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Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse

[Eva Brems](#)

I. Introduction

In recent years, feminism and cultural relativism have been among the most vigorous and the most visible critiques of dominant human rights discourse. On many issues feminists and cultural relativists have found themselves taking diametrically opposed sides. The manifest successes of feminist views inside the human rights system have sometimes been at the expense of cultural relativist views. This paper argues against such an antagonism. An analysis of both the feminist and the cultural relativist positions will uncover parallels and similarities in their respective claims. There seems to be enough common ground to allow for building a bridge between the two strands of thought. Instead of wasting part of their creative potential in opposing each other, feminists and cultural relativists could join forces and combine their insights into a constructive critique.

In Parts II and III of this article the feminist and the cultural relativist critiques of human rights are summarized separately. In Parts IV and V, the two critiques are compared and contrasted. This confrontation usually takes the form of a sharp conflict, which is illustrated in Part IV by means of the recent UN world conferences. Part V reduces the dimensions of the conflict by pointing at parallels and similarities between the two critiques. In Part VI, a constructive approach to the remaining differences between the cultural relativist and the feminist human rights views is advanced. **[End Page 136]**

II. The Feminist Critique of Human Rights

Human rights are not what they claim to be, feminists say. They are a product of the dominant male half of the world, framed in their language, reflecting their needs and aspirations. Whereas the "rights of man" as originally conceived by the great liberal thinkers were not intended to include women, today's "universal human rights" still overlook them as a matter of fact. The feminist critique of human rights thus basically argues for the inclusion of women in the human rights protection system. Feminists of all strands ¹ advance various means to realize this aim.

A. Liberal Feminists

Most at ease in the present human rights system are the "liberal feminists." ² Their major concern, equal treatment of men and women, underlies the nondiscrimination provisions of most human rights

treaties.³ Liberal feminists stay within the existing human rights framework, using its language and logic to argue for an increased concern for women's needs. Karen Engle distinguishes between doctrinalists and institutionalists.⁴ The first concentrate on bringing situations where they consider women's rights to be violated under the protection of specific existing human rights provisions. **[End Page 137]** The latter focus on improving the present institutional structure for the enforcement of the human rights of women.

In the eyes of many feminists today, a liberal "add woman and stir" approach does not go far enough. Cultural feminists as well as radical feminists are convinced that a real inclusion of women in the human rights system requires a transformation of that system.⁵ The human rights concept must get rid of the "maleness" with which its concepts and structure are imbued.

B. Cultural Feminists

Cultural feminists⁶ are the antipodes of liberal feminists in that they stress women's difference from men rather than equality of the sexes. Real equality, as opposed to formal equality, takes this difference into account and values it. Various measures are proposed for the introduction of the female difference approach into the human rights system.

The most obvious difference between the sexes is the biological one. Woman's comparative physical weakness makes her more vulnerable to acts of violence, including sexual violence. Her childbearing and lactating capacities place her in a unique situation and are the presumable biological bases of her widespread role as a child-rearer. This often goes together with a concentration of activities and responsibilities in the home and less involvement in public life. In addition, woman's psychological structure is often argued to be different from man's. Her relational and nonconflictual orientation is especially stressed,⁷ and usually some relationship between this and her different biological and cultural factors is claimed.

In its most radical form, this critique rejects law itself as a patriarchal institution because of its abstract, adversarial character.⁸ Most feminists, however, consider that the usefulness of law as a strategy outweighs its **[End Page 138]** disadvantages.⁹ A reorientation of human rights towards the concrete is advocated, such as a "responsibility model" centered around human needs.¹⁰ Such proposals build upon the existing human rights framework and never reject it as such. However, the catalog of human rights has to be revised in light of woman's differences. This implies the recognition of new rights, such as reproductive rights or sexual autonomy rights, and the "recharacterization"¹¹ or "particularization"¹² of existing rights. It is this effort of bringing gender-specific violations under the human rights umbrella which is often referred to by the slogan "women's rights are human rights."¹³

A crucial aid in this undertaking is the breaching of the public/private dichotomy. Indeed, while human rights were "designed to regulate the relations between men and the state,"¹⁴ women's oppression is largely situated in a private context: in practices and traditions living in society or in the home itself. The feminist battlecry "the personal is the political" translates in the human rights context into an argument in favor of the horizontal effect or *Drittwirkung* of human rights.¹⁵ In response to this claim, the drafters of the Convention on the Elimination of All Forms of Discrimination Against Women¹⁶ extended the definition of discrimination in Article 1 to "the political, economic, social, cultural, civil or any other field."¹⁷

Public/private is not the only dichotomy cultural feminists expose as an artificial male construct. Identifying the political sphere as male and the socioeconomic sphere as more central to women's advancement, feminists object to the general priority accorded civil and political rights and the **[End Page 139]** second rate status of social and economic rights. The rights they advance as priorities (for instance, the rights to food, clothing, shelter, work, health, and education) belong to this second category.¹⁸

As foreign to the female world view as the aforementioned abstract dichotomies, cultural feminists claim, is the liberal concept of the autonomous individual underlying human rights. The underlying

rationale is that instead of identifying themselves solely as autonomous individuals, women are more oriented toward the family and other groups or communities than men are. In order to take this relational or "connected" nature into account, a concretization and contextualization of human rights, as well as attention to the "third generation" of collective human rights, is necessary. ¹⁹

C. Radical Feminists

Radical feminists maintain that all theories based on equality or difference make the same mistake of using a "male yardstick." They warn against valuing differences which are a product of a patriarchal society which needs to be dismantled. ²⁰ The key "givens" are male dominance and female subordination, the central locus of which is the sexual sphere. ²¹ The fact that many women do not perceive their lives in this way is explained by a theory of "false consciousness." ²²

Although radical feminists are stringent in their critique of law and rights as instruments for the perpetuation of male dominance, ²³ research for this paper did not uncover any explicit rejection of human rights as such. Rather, like the cultural feminists, they recognize the strategic worth of **[End Page 140]** human rights. ²⁴ From a completely different perspective, radical feminists come to some of the same conclusions as cultural feminists with regard to human rights. The public/private and other dichotomies have to be broken down because they are a cover-up for the maintenance of male dominance in the spheres that are subsequently kept outside human rights scrutiny. ²⁵ The creation of new "women's human rights" and the recharacterization of existing rights are two means advocated to identify instances of women's subordination and of violence against women as human rights violations. ²⁶

D. Feminist Methodology and Conclusions

A general feature of feminism which offers some interesting perspectives for human rights theory is its methodology. Feminist analysis is described as "*contextual, experiential, and inductive.*" ²⁷ Feminists take actual women's experiences as a starting point and place those in their full contexts. They prefer a complex "insider" viewpoint to a simplified and abstract outsider viewpoint. ²⁸ The complexity of this approach has sometimes led to justified accusations of essentialism, ²⁹ where the universality of women's experiences was taken for granted. Yet if this error is avoided, feminist inquiry's well-proven methodology, with its constructive radical potential, can be extremely valuable for human rights theory. ³⁰

Remarkable in this short overview of the feminist critique of human rights is the finding that human rights as such are never rejected. All strands of feminist critique aim at the inclusion of women in the human rights system. ³¹ **[End Page 141]**

III. The Cultural Relativist Critique of Human Rights

Human rights are not what they claim to be, cultural relativists say. Human rights are a product of the dominant Western parts of the world, framed in their language, reflecting their needs and aspirations. Whereas the "rights of man" as originally conceived by the great liberal thinkers were not intended to include slaves and indigenous inhabitants of the colonies, today's "universal human rights" are still foreign to non-Westerners as a matter of fact. From these premises, cultural relativists derive their argumentation, which is basically aimed at the rejection of the inclusion of non-Western people in the international human rights protection system. ³² The essence of the cultural relativist position on human rights can thus be framed in a way that shows the parallel with the feminist position. In the same way, the different strands of feminism that were examined in the previous section have parallels in the different strands of cultural relativism.

A. "Liberal Culturalists"

Some advocates for respect for non-Western cultures try to bring protection for cultural rights,

including minority rights and rights of indigenous peoples, under the existing human rights provisions or to improve human rights institutions in order to further their claims. These could be called "liberal culturalists" and, in an analogy to liberal feminists, be described as doctrinalists and institutionalists, respectively. However, such activists are not generally labelled "cultural relativists." That name is reserved for those who attack the human rights system from their culturalist position. See the discussion in Part III.C.

