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Relativism versus universalism in human rights: A construction in contemporary feminist thought

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Abstract
This article shows how feminism affects third-world county's societies and how women are participating in their culture. This article also focuses on the relation between Known theories of feminism, cultural relativism, and human rights. This article also discusses the debate between Universality and Relativity of human rights and how international laws depend on a country's culture.

Keywords: cultural relativism, feminism, human rights, universalism, culture, power

Introduction
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.

Feminism, Cultural Relativism and Human Rights: Uneasy Relationships
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 met general level of 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]

Others have opted for an "instrumentalist" approach to universality, which simply views the concept as a useful strategic tool for achieving the protection of various rights.

However, despite its practical appeal such an approach is problematic. In an article entitled "Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies", Annie Bunting notes, "[S]trategic implementation of universal rights suppresses and devalues cultural diversity. Fundamental cultural conflicts are left unresolved, buried beneath presumptively universal norms." [6]

Bunting takes a considerably more nuanced approach to the challenge posed by cultural relativism. She emphasizes the dangers inherent in any attempt to understand either "female oppression" or "male domination" outside of specific cultural, historical, economic and political contexts. While recognizing that culture can construct and/or exacerbate gender inequality, Bunting refuses to posit a seemingly neutral or universal standpoint from which all cultures and societies can be judged, and which could lead to misleading oversimplification and generalization. She cautions against blanket condemnations of "patriarchy" and "male domination" that do little or nothing to account either for differences between cultures or for the particular kinds of oppression that women experience in their daily lives.

The concerns outlined above have provided an impetus to the development of approaches that attempt to overcome the stark dichotomy between universalism and relativism. Such an approach is reflected in the essays which make up a 1992 collection edited by Abdullahi A. An-Na'im, Human Rights in Cross-Cultural Perspective: A Quest for Consensus [7]. An-Na'im roots his approach firmly in the practical imperative of understanding and bridging the gulf between the theory and practice of human rights. He articulates the challenge facing international human rights scholars: "Current and foreseeable new human rights cannot be seen as truly universal unless they are conceived and articulated within the widest possible range of cultural traditions." [8] At the same time, An-Na'im maintains a realistic view of the potential of this approach:

The proposed approach seeks to explore the possibilities of cultural reinterpretation and reconstruction through internal cultural discourse and cross-cultural dialogue, as a means to enhancing the universal legitimacy of human rights. This approach does not assume that sufficient cultural support for the full range of human rights is either already present or completely lacking in any given cultural tradition. Rather, more realistically, prevailing interpretations and perceptions of each cultural tradition can be expected to support some human rights while disagreeing with or even completely rejecting other human rights [9].

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:

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 [10].

Falk asserts that we need to recognize the reality of cultural "penetration and overlapping" [11] 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." [12]

An-Na'im and Falk portray culture as a field of struggle, but seem to perceive it largely as an internal struggle. An-Na'im has pointed out the dangers involved in abandoning the religious or cultural domain to the tender mercies of fundamentalists who would like it to remain a bulwark against change [13]. Writing specifically on the intersection of women's rights and Islam, he makes important observations that are consistent with his overall approach to the intersection of international human rights norms and cultural or religious values. He points out that there is rarely, if ever, consensus within a given society about the implications of religious precepts. Culture and religion, far from being removed from the daily lives of men and women, constitute fora within which changing roles and values are debated. However, An-Na'im is careful to point out that the challenge of reinterpreting Islamic norms is one that is by definition limited to Muslims [14]. International standards can play an important role in providing focal points for discussion, but they cannot simply be imposed without sensitivity to cultural and historical specificity. Wilson does not deny the dangers of ethnocentrism in the human rights context, but sees the universalist position as having increasing validity, and the relativist position as being increasingly undermined, through "the globalisation of culturaleconomic and political processes. [15]" Indeed,

Wilson suggests we may be moving into a 'post-cultural' world. [16] He is careful to qualify what he means by globalisation:

Globalisation does not mean the same as westernisation, modernisation or standardization. We should not adopt a diffusionist view of globalisation since it does not just imply a process of homogenisation and integration, but involves a proliferation of diversity as well. A diversity of normative orders may still prevail, and may even be exacerbated by global processes, but they are no longer predicated upon isolation. Rather, a sense of different is constructed out of relatedness, opposition and an awareness of plurality. Nor are moral differences as reliant on enclosed systems as before, but are more fragmented and susceptible to transnational flows of moral values, particularly through world religions. Just because a cultural form is global, it does not mean that everyone relates to it in the same way--its interpretation depends on local and individual value distinctions [17].

