Spring 1997

Feminism, Globalization and Culture: After Beijing

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In this article, Professor Obiora begins with the premise that the credibility of traditional legal frameworks has eroded, because the law remains unable to relieve the oppressions and polarization between cultures, even in the wake of global institutional transformations that seem to help the oppressed, particularly women. Professor Obiora offers the Beijing Platform for Action as a radical new solution for human rights protection, radical in that it is one of the first declaratives to transcend the previous dichotomy of issues among women by expressing a commitment to a global framework in which to address these issues, particularly the feminization of poverty. After a brief description of the Platform, the author asks whether it is really possible to provide such a global framework, given the inherently cultural and communitarian nature of feminist issues. In the second section, Professor Obiora argues that because the Platform for Action is not a legally binding instrument, and because traditional sources of monetary and social support may not be present, particularly in developing countries, alternative mechanisms for enforcement of the Platform must be explored. As a solution, the author suggests that in order to realize the Beijing mandate, women need to collaborate and move to mechanisms outside traditional institutions. In the third section of the article, Professor Obiora responds to Aihwa Ong's article, and begins by highlighting Ong's concept of feminist imperialism as a starting context for a discussion of the role of culture in defining a feminist agenda for the alleviation of women's oppression. Professor Obiora then argues that the international human rights regime is enhanced by culturally-sensitive approaches, as centrality is the framework for existence. Yet, Professor

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* This article was written as an invited response to a paper presented by Aihwa Ong at a symposium organized by the Indiana Journal of Global Legal Studies. For a complete collection of the articles presented, see 4 IND. J. GLOBAL LEGAL STUD. (Issue 1, Fall 1996). The author is a Nigerian scholar working in the United States. She wishes to thank Jesus, Norani Othman, Ron Krotoszynski, Obioma Nnaemeka, Ekeoma Dike, Nma Eleazu, Zillah Eisenstein, Wendy Schoener, as well as Jane Larson, Ellen Bublick, Yvette Barksdale, Michelle Oberman, and other participants at the June 1996 Chicago feminist law teacher forum for their insightful critiques.
Obiora questions how to define and validate custom or culture in light of the inevitable effect of world economic, political, and cultural forces. Professor Obiora also questions how to reconcile the validation of cultural practices that are seen by Western feminists as oppressive to the women who practice them. Finally, in the fourth section, Professor Obiora attempts to integrate the previously raised issues with a discussion of a universalist-relativist framework. In doing so, the author suggests that the greatest challenge to developing a human rights regime that appeals to all cultures may be to negotiate a productive end for the recognition of difference, balancing the benefits of both universalism and relativism.
In pondering the implications of globalization for feminist endeavors and how feminisms across the globe have addressed the corollary possibilities of globalization, it occurred to me that perhaps the rest of the world was just beginning to trail a course charted by feminists at a point where many feminists were shying away from the course. As they witness radical changes that are calling into question the validity of conventional categories on the heels of globalization, conscientious feminists extol the virtues of attention to specifics. Thus, it is now quite popular in feminist circles to critique essentialism and the obliteration of what some are gradually recuperating as redeeming borders. Opposing these critical feminist posturings are trends in the realms of law, politics, and the economy which decidedly favor the conflation of boundaries.

Both the global and feminist trends are fraught with contradictions. Despite claims of the growing emergence of a unified self and locus in the aftermath of globalization, the world economic order and sociopolitical climate remain characterized by polarizations and insistent tensions between the center and the periphery. The global landscape continues to be defined by a constellation of dependent relationships, and intractable forces of change continue to create inequities. The rich get richer as the poor toil and languish; repressive regimes wax stronger as reformists agitate for accountable and representative governance; the credibility and momentum of the rule of law appear to be eroding as it recurrently proves impotent to alleviate aggravated sufferings and oppressions around the globe.1 This is occurring, ironically, at precisely the moment in history that a proliferation of human rights campaigns enunciate the basic requirements of a good life and aspire to them as a threshold prerequisite for the protection of human dignity.

For their part, feminist revisionists have achieved some recognition for their homage to diversity and pluralism at the same time that the manipulation and deployment of cultural difference to sexist ends renders certain regimes

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1. Contemporary trends in the globalization of the economy, politics, and law have narrowed the spatial and ideological distance between women and have made possible immense opportunities for information exchange, coalition building, and other forms of activities. However, in some respects, the institutional transformations that have attended globalization have been a mixed blessing for women. With regard to the economy, there has been a simultaneous heightening of both the marginalization of women and lucrative opportunities for innovative initiatives which favor women. On the issue of politics, the resurgence of democracy and democratization has increased the likelihood of active political representation and participation. In the legal arena, radical reforms, especially in the enlarging human rights dimension, have been initiated to regulate crucial relations. In fact, some of these reforms have emerged in correlation with political and economic conditionalities.
suspicious. Feminist concerns to respect difference and counter efforts to
guard against the aberration of difference are mutually reinforcing. Yet they
often engender conflicting responses. One critical question revolves around
how best to reconcile the conflicts. The insight, “the personal is political” has
animated the platform of the feminist movement since its renaissance. The
force of feminist epistemology and praxis rests in part on the celebration of the
personal. Yet this same strength has sometimes operated as a blinder to
fundamental differences.

How can we valorize the cross-cultural appeal of international feminist
initiatives without compromising feminist visions and imperatives? With the
incipient trend of globalization and the seductive allure of universalized
particulars, how do feminists resist the temptations of hegemonic
homogenization? When feminists are skeptical toward culture and its
constituent elements, when they advocate the protection of women’s interests
within universalistic norms and standards of human rights, how can it be
ensured that what they prescribe as norms and rights for the world at large are
not at core reducible to customs of the West? How can the lessons of the past
enable us to guard against self-serving selectivity, and inform our everyday
responses to—and conceptualizations of—possibilities?

In this article, I question the interface of feminism and globalization with
particular reference to the implications for culture. The analysis, which draws
on a series of events that culminated in the celebration of the Fourth World
Conference on Women, is a preliminary attempt to understand and underscore
the significance of locally grounded feminist goals and methods in the so-
called era of globalization. I will explore how we can maximize the strengths
of feminism, while attenuating the conflicts within it and the oppositions to it.
The article begins with a discussion of some substantive and implementational
aspects of the Beijing declarative. As a point of entry into recurrent debates
on the notion of culture and its significance for the status, roles, and rights of
women, the next section of the article more extensively examines the
implications of the emerging human rights of women. The article concludes
with a discussion of the universalist-relativist framework which attempts to
more generally integrate issues raised in the preceding passages.

I. THE ROAD TO BEIJING

In The Second Sex, Simone de Beauvoir observed that women were not
savvy and resourceful enough to extensively engage in political activity. She
suggested that the problem could be attributed to the fact that women lived apart from one another; they were divided by race and class; and they have been unable to see beyond their own quite particular situations. In other words, they too often lacked "the sense of the universal," approaching the world instead as "a confused conglomeration of special cases." Women have come a long way since de Beauvoir wrote, as demonstrated particularly by evidence emanating from the proceedings at the Fourth United Nations World Conference on Women in Action for Equality, Development and Peace, which was held in Beijing.

Eyewitness and other accounts of the U.N. Conference were rather inspiring. It was most interesting to learn of how the zeal of women was translated and amplified by sophisticated technology. One of the most phenomenal aspects of the Conference revolved around the instrumentality of the information age and electronic media in the mobilization of women and in the facilitation of the Conference agenda. From many indications, these devices brought home the notion of a "global village" and lent credence to the folk wisdom "unity is strength." Conglomerating in cyberspace, prior to, in the course of, and following the Conference, scores of women seemed to have transcended immense odds--sparse material resources, temporal and spatial constraints, and the like--to interact and share, brainstorm, network, and strategize. In the process, many of the women discovered, engaged, and came to a deeper understanding of their differences and commonalities. Invariably, their inclination to struggle for the common cause of eliminating gender-based inequities was reinforced, irrespective of their often divergent points of emphasis and departure. In the ensuing interchanges, these women illuminated the ubiquitous and abiding faces of structured patriarchy. Their sentiments resonated in the Platform for Action articulated at the Conference.

Observers of the evolution of the United Nations World Conferences on Women would attest that building a consensus for resolutions has not come easily at many of these forums. At the First World Conference on Women, held in Mexico City in 1975, the agenda was ensnared in a power struggle regarding who should define its focus and parameters. The second conference in Copenhagen in 1980 and the conference in Nairobi in 1985 were equally

3. Id. at 580, 685, noted in Martha Minow & Elizabeth V. Spelman, In Context, in PRAGMATISM IN LAW AND SOCIETY 247, 253 (Michael Brint & William Weaver eds., 1991).
mired by controversy.\textsuperscript{4} The objectives of women from the so-called Third World countries, more preoccupied with the ravages of specific patterns of economic marginalization, debt crises, restrictive monetary policies, and militarization, were perceived by some women from the more privileged regions as overly-broad and diversionary.\textsuperscript{5} The responses of many women from Third World countries to Western feminists' demands for sexual rights were equally dismissive.\textsuperscript{6} Ela Bhatt subsequently formulated the crux of the matter thus: "[t]hey ask for abortion rights; we ask for safe drinking water and basic health care."\textsuperscript{7} Criticizing the Western domination of earlier conferences, Asma Jahangir, chair of Pakistan's Human Rights Commission, remarked, "I am beginning to think that Western women lack a deep understanding and global perspective of women's issues."\textsuperscript{8}

The Beijing meetings mirrored the traditional pattern of disagreements, gridlocks, dialogues and eventual reconciliations and resolutions.\textsuperscript{9} In fact,

\begin{thebibliography}{99}
\bibitem{Mohanty1991} Third World, as defined by Mohanty, implicates geographical location and sociohistorical conjectures and incorporates "minority" populations (people of color) in the United States and Europe who, through systemic socioeconomic and ideological processes, are in similar positions with peoples of Africa, Asia, Latin America and the Middle East. See Chandra T. Mohanty, \textit{Cartographies of Struggle: Third World Women and the Politics of Feminism} [hereinafter Mohanty, \textit{Cartographies}], in \textit{Third World Women and the Politics of Feminism} 1, 2 (Chandra T. Mohanty et al. eds., 1991) [hereinafter \textit{Third World Women}].
\bibitem{FacingTomorrow1985} The divergence of interests and focus among women was forcefully documented in the film, \textit{Facing Tomorrow} (Lecerne Media 1985). There, women defined the commonly intoned term, Peace, in a wide array of manners in relation to, and in location of, their objective conditions. To some African mothers, "peace" may mean educating her children, when to Bella Abzug, the quest for peace implies election to Congress. The women's divergent accents on, and their perspectives and distillations of, the term peace foreground the multiplicity of feminist objectives. By definition, however, all human rights violations are a threat to peace, and impoverishment valorizes vulnerability and volatility.
\bibitem{Mernissi1991} For discussions of the tension between Third World and Western Feminism, see Fatima Mernissi, \textit{The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam} (Mary Jo Lakeland trans., Addison-Wesley Publishing 1991); Gayatri Chakravorty Spivak, \textit{French Feminism in an International Frame}, in \textit{In Other Worlds: Essays in Cultural Politics} 134 (1987); Third World Women, supra note 5; Marnia Larzeg, \textit{Feminism and Difference: The Perils of Writing as a Woman on Women in Algeria}, in \textit{Conflicts in Feminism} 326 (Marianne Hirsch & Evelyn Fox-Keller eds., 1990); Simona Sharoni, \textit{Gender and Middle East Politics}, \textit{Fletcher Forum of World Affairs}, Summer 1993, at 59.
\bibitem{Khor1995} The barriers between women exist not only across borders. Within discrete localities, there may be a divergence of interests, focuses and approaches. See Martin Khor, \textit{North-South: Beijing Coverage Reflects Difference in Perspectives}, Inter Press Source, Sept. 17, 1995 available in LEXIS, News Library, INPRES File. This divergence explains the conflicts that erupted and the resentment that brewed about the composition of many of the delegations to Beijing. For example, Margaret Do Ngo, a Zimbabwean activist, took issue with the fact that the delegates were predominantly "academics who have no real contact with
\end{thebibliography}
when delegates arrived in Beijing for the Conference, they had merely a draft
document adorned with parentheses indicating texts still subject to negotiation
and consensual approval. After sustained deliberations, the Conference
culminated in the adoption of a landmark resolution. In and of itself, the
achievement of a consensus on the Beijing Platform of Action was an historic
accomplishment. In fairness to the people who labored on the preceding
conferences, however, it is important to note that Beijing built on the gains of
past conferences, especially on the breakthroughs which distinguished the
1985 Nairobi Conference and brought it recognition as the “birth of global
feminism.”

