.-B.S. Preis, “Human Rights as Cultural Practice: An Anthropological Critique” (1996) 18 Human Rights Quarterly 286. ,292-293

⁴ E. Brems, “Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse” (1997) 19 Human Rights Quarterly 136.

⁵ N. Kim, “Toward a **Feminist Theory** of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism” (1993) 25 Columbia Human Rights Law Review 49 at 50.

Both of these polar positions on the relevance of culture should be rejected. If the field of human rights continues to be controlled by these interpretive perspectives in their various forms, the most probable result is a demeaning encounter between two forms of fundamentalism, the pitting of relentless secularists against hardened traditionalists.⁶

Falk asserts that we need to recognize the reality of cultural “penetration and overlapping”⁷ that characterizes the modern world. He urges us to recognize “an intermediating relevance for both international law and cultural hermeneutics, above all seeking to reconcile cultural and global sources of authority by reference to a core concern for the minimum decencies of individual and group existence.” The role of international human rights law, then, is to facilitate “dialogue about appropriate behavioral standards in an atmosphere of growing toleration for divergency arising from varying cultural traditions.”⁸

Despite their differences, the approaches discussed in this section go beyond a static view of either culture or international human rights norms. The development of those norms is seen as an inherently dynamic process; the standards embodied in the Universal Declaration and other human rights instruments are constantly being recreated. Thus, rather than constituting two irreconcilable positions, universality and particularity are seen as poles between which our thinking about human rights must constantly oscillate in order to capture the complexity and diversity of human experience.

The common theme uniting these theories is that they all ask the “woman question.”⁹ Feminist theory examines the woman's condition in a male-dominated society from a woman's perspective. By examining the systematic subordination of women, it tries to uncover the reasons for this subordination with a view to remedying it. Feminist theory validates women's experiences by making them worthy of discussion. The practical effect of feminist theory is that it introduces a female or “womanist” perspective on issues where one was previously lacking. Furthermore, it acknowledges and addresses issues such as sexual harassment that were previously ignored because they affected primarily women.

International Human Rights Law and the Puzzle of State Action:

Human rights laws generally come into play only when the state is involved. “Private” acts, such as genital surgeries, are designated “cultural,” and are exempt from most human rights laws. “Public” acts, however, are designated “political” and, thus, suitable for international discussion or intervention. As a result of these designations, the public/private distinction has entered into the dialogue on human rights as a justification for state non-intervention into cultural practices that harm women.¹⁰ Because practices that affect women generally fall into the “private”

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

⁹ Christine A. Littleton, Does it Still Make Sense to Talk About ‘Women’?, 1 *UCLA Women’s L.J.* 15, 17 (1991). See also Maxine Molyneux, Some International Influences on Policy-Making: Marxism, Feminism and the ‘Woman Question’ in *Existing Socialism*, 18 *Millennium J. Int’l Stud.* 255 (1989).

¹⁰ Noreen Burrows, International Law and Human Rights: the Case of Women’s Rights, in *Human Rights: From Rhetoric to Reality* 82-84 (Tom Campbell et al. eds., 1986).

category, they are protected as part of a society's "culture."¹¹ Ironically, the public/private dichotomy, so often used to distinguish "culture" from "politics," is derived from Western notions of liberalism.¹² Thus, the relativist stance that private practices are cultural practices is itself rooted in Western ideology. Liberalism divides family¹³ and state into two separate spheres -- the private and the public.¹⁴ Human rights law adheres to this division by concerning itself primarily with those acts committed under color of state law.

Culture is seen as an "internal," and therefore "private" matter, within the exclusive jurisdiction of a state. In reality, however, the designation of some matters as "private" or "internal," and others as "public" or "external," is neither predetermined nor fixed. States create these categories after they have acted, in order to justify their actions. There is nothing immutably "public" or "private" about any state or individual action.

In the United States, the lack of government funding, combined with the increase of restrictions, limits access to abortion for many rural, underage and poor women.¹⁵

Marriage and sexual relationships are two other purportedly "private" areas which are subject to extensive state regulation. In Pakistan, for example, the 1979 Hudood Ordinance punishes women for zina, or having extramarital sexual relations. This ordinance has a particularly sinister effect in rape cases, where the burden of proof falls on the victim. If the woman fails to prove that she did not consent, the court may convict her of zina. In many cases, the accuser is acquitted but the woman is convicted of adultery and sentenced to flogging or imprisonment.¹⁶

In Iran, it is nearly impossible for women to file for divorce¹⁷ The head of the Iranian Supreme Court recently announced that women are not given the right to divorce because they are prone

¹¹ Riane Eisler, *Human Rights: Toward an Integrated Theory of Action*, 9 *Hum.Rts.Q.* 287, 289 (1987) (since women have traditionally been excluded from the public sphere, the rights of women have likewise been excluded from the category of rights protected from institutionalized oppression and discrimination).

¹² Deborah L. Rhode, *Feminist Critical Theories*, in *Feminist Legal Theory* 337-341 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991).

¹³ The principle of noninterference with "family autonomy" has been selectively applied to maintain a particular type of familial (and social) organization -- "a male headed, procreation oriented patriarchal family in which women have few if any individual rights." Eisler, *supra* note 22, at 293.

¹⁴ Linda J. Nicholson, *Feminist Theory: The Public and the Private*, in *Beyond Domination* 221 (Carol C. Gould ed., 1984).