To speak of the universality of human rights, then, "becomes a question of context, necessitating a situational analysis. [18]" Anticipating criticism that such a requirement drifts back into relativism, Wilson insists, "It is possible to have contextualisation without relativisation, since one can keep open the possibility, and in the dying embers of the twentieth century, the likelihood, that contexts are interlinked through a variety of processes" [19]. Moreover, he emphasizes, the attention to context requires far more than attention to cultural boundaries-- specificity extends to a wide variety of factors:

Local interpretations of human rights doctrine draw on personal biographies, community histories, and on expressions of power relations between interest groups. Their relationship to formal, legal versions has to be discovered, not assumed. Just because an Asian or African human rights organisation uses the language of human rights, against its government, it should not be assumed that human rights are being invoked in an orthodox and positivist legal manner. This assumption ignores the degree to which human rights doctrine does get reworked and transformed in different contexts, whether the context is "non-Western" or not [20].

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." [21] 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. [22] Because practices that affect women generally fall into the "private" category, they are protected as part of a society's "culture." [23]

Ironically, the public/private dichotomy, so often used to distinguish "culture" from "politics," is derived from Western notions of liberalism [24]. Thus, the relativist stance that private practices are cultural practices is itself rooted in Western ideology. Liberalism divides family [25] and state into two separate spheres -- the private and the public. [26] 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.

For example, personal relations and family matters are relegated to the "private" sphere, both in the United States and under international law. In matters of reproductive control, however, the state often infringes upon the privacy of the individual, through measures ranging from regulation to coercion to outright prohibition. In China, the "one-child" policy often results in state-coerced abortions. [27] In Romania, the government's attempt to increase national population growth resulted in a near-prohibition on contraceptive use and a corresponding rise in unwanted pregnancies and illegal and dangerous abortions. [28] 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 [29].

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 [30].

In Iran, it is nearly impossible for women to file for divorce [31] The head of the Iranian Supreme Court recently announced that women are not given the right to divorce because they are prone to "emotional and irrational decision-making." [32] If a husband dies or divorces his wife, only he or his family may claim the children [33].

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 [34]. 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 [35].

The culture of which anthropologists speak is the dominant culture within the society -- the culture of society's power elite. Culture, thus distilled, leaves out rebels, misfits, and the disempowered. For example, the communist government of the People's Republic of China claims that China has its own standard of human rights and that human rights issues fall within China's domestic jurisdiction. Many Chinese citizens, however, do not adhere to this position, as the events in the spring of 1989 demonstrated. The people whose culture the regime ostensibly was trying to protect rose up in overwhelming numbers to express their dissatisfaction with the "Chinese" attitude toward human rights [36].

Other recent world events, most notably the break-up of the Soviet Union and the ethnic and economic conflict in Bosnia-Herzgovina, 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 [37].

Women as Cultural Participants

The subordination of women is not unique to any particular region of the world, but spans cultural [38], geographic, social and economic boundaries [39]. Women comprise 50 percent of the world's voting population, yet they hold 10 percent or less of the seats in national legislatures. Because most cultures are male--dominated, the essentialist version of culture ignores the contributions of women, who are subordinated and oppressed globally, in non-Western countries as well as in Western countries.

While successful social reform must originate within a society [40], subordinated groups within each society must be allowed to participate in the political process in order to avoid injustice. In other words, while social change must come from forces within the society, such change is often prevented from occurring, not because of lack of popular support, but because of an imbalance of power in favor of the status quo [41].

The relativist argument against feminism is all the more specious given the historical and cross-cultural nature of women's oppression [42]. Women seeking internal reform are already steeped in the social and moral consciousness of the societies they are seeking to change. Their efforts manifest a reflective and self-critical awareness, which replaces blind acceptance of social mores [43].

Feminist networks have developed on all continents [44]. These networks are, in part, a function of advanced communications technology and faster, safer methods of transportation. Modern technology has shortened the distance between nations, and increased the international exchange of ideas. Feminism is a natural consequence of this shrinking world. Satellite television and international marketing disseminate culture across borders, and affect culture within borders. Few, if any, cultures exist in a vacuum. As a result, few subgroups, including women, are exempt from outside influence.