But what is this so-called “global feminism?” For our immediate
purposes, we could assume that it speaks, among other things, of the
permeation and reinforcement of preexisting feminist proclivities, currents,
and movements in some quarters or of the inception and intensification of a
global momentum. “Global Feminism” could also signify a vindication of
core insights which were embedded in some of the issues pioneered by Third
World women at the Mexico Conference in 1975. In illuminating the vicious
and cyclical dynamics of gender bias, asymmetry, and oppression, these
women voiced concerns about the increasingly totalizing complexities of
patriarchal hegemony. The Mexico Conference eventually concluded that
“women’s roles are closely linked to the political, economic, social, and
cultural conditions that constrain them from advancement and that factors
determining the economic exploitation and marginalization of women stem
from chronic inequalities . . . [and] injustices” of material conditions at most
levels across the globe.

A cursory review of the Declaration and Platform for Action which was
unanimously adopted by representatives of 189 countries participating in the
Fourth World Conference on Women reflects a reaffirmation of the Mexico
findings. The Platform for Action concentrated on some of the key issues

the grass roots.” Smolowe, supra note 7.

10. See Nancy Seufert-Barr, Seeking Action for Equality, Development, Peace, U.N. CHRON., June
1995, at 39, 43.

11. The Fourth World Conference on Women was perhaps the largest conference ever held by the
United Nations and certainly its largest on women. See Women: From Beijing, A Platform for Action and
Almost 50,000 people, more than two thirds of them women, attended the inter-governmental conference
and its parallel event, the NGO Forum on Women.

12. See U.N. DEP’T OF PUB. INFO., NOTES FOR SPEAKERS: THE ADVANCEMENT OF WOMEN (No. 6),
identified as representing fundamental obstacles to the advancement of the majority of women in the world. One of the chief concerns addressed in Beijing was the question of the increasing feminization of poverty. In this age of tremendous global transformations, and radical transformations which have meant plenty for many in terms of market potentials and returns, women predominantly remain on the lowest rung of the economic ladder. These global trends have precipitated grave ramifications for the totality of the lives of many women. To weather the harsh realities of adversities induced by capitalist globalization, many women have had to double their work efforts.

At the same time, they are reducing their food rations and enduring deprivations of essential social services and health care in proportions that diminish their productivity and life expectancy. The impoverishment of women is most intense in, although not peculiar to, the developing countries in the Southern hemisphere and the Eastern European economies in transition. The world over, women disproportionately bear the brunt of structural adjustment programs, industrial reorganizations, and the woes of "Failed States" in general.

Deliberations in Beijing were so broad that Noeleen Heyzer, the director of the United Nations Fund for Women, commented that the Conference should have been called "the women’s conference on the world." In the same

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13. The 362-paragraph document embraced as the Platform actually delineates 12 “critical areas of concern” touching on a broad spectrum of issues. These issues range from enhancing women’s economic and political status, improving health care and education, protecting women and girls from violence and promoting marital and sexual rights, to endorsing broad social goals such as disarmament, reform of structural adjustment programs, poverty reduction and writing off the foreign debt of many developing countries. See REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING DECLARATION AND PLATFORM FOR ACTION, at 19, 20, U.N. Doc. A/CONF. 177/20 (1995) [hereinafter FOURTH WORLD CONFERENCE ON WOMEN].

14. The rapid influx of women into the paid labor force has seen one of the greatest economic changes over the past decade. However, many of the jobs open to women are underpaid, poorly regulated and short-term. UNITED NATIONS, WOMEN IN A CHANGING GLOBAL ECONOMY: 1994 WORLD SURVEY ON THE ROLE OF WOMEN IN DEVELOPMENT, U.N. Sales No. E.95.IV.1, at xiv (1995).

15. No matter the region, women are the most vulnerable to economic downturns. As aptly put by Gita Sen of Development Alternatives with Women for a New Era (DAWN), “[w]ithin the geographic north, there is a south, and within the south, there is a north.” Smolowe, supra note 7. See also U.N. Conference Seeks Economic Answers, (NPR All Things Considered, Sept. 14, 1995) [hereinafter NPR All Things Considered].

16. Failed States are those whose governments are perceived to be incapable of performing the most elementary functions of governance. HENRY J. STEINER & PHILLIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 287 (1996).

vein, the Secretary-General of the U.N. confirmed that "[a]ll of the great global concerns - the environment, human rights, population, social development - directly affect the situation of women . . . . Equally, improvements in the situation of women will bring positive change in each of the great global issues." Echoing a similar sentiment, Ms. Gertrude Mongella, Secretary-General of the Fourth World Conference on Women, stated that "there is no women's agenda as such. There is just one national, one global agenda. But women will put different emphases and different priorities on the issues based on where they come from and where they want to go."

Thus, true to the fundamental feminist critique, "the personal is political," the Beijing Platform emphasized the intricate link between the personal circumstances of women and public structures, and prescribed pertinent political solutions. Its global perspective not only served to attenuate the relevance of the public-private divide and reinstitute the wisdom of "the personal is political" as a rallying point. It also served to narrow the gap between the North-South perspectives in the international women's movement. As indicated earlier, the dichotomization of issues of sexuality and subsistence characterized international women's forums at the outset. Campaigns for sexual rights and freedoms were disparaged as the trite obsession of privileged Western feminists by some feminists who preferred to emphasize economic concerns. These predominantly Third World feminists were in turn dismissed as falsely conscious by some of their Western counterparts who failed to understand why they would minimize the importance of sexual rights, plagued as they are by a multitude of sexual dilemmas and offenses deriving from patriarchal cultural traditions.

The dichotomization of issues among women necessarily persists in the contemporary era, albeit differently and in somewhat less polarized

18. Seufert-Barr, supra note 10, at 43.
21. Even dominant interpretations of peace and security, which exclude the issues, voices, and perspectives of women, have been implicated by feminist efforts that elucidate the artificiality of the public-private dichotomy. Compare the following assertion attributed to Pope John Paul VI: "If you want peace, work for justice."
22. This is somewhat of a paradox because some feminists treat the dichotomy between the public and the private as a universal, transhistorical and transcultural feature of human existence.
proportions. Many women now more holistically comprehend the intimate relationship between women's economic dependence and the various manifestations of sexual violence. But to what extent have they achieved consensus on what constitutes violence? Few would deny that the world seems to be inching closer more than ever to acknowledging a more universal feminist agenda, even if demarcating its contours generates charged controversy. The Beijing imperative expresses a commitment to a global framework, attesting to the fact that the women’s movement has matured to a considerable extent. In material respects, the imperative seems to herald the beginning of a new era in the globalization of feminism.

However, can one speak meaningfully today of global feminism? What is the context for and the content of such a claim? Does appropriating a global framework marginalize feminist issues or are feminist issues intrinsically global? Could the impetus for global feminism derive from the disparate impact of global issues and globalization on women as a discrete group? Considering the controversies among women, do postulations of global feminism risk essentializing to an absurd extent? Or will the realization of a global feminist agenda invariably entail watering issues down to achieve consensus and arrive at the path of least resistance which may be devoid of significance in the final analysis?

Is globalization a value-free process? What voices are entombed in the process of globalization? If the least empowered voices are in danger of exclusion, can we afford to take solace in claims which demonstrate that women have ample capacity for empathy and expect that the outcome will be different here? A central element of the global feminist agenda is the recognition of the human rights of women. What is the scope and substance of these rights? Is it obvious that the perspectives of the West and the “Rest” converge on questions of the constituent elements of women’s human rights, or is there a danger of glorifying the views and ways of the West as the norms and rights of the world? Given the advantage of hindsight and the wealth of literature that suggest the incommensurability of norms, values, and standards, what then? Is “global feminism” a quaint nomenclature that disguises women-on-women enactments of power and hegemony? Some of these questions are necessarily rhetorical, but they bear on the argument that will be developed below.

II. SUBSTANCE AND SEMANTICS: PUTTING THEORY INTO PRACTICE POST-BEIJING
Many scholars recognize the fundamental policies embodied in international legal norms for promoting human rights as an important framework for addressing the mosaic of social, cultural, economic, and political concerns of complex modern societies. Human rights have historically not been concerned with invasions and denials by non-governmental practices and constituents of power. Conventional human rights evolved as checks on public authority, State power, and State action. Within the confines of these rights, the individual has prima facie priority over social goals or interests, although there are legitimate social limits on the exercise of individual rights. The current specter of human rights rose to global stature after the Second World War. But for a few exceptions prior to this period, individuals were mere “appendices” of the State to which they belonged, comparable to pawns, to be used, protected, or sacrificed according to the imperatives of State interest. The 1948 Universal Declaration of Human Rights played a decisive role in stimulating and directing the international promotion of human rights. Serving as a watch-dog against egregious deviations from basic human rights standards, the General Assembly has operated as the “conscience of the world.” Today, there are at least 70 human rights instruments.

Although there is a steadily evolving global culture of adherence to human rights standards, breaches and abuses remain perennial. An obvious constraint on the international human rights regime lies in the nature of the international order. Although common interests and the adverse repercussions of flagrant abuse in the international arena generally motivate sovereign States to fulfill their treaty obligations in good faith, systematic reliance on the political will and cooperation of the States is not always sufficient.

27. See Bilahari Kausikan, Asia’s Different Standard, Foreign Pol’y, Fall 1993, at 24.
29. It is almost banal to repeat that the international legal norms and obligations in day-to-day international transactions are decentralized, the individual State being its own law enforcement agent.
Governments have a long history of promising more than they deliver. Records of this history abound when it comes to women.

The disparity between the theory and practice of these international norms underscore the fact that there is as much a need to develop effective implementation mechanisms for the protection of human rights as there is to proclaim those rights. While legal rights do exert some influence, they are essentially dependent variables and means, not ends in themselves. Even when accompanied by stiff mechanisms which monitor reception and implementation, they have a limited capacity to compel any particular course of action. Rights impose correlative duties on others to refrain from acting against the interests of the persons holding the rights. Hence, human rights are of practical significance only if corresponding legal obligations are established. By the same token, unless a duty can be effectively enforced, it is merely a voluntary obligation subject to the whim of the addressee. Given the decentralized character of the world arena and the complexity of most of the issues it handles, the ideals and objectives of sociolegal reform require implementation measures that are both more aggressive and independent from existing power structures.

What follows now that the Fourth Women’s Conference ceremonies are concluded, the proceedings banished to the annals of history, and the directives disseminated to governments for implementation? Platitudes aside, how would the Conference recommendations be actualized to influence the policies and practices which determine the ground-level realities of women? What does the consensus reached in Beijing, for example, to the effect that gender equality was a matter of human rights and a condition for social justice, mean in light of the dissonance in world views and material disparities in the world system? What are the prospects for the enforcement of the Beijing imperative? Will they be an improvement on the record of antecedent instruments? Have international conferences proved to be substantively instrumental for reform or have they been mere symbolic Band-Aids offering temporary relief, serving to co-opt or contain undercurrents for radical transformation?

quickly the first of their obligations, which is the removal of [blatantly] discriminatory laws.” Some countries undertake affirmative actions to facilitate de facto equality. The most difficult task, however, is associated with the third commitment, the elimination of discriminatory attitudes, conduct, prejudices and practices. These can only be achieved through unequivocal political commitment. See Equal Rights for Women (and Girls), 3 WOMEN 2000 at 5 (1992).

30. Id. at 12.
31. It is arguable that other than triggering animated debates and mundane competition for “crumbs from the table” which mobilize symbols to secure privilege in the status quo, State-parties who have acceded
The logistics of change require us to consider how to negotiate and garner resource support to maximize reform implementations. Although many contentious issues on the Platform were resolved, an insistent concern is how to implement reform, particularly in countries that are in dire financial straits. Clearly, the Platform contains no specific allocation of public money for implementation. Moreover, major foreign aid donors are reducing their commitments to address concerns within their domestic frontiers. Thus, respective countries must generate funds from alternative sources to counter patterns of gender bias within their borders. In the wake of growing awareness that rights are not a panacea, an impression that is fed by the constraints on resources for rights implementation, a crucial question is how to realize noble feminist goals and objectives. This question is particularly pertinent in the present context as the Beijing Platform was a statement of political interest, not a legally binding document.