B. Dominance Theorists

Critiques of a Western dominance in the human rights concept sometimes use a "dominance theory" that can be seen as parallel to the radical feminist argument. The locus of Western dominance and non-Western suppression [End Page 142] is, in the first place, the economic sphere. In this view, human rights are used in the foreign policy of Western states as instruments of neocolonialism³³ and of economic competition.³⁴ This position, which has been called the "conspiracy theory,"³⁵ has a predominantly political and economic, rather than cultural, character. Yet it is generally carried a step further, arguing that Western imperialism also contains a moral component, because Westerners impose their values on the rest of the world through their insistence on human rights.³⁶ Thus the argument becomes part of the cultural relativist critique of human rights.

C. Cultural Relativists

The core of the cultural relativist critique, however, is made up of a "difference" argument, in the style of cultural feminism. Typically, in a first step it is shown how human rights historically and conceptually reflect Western values.³⁷ In the next step, some particularities of a non-Western culture³⁸ are highlighted and contrasted with those Western concepts. The conclusion from these premises is to reject human rights.

Different levels of rejection can be distinguished.³⁹ At the most radical level, human rights are rejected in their totality as foreign to and incompatible with a particular non-Western culture. Although this is the most pure and consistent cultural relativist stance, it is the one least frequently encountered.⁴⁰

More often, cultural relativists either reject specific rights, or reject the specific content or interpretation of those rights. For instance, members of a [End Page 143] certain culture might object to freedom of religion. Or while not objecting to the right as such, they might object to its encompassing the freedom to change one's religion, either in its formulation (as permitted under Article 18 of the Universal Declaration of Human Rights⁴¹) or through interpretation.

Finally, on an even more detailed level, cultural relativists might accept a right with all its components and with its general interpretation, but reject the classification of a particular cultural practice as a violation of that right. For instance, in a culture where female circumcision is practiced, the prohibition of torture and cruel, inhuman, or degrading treatment (prohibited under Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights⁴²) may be completely accepted while the classification of female circumcision as such treatment is rejected.

At closer view, only the first, most radical, attitude aims at the exclusion of non-Western cultures from the human rights system. The other, more moderate stances can be translated into claims of inclusion into the system, conditional on its transformation in such a way as to accommodate cultural differences.

One final exclusionist approach deserves mention. Sometimes the cultural relativist argument consists of presenting an alternative system of human rights, or more correctly, an alternative system for the achievement of social justice or the protection of human dignity, as a valid substitute for international human rights.⁴³ Depending on how much of the international human rights concept is incorporated into the description of the alternative system, this argument comes down to either a total or a partial rejection of human rights. It is, however, a rather problematic position. If the human rights system is

simply criticized on one ground or another, it can react to the criticism and a constructive dialogue is at least possible. But if the concept of human rights is appropriated by the critics and given a different content, this results in a deadlock, because the underlying conflict is denied and no opening for dialogue is provided. These critics do not discuss how their claims could be answered by a transformation of the human rights system. Their argument is truly one of exclusion. **[End Page 144]**

D. Criticisms and Demands for Transformation

What are the concrete criticisms that cultural relativists address to the human rights system? Cultural relativists invariably describe human rights as a product of Western liberalism. Some aspects are described as crucial to the human rights concept, and at the same time as through and through Western. This statement is often accompanied by a historical overview of the origin of human rights and of the Western values in question.⁴⁴ The aspects of human rights most often attacked as Western are its individualism, its abstractness, and the concept of rights itself.

From nearly every non-Western culture comes the argument that its members do not define themselves in the first place as autonomous individuals, but instead experience themselves as having an "ascribed status" as members of a larger group or community, such as family, tribe, class, nation, or other group.⁴⁵ The use of abstract concepts and categories in human rights is argued to be the product of Western rationality, not shared by non-Westerners. They are convinced it is important to place all matters in their cultural context and to examine them at a concrete level.⁴⁶ One axiom of cultural relativism is the statement that judgments of behavior or of situations do not make sense outside the culture in which they take **[End Page 145]** place.⁴⁷ The concept of rights itself is argued to be characteristic of a society that thinks in terms of atomized individuals and abstract ideas. Many non-Westerners are wary of the adversarialism inherent in rights talk. Rather than rights, they stress obligations and reciprocal responsibilities. Conflict solution is sought by consensual, cooperative means rather than through legalism and antagonism.⁴⁸

In terms of demands for transformation of the human rights system, the communitarian critique suggests that greater attention should be paid to collective rights,⁴⁹ and to placing limitations on individual rights in favor of communal interests. One way of constructing such limitations is to center them around the concepts of obligations and responsibilities.⁵⁰ To the extent that the cultural relativist critique is opposed to legalism in human rights, it could support a status quo. As it is now, the international community, lacking the proper institutions for universal legal enforcement, tries to enforce human rights mainly through political pressure and embarrassment in the eyes of the public. Considering that the existing power imbalances in the international community get free play in this system, while they might be more contained in a more legalistic system, it may be wiser for the non-Western world to parallel the feminist solution--i.e., to set aside their cultural objections to "rightism" and play the rights game as a strategy to further their other claims inside the human rights system.

The demand for concretization and contextualization of human rights leads first of all to a focus on their realization.⁵¹ Also, this demand forms the basis of a "human needs" approach, in which the indivisibility of all human rights is used to frame the argument in favor of flexibility in the prioritizations made in human rights. Generally this results in an attack on the imbalance between civil and political rights on the one hand and social, economic, and cultural rights on the other. Non-Western countries are often third world countries, where it is argued either that economic progress has to be **[End Page 146]** attained as a first priority or that the right to development trumps all other rights.⁵²

Finally, a recurring argument derives from the idea that there is a core and a periphery in human rights. The core is essential and universal, while the periphery should permit cultural variations. When this core/periphery model is applied to the catalogue of human rights, it argues for a reduction of the list of universal human rights to those not contested anywhere, leaving the rest optional--so that human rights lists vary according to culture.⁵³ The core/periphery model can also be applied to each right individually and used to argue for the succinct formulation of the essence of what is to be protected within each right, thus leaving room for contextual variation in the interpretation and application of the right within each culture.⁵⁴

Remarkable in this short overview of the cultural relativist critique of human rights is the finding that while the critique seems at first sight aimed at the exclusion of non-Western cultures, closer analysis reveals that this holds true for only a minority of cultural relativists. ⁵⁵

IV. Feminism and Cultural Relativism in Conflict

Feminists look at human rights through a gender lens, and cultural relativists use the cultural perspective. They clash on issues where their perspectives lead to opposite claims and priorities have to be made. Such issues arise either when a culture prescribes certain manners in which women should behave or be treated, or when feminists state that women's advancement requires certain cultural attitudes.

Compared to cultural relativists, feminists enjoy a lot more credibility in the international human rights community. In recent years, women's rights have been advancing rapidly from the margin to the forefront of human rights concern. In this process, a feminist attack on cultural relativism was inevitable. Culture and religion are regarded with suspicion by feminists, as spheres of male dominance and female suppression. ⁵⁶ A central feminist **[End Page 147]** demand is the breaching of the public/private dichotomy, so that human rights are extended to relations between private persons. Culture thus cannot enjoy immunity from human rights scrutiny on the ground that it does not involve the relationship between the state and its citizens. Moreover, one of the spheres that gets priority attention in the feminist human rights campaign, the family, is the sphere in which most cultural traditions are preserved. This is partly a result of the colonial experience of many non-Western countries, where the colonizer introduced the distinction between a public and a private sphere, imposing his laws on the public sphere, but leaving the private sphere to be governed largely by indigenous rules. ⁵⁷

A. Harmful Cultural Practices

In the clash between cultural relativists and feminists, most attention goes to so-called "harmful cultural practices." This term indicates practices particular to certain (non-Western) cultures which, to the outsider's eye, harm or disadvantage women, but which are meaningful to certain participants in those cultures. In these situations, either the culture's insiders perceive no harm or disadvantage, or if the harm or disadvantage is recognized, it is justified or compensated for in the wider cultural context. The criticized practices include widow burning in India (sati), prenatal sex selection and female infanticide resulting from a preference for a son, child marriage, arranged or forced marriage, polygamy, seclusion and veiling, and food taboos for women. But the lion's share of feminist outrage concerns the practice of female circumcision, which has been described as "barbaric torture and mutilation" designed to perpetuate male ownership over women ⁵⁸ and as "deeply linked to the denigration of women as inferior beings." ⁵⁹

The vehemence of this reaction illustrates the deafness of an absolutist position to the arguments of the other side. Feminists refuse to accept cultural objections to universal women's rights, because through their lens they see the culture from which those practices emanate as male created **[End Page 148]** and male dominated. ⁶⁰ At the same time they refuse to see the culturally determined character of their own position, ⁶¹ arguing that the universality of male dominance ⁶² is a sufficient basis for the universality of women's rights. Thus, they have no qualms about using cultural imperialism in their battle against male imperialism. ⁶³ Cultural relativism in its absolutist form makes an analogous reasoning: the communal right to practice and maintain a culture comes first, and the objection from the women's rights perspective is not given serious consideration on the ground that these are a Western construct. ⁶⁴ Clearly, absolutist positions in the debate between feminism and cultural relativism lead to paradox and deadlock.