The relativist comparison of feminism with colonialism is flawed because it ignores the difference between coercion and autonomous decision-making. It confuses the desire to change with forced change, and mistakes societal constructs and the status quo for the natural order. The cultural imperialism that accompanied colonialism forced changes against the will of the people. This resulted in the stripping away of cultural identity. Feminism, on the other hand, is a product of the gradual process of social evolution. Women from Western industrial countries are not marching into developing non-Western countries and forcing the local women to accept Western feminist ideas. Rather, increased communication among countries has facilitated the flow of ideas, and placed feminist ideas "out there" for women all over the world to discover. Just as each society is free

to accept or reject ideas it receives from another society, so are women able to accept or reject ideas they receive from other women [45].

Some may question how the international community can talk about women's rights and a feminist movement when women themselves cannot figure out what it is that they want [46]. The answer is that feminism and international networking provide alternatives to practices and customs that have felt oppressive to women, but that are so deeply rooted in tradition that they are difficult to change. Feminism criticizes the existing male-dominated culture, and thereby creates the possibility of choices and a cultural identity that includes women [47].

Feminist theory cannot set forth an agenda of issues upon which all women agree. For example, the right to an abortion, which is of primary importance in the United States, is not as important in many countries where women's primary concern is equal access to food and housing. In some countries, abortion is a feminist concern not so much because the right is lacking, but because it is forced upon women in an effort to control the population, often in a sinister, sex-selective manner [48]. Rather than replacing non-Western cultural practices with Western ones, feminist approaches to international human rights should shift the focus from the existing male-dominated status quo to one that takes women's experiences into account.

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 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.

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9. Ibid. at 3-4.
10. ibid
11. ibid
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14. Ibid. at 514. An-Na'im recognizes that this division into "internal" and "external" realms can be problematic. What about the situation of those who hold a set of beliefs different from those of the majority within any given society? In an article on the rights of religious minorities, he asserts categorically that Muslims cannot rely on the provisions of Shari'ah law to justify discriminatory treatment of non-Muslims, and must instead "seek ways of reconciling Shari'ah with fundamental human rights": "Religious Minorities under Islamic Law and the Limits of Cultural Relativism" 9 Human Rights Quarterly 1 at 18. Consistent with his overall approach, however, he emphasizes that "[t]he choice of the particular methodology for achieving this result must be left to the discretion of the Muslims themselves.", 1987.

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45. Disagreement among women was one of the issues that arose at the World Conference on Human Rights in July. "With thousands of women from distinct backgrounds and outlooks voicing varied and even conflicting concerns, the Vienna conference blew the myth of a single 'women's voice' to shreds." Julie Mertus, Working It in Vienna: Women Fight for Recognition at the U.N., Village Voice, July 13, 1993, at 35-36. Yet, even in the midst of this diversity, "women were able to find one area in which nearly everyone had something to say: violence against women.", 1993.
46. ," "Gender," and "Sexual Orientation" in Euro-American Law and Society, 83 Cal. L. Rev. 3, 373 (1995) (footnotes omitted); see also Darren Lenard Hutchinson, Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse, 29 Conn. L. Rev. 561, 585 n.105 (1997) (describing and citing to lesbian critiques of feminists and political activists); Frances Olsen, Politics Without a Movement, 22 Cardozo L. Rev. 1105, 1108 n.13, 2001.
47. Catherine A. MacKinnon, Difference and Dominance: On Sex Discrimination, in Feminist Legal Theory: Readings in Law and Gender 82 (Katherine T. Bartlett & Rosanne Kennedy eds., 1991). "For women to affirm difference, when difference means dominance, as it does with gender, means to affirm the qualities and characteristics of powerlessness."
48. A recent study in Bombay found that 99% of all abortions were of female fetuses. Michael Breen, Daughters Unwanted: Asians Preference for Sons Makes Abortion Rate Soar, Wash. Times, Feb. 13, 1993, at A1. At one clinic in Mumbai, 7,999 out of 8,000 abortions performed after amniocentesis were of female fetuses. John W. Anderson & Molly Moore, Born Oppressed: Women in the Developing World Face Cradle-to-Grace Discrimination, Poverty, Wash. Post, Feb. 14, 1993, at A1.