III. CULTURE VIS-À-VIS CHANGE AND COLLABORATION: BUILDING ON ONG

As the events in Beijing demonstrate, women the world over are coming into a recognition that they have much to learn from each other. One measure of this development is the growing orientation of women to contextual specificities. Contextually located analysis calls for sensitivity to particular configurations of power and conditions of struggle through which women are socially constructed and against which they are socially situated. Thus, while de Beauvoir and others may identify contextuality of sorts as a root of inertia, sensitivity to context may come to define the maturity of the international women’s movement. As one commentator observes, this signifies the triumph of practicality over ideology, transforming feminist objectives into a meaningful watershed for social reform.

To realize the transformations envisaged by the Beijing mandate, collaborations among women and recourse to extra-establishment means to address the needs of women are expedient, if not imperative. The exigencies to the entourage of resolutions concerning women are yet to demonstrate substantive commitment by deploying material resources.

32. See NPR All Things Considered, supra note 15.
35. Smolowe, supra note 7.
of the global political economy, the austerity dictated by the debt crises, and the like have recharacterized preexisting structures and hierarchies, instigating the conceptualization of alternative remedies. The ingenious mechanisms that have evolved at the initiative of diverse inhabitants of debt-ridden Third World nations as a response to the conditionalities imposed by multilateral lending institutions have earned them respect and some degree of a following. According to Ela Bhatt of India, whose Self-Employed Women’s Association (SEWA) gained notoriety for charting an unprecedented course to deal with gender-bias in access to credit, “[t]he Third World is taking a lead in finding solutions to urban poverty.”

Here and in other instances, the experiences and insights of women in the Third World offer a template for facilitating some of the efforts of their Western counterparts. Conversely, Third World women have borrowed some ideas and practices from the rich repertoire of the West.

For many feminist activists the mandate is to think globally and act locally. There are parallels between this mandate and Madame Mongella’s observation about the divergence of needs and focus.

In a sense, they are both injunctions against other-defined agendas and priorities. Most conscientious commentators agree that people should appropriate or be conceded genuine space to shape the particularities of their society as they deem fit. Along similar lines, Martha Minow and Elizabeth Spelman maintain that by acknowledging particularities and learning how people’s interests differ and converge, we will sustain more informed and sincere political coalitions.

At the same time that they are constituting kindred spirits, women are becoming less enthralled with the once-orthodox myth of “global sisterhood” and more attuned to the pervasiveness of profound differences in their lives. Artificial notions of sisterhood are being displaced by more compelling propositions. Arguing for the abandonment of the concept of sisterhood as global construct based on unexamined assumptions about women’s similarities, Bonnie Thornton Dill proposes a pluralistic substitution that

36. *Id.*
37. *See Conference To Set Women’s Agenda, supra* note 19.
38. *See* David Baker, *Theory as a Cultural System, in Foreign Values and Southeast Asia Scholarship* 1, 8 (Joseph Fischer ed., 1973). This understanding is, in fact, reflected by the controversial clause in the Beijing Platform for Action discussed in the passage beginning with footnote 139, infra, and the accompanying text refers.
recognizes and accepts the objective differences between women. In her estimation, such an approach requires that feminists concentrate their political energies on building coalitions around particular issues of interest.40 Amrita Basu, a political scientist at Amherst, advocates a paradigm of meaningful sisterhood which defines itself locally, even if there is continual interplay between the local and the global. To the extent that "meaningful sisterhood" spurns oppositional juxtapositions and trite essentialism, it parallels epistemological and political traditions that construe the individual woman as part of an often radically plural collective of women. Although this collective is differentiated and stratified by forces other than gender, it boasts of a sharedness that is not a given, but rather a possibility realized through dialogues and active alliances.41 Elucidating this thesis, Zillah Eisenstein urges the use of dialogues between feminisms to build connections between communities of women that respect diversity.

Professor Eisenstein draws on the thoughts of Jana Hradilkova, a Czech woman who stated that "Feminism smells like an ideology and people have had their fill of ideology."42 "Any 'ism' remains suspect."43 Eisenstein is quick to clarify, however, that aversion to "isms" connotes, not a lack of feminist political consciousness, but a preference for home-grown responses and initiatives.44 Noting that feminism of the West exported to countries of the South and East has come to emulate imperialist operations that entice Third World women to the West only to collude in their ghettoization as illegals and reserves, Eisenstein commends the efforts of these women to resolve their dilemmas on their own terms.45

In her own contribution to the symposium, Professor Aihwa Ong sheds further light on the workings of "feminist imperialism." She identifies a defining feature of the phenomenon as the "disregard [for] alternative political moralities that shape the ways women in other societies make moral judgments about their interests and goals in life . . . ."46 To alleviate some aversions to

40. See Bonnie Thornton Dill, Race, Class, and Gender: Prospects for an All-inclusive Sisterhood, 9 FEMINIST STUD. 131, 146 (1983).
42. Id. at 87.
43. Id.
44. See id. at 87-88.
45. See id. at 77.
feminist imperialism, Ong proposes a shift from a singular focus on class or gender exploitation—even though they exist in fact—to the cultural constructions and struggles over meaning engaged by different communities.47 Ong takes the issue further in a different paper where, comparing the exaltation of the cult of self to the repugnance of a repudiation of individual rights in the Western perspective, she questions the justification for imposing a specific notion of morality on other cultures.48 More precisely, she asks, “when society is faced with difficult moral dilemmas—the good of society or the good of a few individuals—whose morality comes into play?”49 While mindful of potential apolitical implications of cultural relativism, she concludes that a persuasive answer to her question “must acknowledge the making of other worlds in their own terms, outside Western political domination.”50 In Ong’s opinion, the task involves “developing a mobile sensitivity to cultural difference that nevertheless insists on defending minimal modern human rights . . . [Researchers] must be more aware of the local effects of geopolitics, transnational capitalism, and rescue [research].”51

Ong touches a raw nerve here as non-Western women deplore how Western feminists frequently feed on Western discourses which portray women from other cultures as perpetual victims and project their protection as a signifier for establishing a good society.52 Gayatri Spivak contends that, ideologically cathected as a “social mission,” “imperialism’s image as the establisher of good society is marked by the espousal of the woman as object of protection from her own kind.”53 This is notwithstanding that particular messianic interventions may come at the cost of greater constriction, in addition to being contaminated with nativism and possibly being instigated by causes partially attributable to material conditions precipitated by imperialist activities. For these and other reasons, the poignant objections raised against solipsistic researchers who zero in on clitoridectomy as the sole point of

47. See generally id.
49. Id. at 430.
50. Id.
51. Id.
53. Spivak, supra note 52, at 299.
reference and definition for women’s oppression in Africa and the Middle East are quite well taken. Among these lines, Nawal el Saadawi quarrels with Western women who go to countries such as Sudan and “see” only clitoridectomy, but never notice the economic exploitation by multinational corporations and the like. Echoing a similar sentiment, Rigoberta Menchu, a delegate of the exiled Unified Guatemalan Opposition and a Quiché Indian woman, characterizes the multinational corporation as the epitome of oppression and the successor of colonialist armies.

Saadawi and Menchu have identified a distinctive trait of women activists in developing countries who perceive the implements and agents of imperialism as the archenemy. These women are acutely aware that for now, the overarching concern is not just, as Cheryl Johnson-Odim puts it, a question of gender-based redistribution of resources, but of their generation and control; not just equal opportunity between men and women, but the creation of opportunity itself; not only the position of women in society but the position of the societies in which Third World women find themselves. Given the signs of the times, the decisive question for these women is: what has the litany of issues on a particular agenda got to do with the price of fish in the market? That is, what is the relevance of the agenda for the ground level realities of the women concerned? These women cannot afford to flirt with the unreality characteristic of high levels of abstraction, so they refuse to play the ostrich.

Accordingly, gender equity in many Third World localities is often viewed by women as being linked to national and economic development, and women’s demands have been explicitly political, with work, education, and health of the society at large, not only of women per se, taking the lead on the

54. See L. Amede Obiora, Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision, 46 CASE W. RES. L.REV. (forthcoming 1997) [hereinafter Obiora, Bridges and Barricades]; Achola Pala Okeyo, Reflections on Development Myths, AFR. REP., Mar.-Apr. 1981, at 7; Tiffany R. Patterson & Angela M. Gilliam, Out of Egypt: A Talk with Nawal El Saadawi, FREEDOMWAYS: SPECIAL MIDDLE EAST ISSUE, 186, 233 (1983); Marie-Angelique Savane, Introduction to 1989 DEVELOPMENT DIALOG 5, 9. In several instances, clitoridectomy has become a rallying point for Western women who articulate their concerns in terms so offensive that Arab and African women—who had always fought against the practice on health grounds—felt compelled to defend it. See Angela M. Gilliam, Women’s Equality and National Liberation, in THIRD WORLD WOMEN, supra note 5, at 215, 218. True to the adage that a tree falling in the forest makes no noise unless an ear is present to register it, the efforts of these women go unreckoned in Western-biased narratives of anti-circumcision efforts.

55. See Gilliam, supra note 54, at 218.

56. Id. at 228.

57. See Cheryl Johnson-Odim, Common Themes, Different Contexts, in THIRD WORLD WOMEN, supra note 5, at 314, 320.
For Third World women, the concept of sisterhood is not the optimal paradigm for change if it isolates sexism from the neocolonial, class, racial, and other systemic dimensions of women’s (and men’s) oppression. Domatila Barrios captures this orientation in her insistence that the “interests of the bourgeois really aren’t our interest.” Attesting to how governments co-opt “feminism” and women’s issues to foster their own political agenda, Barrios, an organizer of tin miners’ wives against Bolivian State repression, recounts how U.S. women’s rights activist Betty Friedan accused her of being “manipulated by men” and thinking only “about politics” because she was concerned about underfed children, vomiting lungs, and underdevelopment.

Delinking the insidious implications of geopolitical power from feminist issues has made many Western feminists who identify as left and progressive, as well as select Third World scholars who subscribe to the strategy, strange bedfellows with reactionaries who are determined to depoliticize the feminist agenda. The stance, which also implies an inclination to maintain the structure of legitimation without calling into question its attendant privileges, gave a complex and contradictory significance to the notion of the personal as political. Consequently, Western feminist scholarship cannot avoid the

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59. Gilliam, *supra* note 54, at 228-29. “All too often . . . [white feminist] theories and practices have frequently implied that the purest and most direct challenge to sexism is one exorcised of elements related to racial and economic oppression—as if there were such a phenomenon as abstract womanhood abstractly suffering sexism and fighting back in an abstract historical context.” Davis, *supra* note 4, at 17-18.


61. Id. at 201-03. See also Sonia Saldivier-Hull, *Feminism on the Border: From Gender Politics to Geopolitics*, 203 (1990).


63. The stance is reminiscent of the era of manumission campaigns when political expediency drove white feminists to accept principles directly opposed to the survival and well being of blacks in order to achieve more limited advances for women. At least one commentator draws on this as historical proof that, under pressure from the white men with whom they live and upon whom they are economically dependent, many white women will abandon their “sisters of color” in favor of self-preservation. Dill, *supra* note 40, at 135, 136.

64. As the gaps between certain social categories narrow and the permeability and indeterminacy of the borders peak in the wake of globalization, provoking doubts about the validity of voodoo economics, the mutual experiences of groups is apt to evoke greater empathy as issues previously perceived as pertaining to the “other” have hit home. This trend promises to simultaneously politicize the personal and personalize the political. See e.g., Krishna Ahooja-Patel, *Introduction to Women and the World Economic Crisis* at ix (Jeanne Vickers ed., 1991) (discussing the disparate impact on the poor, a category that is predominantly comprised of women: that is, women tend to constitute the poorest of the poor). Cf. Davis, *supra* note 4, at 22 (“burden of poverty is borne most distressingly by women of color . . . ”).
challenge of examining its inscription in particular relations of structural dominance and struggle, its role in the discursive colonization of the material complexities and historical heterogeneity of the lives of Third World women, as well as its complicity in value systems that exacerbate and sustain harsh realities in dependent political economies. Linear thinking ignores the multiple and fluid structures of power relations, but history underscores the expedience of approaching the idiom of power in all its complexity and understanding its variation in space and time.