B. Acceptance (Dominance) of Feminist Theory

In light of the ongoing battle between feminists and cultural relativists, it is not surprising to see that the acceptance of feminism inside the international human rights discourse is accompanied by a rejection of cultural relativism. The apparent irreconcilability of the two views is of course not the only

factor that explains this evolution. There is, for instance, the possibility that feminism, being predominantly Western and therefore familiar to the dominant Western forces in the international community, may be seen as less threatening than cultural relativism. The fear of cultural relativism is explained and partly justified by the fact that the name cultural relativism is often abused by dictatorial governments, who use this to cover up their human rights violations. In international fora, the interlocutors are by definition government representatives, which does not enhance the credibility of their claims in this respect. In addition, the form in which the arguments are presented may equally play a role. The "inclusion" claim made by feminists looks a lot less threatening and is therefore more likely to get a constructive response than the "exclusion" claim made by cultural [End Page 149] relativists. Finally, it may be remarked that the international feminist movement is a lot more unified and organized than the cultural relativist movement, if such exists at all.

C. Feminist Successes in Recent UN Conferences

The force of the international feminist movement became clear during the world conferences organized in the last few years by the United Nations in Vienna, Cairo and Beijing, which to different degrees became battlefields of the conflict between feminists and cultural relativists.

1. UN World Conference on Human Rights in Vienna

Both feminists and cultural relativists seized the opportunity of the 1993 UN World Conference on Human Rights in Vienna ⁶⁵ (Vienna Conference) to try to push their claims to the forefront. The cultural relativist move came from the governments of one region, Asia. At Asia's regional preparatory meeting for the Vienna Conference, a "Bangkok Declaration" ⁶⁶ was adopted, which included the statement that "while human rights are universal in nature they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds." ⁶⁷ This highly alarmed the Western governments, who interpreted it as an attempt to undermine the entire international human rights system. In response, they became determined to resist any concession to the cultural relativist current. ⁶⁸

Feminists evidently organized primarily on a governmental level. A huge lobbying operation was set up ⁶⁹ with a petition circulating in 120 [End Page 150] countries and in women's caucuses, carrying the feminist message to the regional meetings and the UN preparatory meetings held prior to the Vienna Conference. There were two goals. The first goal was the integration of women's concerns in all human rights issues. The second goal was the recognition of violence against women as a human rights violation.

In the final document of the Vienna Conference, ⁷⁰ the universality of human rights was repeatedly stressed ⁷¹ and cultural relativism rendered harmless in a reversal of the controversial Bangkok statement: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." ⁷² Commentators considered this reaffirmation of the universality of human rights as "perhaps the most significant success of the World Conference." ⁷³

With cultural relativism thus "defeated," feminists had reasons to feel victorious. The Vienna Declaration and Programme of Action ⁷⁴ contains several articles explicitly dealing with women's human rights. It was proclaimed that "[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights." ⁷⁵ In addition, the integration of the human rights of women into the mainstream of the UN system was mentioned as a concern, ⁷⁶ as was the elimination of violence against women in public and in private life. ⁷⁷ Feminists labelled this result a "milestone" ⁷⁸ and an "extraordinary success." ⁷⁹

The conflict between feminism and cultural relativism was envisaged, but not solved in the ambiguous wording of the paragraph on violence against women in the Programme of Action, which stresses the importance of "the eradication of any conflicts which may arise between the rights of women and the

harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism." ⁸⁰ With regard to children a firmer position is taken: states are urged to "remove customs and practices which discriminate against and cause harm to the girl child." ⁸¹ **[End Page 151]**

2. 1994 International Conference on Population and Development in Cairo

Although the 1994 International Conference on Population and Development ⁸² in Cairo dealt explicitly neither with women, nor with human rights, its Programme of Action ⁸³ contains some references to these themes. Again, feminist concerns seem to have been integrated throughout the conference. One of the fifteen guiding principles of the Cairo Programme of Action states that "[a]dvancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes." ⁸⁴ The balance of this principle reiterates paragraph 18 (1) of the Vienna Declaration and Programme of Action. ⁸⁵

Cultural relativists could interpret the recognition that "various forms of the family exist in different social, cultural, legal and political systems" ⁸⁶ as a concession to their claims. However, it is improbable that this is how it was intended, especially since there is a Western interest in assuring that situations such as the single parent family are covered by the definition. As for "harmful cultural practices," forced marriages and child marriages are referred to implicitly by insisting on the "free and full consent of the intending spouses . . . [and a] minimum age at marriage." ⁸⁷ Female circumcision is condemned at several instances. ⁸⁸

3. 1995 World Conference on Women in Beijing

During the 1995 World Conference on Women in Beijing, the conflict between feminism and cultural relativism moved to the forefront. The main issue in this respect was whether the expression "equity," as a description of the desired relationship between men and women, was acceptable as an alternative to the expression "equality." In Cairo, the juxtaposition of both concepts had been accepted, where one of the objectives was stated to be the "achieve[ment of] equality and equity based on harmonious partnership **[End Page 152]** between men and women." ⁸⁹ But in Beijing, the West rallied around the goal of firmly closing all doors to cultural relativism. They managed to delete all mention of "equity" in the final text.

The Beijing Platform for Action reaffirms the universality of human rights, including the human rights of women. ⁹⁰ In harmony with the Cairo Programme of Action, the Beijing Platform for Action also explicitly adopts the principles of paragraphs 5 and 18 (1) of the Vienna Declaration and Programme of Action. ⁹¹ However, the Beijing Platform adds a reference to "the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities" ⁹² made in the text. Nevertheless, the eradication of "harmful cultural practices," with a special emphasis on female circumcision, is called for in the global framework, ⁹³ as well as in the chapters on health, ⁹⁴ on violence against women, ⁹⁵ and on the girl child. ⁹⁶ It is also stated that governments should refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence against women. ⁹⁷ Custom is also pointed at as a factor contributing to discrimination against women in areas outside the "harmful cultural practices" context, for instance with regard to ownership of land ⁹⁸ and access to education. ⁹⁹ In addition, the Platform for Action includes a warning against religious extremism, which may have a negative impact on women ¹⁰⁰ as well as a recommendation to take steps so that religion is not a basis for discrimination against girls. ¹⁰¹

It should be added that Cairo's recognition of various forms of the family is reiterated in the Beijing Platform for Action ¹⁰² and that a few other mentions of respect for cultural diversity are made in specific contexts. ¹⁰³ Nevertheless, the 1995 World Conference on Women provides a telling **[End Page 153]** illustration of the simultaneity of the rise of feminism and the rejection of cultural relativism in the international community.

V. Parallels and Similarities

Neither feminism nor cultural relativism originated in the human rights sphere. Both are strong movements, each with its own history and dynamics, which in many respects makes it impossible to compare them. But when they become critiques of human rights, feminism and cultural relativism make parallel claims.

Both start from a finding that the liberal concept of human rights was developed by the dominant group, excluding the group whose perspective they defend, making this conception of human rights inadequate for their group.

Their strategies do differ. The feminist critique is offensive: it accuses human rights of not being universal because they exclude women's concerns. The cultural relativist critique is defensive: it rejects the universality of human rights because they exclude the concerns of non-Western cultures.

But each critique wants the same thing: changes in the human rights system so as to incorporate either a gender perspective or a perspective of cultural diversity. Each wants to make the "human" in "human rights" a little less abstract by returning its gender or its culture. They agree that human rights should be, as they were intended to be, the rights of all human beings regardless of elements such as gender or culture. However, in order to achieve this intended gender neutrality or culture neutrality, human rights must be neither gender blind nor culture blind. Because if neutrality comes down to blindness, human rights will further privilege the privileged and further disempower the disempowered, which is not what they are designed to do. This partial reconcretization or recontextualization of human rights is what Keba Mbaye names "la spécificité," ¹⁰⁴ in English specificity or particularity.