¹⁵ *Webster v. Reproductive Health Services*, 492 U.S. 490, 538 (1989) (rejecting the argument that abortion is a "fundamental right" that can only be restricted to serve a compelling state interest); see also *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992) (approving Pennsylvania statute restrictions on abortion, including a twenty-four hour waiting period and a state-mandated message to discourage abortions); *Rust v. Sullivan*, 111 S.Ct. 1759 (1991) (upholding the government's ban on abortion counseling at federally funded family planning clinics.); Margaret F. Brinig, *The Role of Socioeconomics in Teaching Family Law*, 41 *San Diego L. Rev.* 177, 180-86 (2004) (illuminating the interaction between the divorce rate and various other socioeconomic forces); Jayanth Kumar Krishnan, *Public Interest Litigation in a Comparative Context*, 20 *Buff. Pub. Int. L.J.* 19, 36-41 (2001-2002) (noting the complex relationship in Israel among law, culture, and religion in controlling women's employment, abortions, and divorce); Joel Richard Paul, *Cultural Resistance to Global Governance*, 22 *Mich. J. Int'l L.* 1, 83 n.373 (2000) ("[G]ains to women in the marketplace often are not matched by legal reforms in the private sphere. For example,... Chile has guaranteed equal employment opportunities for women, but has resisted efforts to liberalize women's reproductive rights and access to divorce.").

¹⁶ *Hearings Before the Subcomm. on Human Rights and International Organizations of the House of Representatives Comm. on Foreign Affairs*, 101st Cong., 2d Sess. 209 (1990) (statement of Amnesty International, U.S.A.).

¹⁷ Katayon Ghazi, *Helping Women Raise Sights in Islamic Society*, *N.Y. Times*, Mar. 14, 1992, at A2.

to “emotional and irrational decision-making.”¹⁸ If a husband dies or divorces his wife, only he or his family may claim the children.¹⁹

The Actual Experiences of Women:

The label “culture” has obscured the power-play involved in the evolution of “traditional” practices that affect women. Rather than using “culture” as the starting (and ending) point for determining whether abuses of women are human rights abuses, human rights should be reconceptualized to include women's actual experiences.

Culture and Power:

Culture is not static. It varies with time, geography and population, and is affected by social and political change. Each society has its own distinct culture, although it may be difficult to define.²⁰ The nature of each society's culture, however, differs from individual to individual, and from subgroup to subgroup within the larger society. In other words, “culture” is often composed of different “subcultures” that may or may not conform to the expectations and norms of the broader society.

Although capturing the slippery essence of culture is difficult, if not impossible, that is precisely what anthropologists must do in order to “make sense” of other peoples and societies. What matters are not the complexities and inconsistencies of culture, but the way culture must be “essentialized” so that boundaries can be drawn between societies and social ways of living. Thus culture, a nebulous concept, becomes a “thing,” an “imaginary law reigning over the discipline of anthropology” and over other human sciences disciplines.²¹

Other recent world events, most notably the break-up of the Soviet Union and the ethnic and economic conflict in Bosnia-Herzegovina, attest to the importance of distinguishing the culture as defined by the power elite from the culture as defined by the people. In almost every society, the power elite is comprised overwhelmingly of men. Because most cultures are male dominated, how and what women choose to accept or reject as part of their culture is often ignored or suppressed.²²

Conclusion:

The strength of all three strains of feminist thought lies in their efforts to construct a view of society that includes women's experiences. By providing alternative visions, feminist theory challenges existing laws and customs that women have always felt were “unfair.” Feminism also provides opportunities for international networking. This strengthens women's political power on an international level, thereby increasing the power of women on a local level.

Women comprise fifty-one percent of the world's population. One should not expect them to agree on all issues. What is important is not unanimity or universal consensus, but a political

¹⁸ *ibid*

¹⁹ *Ibid*

²⁰ Kathleen Barry, *Female Sexual Slavery: Understanding the International Dimensions of Women's Oppression*, *Hum. Rts.Q.*, Spring 1981, at 44, 51. She argues that the determination of what is culturally relative and therefore should be protected is based on patriarchal values, especially those that support male domination and oppression of women while protecting male political and economic power. *Id.* at 51-52.

²¹ Richard A. Shweder, *Preview: A Colloquy of Culture Theorists*, in *Culture Theory: Essays on Mind, Self, and Emotion 1* (Richard A. Shweder & Robert A. LeVine eds., 1984).

²² “The secondary status of women is one of the true universals, a pan-cultural fact.” Sherry B. Ortner, *Is Female to Male as Nature is to Culture?* in *Woman, Culture and Society*, *supra* note 41, at 67.

climate which permits women's different concerns to be heard. They can learn from other cultures, and in so doing, redefine their own. When women are presented with alternatives other than those currently existing, they will finally be allowed to exercise real political choices.

Because of the public/private dichotomy underlying liberal human rights theory, practices that affect women are usually deemed to be “cultural” and, therefore, more likely to escape international scrutiny. The vast majority of societies are male-dominated. As a result, women's efforts to remedy gender oppressive practices within their own countries are often stifled or ignored, both locally as well as internationally. Feminism provides an alternative way of looking at the conditions in which women live. Instead of accepting the status quo, feminism's multi-perspectival approach enables women to challenge existing conditions in their own cultures as male-biased, gender oppressive and unfair.