There are several problems with mainstream Western feminism’s narrow focus on gender oppression. One problem is that it presumes white, middle class women’s reality as the quintessence of women’s reality. This creates a tendency to deny difference where it is conceived as posing a threat to a unified front, even if it means purchasing solidarity with silence and submerging conflictive histories. Another problem is that the reification of gender identity implies that female apologists for ultimately misogynistic measures, women who artfully build their careers on the backs of other women, are more deserving of solidarity than demonstrably empathetic male compatriots who contest patriarchal oppressiveness in all its guises.

Acknowledging patterns of inequity and injustice along refined and specific lines implies comparisons that necessitate and facilitate inclusions and coalitions. It is true that sensitivity to the subjectivity and incommensurability of women’s experiences may be manipulated to buttress anti-feminists’ “divide and conquer” rhetoric; likewise having other allegiances may overwhelm the possibility of feminist identities. However,

65. Mohanty, Under Western Eyes, supra note 52, at 51, 54.
67. Audre Lorde was right on point when she observed that as with all families, feminists sometimes find it difficult to deal constructively with the genuine differences between them and to recognize that unity does not require that they be identical to each other. AUDRE LORDE, I AM YOUR SISTER: BLACK WOMEN ORGANIZING ACROSS SEXUALITIES 1-8 (1985).
70. Gilliam, supra note 54, at 217.
71. As Minow and Spelman put it, “If you and I bring different understandings to bear on a situation because of our different contexts, then we must work together to forge solutions.” Minow & Spelman, supra note 3, at 262.
72. Eisenstein, supra note 41, at 78. That is if we assume that such an identity is a possibility for third world women’s political struggles, cross-cut as they are by gender, race, and nation. See Mohanty,
insofar as we cannot wish the problem away, avoidance is not a constructive response. Analyzing the representational dilemma that threatens to undermine significant forms of political identity, Peter Crawford locates the challenge in articulating a notion of political constituency that does not cancel itself out with the subtleties of sliding signifiers. Rosalind Delmar may have made the case most eloquently when she stated: "Is it not the case that even extreme differences in politics can often mask underlying agreement? Could it not still be that what unites feminists is greater than what divides? Might not current fragmentation be merely an episode in an overriding history of unity? . . . reminiscent of what Freud called 'the narcissism of minor differences.' Even so, at a theoretical level, agreements are uncovered only by the exploration of differences— they cannot be assumed."

Articulating a need to respond to the globalization of the market with the globalization of protest, Arthur Scargill maintains that the existing web of multinational power can only be tackled by solidarity and resistance which recognizes no borders. Although the remark was uttered in a different context, it underscores the importance of a holistic approach in furtherance of transnational solidarity. Initiating a dialogue for transnational solidarity involves not championing colonizing deterritorializations of specific cultures or facilitating the assimilation of the "rest" into a unified self [read West]. It involves maintaining a respectful distance and leaving open possibilities for understandings which may defy taken-for-granted explanations, celebrated ideals, or prescriptions. Earning the legitimation fundamental to institutionalizing patterns of values precludes mechanistic allegiance to predetermined recipes which are incongruent for cross-cultural applications. To sustain feminist alliances, it is determinative to forge a form of fictive kinship through networks which are shy of grand notions that sabotage specific and structural anchorage and instead embrace negotiated and grounded understandings. Ironically, it is the more messianic and politically naive feminists who pay tribute to totalizing models, abdicate the obligations of "sisterhood," and transgress the canons of solidarity.

At times it seems that more effort is devoted to packaging feminist concepts than to developing how to actualize them or to understanding what

Cartographies, supra note 5, at 2, 3.


it means to make that attempt. But, if we posit in the tradition of Oliver Wendell Holmes that law is not a brooding omnipresence in the sky, then we must devise means of enhancing the ecological relevance, popular allure, and persuasiveness of legally constructed remedies. How do we interest and engage a broad spectrum of women in feminist activism and coalition building? For some, a preliminary step may be resorting to effective dissemination of information and enhancing awareness about women’s issues. Reaching beyond orthodox conventions to politicize critical levels of experiences may enable another segment of women to reconceptualize their lives as, in Joan Nestle’s words, “deepest text” not just for the purposes of illuminating the embeddedness of the personal but as referents for activism. For these women, true empowerment may begin with the recognition of the systemic forces that impinge on their space and ability to act politically, either through individual resistance or mass political mobilizations to confront basic power relations. And yet to some other women, say the privileged elites, the issue may be more complex, entailing the (re)envisioning of the big picture in ways that spur them to closely scrutinize the underlying assumptions of their claims and open up their claims to critical inquiry. After all, the only chance for moving beyond limited perspective comes from acknowledging it and by trying to incorporate an understanding of those limitations in subsequent efforts to understand the world.

Extolling the virtues of negotiated alliance for feminist purposes, Professor Ong invokes “strategic sisterhood” as a foundational component for an effective transcultural feminist and human rights critique and struggle for inclusive global moral and political economies. Ong reminds us that “feminism, and women’s rights, only make sense in terms of the imagined communities within which people live and, through their embeddedness in cultural relations and norms,” define the good life for themselves. On this premise, Professor Ong goes on to argue that “[t]he challenge to feminist theory, then, is to uncover the dynamics of a ‘cultural citizenship’ . . . that is,

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75. Compare Catharine A. MacKinnon, Feminism, Marxism, Method, and the State: An Agenda for Theory, 7 Signs 515 (1982), for an explanation of how the process of consciousness-raising excavates hidden texts to trigger action.
77. See generally Minow & Spelman, supra note 3, at 247.
78. Ong, supra note 46.
79. Id. at 134.
embedded in moral economies of the State and culture." To do so, feminism must "attend to how discourses of community, development, and gender are negotiated in a particular society." Defining "cultural citizenship" as constitutive of "processes whereby subjects are self-making and being made in webs of power relations that define how and where they belong in a nation state," Professor Ong presents the experiences of Sisters in Islam. Extrapolating from these, Ong demonstrates that, rather than frame their projects in terms of Western liberalism, some feminists may undertake projects in communal terms and reconstitute them where necessary.

Many Muslim countries justify the reservations that they enter against human rights instruments on the grounds that the reservations facilitate adherence to certain principles of Islamic law. Muslim feminists are, in turn, illuminating most gender-biased interpretations as historically conditioned mirrors of social, economic, and political circumstances. Sisters in Islam is a group of Muslim feminists in Malaysia who have gained global recognition for their finesse in negotiating the space to articulate women's rights within narratives of community by appealing to historicized interpretations of Islamic texts. The Sisters join the ranks of Muslim reformists who reinterpret sacred canons and text as open-ended, with a view to establish that it is actually patriarchal attitudes and misreadings of Islamic sources, not Islamic tenets, that motivate pervasive patterns of discrimination against women. Other Muslim scholars and activists have espoused similar theses. In the apt analysis of Abdullahi Ahmed An-Na'im, religious texts, like all other texts, are open to a variety of interpretations; thus, "[h]uman rights advocates ... should struggle to have their interpretations of the relevant texts adopted as the new Islamic scriptural imperatives for the contemporary world." An-Na'im maintains that

80. Id. at 130.
81. Id. at 114.
82. Id. at 130-31.
83. Id. at 130-35.
84. How do we/they define feminism? How do other questions of identity intersect in determining feminism in the Islamic world? Do the Sisters in Islam, for example, self-identify as feminists or are they designated feminists by alien observers? Compare with Delmar, supra note 74, at 8. ("It is certainly possible to construct a baseline definition of feminism .... But beyond that, things immediately become more complicated .... Recently the different meanings of feminism have manifested themselves as a sort of sclerosis of the movement .... How much does this matter?").
85. See generally Memissi, supra note 8.
a twin value of the approach is that it reduces the chances of alienating women from their communities of origin and enhances the chances of enlisting the cooperation of these women for change. However, he cautions that:

Our commitment should not be to the rights of women in the abstract . . . . It should be a commitment to the rights of women in practice; the rights of rural and nomadic African and Asian women to live in very "traditional" or tribal communities and practice Islam, or other religious beliefs, out of genuine conviction . . . . It is irresponsible and inhumane to encourage these women to move too fast, too soon and to repudiate many of the established norms of their culture or religious law, without due regard to the full implications of such action. It must be remembered that it is these women who will have to remain to endure the full consequences of their actions.88

Various philosophical and intellectual traditions recognize the relevance of culture to expressions of self, identity, and humanity. Given the centrality of culture as a framework for existence, the legitimacy of the international human rights regime is necessarily enhanced by culturally-sensitive approaches.89 Insofar as international human rights standards are perceived to be at variance with vital local norms and values, they may not readily elicit the requisite commitment for compliance.90 Richard Falk also alludes to an analogous conclusion when he argues that the international protection of human rights cannot proceed very far without liberating the culture itself to serve these ends because:

[T]he state [sic] is both too strong and too weak in relation to the protective enterprise—it is too strong in the crucial respect that if it is the source of gross violations, it becomes exceedingly difficult . . . to organize effective opposition . . .

89. See An-Na’im, Human Rights, supra note 87.
90. Id.
At some level, feminism is inconceivable without some conception of individuals as free and equal beings, emancipated from the ascribed, hierarchical bonds of traditional society. In particular, feminist critics do not make light of the stronghold of culture in defining the lives of women, especially in this wake of rapid global interdependence and the manifold changes attending it. But, at what point are the notions of custom that underlie these critiques defined? In other words, what is the historical frame of reference? To what extent is "custom" manipulated to privilege the same parties that criticize it? How much of what is addressed as custom evolved or calcified in opposition to external stimuli? What aspects evolved as a discourse and enactment of protest in response to material conditions molded by the exploitative structures of production associated with Western capitalist penetration? Which customs express a dissonance fostered by confused allegiances? Which reflect critical hemorrhage fomented in contentious interactions? Are these less-than-custom by virtue of their mode of formation?

Negotiations and renegotiations of accumulated shared symbols, bound to favor some constituencies more than others, are decidedly functional processes. In the African context, tradition, which furnishes a sense of

92. See, e.g., Anna Funder, De Minimis Non Curat Lex: The Clitoris, Culture and the Law, 3 TRANSNAT’L L. & CONTEMP. PROBS. 417, 427 (1993) (arguing that the movement to preserve traditional cultures often clashes with globalizing trends and technological advancements in developing markets); PERDITA HUSTON, THIRD WORLD WOMEN SPEAK OUT (1979).
93. A popular Yoruba proverb states that a leaf that soaks for long in soap acquires soap properties. Western feminists patently and latently operate as legatees of Western hegemony.
94. One commentator cites an illustrative social purpose thus: "custom" and "tradition" give answers to why the world is as it is when an empirical cause and effect cannot be seen, or when it cannot be remembered. See Suzanne Preston Blier, Truth and Seeing: Magic, Custom, and Fetish in Art History, in AFRICA AND THE DISCIPLINES, supra note 66, at 139, 154. See also SUSAN BUCK-MORSS, THE DIALECTICS OF SEEING: WALTER BENJAMIN AND THE ARCADES PROJECT (1989). Ong, on the other hand, depicts culture as immensely versatile and fraught with contradictions. She shows how Asian agents stand orientalist constructs on their heads. See Aihwa Ong, On the Edge of Empires: Flexible Citizenship among Chinese in Diaspora, 1 POSITIONS 745, 746 (1993) (arguing that Asian subjects electively maneuver and manipulate
continuity, tends to anchor a continent dizzy with change. Thus, even "tradition" is mediated by the increasingly global political economy. The recent past has seen an immense growth in consciousness concerning the impact of world economic forces. Yet while this global consciousness is new, the phenomena themselves are not. For the past three centuries at least, territorialized international and global, as opposed to national and State-centered, market-oriented apparatuses have aspired to regulate the universe at large. World economic, political, and cultural forces have been principal variables rendering the world one large, interdependent market where not only people, knowledge, images, and ideas, but to varying degrees, capital, labor, and goods circulate, even though flows between its component core and periphery are immensely uneven. The denationalization of sociocultural processes seems to culminate in a dialectical process in which national identities and forces are in constant struggle with international ones.