Because feminism and cultural relativism each concentrate on one specificity, each faced the same danger of ignoring all other particularities and so becoming absolutist or essentialist. And because the commonality of gender is the basis for feminists to organize, just like the commonality of culture is the basis for cultural relativists to organize, the tendency to reduce everything to this common element is natural. It increases a movement's internal coherence as well as the power of its arguments. Yet it is not **[End Page 154]** excusable, because this results in a repetition, albeit in a different form, of the very problem the critique reacted against, and so causes a loss of a lot of its constructive potential. Inside the feminist movement, the danger of essentialism has been identified as inherent especially to cultural and radical feminism ¹⁰⁵ and is being addressed. While feminists still want to make women's "different voice" heard, they recognize that this voice is composed of many different voices, because women vary across class, race, age, wealth, sexual orientation, and culture. ¹⁰⁶

Building on this anti-essentialist strand of feminism, some authors argue for reducing the tension between feminism and cultural relativism through changes in the feminist ideology. For instance, African feminists argue for a broader conception of feminism, one which would recognize on the one hand the African historical experience of imperialism combined with patriarchy, and on the other hand, the contemporary divergent cultural contexts within which feminism must be situated. They call for a "multiple consciousness [that] acknowledges competing claims about what constitutes the self and the community in which it is embedded." ¹⁰⁷ Annie Bunting argues for an "asymmetrical anti-essentialism," which tolerates essentialist arguments only as a self-consciously employed strategy in the hands of non-Western women, so that through their contribution feminism can get rid of its stereotypical views of other cultures. ¹⁰⁸ If feminism can thus manage to pursue its insistence on specificity even inside the concepts of "woman" and "man," it would indeed take an important step toward bridging the gap with cultural relativism.

It would become even more promising if cultural relativism were to make a parallel move by recognizing that "culture" is neither fixed nor monolithic. Nobody is in a position to determine what is the essence of a particular culture, just like nobody is in a position to determine what is the essence of a particular gender. Linked to the problem of essentialism is the practice of rejecting "inauthentic voices." Attempting to create the "essential woman" or the "essential African" or Asian or whatever, leads not only to ignoring the differences inside those categories, but also to an artificial isolation from their opposite, which is perceived as the enemy. In reality though, women and men, Westerners and non-Westerners frequently interact and reciprocally influence each other. Just like internal variations,

this intertwinedness with the enemy is a part of reality that essentialists [End Page 155] refuse to take into account. Women who feel happy in their "subordinate" roles are ascribed "false consciousness." Their views are not taken seriously by many feminists because they are considered to be the product of enculturation in the despised patriarchal society. Likewise, members of non-Western cultures who abandon part of their cultural heritage are often put aside by cultural relativists as "non-authentic" and "Westernized."

If part of reality is ignored by feminists and cultural relativists alike, the results of their activism can at best benefit only part of the people whose interests they pretend to represent. While the sacrifice of the other part may be acceptable from the viewpoint of feminist revolution or of cultural conservatism, it is not acceptable from the viewpoint of human rights. The argument in favor of increased specificity of human rights precisely aims at improving their reach, at making human rights meaningful for the greatest possible number of people.

Keeping in mind this warning against the risk of essentialism inherent in both feminism and cultural relativism, consider the positive side of the demand for specificity by examining the parallels in the transformatory claims that feminists and cultural relativists address to the human rights system. In both currents, it is recognized that a consistent insistence on specificity would lead to a rejection of the concepts of "law" and "rights." Yet after formulating their rights critique, both feminists and cultural relativists decide to rehabilitate the concepts for tactical reasons.

Feminists have been very successful in translating their concerns into rights, arguing both for the recognition of new rights and the reinterpretation of existing rights. Cultural relativists, although less successful, similarly aim at a "domestication" ¹⁰⁹ of human rights. But with regard to new rights, cultural relativists are somewhat limited by the negative framing of their demand, which leads them to focus on the rejection rather than the affirmation of rights. However, in the current international context, where a lot of attention goes to cultural minorities, an approach through the right to respect for one's culture could be very fruitful. While both feminists and cultural relativists are willing to pursue their goals through the tough game of law, they consider the "softer" legal methods to be most consistent with their specificity. Thus they prefer decision-making as well as dispute resolution through negotiation and consensus rather than adversarial means. ¹¹⁰

A striking commonality of feminists and cultural relativists is their [End Page 156] substitution of the abstract individual with a situated, connected self. ¹¹¹ While it is only logical that feminists look at women as a group and that cultural relativists focus on cultural groups, it is remarkable that the "groupness" aspect of their specificity claims goes beyond that. Being a member of a group such as a family or a local community is argued to be particularly significant for women as well as for non-Westerners. However, while cultural relativists see this aspect only in a positive light, feminists also point at groups as the locus of oppression. Although they share the cultural relativists' concern with collective rights, feminists therefore add the necessity of breaching the immunity of private groups to human rights scrutiny.

Another striking parallel between feminist and cultural relativist human rights critiques is their rejection of the prioritization of civil and political rights. ¹¹² The social and economic spheres are argued to be of particular importance to women as well as to non-Western people. Civil and political rights are by no means rejected, but a different balance is argued for, one in which social and economic rights would have equal importance. Both on the feminist ¹¹³ and on the cultural relativist side, the insistence on social and economic rights is sometimes the result of a "human needs" approach. Such an approach, which starts from the concrete needs of real women or real non-Western people, also expresses a final important common characteristic of the feminist and cultural relativist critiques of human rights: the bend away from abstract categorization toward attention for the concrete contextualized human being. ¹¹⁴

VI. Toward a Constructive Approach to the Remaining Differences

The parallels and commonalities between the feminist and cultural relativist critique of human rights uncovered in the previous section show that the conflict between those two currents is not as profound as it often seems. A lot depends in this respect on the internal dynamics of each critique, and

specifically on their capacity to avoid essentialism. However, conflicts [End Page 157] between the perceived rights of women and the perceived rights of culture will continue to arise. In order to prevent or solve these, many authors urge for efforts to be made inside particular cultures. They want to change the customs or traditions that are seen as human rights violations. Proposed methods include consciousness raising, ¹¹⁵ reinterpretation of religious laws, ¹¹⁶ and selecting the "positive aspects" of a culture. ¹¹⁷

Efforts to integrate human rights in all cultures are indeed crucial. The effectiveness of human rights depends to a large extent on their being alive in civil society and public opinion. ¹¹⁸ Human rights should fit within the categories in which people think; they should be obvious to everybody, and they should not contradict other obviousnesses. However, this ideal of truly universal human rights will not be brought about by working from within cultures alone. The human rights system will have to make some accommodations as well. At present, cultural objections to particular human rights clauses too often lead to reservations to treaties or declarations or simply to non-enforcement. If the system could be relied upon to be sensitive to cultural diversity, this problematic situation might end.

A. Introduce Concreteness into Human Rights

It is beyond the scope of the present paper to elaborate in detail how the human rights system can accommodate cultural variations. Yet from the comparative analysis of the cultural relativist and the feminist critiques to the system a few guidelines emerge. The first concerns the need to be wary of excessive abstractness. If an idea is, like human rights, intended to be meaningful all over the world, it has to take into account the heterogeneity of the world's people. Therefore a measure of concreteness, specificity, or particularity has to be incorporated into the human rights concept. That human rights are valid for all humans does not imply that these humans have to remain abstract. Rather on the contrary: if human rights are modelled to fit abstract humans, there is bound to be a fitting problem when they are confronted with real persons. [End Page 158]

The need for a contextualized concept of the person has been elaborated by many contemporary theorists. Michael Sandel, for instance, criticizes liberalism for its unrealistic conception of an "unencumbered self" which denies the possibility that any roles, commitments, or community memberships could be constitutive of the self. ¹¹⁹ Anti-essentialist feminism is developing an interesting "insider" methodology to approach conflicts of culture and women's rights. An influential theory in this respect is Seyla Benhabib's "interactive universalism." ¹²⁰ This concept wants to avoid both the substitutionist error of elevating the experiences of a specific group to the "human" norm and the relativistic paralysis of endorsing all pluralities and differences as morally and politically valid. It criticizes the "generalized other" by taking the standpoint of the "concrete other," "an individual with a concrete history, identity and affective-emotional constitution."