Revisionist studies demonstrate how the hemorrhage induced by contentious world-systems interactions engender the invention of tradition in service of nationalism and related ideologies. In fact, the contemporary politicization of ethnicity, as expressed via motifs such as identity, tradition, and indigenization, has been described as largely resting on globally produced

material and symbolic resources, strategies and formulations infused with orientalist codings to negotiate shifting discursive terrains in the world economy and to express a complex instrumentality that belies orientalist claims of communalism. A further illustration of self-preserving agency can be gleaned from the rationale for foot binding. See Ann Anagnost, Transformations of Gender in Modern China, in GENDER AND ANTHROPOLOGY 313, 330 (Sandra Morgen ed., 1989) (The practice of foot binding was so popular that the smallness of one’s feet was an acutely conscious measure of feminine presentability and large feet were a liability that impaired a woman’s marital prospects.).

95. See generally BLAINE HARDEN, AFRICA: DISPATCHES FROM A FRAGILE CONTINENT (1990).

96. Globalization is a trendy name for a perennial phenomenon. Compare Ellen C. DuBois et al., Feminist Discourse, Moral Values, and the Law--A Conversation, 34 BUFF. L. REV. 11, 64 (1985) (stating “[a]ll too often we talk about our experiences in contemporary terms; the trained eyes and ears of historians are lost to us. The historian can suggest the patterns and identify the re-emergence of issues which may have been cast in a slightly different form in the past.”).

97. See ANTHONY D. KING, URBANISM, COLONIALISM, AND THE WORLD-ECONOMY 2 (1990) (stating “virtually all peripheral regions in the world-economy were at one time controlled by European core powers for varying periods between 1500 and 1950, creating ‘a world organised as one huge functional region of the core states’ . . . .”).


ideas.\textsuperscript{100} Globalization involves a development of something akin to a global culture which, even where not normatively binding, represents a general mode of discourse about the world as a unified entity.\textsuperscript{101} As localized and State communities are more thoroughly penetrated by international forces, a common reference is constituted as the basis for community.\textsuperscript{102} However, the structures of power result in a hegemonic system of meaning striving to emerge into a given, taken-for-granted system.\textsuperscript{103} To stem the trend, societies increasingly drawn into the global political economy often come to locate their cultural identity in particular practices.\textsuperscript{104} Marginalized by exposure to an onslaught of conditions of modernity, the market economy, and imperialistic transnational enterprises,\textsuperscript{105} distinct cultural groups tend to view themselves as being under pressure to demonstrate their ritual purity and allegiance to

\textsuperscript{100} On this note, King observes that in an increasingly globalized world, characterized by historically exceptional degrees of civilizational ethos and various modes of interdependence, there is an exacerbation of ethnic self-consciousness. See King, supra note 97, at 1-2.


\textsuperscript{104} See Alison M. Jaggar, Cultural Difference and Equal Dignity, HASTINGS CENTER REP., Sept.-Oct. 1994, at 44 (a review of Charles Taylor, Multiculturalism and "The Politics of Recognition" (1992)) (depicting the rise of identity politics to counter globalization). It is a paradox that historicizations of cultures, contingent experiences, and normative constructs reveal their organic, indeterminate, and contested nature, but often end up providing the impetus for idealizing and romanticizing them in one form or another.

\textsuperscript{105} These processes tend to negate Third-World societies and cultures in the name of their otherness, while simultaneously restructuring and radically transforming them into culturally relevant and responsive domains for Western "good." See generally TRANSNATIONAL ENTERPRISES: THEIR IMPACT ON THIRD WORLD SOCIETIES AND CULTURES (Krisha Kumar ed., 1980) (contributing authors discuss the impact of multinational corporations on the societies and cultures of various countries and regions around the world). Although the market is conceived as a community forum for exchange and negotiations, it has evolved more along lines which incorporate exploitative biases. Global economic enterprises in production, distribution and capital, complemented by patterns of global division of labor, intensify the skewing of the world political economy by vicious cycles of dependence and domination. See Armant Mattelart, TRANSNATIONALS & THE THIRD WORLD: THE STRUGGLE FOR CULTURE (1983); Herbert I. Schiller, INFORMATION AND THE CRISIS ECONOMY (1986).
traditional high culture. In certain quarters, changes emanating from globalization are suspiciously perceived as Trojan horses in service of cultural imperialism. As such, they are countered with fervent expressions of nationalism signified by assertions of cultural autonomy and continuity.\textsuperscript{106} Hence, in India, for example, sati becomes "an important proof of conformity to older norms at a time when these norms had become shaky within."\textsuperscript{107}

During colonial domination in some parts of Africa, the practice of female circumcision was a passionately contested terrain. In Kenya, for example, efforts to abolish the practice date back to the beginnings of British colonialism. A blind effort to eliminate the practice was prompted by the British contempt for the indigenous values it expressed. This simultaneously condemned the practice to secrecy and redefined its significance. As a clandestine custom, attachment to it became a symbol of nationalistic resistance.\textsuperscript{108} It was disconcerting enough that people were dealing with the crisis of confidence caused by colonialism which deracinated ancestral ways without necessarily providing comparable security.\textsuperscript{109} The interference with their esteemed cultural practice merely intensified their distrust and resentment of the alien power. Among the Kikuyu of Kenya, Kenyatta reports that female circumcision would come to be identified as an expression of nationalist sentiment.\textsuperscript{110}

A reincarnation of this history is not far-fetched, for as Zillah Eisenstein reminds us, in an era where the ideology of the global economy creates a superficial sense of a fungible world without boundaries, and when the enduring consequence of aggressive privatization is in fact the polarization of experiences, distinctive cultural and religious categories are conjured to renegotiate globalized spaces. The Declaration and Platform for Action that was issued in Beijing furnishes a framework for challenging situations in which the rights of women are compromised for the benefit of cultural traditions which institutionalize and reproduce patriarchal hegemony and

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  \item \textit{See Raimundo Panikkar, Is the Notion of Human Rights a Western Concept?,} 120 DIOGENES 75 (1982).
  \item Spivak, supra note 52, at 297; \textit{See also Ashis Nandy, Sati: A Nineteenth Century Tale of Women, Violence and Protest, in RAMMOHUN ROY AND THE PROCESS OF MODERNIZATION IN INDIA 168 (V.C. Joshi ed., 1975).}
  \item \textit{See JOMO KENYATTA, FACING MOUNT KENYA 125-29 (1971); Obiora, supra note 54; FRANTZ FANON, THE WRETCHED OF THE EARTH 119, 165, 180, 191 (Constance Farrington trans., Grove Press 2d ed.) (1963).}
  \item Obiora, New Skin, supra note 99.
  \item \textit{KENYATTA, supra note 108, at 263.}
\end{enumerate}
gender asymmetry, violence, and oppression. The Declaration can also be read as implicating certain cultural practices that women themselves deliberately appropriate and celebrate. This reading reveals the inherent dilemmas of the international campaign against female circumcision.

It is arguable that there is some notion of cultural autonomy implicit in the position of some women who engage in cultural practices like female circumcision. To the extent that a promotion of cultural autonomy can be inferred from resistance to anti-circumcision campaigns, perhaps it reveals more of an interest in prioritizing issues than a desire to immunize crucial practices from scrutiny. Even individuals and corporate entities who insist on uncompromised cultural autonomy may be persuaded by superseding transformative trends to recharacterize a tradition which they previously hallowed as being of questionable tenacity.¹¹¹

Perhaps the women who engage in practices such as female circumcision are not oblivious to its downsides and to their grievances in general; they do not lose sight of vital signs and connections. Rather, it may well be that these women are acutely aware that campaigns against cultural practices which isolate them from the socioeconomic context of their occurrence may be efforts in futility. Put bluntly, some proponents of a practice such as female circumcision may reckon that uncircumcised genitalia alone would not put food in the stomach of a woman who is traumatized and rendered vulnerable to disease by hunger. On the other hand, they may realize that access to productive resources may alleviate the pressure on the woman to submit to circumcision as a rite of passage (read passport) for strategic alliances (read marriage/social acceptance and empowerment).¹¹² The real challenge then becomes finding how to reconcile and mediate the complicated realities of women who are caught in what boils down to a false choice of declaring for or against circumcision.

¹¹¹ This argument derives credence from the change of position demonstrated by the World Health Organization (WHO). For more than two decades when the principles of State sovereignty and domestic jurisdiction were reigning orthodoxies, the Organization refused to officially elucidate the hazards of ritual operations like female circumcision on the premise that it involved social and cultural elements whose study was beyond the sphere of its competence. WHO has since become active in the campaign against female circumcision. See NOTES FOR SPEAKERS, supra note 12, at 23-24. See also R.B.J. Walker & Saul Mendlovitz, Interrogating State Sovereignty, in CONTENDING SOVEREIGNTIES: REDESIGNING POLITICAL COMMUNITY 1 (R.B.J. Walker & Saul Mendlovitz eds., 1990); Anthony D’Amato, Domestic Jurisdiction, in 10 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, 132 (Rudolf Bernhardt ed., 1987).

¹¹² See Obiora, Beyond Rhetoric, supra note 24; Obiora, Bridges and Barricades, supra note 54; L. Amede Obiora, The Little Foxes that Spoil the Vine: Re-Visiting the Feminist Critique of Female Circumcision in Africa, 10 CANADIAN J. OF WOMEN & THE L. (forthcoming Spring 1997).
What does the preference of some women for a cultural practice such as female circumcision connote? Whose culture are these women really affirming? Does such affirmation have significance for their self-determination or for the proscription of the practice in question? How can we achieve a balance between validating a multiplicity of cultural expressions and realizing the global commitment to protect the rights of women? Ann Anagnost has observed that one of the problems of speaking about practices such as female circumcision, which are the bodily inscription of cultural gender codes, "is how to speak of them without contributing to the construction of a colonial discourse." However, as Anagnost maintains, "avoiding the Scylla of colonial discourse" must be balanced against avoiding "the Charybdis of an extreme relativist position which makes anything that fits into the 'integral fabric' of a culture justifiable in those terms."

Several studies which have called attention to the enmeshment of gender in politics throughout the course of history discuss how women stop being women in the face of political crisis and how they patriotically sacrifice and postpone their needs and rights for the cause of nationalism or community. Even when the meaning of community is not definite and its interest not intuitively compelling, the ideology and structural paradigm of community prevails. Ong, for instance, relates the complicity of citizens who, intent on preserving the integrity of besieged communities and expectant that ruling elites will deliver on the reciprocal guarantees of socioeconomic well-being in return for civic discipline, tolerate and excuse human rights trade-offs and renegotiations.

On a similar note, Rey Chow, commenting on how to approach the Tiananmen crisis in terms of gender, observes that "... at the moment of shock Chinese people are degendered and become simply 'Chinese'" so that "[t]o ask how we can use gender to 'read'" such a political crisis would be "to insist on

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113. Anagnost, supra note 94, at 329. Gayatri Spivak articulates a similar dilemma in the context of British colonial discourse on suttee as: "White men are saving brown women from brown men." Spivak, supra note 52, at 297.

114. Anagnost, supra note 94, at 329. Anagnost also suggests that to attenuate the repugnance of alien practices to Western sensibility, "[o]ne might compare practices that mark bodies in our own culture: face-lifts, liposuction, nose jobs, electrolysis, waxing, anorexia, etc., as a way of equalizing the power relationship in our explanation of alien customs which involve pain or 'an improvement of nature' but which always exist in reference to a code." See id at 329.

115. Cf. Ong, supra note 46, at 115 (arguing that governing regimes employ discourses of community as structuring hegemonies or ideological forces for disciplining society as it undergoes rapid changes).