B. Frame Conflicts in Legal Terms

It has been argued that the legal context and particularly litigation is very suitable for the application of the theory of "interactive universalism." ¹²¹ Indeed, the law is perpetually concerned with the tension between the abstract (the rule) and the concrete (the facts of a case). The need for, and feasibility of, a relational, contextualized approach to rights within the legal system has been convincingly demonstrated by Martha Minow in her wonderful work *Making All the Difference*. ¹²² Therefore, the second guideline for broaching the opposition between feminism and cultural relativism is that conflicts can be substantially deflated if they are framed in legal terms. This option for human rights-as-law may conflict with the argument that both women and non-Western people feel uncomfortable about using legal methods. However, neither feminists nor cultural relativists eventually reject law as such, probably because they realize that the alternative is human rights-as-politics, where power differentials play an important role. What does the conflict between women's human rights and cultural relativism look like in legal jargon? [End Page 159]

1. Conflict between Rights

A first possibility is to view it as a conflict between rights. On the one hand there are "women's human

rights," on the other "cultural" or "religious" rights. Women's human rights are laid down in several texts, the principle one being the Convention on the Elimination of All Forms of Discrimination Against Women.¹²³ In addition, rights to religion and culture are found in Articles 18 and 27 of the International Covenant on Civil and Political Rights¹²⁴ and in Article 15 of the International Covenant on Economic, Social and Cultural Rights.¹²⁵ If opposing claims can each be framed in terms of a right, and if those rights have equal validity as a matter of principle, a constructive approach is possible. This was convincingly demonstrated by Donna Sullivan, who elaborated a framework for the resolution of conflicts between gender equality and religious freedom.¹²⁶

In the present state of international law, however, cultural rights do not have the same status as religious rights. Freedom of religion is one of the oldest human rights. It is classified among the civil and political rights, which enjoy *de facto* priority status inside the human rights system. Its respect is regularly enforced by national as well as international bodies. In contrast, cultural rights are considered to be "second generation rights," a category that is usually not given enforceable status. And even within the second generation, cultural rights receive less attention than social rights, and are formulated a lot more succinctly.¹²⁷

Religious rights are generally intended to protect the unique character of a variety of religions. Cultural identity, however, seems to be protected only in the contexts of protection of minorities and protection of the rights of indigenous peoples. A general right "to protect custom and practices that sustain a particular culture's unique identity"¹²⁸ does not exist as yet. The disparity between the status of religious and cultural rights creates an awkward situation from the cultural relativist point of view. Most, if not all religious practices can be termed cultural. Yet those cultural practices that **[End Page 160]** are religious are met with much higher respect than those that are not. In real life, the line between religious culture and other culture is often hard to draw. For instance, should the official doctrine of a religion or the people's perception of what their religion requires be decisive? As long as cultural rights do not have an equal status with women's rights, it is impossible to dissolve the opposition between feminism and cultural relativism through a framework based on conflicts of rights.

2. Rights and Grounds for Limiting those Rights

Another way of framing the problem in legal terms, is by viewing one interest as a right, and the other as an acceptable ground for limitation of that right. That rights can be subject to limitations is an accepted feature of the international human rights system. Article 29 (2) of the Universal Declaration of Human Rights stipulates that:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹²⁹

Similar limitation clauses accompany several rights in the International Covenant on Civil and Political Rights¹³⁰ and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹³¹ The enumerated interests do not automatically trump the rights in question; rather, limitations have to be provided by law and pass a proportionality test. Through this test the controlling body aims at striking a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. It could be possible to frame "gender equality" as a community interest in the name of which the "right to practice one's culture" could be limited. Yet given the present status of that right in the human rights system, this solution looks rather far-fetched. But what about the opposite, culture as a community interest that justifies limitations of women's rights if a proportionality test is satisfied? Several problems appear. For one, formulations of women's rights are not usually accompanied by limitation clauses. Another obstacle is the requirement in all limitation clauses that the measure limiting the right be provided by law. While some cultural traditions are part of "customary **[End Page 161]** law," it is clear that many others are not "provided by law," even in the widest sense of the word.

3. Interpretation

Then how can the law deal with the feminist-culturalist conflict? The smoothest way seems to be through interpretation. The interpretative enterprise is the meeting place of the concrete and the abstract. Human rights language is necessarily general. This permits the judge to take into account all kinds of particularities of the situation brought before him or her, including the cultural context and the human rights view of the people concerned. The same situation may be a human rights violation in one cultural context and not in another. If an invariable core of meaning of each right is respected, such a margin of cultural variability is by no means a revolutionary concept. The acceptability of various cultural interpretations has already been agreed upon with regard to some concepts, such as that of "family." Also, one of the functions of the "margin of appreciation" doctrine in the case law of the European Court of Human Rights is to permit a different balancing of interests in different cultural contexts. ¹³² An obstacle to the approach of cultural variation in interpretation, however, is the fact that sometimes the formulation of a right in an international document already contains a certain culturally specific interpretation. ¹³³

C. The Individual as the Starting Point

The third guideline for handling conflicts between feminism and cultural relativism is to take as a starting point the individual. Not the liberal concept of an abstract individual which is rejected by cultural relativists and feminists alike, but a contextualized individual, who conforms to our "specificity" guideline. To abandon the individual in favor of an approach through group rights would, however, deny the feminist concern about the oppressiveness of groups. If the viewpoint of the group is taken, there is a risk of essentialism, because it becomes difficult to take internal differences **[End Page 162]** and evolutions inside the group into account. Group rights are not the only way to express the "connectedness" or "embeddedness" of human beings in terms of human rights. Individual rights can have an important communal aspect. This is clear for family rights, religious rights, and associational rights. But also, if a certain way of speaking is characteristic for a particular community a communal dimension may be integrated into the freedom of speech. And some cultural or communal aspects of someone's way of life may be brought under the right to privacy. ¹³⁴

Many other examples could be given, but the main point is that introducing specificity in an individual rights approach makes it possible to value a concrete person's communal ties, not those that the dominant forces inside the community would like to attribute to him or her. Each individual should have the right to practice his or her culture and traditions, but likewise, each individual should have the right to reject them, for instance because he or she has been influenced by contact with another culture or with international feminism. These influences are as much a part of reality as traditional culture is. The international human rights system should defend this "opt-out" possibility ¹³⁵ and take up responsibility for the women who use it. ¹³⁶

VII. Conclusion

Feminists and cultural relativists criticize the dominant human rights discourse from very different angles and backgrounds. They are certainly not natural allies, yet they have some points of critique in common. That finding is significant. Maybe there really are some faults in the international human rights system. Maybe something should be done to mitigate the ruling conception of abstract individualism and to balance the different categories of rights.

What makes both critiques even more convincing is the fact that **[End Page 163]** essentially they come down to demands for inclusion of substantial groups of the world community in the human rights system. Inclusion of all human beings is precisely what the "human rights" concept is all about. It is central to the ideal of universality. What both the feminist and cultural relativist critiques of human rights make clear is that universality is not synonymous with uniformity. Real inclusion of all human beings requires attentiveness to their specificities.

Even though they do not seem much aware of it, cultural relativists and feminists share several concerns in their critique of human rights. These are important concerns. For instance, both critiques state that human rights should improve the lives of real people, taking account of their needs as well as of their contexts and particularities. In addition, both critiques share the concern that all human rights are indivisible, which means that social and economic rights and collective rights should not be

less important than civil and political rights. If human rights were to aim at these goals, not only women and non-Western cultures, but all humans would benefit from it.

If cultural relativists and feminists stopped wasting their breath and energy on issues on which they are opposed and focused instead on issues they have in common, they could develop a powerful constructive human rights critique. Since cultural relativists enjoy little or no credit on the international human rights scene, they have everything to gain from such an alliance. Feminists also have an interest in maximizing the constructive critical potential of their critique. Feminists must be aware that their present rise to the forefront of human rights discourse is partly as a result of the efforts from the dominant West to exclude other currents from that forefront, such as cultural relativism and the broader movement for social and economic rights.¹³⁷ It has been noted that "the previous U.S. government raised women's rights or violence against women to avoid its obligations around socio-economic rights, and rights to development."¹³⁸ Similarly, in Vienna, where women's human rights were the big success story, social and economic rights were rather neglected. This means that very likely, the advance of feminist concerns in human rights will stop where the overlap with these other critiques starts: at the point where Western states start to feel threatened, because they can no longer be certain to respect all the demands of human rights without having to adapt their behavior. Given that human rights were most certainly not designed to make states feel comfortable, but rather the opposite, a coalition designed to force these "difficult issues" to the forefront may indeed be necessary.

Eva Brems studied law at the Universities of Namur and Leuven in Belgium and received her LL.M from Harvard University in 1995. Under a fellowship from the Belgian National Fund for Scientific Research, she is currently working on a Ph.D. in law at the Institute for Human Rights of the University of Leuven on the subject of the universality of human rights and cultural diversity.

Notes

1. The subdivision of feminist thought in different strands used here is one that is frequently encountered. However, like most of reality, feminism resists strict categorization. It is self-evident that the thought of one author may contain elements of different strands, and that my use of these categories here should not be interpreted as an attempt to "box" anyone.
2. See **Mary Becker et al., *Cases and Materials on Feminist Jurisprudence: Taking Women Seriously*** 17-26 (1994) (discussing the history and characteristics of liberal feminism).
3. See, e.g., International Covenant on Civil and Political Rights, art. 26, *adopted* 16 Dec. 1966, 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR]; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14, *opened for signature* 4 Nov. 1950, Eur. T.S. No. 5, 213 U.N.T.S. 221 (*entered into force* 3 Sept. 1953); American Convention on Human Rights, art. 24, *opened for signature* 22 Nov. 1969, O.A.S.T.S. No. 36, *reprinted in* 9 **I.L.M.** 673 (1970) (*entered into force* 18 Jul. 1978).
4. Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 **Mich. J. Int'l L.** 517 (1992). Engle examines Kay Boulware-Miller, Alison T. Slack, Abdullahi An-Na'im, Rebecca J. Cook, Deborah Maine, and Yougindra Khushalani as examples of the doctrinalist approach. See Kay Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 **Harv. Women's L.J.** 155 (1985); Alison T. Slack, *Female Circumcision: A Critical Appraisal*, 10 **Hum. Rts. Q.** 437 (1988); Abdullahi An-Na'im, *The Rights of Women and International Law in the Muslim Context*, 9 **Whittier L. Rev.** 491 (1987); Rebecca J. Cook & Deborah Maine, *Spousal Veto Over Family Planning Services*, 77 **Am. J. Pub. Health** 339 (1987); **Yougindra Khushalani, Dignity and Honour of Women as Basic and Fundamental Human Rights** (1982).

Engle ranks Margaret E. Galey, Laura Reanda, and Noreen Burrows among the institutionalists. See Margaret E. Galey, *International Enforcement of Women's Rights*, 6 **Hum. Rts. Q.** 463 (1984); Laura Reanda, *Human Rights and Women's Rights: The United Nations Approach*, **Hum. Rts. Q.**, Spring

1981, at 11; Noreen Burrows, *International Law and Human Rights: The Case of Women's Rights*, in **Human Rights: From Rhetoric to Reality** 80, 89-96 (Tom Campbell et al. eds., 1986).

5. Such proposed transformations include a focus on human needs instead of human rights, revising the catalog of human rights, breaching the public/private dichotomy, and upgrading social and economic rights and collective rights. See discussion *infra* Parts II.B & III.D.

6. See Robin West, *Jurisprudence and Gender*, 55 **U. Chi. L. Rev.** 1 (1988) (discussing cultural feminism and its relation to radical feminism).

7. See **Carol Gilligan**, *In A Different Voice: Psychological Theory and Women's Development* (1982).

8. John Hardwig, *Should Women Think in Terms of Rights?*, 94 **Ethics** 441 (1984).

9. Gayle Binion, *Human Rights: A Feminist Perspective*, 17 **Hum. Rts. Q.** 509, 524 (1995) ("Despite serious feminist concerns about formalism, about statism, and about the function of law in general . . . the legal front and the diplomatic front cannot be eschewed.").

10. *Id.* at 525.

11. See Rebecca J. Cook, *Women's International Human Rights Law: The Way Forward*, in **Human Rights of Women: National and International Perspectives** 3, 10 (Rebecca J. Cook ed., 1994) [hereinafter **Human Rights Of Women**].

12. Burrows, *supra* note 4, at 81.

13. See Andrew Byrnes, *Women, Feminism and International Human Rights Law--Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation? Some Current Issues*, 12 **Austrl. Y.B. Int'l L.** 215 (1988-1989) (distinguishing "women's rights [as human rights]" from "women's human rights," the latter term applying to human rights violations which are not gender specific).

14. Burrows, *supra* note 4, at 81.

15. See also Riane Eisler, *Human Rights: Toward an Integrated Theory for Action*, 9 **Hum. Rts. Q.** 287 (1987); Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 **Harv. Hum. Rts. J.** 87 (1993).

16. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/36 (1980), *reprinted in* 19 I.L.M. 33 (1980) (*entered into force* 3 Sept. 1981) [hereinafter CEDAW].

17. *Id.* art. 1.

18. See Fran P. Hosken, *Toward a Definition of Women's Human Rights*, **Hum. Rts. Q.**, Spring 1981, at 2-10; Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 **Hum. Rts. Q.** 488 (1990); Barbara Stark, *Nurturing Rights: An Essay on Women, Peace, and International Human Rights*, 13 **Mich. J. Int'l L.** 144 (1991); Joanna Kerr, *The Context and the Goal*, in **Ours By Right: Women's Rights as Human Rights** 3, 4-5 (Joanna Kerr ed., 1993); *cf.* Adetoun O. Ilumoka, *African Women's Economic, Social, and Cultural Rights: Toward a Relevant Theory and Practice in Human Rights of Women*, in **Human Rights of Women**, *supra* note 11, at 307, 307-325.

19. Hilary Charlesworth, *What are "Women's International Human Rights"?*, in **Human Rights of Women**, *supra* note 11, at 58, 75.

20. See **Catharine A. MacKinnon**, *Difference and Dominance: On Sex Discrimination*, in **Feminism**

Unmodified: Discourses on Life and Law 32 (1987).

21. See **Catharine A. MacKinnon**, *The Art of the Impossible*, in **Feminism Unmodified: Discourses on Life and Law**, *id.* at 5-7.

22. See **Becker et al.**, *supra* note 2, at 59 (defining false consciousness as "the notion that women sometimes act against their own self interest because they have internalized--as part of their consciousness--male norms and standards").

23. See, e.g., **Catharine A. MacKinnon**, **Toward a Feminist Theory of the State** 237-39 (1989).

24. See Charlesworth, *supra* note 19, at 61; see also Helen Bequaert Holmes & Susan Rae Peterson, *Rights Over One's Own Body: A Woman-Affirming Health Care Policy*, **Hum. Rts. Q.**, Spring 1981, at 71.

25. See Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 **Am. J. Int'l L.** 613, 629 (1991).

26. See Bunch, *supra* note 18, at 486-98; Charlesworth, *supra* note 19, at 71-76.

27. Binion, *supra* note 9, at 512 (emphasis in original).

28. Julie Mertus & Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: The Inside/Outside Construct*, 26 **N.Y.U. J. Int'l L. & Pol.** 201 (1994).

29. See, e.g., Angela P. Harris, *Race Essentialism in Feminist Legal Theory*, 42 **Stan. L. Rev.** 581 (1990).

30. See Byrnes, *supra* note 13, at 206.

31. See Binion, *supra* note 9, at 513.

32. It is a fact that the cultural relativist critique of human rights is often abused by those in power to object to the international scrutiny of the human rights situations in their countries. However, a sincere cultural relativism exists as well, and with good reason. It is this sincere form of the critique that I wish to engage in this paper. Due to the negative connotation of the term "cultural relativism," several authors, including Keba Mbaye and Makau wa Mutua, explicitly state that they are not cultural relativists. If I have treated them as such in the present paper, it is because I do not limit the term "cultural relativism" to the radical rejection of human rights.

33. See Shashi Tharoor, *The Universality of Human Rights and their Relevance to Developing Countries*, 59 **Nordic J. Int'l L.** 142 (1990).

34. Bilahari Kausikan, *Asia's Different Standard*, 92 **Foreign Pol'y** 24, 27-28 (1993).

35. Fernando R. Tesón, *International Human Rights and Cultural Relativism*, 25 **Va. J. Int'l L.** 896 (1985), referring to 2 **Karl Popper**, **The Open Society and its Enemies** 94 (1966).

36. See, e.g., Adamantia Pollis & Peter Schwab, *Human Rights: a Western Construct with Limited Applicability*, in **Human Rights: Cultural and Ideological Perspectives** 1 (Adamantia Pollis & Peter Schwab eds., 1979).

37. See, e.g., Josiah A. M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 **Hum. Rts. Q.** 309 (1987).

38. A variation of this scheme occurs when the argument is centered around ideological instead of

cultural opposition. This form usually comes from communist countries.

39. See also Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 **Hum. Rts. Q.** 400, 400-01 (1984) (making similar subdivisions); Douglas Lee Donoho, *Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards*, 27 **Stan. J. Int'l L.** 345 (1991) (making similar subdivisions).