116. See id. at 117.
the universal and timeless sufficiency of an analytical category, and to forget
the historicity that accompanies all categorical explanatory power.” She
maintains that “[t]he problem is not how we should read what is going on in
China in terms of gender, but rather: what do the events in China tell us about
gender as a category, especially as it relates to the so-called Third World?
What are gender’s limits, where does it work, and where does it not work?”117

Some studies have established that once the crisis subsides, nascent
regimes double up on the restoration of deracinated origins and order in ways
that have appalling consequences for women.118 Thus, gender inequality and
exploitation are subsumed and camouflaged in the interest of supposedly
communitarian ideals informed by moral codes that treat gender in an
undifferentiated way when objective realities and productive relations in fact
reproduce gender asymmetry.119 During the Iranian Revolution, for example,
many non-religious, non-traditional and eminently educated women “took up
the veil as a symbol of solidarity and opposition to the Shah” only to have
Ayatollah Khomeini introduce restrictive measures which reinstated the veil
as compulsory following the Shah’s defeat.120 Fatima Mernissi warns that to
correctly assess women’s prospects and future in Muslim societies, we must
relinquish stereotypes that present fundamentalism as “an expression of
regressive medieval archaism,” and decipher it as a statement about the
identity of men undergoing changes so profound and threatening that they
trigger invidious responses.121

A curious paradox can be discerned in seemingly divergent analyses of
culture. Nationalists avidly manipulate culture as an instrument of identity
politics. To the contrary, iconoclastic reformists deprecate culture as the root
of inertia. The reactionary and radical views converge in their missionizing.122
In their mutual assumption of culture as a static entity, radical and reactionary

117. See Rey Chow, Violence in the Other Country: China as Crisis, Spectacle, and Woman, in
THIRD WORLD WOMEN, supra note 5, at 81, 82.
118. See Obiora, New Skin, supra note 99.
119. See Ong, supra note 46, at 117.
120. Nayereh Tohidi, Gender and Islamic Fundamentalism: Feminist Politics in Iran, in
THIRD WORLD WOMEN, supra note 5, at 251, 252, 260. See generally NAWAL EL SADAWI, THE HIDDEN FACE OF
EVE: WOMEN IN THE ARAB WORLD (1980); Larzeg, supra note 8 (discussing the subordination of gender
issues for benefit of broader national interest during crisis); Anne McClintock, “No Longer in a Future
Heaven”: Women and Nationalism in South Africa, 51 TRANSITION 104 (1991) (arguing that nationalism
reinforces gender power structures by discouraging internal division among nationals).
121. FATIMA MERNISSI, BEYOND THE VEIL: MALE-MALE DYNAMICS IN MODERN MUSLIM SOCIETY
13 (1986).
122. See Obiora, New Skin, supra note 99, at 576-77.
interventions have had varying degrees of success in calcifying cultural traditions, the outcome being the patent purpose of the former and the latent effect of the latter. As already suggested, it is not unusual to encounter persons predisposed to the orientalist presumption that non-Westerners are "eternally sealed within their own cultural totalities and/or permanently condemned to live their lives within the confines of their 'most authentic' systems of beliefs and values." In fact, this mindset partially informs the common tendency among certain feminists to view the predicaments of women in non-Western countries as stemming from indigenous "cultures of patriarchy." Such discourses notoriously fail to confront and critically interrogate the complexities of women's worlds by focusing almost exclusively on the phallocentric bias of sociocultural institutions and practices.

The truth of the matter is that, despite popular feminist discourses, culture may not be the dispositive influence on the responses of women. Ong's scholarship has played a significant role in showing that the responses are quite complex and that the focus on local culture may, in fact, be exaggerated. For example, Ong documents how "the new commerce in the labor-power and bodies of Asian women, is more rooted in corporate strategies of profit-maximization than in the persistence of indigenous values." Many young women may choose employment in transitional factories operated under horrifying conditions as a ticket out of socially suffocating political economies. Feminists who narrowly earmark patriarchy and gender

123. Ann Elizabeth Mayer, Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?, 15 Mich. J. Int'l L. 307, 386 (1994). In this perspective, non-Western dissenters wind up being characterized as a betrayer of their culture, not only by reactionary forces in their own societies, but also by Westerners. This is indeed a paradox. Some Westerners may prefer perceived inertia in the "other" cultures as reinforcing the exaltation of the West. Other Westerners may prefer to witness radical reforms, even if only to take credit for the situation.

124. This is at odds with a claim in the seminal exposition on Orientalism. Cf. Edward W. Said, Orientalism 322 (1979) ("[T]he notion that there are geographical spaces with indigenous, radically 'different' inhabitants who can be defined on the basis of some religion, culture, or racial essence proper to that geographical space is . . . a highly debatable idea."). See also Sadiq Jalal al-'Azm, Orientalism and Orientalism in Reverse, in Forbidden Agendas: Intolerance and Defiance in the Middle East 349, 367 (Jon Rothschild ed., 1984).

125. See Nesiah, supra note 34, at 202-03.

126. See Aihwa Ong, Industrialization and Prostitution in Southeast Asia, SOUTHEAST ASIA CHRON., Jan. 1985, at 2. Ong concludes that "[t]he multinationalization of production and the global culture of consumption have located Asian women as the final resource, to be exploited . . . ." Id. at 5.

127. See Aihwa Ong, Spirits of Resistance and Capitalist Discipline: Factory Women in Malaysia 204-10 (1987). Linda Lim maintains that wage employment in transnational companies contribute to the emancipation of women, but patriarchal power is actually reconstituted in factory settings
subordination as decisive underpinnings and inevitable consequences of such employment err in portraying the affected women workers as passive victims and neglect to appreciate factors other than gender subordination in their experiential framework. In such situations, tempering tradition in and of itself seldom suffices to redress gender inequities; the elimination of indigenous traditional structures without more turns out to be only a step in the realization of gender-based justice.

By highlighting the need to guard against the isolation of mutually reinforcing variables, I do not suggest that the cultural focus of traditional feminism is entirely misplaced. In many countries, life remains regulated by customary and religious norms which are often in direct conflict with the principles of international human rights standards and national laws. Degrees of allegiance to the structures of ancestral traditions constitute potential obstacles for regimes that are intent on implementing gender equity. Various governments have been known to exploit culture as a rationale for validating and sustaining discriminatory status quos. Professor Ong eloquently depicts how governing regimes employ discourses of community (and a correlative appeal to culture) as structuring hegemonies or ideological forces for disciplining society as it undergoes rapid changes. To illustrate this, Ong points to China, where State ideology and popular consciousness express strong resistance to the privileging of individual rights against the good of the collective, and where people talked about the Tiananmen crackdowns as justifiable and moral because these disruptions could have overturned the government and derailed desperately needed development. Human rights activists were considered immoral because their activities were seen as weakening China's bargaining position in global trade.

Interestingly though, the operative discourses of community that animate propagandist State ideology may rely on flawed memory and/or on false assumptions of consensus which ignore severe hierarchies and social

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128. Nesiah, supra note 34, at 207. See also Ong, supra note 127.
129. Often, to do this they conjure images that obscure the complexity of relevant experiences by reifying problematic abstractions to posit a priori cultural uniformity and to disregard empirical evidence of diversity and dynamism. These images constitute culture as a monolithic and static entity. See Patrick Macklem, Distributing Sovereignty: Indian Nations and Equality of Peoples, 45 STAN. L. REV. 1311, 1343 (1993).
130. Ong, supra note 48, at 430.
stratifications as well as the extent to which solidarity is enacted through coercion. In this respect, the communitarian ideal has been described as Janus-faced. According to Yash Ghai, it is used to distinguish human rights as Western, individually-oriented constructs at odds with the community-centered values of the East. "Yet it is also used to deny the claims and assertions of communities in the name of 'national unity and stability.'"\(^{131}\) Ghai also elaborates on other inherent contradictions of the ideal. For example, he asserts that although Asian capitalism appears to rely on the family and clan associations, there is no doubt that it contributes to disintegration of the community, its cohesion, ties and networks. He enumerates the grounds for his assertion as follows:

The organising matrix of the market is not the same as that of the community. Nor are its values or methods particularly "communitarian." . . . The emphasis on the market, and with it individual rights of property are also at odds with communal organisation and enjoyment of property . . . [t]he pervasive use of draconian legislation [and sanctions] . . . belies claims to respect alternative views, promote a dialogue, and seek consensus.\(^{132}\)

The governments that manipulate discourses of culture and community are often motivated to violate human rights standards because of an absence of political will rather than because of the existence of inescapable cultural differences which make the standards inapplicable.\(^{133}\) Indeed, when these regimes take a stand against the principle of the universality of human rights, their challenges are likely to ignore the currents in indigenous movements that seek to promote and protect human rights.\(^{134}\) Writing with particular reference

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132. *Id* at 18.
133. In the recent past, notable scholars have challenged the commonplace acceptance of contemporary clusters of rules, moralities, and expectations that have been called "tradition." Holding that much discourse over customary roles, duties, rights and obligations is really a discourse on domination, subordination, and resistance, these works demonstrate the historically specific circumstances and techniques whereby the concepts of tradition formed, gathered meaning over time, and attained its present-day status. See, e.g., Obiora, *Reconsidering*, supra note 99.
to Asia, Ghai argues that attitudes to human rights "are reflective of social and class positions in societies." He concludes that, "[f]or the most part, the political systems [that the ruling elites] represent are not open or democratic, and their publicly expressed views on human rights are an emanation of these systems, of the need to justify authoritarianism and occasional repression." 

Because many countries that jealously guard culture have deplorable human rights records, it is in their political interest to find rationales for asserting the nonapplicability of international rights norms. In light of such self-serving protectionism, one can appreciate why then-U.S. Secretary of State, Warren Christopher, urged the world at the Second World Conference on Human Rights held in Vienna in June 1993, not to "let cultural relativism become the last refuge of repression." Another commentator agrees "that it is precisely a logic external to the societies being considered, both Western and Third World, which must be applied in order to change human rights abuse[s] against women." But ought this be the end of the analysis? It may well be that, in relation to a universe of interests, this perspective is representative. It also may be that certain understandings are indeed universal and not subject to contextualization or compromise. But that must be demonstrated, not merely assumed and asserted, lest we fall prey to arbitrariness.

IV. REFLECTIONS ON THE CONTROVERSY OVER UNIVERSALISM AND RELATIVISM: SOME IMPLICATIONS FOR BEIJING

Ultimately, the Platform concedes implementation as "the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms, and the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities . . . ." Is the qualification of State action in the Platform a form of deference to the incommensurability

complaints . . . . Where people are claiming equal rights, it means they are missing them."

135. Ghai, supra note 131, at 6. Although some government leaders speak as if they represent the whole continent when they make pronouncements on human rights, there is no distinct Asian approach to human rights. Neither Asian culture nor Asian realities are homogenous; all the world's major religions are represented in Asia and a multiplicity of other factors have produced a rich diversity of cultures.


138. See Funder, supra note 92, at 466-67.

139. Platform, supra note 13, at Annex II, Ch. II, para. 9, at 11.
of contexts? What exactly is the import and scope of the qualification? Is this clause nothing short of a classic illustration of how diplomacy can spell disabling ambiguity? The absence of ambiguity in comparable documents suggest that the language was purposeful. Apparently, the stipulation is not intended to endorse gender inequities, but it does reflect a problematic element of contradiction. In a seemingly contradictory turn, the document stipulates that "[w]hile 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."

Is it oxymoronic to enjoin systematic violations, allegedly rooted in culture and religion, while at the same time taking into consideration the imperatives of the cultures and religions in question? How do we identify appropriate cultural milieux for reform intervention? How can we locate reform endeavors on a continuum of indigenous initiative and avoid radical postures which risk

140. One is reminded here of analogous debates generated by the trade-offs of human rights and developmental necessities and by the mandate for progressive realization contained in the International Covenant for Economic, Social and Cultural Rights (ICESCR). See DONELLY, supra note 25, at 164-202 (providing a detailed critique). The Covenant imposes obligations upon governments which are to be fulfilled incrementally subject to the availability of resources. See International Covenant for Economic, Social, and Cultural Rights, adopted Dec. 16, 1966, Art. 2, 993 U.N.T.S. 3. Some commentators contend that sacrificing human rights under the pretext of achieving rapid development exacerbates inequalities, while subsidizing and perpetuating the tenure of corrupt governments. See DONELLY, supra note 25. In a similar vein, it has been argued that progressive realization erodes the substantive content of the ICESCR. For further discussion, see Philip Alston & Gerard Quinn, The Nature and Scope of States' Obligations under the International Covenant on Economic, Social and Cultural Rights, 9 HUM. RTS. Q. 156 (1987); Louis Henkin, International Human Rights and Rights in the United States, in HUMAN RIGHTS IN INTERNATIONAL LAW 33 (Theodore Meron ed., 1984).


143. Platform, supra note 11, at chapter 1, para. 9.
undercutting the effectiveness of legitimate cultural reforms? What is the role of outsiders in directing the change?

Some commentators insist that arguments made in order to preserve culture reincarnate the "public-private" divide on a global scale. In this view, distinguishing global economic enterprises and the complex free marketplace as the public sphere of nations, as opposed to the domestic domain of culture, legitimizes and masks political preferences and prejudices. In some instances, however, invocations of cultural autonomy may be borne of other considerations. Agitations for respect of cultural particularities may connote realistic sensitivity to the pernicious problems of enforcing international legal norms. Constrained resources may mean that modified legal interventions or alternatives thereto are more pragmatic and sustainable. Further, jurists and policy practitioners have consistently warned that frontal attacks on deeply-embedded cultural traditions, beliefs, and attitudes may engender a crisis of legitimacy and subject reform initiatives to fierce contests.

Here again, however, acknowledging the diversity and specificity of contexts has its limitations. In this instance, particularizing can thwart the definition of universals which would inform human rights standards. Martha Minow and Elizabeth Spelman capture this dilemma in their inquiry. The authors ask, "given [a] commitment to the importance of contingency, how is judgment possible within a particular situation? Moreover, even if such judgment is possible, how could any judgment specific to a situation bear any implications beyond itself?" Minow and Spelman further maintain that attention to context invites or even requires blindness to politically significant similarities, since the normative claims at the heart of serious social and political challenges are not compelling if the operative assumption is that each person's condition and each political situation is sui generis.

In their provocative work about contextualism, Minow and Spelman establish that internal criticisms of contextualism call attention to a blind spot in popular rhetoric. In the authors' view, this rhetoric misconceives abstraction and contextualism as mutually exclusive and opposed to each

144. See generally Eisenstein, supra note 41; Funder, supra note 92.
145. See Kausikan, supra note 27. Distance makes it easier to be virtuous; proximity makes for prudence.
146. See generally Obiora, Reconsidering, supra note 99; Falk, supra note 91; An-Na'īm, International Law, supra note 88.
147. Minow & Spelman, supra note 3, at 249.
148. Id. at 254-55.
other, "when at best there are constant interactions between them." They note that abstract theories are in some sense rooted in particular contexts and operate with particular effects that benefit some people more than others; at the same time, contextual approaches are in some sense expressions of abstract theories. The authors submit that "once the pretended distinction between context and abstraction is discarded, the important question becomes which context should matter . . . ."

Since universals are not determinate, the challenge may be to negotiate a productive end for the recognition of difference. Taking seriously the challenge to be sensitive to contextual specificities prevents the evaluation of one cultural construct with the categories of another culture. It precludes the application of monolithic standards to situations that do not have transcendental commonalities. At the same time, it also implies a rejection of false geographic differentiations and fosters a recognition of the sharedness of certain experiences. On the other hand, deference to cultural context and diversity risks perpetuating questionable hierarchies, negative stereotypes, and problematic practices. The concept of difference as coterminous with a

149. Id. at 256.
150. Id. The authors cite two examples: (1) the contextualist has moral, political, and epistemological theories for preferring contextual approaches; and (2) the contextualist uses generalizable categories to select what particular details matter. The authors state:

[p]erhaps paradoxically, then, the call for context represents a call to consider structures of power in society that extend far beyond the particularities of a given situation. The call for context itself tacitly signals both that the selection of some context is unavoidable, if only by default, and that the selection of one context over another implies a preference for one set of analytic categories rather than another.

Id. at 258.
151. Id. at 259.
152. Cultural categories and their contents are not stable, rigid, and essential, but contingent, fluid and negotiable. For the most part, cultures are not pristine artifacts. The West, like the Third World, is culturally determined, and culture in the Third World, as in the West, is a dynamic and transformative matrix. See generally Obiora, Reconsidering, supra note 99. See also HENRY MCDONALD, THE NORMATIVE BASIS OF CULTURE: A PHILOSOPHICAL INQUIRY 3-9 (1986).
criteria for selectivity often means that it degenerates into claims of superiority and inferiority.154

Elizabeth Mayer articulates an interesting viewpoint on this matter. She critiques the cultural relativists' stance as having a corollary vision of an inherent backwardness in the culture of reference which assumes that "an inferior standard of rights is normal and sufficient" for the culture concerned, since international human rights are alien to it.155 It appears, though, that there is nothing on the face of most arguments for relativity which imputes backwardness. Relativists may in fact contend that it is yet to be conclusively demonstrated that the standards of the model(s) they consider applicable are "inferior to human rights." Even a staunch proponent of universalism such as Jack Donnelly concedes that "[a] society that regularly balance[s] individual human rights against the rights of society may or may not be preferable to a society that gives prima facie priority to individual human rights." Even a staunch proponent of universalism such as Jack Donnelly concedes that "[a] society that regularly balance[s] individual human rights against the rights of society may or may not be preferable to a society that gives prima facie priority to individual human rights."156 It may just take as much ethnocentrism toward other worlds to discount their indigenous structures as it takes to regard their practices which are consistent with human rights precepts as calculated enactments of distinctive Western values under Western pressure to appease Western critics.157

Many Western theorists harp on the force and power of "age-old customs" and instrumentalist interpretations thereof to derail noble goals. Custom means one thing when applied to non-Western contexts and another when applied to the West, devaluing the former and privileging the latter.158 But what is custom? Does the West not participate in problematic culture? Is it not the "custom" of the West to canonize and institutionalize its socially constructed norms as the rights of the world, i.e., international human rights?159

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155. Mayer, supra note 123, at 384.
156. DONNELLY, supra note 25, at 58.
157. See Kausikan, supra note 27, at 25.
158. See generally Bier, supra note 94.
159. Given the routinization of questionable forms of surgery, the right to bodily integrity, for example, is by no means an absolute value in Western society. See generally FRANCOISE LIONNET, POSTCOLONIAL REPRESENTATIONS: WOMEN, LITERATURE, IDENTITY (1995); Obiora, Bridges and Barricades, supra note 54; Gunning, supra note 39.
160. Even in feminist circles, the power of custom or the custom of power is evident, mirroring a patriarchal structure. Feminist elites take exception to phallocentricty, but some may end up sponsoring agendas that frequently reflect the priorities of the vanguards rather than of a broad spectrum of other women. Particularly imperialistic are the practices of these elites which discursively wrench non-Western women out of their originating contexts and infuse them with concerns that are over-determined by Western feminist elite preoccupations.
A fundamental insight of cultural critics is that cultures constitute themselves by reference to each other and that the different inflection given to accumulated symbols of a given community is at once a cause and effect of its power. Edward Said has argued that the idea of Western European identity as a superior one in comparison with all the non-European peoples and cultures is precisely what makes that culture hegemonic. The concept of continuous tradition or custom, as employed in the Western idiom and universalist paradigm of knowledge vis-à-vis other worlds, typically describes curiosities perceived and analyzed not as rational systems in their own right but rather as exotic and primitive examples to be "civilized" in the Western order. Taking “exotic” cultures out of their closed “culture gardens” and into their own world, instead of treating them as remnants of the past not subject to political and economic forces, presents an overwhelming challenge to universalistic claims and understandings.

161. Cf. Sally Falk Moore, Changing Perspectives on a Changing Africa: The Work of Anthropology, in AFRICA AND THE DISCIPLINES, supra note 66, at 3, 33 (stating: "Deceptively simple in appearance, power and meaning are culturally intertwined . . . . Power constitutes meanings, and meanings, power. Discourse is attended both for what it says and what it does not say . . . . Who is in control of what and of whom? And who is defining the situation? How are the terms of . . . discourse being formed?).

162. SAID, supra note 118, at 7. Compare Christopher C. Miller, Literary Studies and African Literature: The Challenge of Intercultural Literacy, in AFRICA AND THE DISCIPLINES, supra note 66, at 213, 216 (stating that “cultures, nations, and spheres like ‘the West’ do not exist in isolation.” There has been an affinity between Africa, Asia, and Europe for millennia. The act of imagining otherness and difference has helped various Western cultures to define themselves.). See also James Clifford, Introduction to WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY 23-24 (James Clifford & George E. Marcus, eds., 1986) (stating that “[i]t has become clear that every version of an ‘other,’ wherever found, is also the construction of a ‘self’ . . . Cultural poiesis—and politics—is the constant reconstitution of selves and others through specific exclusions, conventions, and discursive practices.”).

163. See V.Y. Mudimbe & Kwame Anthony Appiah, The Impact of African Studies on Philosophy, in AFRICA AND THE DISCIPLINES, supra note 66, at 113, 117-18. See also Feierman, supra note 66, at 176 (stating that “[c]ivilization’ in its usage over the centuries in the English language has carried connotations of self and other, or of the proper and improper ordering of society.”).

It is not possible to define civilization except in contrast to barbarism; without the native or the barbarian, the central values of the West are difficult to imagine. Barbarians were not incidental to civilization, aberrant conditions at the margins; they were constitutive of civilization, a way civilization defined itself.

Id. at 185.

164. In the nineteenth century especially, non-European peoples were predominantly perceived through evolutionary theoretical prisms which depicted them “as living archeological specimens, surviving relics of the dim past of the then ‘modern’ world. See Moore, supra note 161, at 3. The prism persists to date, informing certain universalist claims and perpetuating the marginality of many non-Europeans to the mainstream of the global exchange.

165. See Feierman, supra note 66, at 186; JOHANNES FABIAN, TIME AND THE OTHER: HOW
More than ever, the Western "gaze" is being returned and assaulted as non-Westerners assert their independence from the Western will to power and establish new, multivocal fields of intercultural discourse. Reinterpretations which reveal the embeddedness and specificity of the Western tradition proliferate to redeem the force of contemporary practices which are marginalized and derided under the convenient pretext of their particularity.

In this view, ethnographic texts are illuminated as "orchestrations of multivocal exchanges occurring in politically charged situations." Critical hermeneutics that decode and decenter notions of space, time, and belief, while accentuating local contingencies, give lie to arbitrary universalizations. Such critiques show that, while the West appropriates primacy for its fetishes as a prerequisite to entrench its dominion, the "victims" of "progress" and "empire" are seldom passive.

Throughout the world, local particularisms have had to reckon with the pervasive forces of "progress" and apparent global Westernization. James Clifford reports that "[T]he results have been both destructive and inventive. Many traditions, languages, cosmologies, and values are lost, some literally murdered; but much has simultaneously been invented and revived in complex, oppositional contexts." Indeed, he concludes that "modern ethnographic histories are perhaps condemned to oscillate between two metanarratives: one

ANTHROPOLOGY MAKES ITS OBJECT (1983).


168. See CLIFFORD, supra note 166, at 10.

169. The West even has an elaborate repertoire of strategies to elicit the consent of groups with divergent "value-orientations," groups that neither share a "common value system" with it nor are persuaded of the legitimacy of its regime. The conditionalities for economic and non-economic reform (such as the embrace of liberal democracy) imposed by Western donors and institutional lenders can be illustrative of this point. Representative visibility of the marginalized is now a requisite for continued hegemony. See C. WRIGHT MILLS, THE SOCIOLOGICAL IMAGINATION 49-50 (1978) (arguing that in the last resort, coercion is the "final" form of power, but authority (power justified by the beliefs of the voluntarily obedient) and manipulation (power wielded unbeknown to the powerless) complement coercion).

170. The rhetorical devices which make Western authors active, while leaving their subjects passive and robbed of the power to express their contrary views, are enactments of power exemplary, vestigial, and reinforcing of Western domination. See CLIFFORD, supra note 166, at 16; GEORGE E. MARCUS & MICHAEL FISCHER, ANTROPOLOGY AS CULTURAL CRITIQUE (1986).

171. See CLIFFORD, supra note 166, at 16.
of homogenization, the other of emergence; one of loss, the other of invention... each undermining the other's claim to tell 'the whole story.'