40. Rejection of human rights as understood by the West is rather widespread in conservative Muslim circles. However, these authors do not reject the concept of human rights as such. Rather, they put forward an alternative set of human rights, based on Islamic sources. See Heiner Bielefeldt, *Muslim Voices in the Human Rights Debate*, 17 **Hum. Rts. Q.** 587, 601-06 (1995).

41. Universal Declaration of Human Rights, art. 18, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), 3 U.N. GAOR (Resolutions, part 1) at 71, U.N. Doc. A/810 (1948), *reprinted in* 43 **Am. J. Int'l L. Supp.** 127 (1949).

42. *Id.* art. 5; ICCPR, *supra* note 3.

43. See Rhoda E. Howard, *Cultural Absolutism and the Nostalgia for Community*, 15 **Hum. Rts. Q.** 315 (1993) (giving the name "cultural absolutism" to the idea that all systems of social justice are human rights systems); see also Jack Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 **Am. Pol. Science Rev.** 303 (1982) (providing a particularly vehement critique of those who equate human dignity with human rights).

44. See, e.g., Cobbah, *supra* note 37; James C. Hsiung, *Human Rights in an East Asian Perspective, in Human Rights in East Asia, A Cultural Perspective* 1 (1985); Ziyad Motala, *Human Rights in Africa: A Cultural, Ideological, and Legal Examination*, 12 **Hastings Int'l & Comp. L. Rev.** 373, 383 (1989); Raimundo Panikkar, *La notion des droits de l'homme est-elle un concept occidental?*, 120 **Diogené (sum)ne** 87 (1982); S.S. Rama Rao Pappu, *Human Rights and Human Obligations: An East-West Perspective*, 8 **Phil. & Soc. Action** 15 (1982); Prakash Sinha, *Human Rights: A Non-Western Viewpoint*, 67 **Archiv für Rechts- und Sozialphilosophie** 76 (1981).

45. See Claude Ake, *The African Context of Human Rights*, 32 **Africa Today** 5, 5 (1987); Cobbah, *supra* note 37; see also Louis Henkin, *The Human Rights Idea in Contemporary China: A Comparative Perspective in Human Rights, in Contemporary China* 7, 21-22 (1986); Rhoda E. Howard, *Human Rights in Commonwealth Africa* 19 (1986); Hsiung, *supra* note 44; Christopher C. Joyner & John C. Dettling, *Bridging the Cultural Chasm: Cultural Relativism and the Future of International Law*, 20 **Cal. W. Int'l L.J.** 286 (1990); Piotr Kowalski, *The Problems of Cultural Relativism and the Universalism of the International Bill of Human Rights, in 4 Stud. in the Theory & Phil. of L.* 91, 95 (1988); Makau wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 **Va. J. Int'l L.** 339, 339-80 (1995); Panikkar, *supra* note 44; Abdul Aziz Said, *Human Rights in Islamic Perspectives, in Human Rights: Cultural and Ideological Perspectives* 86 (Adamantia Pollis & Peter Schwab eds., 1979); Sinha, *supra* note 44; Raymond Verdier, *Problématique des droits de l'homme dans les droits traditionnels d'Afrique noire*, 5 **Droit et Cultures** 97 (1983); Harro von Senger, *Chinese Culture and Human Rights, in Human Rights and Cultural Diversity* 281, 295, 304 (W. Schmale ed., 1993).

46. This theme is implicit in most of the cultural relativist texts already cited in this discussion, and explicit in Ake. See Ake, *supra* note 45.

47. See Melville Herskovits, *Man and His Works* 61, 63 (Alfred A. Knopf, Inc. 1964) (1948) (summarizing the principle of cultural relativism as: "Judgements are based on experience, and experience is interpreted by each individual in terms of his own enculturation.").

48. See Ake, *supra* note 45, at 5; Cobbah, *supra* note 37; Radhika Coomaraswamy, *To Bellow like a Cow: Women, Ethnicity, and the Discourse of Rights, in Human Rights of Women, supra* note 11, at 39; Henkin, *supra* note 45; Howard, *supra* note 45, at 20; Hsiung, *supra* note 44; Panikkar, *supra* note 44; Pappu, *supra* note 44; Sinha, *supra* note 44; von Senger, *supra* note 45, at 301, 305.

49. See Ake, *supra* note 45, at 9; Norbert Rouland, *La tradition juridique africaine et la réception des déclarations occidentales des droits de l'homme*, 26 **Droit et Cultures** 197, 216 (1993); von Senger, *supra* note 45, at 308-09.

50. Mutua, *supra* note 45.

51. See Ake, *supra* note 45, at 10-11.

52. See Ake, *supra* note 45, at 5; Kausikan, *supra* note 34; Kowalski, *supra* note 45; von Senger, *supra* note 45, at 308-09.

53. Sinha, *supra* note 44, at 89-90; cf. Kishore Mahbubani, Deputy Secretary of the Ministry of Foreign Affairs of the Republic of Singapore, *quoted in* Christina M. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, 16 **Hum. Rts. Q.** 741, 745 (1994).

54. See Keba Mbaye, *Les droits de l'homme en Afrique* 50 (1992); Tharoor, *supra* note 33, at 152.

55. An explicit option to stay within the human rights system is found in Kausikan, *supra* note 34, at 39; see also Panikkar, *supra* note 44, at 110.

56. See Charlesworth, *supra* note 19, at 74.

57. For example, the British colonial rulers in India retained the family laws applicable to different parts of the population (Hindus, Muslims, and Parsis) on the basis of their religion. Today family laws in India are still divided along religious lines. Indian feminists consider this a major obstacle to women's rights in their country. See Kirti Singh, *Obstacles to Women's Rights in India*, in **Human Rights of Women**, *supra* note 11, at 375.

58. Eisler, *supra* note 15, at 295, 296.

59. Joan Fitzpatrick, *The Use of International Human Rights Norms to Combat Violence Against Women*, in **Human Rights of Women**, *supra* note 11, at 532, 541.

60. Reza Afshari, *An Essay on Islamic Cultural Relativism in the Discourse of Human Rights*, 16 **Hum. Rts. Q.** 235, 256 (1994); Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 **Colum. Hum. Rts. L. Rev.** 49, 90 (1993).

61. See Coomaraswamy, *supra* note 48, at 40 (arguing that assumptions about the female personality that accompany the discourse on women's rights are not universal).

62. See Michelle Zimbalist Rosaldo, *Woman, Culture, and Society: A Theoretical Overview*, in **Woman, Culture and Society** 17 (Michelle Zimbalist Rosaldo & Louise Lamphere eds., 1974); Charlesworth, *supra* note 19, at 62.

63. See Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 **Harv. Hum. Rts. J.** 23 (1995).

64. See Asma Mohamed Abdel Halim, *Challenges to the Application of International Women's Human Rights in the Sudan*, in **Human Rights of Women**, *supra* note 11, at 397, 411.

65. Vienna Declaration and Programme of Action, *adopted by* The World Conference on Human Rights, 2 June 1993, U.N. Doc. A/Conf.157/24 (Part I), at 29 (13 Oct. 1993) [hereinafter Vienna Declaration].

66. Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, *adopted* 7 Apr. 1993, U.N. Doc. A/Conf.157/ASRM/8-A/Conf.157/PC/59 (1993) [hereinafter Bangkok Declaration].

67. *Id.* at 3 § 8.

68. For instance, at the interregional meeting organized by the Council of Europe in advance of the World Conference on Human Rights, the affirmation of the universality of human rights was advanced as the first among six proposals for action. See *Conclusions by the General Rapporteur, Mary Robinson, President of Ireland, in Human Rights at the Dawn of the 21st Century: Proceedings, Interregional Meeting Organized by the Council of Europe in Advance of the World Conference on Human Rights* 115, 117 (1993).

69. *Women's Rights as Human Rights: an international lobbying success story*, **Hum. Rts. Trib.**, June 1993, at 29 [hereinafter *Women's Rights Lobbying Success*]; Wendy Parker & Pauline Comeau, *Women Succeed in Vienna Where Others Fail*, **Hum. Rts. Trib.**, Nov. 1993, at 22.

70. Vienna Declaration, *supra* note 65.

71. "The universal nature of these rights and freedoms is beyond question." *Id.* at 4 ¶ 1. "All human rights are universal, indivisible and interdependent and interrelated." *Id.* at 5 ¶ 5. See also *id.* at 11 ¶ 32; *id.* at 12 ¶ 37.

72. *Id.* at 5 ¶ 5.

73. Cerna, *supra* note 53, at 742.

74. Vienna Declaration, *supra* note 65.

75. *Id.* at 7 ¶ 18.

76. *Id.*; see also *id.* at 18 ¶ 37.

77. *Id.* at 7 ¶ 18; *id.* at 19 ¶ 38.

78. Mertus & Goldberg, *supra* note 28, at 202.

79. Donna J. Sullivan, *Women's Human Rights and the 1993 World Conference on Human Rights*, 88 **Am. J. Int'l L.** 152 (1994).

80. Vienna Declaration, *supra* note 65, at 19 ¶ 38.

81. *Id.* at 21 ¶ 49.

82. *Report of the International Conference on Population and Development*, Cairo 1994, U.N. Doc. A/Conf.171/13 (18 Oct. 1994) [hereinafter *Cairo Conference Report*].

83. Programme of Action of the International Conference on Population and Development, Cairo 1994, *adopted* 13 Sept. 1994, U.N. Doc. A/Conf.171/13 Annex (18 Oct. 1994) [hereinafter *Cairo Programme of Action*].

84. *Id.* princ. 4.

85. Vienna Declaration, *supra* note 65, ¶ 18(1).

[86.](#) *Cairo Conference Report*, *supra* note 82, § 5.1; *see also* Cairo Programme of Action, *supra* note 83, princ. 9.

[87.](#) *Cairo Conference Report*, *supra* note 82, § 4.21.

[88.](#) *See id.* §§ 4.22, 7.6.

[89.](#) *Id.* § 4.3(a).

[90.](#) Beijing Declaration and Platform for Action, *adopted* 15 Sept. 1995, Fourth World Conference on Women: Action for Equality, Development and Peace, ¶¶ 9, 213, *reprinted in* **Meiklejohn Civil Liberties Institute, Beijing Declaration and Platform for Action: Advance Unedited Draft** (1996). *See also id.* ¶¶ 211, 212.

[91.](#) *Id.* ¶ 2.

[92.](#) *Id.* ¶ 9.

[93.](#) *Id.* ¶ 40.

[94.](#) *Id.* ¶ 108(a).

[95.](#) *Id.* ¶¶ 114(a), 119, 125(i), (k).

[96.](#) *Id.* ¶¶ 225, 232(g), (h), 283(d), 274(f), 276(b).

[97.](#) *Id.* ¶ 125(a).

[98.](#) *Id.* ¶ 158.

[99.](#) *Id.* ¶ 71.

[100.](#) *Id.* ¶ 25.

[101.](#) *Id.* ¶ 276(d).

[102.](#) *Id.* ¶ 30.

[103.](#) *See also id.* ¶¶ 85(p), 107(c), 242(d).

[104.](#) **Mbaye**, *supra* note 54, at 41.

[105.](#) *See* Kim, *supra* note 60, at 99-101.

[106.](#) *See* Catherine Harries, *Daughters of our peoples: International Feminism Meets Ugandan Law and Custom*, 25 **Colum. Hum. Rts. L. Rev.** 493, 509 n.55 (1994) (making reference to challenges of essentialist feminism).

[107.](#) *Id.* at 511-12.

[108.](#) Annie Bunting, *Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies*, 20 **J.L. & Soc'y** 6, 11-13 (1993).

[109.](#) Ake, *supra* note 45, at 9.

- [110](#). See Charlesworth et al., *supra* note 25, at 616-17 (noting this parallel). See also Isabelle R. Gunning, *Arrogant Perception, World-travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 **Colum. Hum. Rts. L. Rev.** 189, 189-248 (1991-1992) (noting that the lack of a strong enforcement mechanism in the international human rights system is a strength rather than a weakness in light of the need for a capacity for cultural sensitivity).
- [111](#). Sandra Harding, *quoted in* Charlesworth et al., *supra* note 25, at 617; cf. V. Spike Peterson, *Whose Rights? A Critique of the "Givens" in Human Rights Discourse*, 15 **Alternatives** 303 (1990).
- [112](#). Bunting, *supra* note 108, at 10; cf. J. Oloka-Onyango & Sylvia Tamale, *"The Personal is Political," or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism*, 17 **Hum. Rts. Q.** 691, 711-12 (1995).
- [113](#). Binion, *supra* note 9, at 524-26.
- [114](#). Peterson, *supra* note 111 (referring to parallel critiques of human rights by feminists and cultural relativists).
- [115](#). See, e.g., Halim, *supra* note 64, at 419; Florence Butegwa, *Using the African Charter on Human and People's Rights to Secure Women's Access to Land in Africa*, in **Human Rights of Women**, *supra* note 11, at 495, 509-11; Jennifer Jewett, *The Recommendations of the International Conference on Population and Development: The Possibility of the Empowerment of Women in Egypt*, 29 **Cornell Int'l L.J.** 191 (1996).
- [116](#). See An-Na'im, *supra* note 4; Abdullahi Ahmed An-Na'im, *State Responsibility Under International Human Rights Law to Change Religious and Customary Laws*, in **Human Rights of Women**, *supra* note 11, at 167.
- [117](#). Ronald Thandabantu Nhlapo, *International Protection of Human Rights and the Family: African Variations on a Common Theme*, 3 **Int'l J.L. & Fam.** 1, 17 (1989).
- [118](#). Coomaraswamy, *supra* note 48, at 39.
- [119](#). Michael J. Sandel, *The Procedural Republic and the Unencumbered Self*, 12 **Pol. Theory** 81, 81 (1984).
- [120](#). Seyla Benhabib, *The Generalized and the Concrete Other: The Kohlberg-Gilligan Controversy and Feminist Theory*, in **Feminism as Critique** 77 (Seyla Benhabib & Drucilla Cornell eds., 1987).
- [121](#). Nitya Duclos, *Lessons of Difference: Feminist Theory on Cultural Diversity*, 38 **Buff. L. Rev.** 325, 375-80 (1990).
- [122](#). **Martha Minow, Making All the Difference** (1990).
- [123](#). CEDAW, *supra* note 16.
- [124](#). ICCPR, *supra* note 3.
- [125](#). International Covenant on Economic, Social and Cultural Rights, art. 15, *adopted* 16 Dec. 1966, 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976), G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).
- [126](#). Donna J. Sullivan, *Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution*, 24 **N.Y.U. J. Int'l L. & Pol.** 795 (1992).
- [127](#). Cf. International Covenant on Economic, Social and Cultural Rights, *supra* note 125, art. 15 ¶ 1(a)

(proclaiming the right "to take part in cultural life"). Judging from the rest of Article 15, the framers did not intend to protect cultural identities, but rather the participation in art, science, etc. See *id.*

[128.](#) See Joyner & Dettling, *supra* note 45, at 290 (pleading for the formulation of such a right).

[129.](#) Universal Declaration of Human Rights, *supra* note 41, art. 29(2).

[130.](#) ICCPR, *supra* note 3.

[131.](#) European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 3.

[132.](#) Eva Brems, *The Margin of Appreciation Doctrine in the Case-Law of the European Court of Human Rights*, 56 **Zeitschrift für ausländisches öffentliches Recht und Völkerrecht** 240 (1996).

[133.](#) Pieter van Dijk, *A Common Standard of Achievement: About Universal Validity and Uniform Interpretation of International Human Rights Norms*, 13 **Neth. Q. Hum. Rts.** 105, 117 (1995) (citing Article 16, paragraph 2 of the Universal Declaration of Human Rights to illustrate this point in reference to marriage). See also Universal Declaration of Human Rights, *supra* note 41, art. 16 ¶ 2 ("Marriage shall be entered into only with the free and full consent of the intending spouses.").

[134.](#) *E.g.*, Buckley v. United Kingdom, 19 Eur. H.R. Rep. C.D. 20, ¶ 65 (1995) (gypsy who was prevented from living with her family in her caravans, on her land, claimed that this treatment interfered with her rights regarding family life, private life, and home).

[135.](#) **Howard**, *supra* note 45, at 198; Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 **L. &**

Ineq. J., July 1989, at 367, 398.

[136.](#) If Western countries seriously believe that particular cultural practices violate women's human rights, the minimum these countries should do is accord refugee status to women fleeing such practices. *Cf.* Pauline Comeau, *Woman fleeing Islamic edicts allowed to stay in Canada*, **Hum. Rts. Trib.**, Winter 1993, at 19 (illustrating the rare exception to the thesis that Western states' commitment to human rights stops where the states feel that their own policies are somehow threatened by the demands of human rights).

[137.](#) *Cf.* Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights*, 27 **Osgoode Hall L.J.** 769 (1989); Rolf Künnemann, *A Coherent Approach to Human Rights*, 17 **Hum. Rts. Q.** 323 (1995).

[138.](#) *Women's Rights Lobbying Success*, *supra* note 69, at 30.

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