In this light, the internalization of forms and processes can be approached as a microcosm or an offshoot of Western-centered discourses that represent and condition economies, societies, and cultures. In material respects, what is "universal" has historically been the decision of the West, which appears to have perfected the art of fetishizing the particular as the universal without the advantage of empirical verification, and against the evidence of profound differences. Inquiry into the process by which norms are formed forces one to reconsider initial assumptions of universal validity. It reveals that the categories which are ostensibly universal are in fact particular, of self-sustaining validity, and made possible by powerful "lies" of exclusion and rhetoric. Inherently partial, committed and incomplete, not total, so-called universals originate in the situated experiences of the core of the capitalist world and analysts may err in looking to other milieux for familiar constellations. The problem is that when applied to these other milieux, the disconforming and demystifying incongruity is construed as crisis and

172. Western discursive practices perpetuate the conventional perception of homogenization toward a dominant model. Recent discussions of themes of universalism and particularism, commonality and difference, the local and the global undermine any simplistic assumptions about a general homogenization of culture. See CULTURE, GLOBALIZATION AND THE WORLD-SYSTEM: CONTEMPORARY CONDITIONS FOR THE REPRESENTATION OF IDENTITY (Anthony D. King ed., 1991); SAID, supra note 124. Cf. Minow & Spelman, supra note 3, at 256 (stating that at some level, particularism and universalism are not mutually exclusive. Advocates of context have a frame of reference and draw on visions beyond particular situations just as exponents of generalizable abstractions are situated in particular ways of knowing.). 173. CLIFFORD, supra note 166, at 17.

174. Internationalization is a dynamic structure that is part of, but fundamentally at odds with, the nation-state system. It renders problematic the spatial framework of the State system by redeploying the social power of nation-states and national economies on an international scale. For example, conditionalities imposed by lending institutions temper claims of sovereignty and triumphs more than the U.N. in inducing accountability and compliance (even if ultimately symbolic). Hence, some scholars propose the importance of opening up the inquiry into internationalization by interrogating it as a cultural, discursive practice for constituting others in ways that effectively integrate them into the dominant Western model and hegemony as both a means of production and a process of legitimation. See Rosow, supra note 102, at 289-90, 292-93.

175. Western, capitalist States encircled the globe, politically, culturally, economically, and epistemologically, bringing other societies into a conceptualization of history and high culture that favored those at the helm. See Robert H. Bates et al., INTRODUCTION TO AFRICA AND THE DISCIPLINES, supra note 66, at xi, xviii; Miller, supra note 162, at 226.

176. See Clifford, supra note 162, at 7.

177. Cultures are not scientific "objects" to be described, neither are they "a unified corpus of symbols and meanings that can be definitively interpreted." Temporal and emergent, culture, and our views of "it," are produced historically, and actively contested. Id. at 18-19.
A peculiar feature of Western legal discourses and practices is the primacy of the individual over society. The West confers individuals and specific groups with a margin of liberty in defining the constraints on authorities, and endows them with the right to seek redress for pertinent breaches. One significance of this observation is that it highlights the historical and cultural roots of the rights vocabulary in the West. However, this does not mean that analogues of the underlying norms expressed in schedules of rights are nonexistent elsewhere. Responding to the claim that a Western rights focus does not fit different cultural traditions, Charles Taylor indicates that one fruitful approach is to ascertain how fundamental liberties and immunities could be guaranteed in different societies and to determine how those guarantees could be routinized and channeled to support the institution of human rights.

Comparisons of empirical evidence suggest that one characteristic that radical Western individualism shares with many other systems, where fundamental juridical, philosophical, political, and cultural traditions privilege the complex web of relations over the individual within, is a system of checks and balances which seeks to restrain the power elites and offer a measure of immunity to the individual. It appears that, even in worldviews without the

178. Feierman, supra note 66, at 179 (citing V.Y. Mudimbe, The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge 27, 191-92 (1988). "V.Y. Mudimbe has explained that functional analyses depend on a contrast between the normal and the pathological. If what is European is defined as normal, then the non-European appears to be disordered, abnormal, primitive."). Implicit in this discourse is a validation of the exercise of creative power to civilize and valorize the control of the West.


180. See Charles Taylor, Human Rights: The Legal Culture, in Philosophical Foundations of Human Rights 49, 49 (United Nations Educational, Scientific and Cultural Organization & International Institute of Philosophy eds., 1986). Recognizing certain personal rights is as though individuals are given "trump" cards which enable them to invalidate the results of the social decisionmaking process whenever it encroaches on the individual's protected sphere. See id. If individuals have a margin of liberty or discretion within which to play the "trump" card to defeat intrusive State action, should international law defer to the State when its people, including those supposedly harmed by a relevant practice, affirm the practice as a matter of self-determination?


182. Id.

183. See generally Taylor, supra note 180.
dogmatic idiom of individual "rights," as in liberal democracies, there are indigenous structures designed to temper the exercise of authority and bind rulers to respect the human dignity of their subjects. Instructive about these structures are insights which call to light the protective capacity and transformative potentials of communitarian orientations.

Typically underlying communitarianism is the belief that indignities visited on individual members rebound as adversities that are potentially dissolvent of the communal fabric. An antidote against individual violence in some non-Western belief systems is captured by the maxim "[i]f you hurt 'me,' you are equally damaging the whole clan . . . ." The belief that whatever happens to the individual happens to the whole and whatever happens to the whole happens to the individual is prevalent among Africans, for example. All things being equal, individual self-conceptualization in the African context tends to find expression in assertions such as "I am, because we are; and since we are, therefore I am." Although autonomous beings, individuals are not necessarily atomistic beings locked in constant struggle against society for the redemption of their rights. Individuals are socially embedded and constituted, and "what a person does and even who [she or] he is, is to a large extent determined by [her or] his social environment and its symbolic order." Social relationships and interactions are implicit in the notion of human dignity, and the protection of human dignity requires the observance of certain collective rights. However, some observers express concern that the recognition of collective rights may open the door to a kind of "group tyranny" and blunt the protective edge of individual human rights. In this perspective, collective rights are analyzed as a radical

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184. See Kausikan, supra note 27, at 25. In the East, Confucian notions of forgiveness and benevolence play this role.
185. Panikkar, supra note 106, at 90.
186. See John S. Mbiti, African Religions and Philosophy 108-09 (1970). Pursuant to a long tradition of investigations, psychology and related disciplines recognize that the self is shaped, in part, through interaction with groups and that fundamental social motivation is linked to self. In the dominant Western ideology, the self may be coterminous with the body, while it tends to be more grounded with a group among some Africans and Asians. See Harry C. Triandis, The Self and Social Behavior in Differing Cultural Contexts, 96 Psychol. Rev. 506, 507 (1989).
reconceptualization of human rights which rest on a view of the "irreducible human person" as separate from, and endowed with inalienable rights against, the society.\textsuperscript{189}

While intense controversy surrounds the universality of the rights paradigm, there is some unanimity about the centrality of dignity as a universal value. The general consensus is that the inherent dignity of the human person is not a matter for State consent, but an inviolable predicate for an international moral order.\textsuperscript{190} The Universal Declaration of Human Rights, the International Bill of Rights, and most international conventions acknowledge that human rights are not static. Rather, human rights are a category of norms deriving from, and helpful in guaranteeing, the inherent human dignity celebrated by the ideals of all cultural and religious traditions.\textsuperscript{191} Accordingly, in many communal systems, notwithstanding their allegiance to agendas which grant preeminence to group solidarity and interests, individuals are apt to enjoy respect for their human dignity.\textsuperscript{192} In communal worldviews, collective welfare is intricately linked to individual well-being and dignity.

Dignity speaks of particular cultural understandings of the intrinsic moral worth of the human person in terms of his or her proper place in society.\textsuperscript{193} It accrues at birth and as a consequence of one's incorporation into, and acceptance of normative cultural constraints of, a given community.\textsuperscript{194} The idea of dignity embraces a complex notion of the individual which combines both a recognition of a distinct personal identity reflecting individual autonomy and responsibility, and a recognition that the individual self is a part of larger collectivities possessed of a repertoire of values and interests which are best reckoned in construing what constitutes the inherent dignity of the individual.\textsuperscript{195} In comparison to claims undergirded by rights, dignity is not readily asserted by an individual against a society; instead, respect for dignity

\textsuperscript{190} See Baehr & VanderWal, supra note 188, at 35.
\textsuperscript{192} See DONNELLY, supra note 25, at 58.
\textsuperscript{193} See Rhoda Howard, Dignity, Community, and Human Rights, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES, supra note 91, at 81, 83.
\textsuperscript{194} Id. Howard asserts that a corollary of dignity is the quiet endurance and acceptance of what human rights may approach as injustice or inequality.
is more regularly realized through social policies which provide for education, access to material benefits, and political participation.\textsuperscript{196}

It is worthy of note that, although the concept and narrative of dignity enjoin respect, they accommodate asymmetric status and disparate treatment, reserving exceptional liberties and immunities as the prerogative of the elite minority.\textsuperscript{197} Implicit in a framework predicated on respect, however, is the possibility of mobility as the fruit of labor. Hence, status may be achievable and indeterminable. Contemporary conditions have transformed relationships and the terms of existence within communities. So-called traditional cultures are, in one form or another, intensely interacting with and becoming integrated into a global political economy. The hallmark of this age is defined by industrialization, urbanization, the eruption of technological genius, and other developments which have undermined the buffers that the structures of religion and tradition tended to afford the individual.\textsuperscript{198} The traditional values which mediated communitarian worldviews are eroding, and the collective structure of society that informs them is ceasing to be a reality for many as the rapid changes of the contemporary era register their toll on relationships between individuals and the collectivities within which they participate.\textsuperscript{199}

While the global media and markets beckon the world beyond particular boundaries and belonging, the civic resources necessary to master and contend with these forces remain reposed in places and stories, memories and meanings, incidents and identities, that situate and give lives moral...

\textsuperscript{196} In Schacter's summation, "[f]ew will dispute that a person in abject condition, deprived of adequate means of subsistence, or denied the opportunity to work, suffers a profound affront to his sense of dignity and intrinsic worth. . . . [Dignity] requires recognition of a minimal concept of distributive justice that would require satisfaction of the essential needs of everyone." Id. at 851.

\textsuperscript{197} Notwithstanding, in an interesting elaboration of the pitfalls of liberal arguments for equality, Joan Williams proposes a paradigmatic shift to a notion of dignity. She argues that stressing equal dignity prevents the embarrassment of saying:

that people who are as "obviously" different as men and women . . . are actually the same. The basic claim ("I'm just as good as you!") need not entail a claim that I am the same as you. One only needs to say that "I will fulfill the conventional requirements for excellence in my own way—which, after all, is all anyone can ever do."


\textsuperscript{199} See Jan Berting & Cees Flinterman, Social and Religious Attitudes Toward Human Rights, in Human Rights, supra note 187, at 109, 110.

particularity. Interestingly, therefore, in the modern social matrix, marked as it is by radical doubt, traditions do not wholly disappear; indeed, in some respects and in some contexts, traditions flourish and acquire a particular potential for violence. We have already seen that, despite its diminished integrity and capacity for insulation, the communitarian ideal is mainly compromised by the ideological manipulations of political elites who use it as the ultimate rationalization for interfering with individual rights. Thus, the onslaught of marginalizations and dislocations engineered by the forces of globalization for traditional sectors, and its accelerated vulnerability to abuse, are not matched by mechanisms which would mitigate concomitant burdens. In light of the exigencies of modernity and the increasingly defunct traditional safeguards, arguments for the implementation of human rights as a vehicle to universalize elite privilege in the emergent public order gain some validity.

Some observers postulate a causal link between human rights, the degeneration of established sociopolitical institutions, and the rise of individualism in the modern society. More precisely, it is theorized that the human rights policy represents “a distinctive set of social practices, tied to particular notions of human dignity, that initially arose in the modern West” to address specific social and political incidents of modern States and modern capitalist market economies. According to Sorokin, human rights play a more prominent role in societies characterized by a high frequency of individual social mobility than in more sedentary contexts in which a threshold of security is organic to traditional bonds. Here, the operative assumption

203. See DONNELLY, supra note 25, at 50. The social model that writers who argue the limited applicability of the human rights systems assume is the small relatively decentralized non-bureaucratic community based on groupings of extended families, the types so characteristic of traditional societies, both Western and non-Western. See id. at 58-60. See also Howard, supra note 193, at 81 (stating that the concept of human rights represents a radical rupture from many status-based, nonegalitarian, and hierarchical societies).
204. See PITINIM A. SOROKIN, SOCIAL AND CULTURAL MOBILITY 542 (1964). In a bid to refute the theory that the rise of individualism accounts for the development of the human rights alternative, Berting traces other historical periods marked by individualism without an incidence of human rights, noting that human rights of the Enlightenment and industrial age is associated with a positive image of individualism as an antidote to collective types of antagonism. See Jan Berting, Societal Change, Human Rights and the Welfare State in Europe, in HUMAN RIGHTS, supra note 187, at 189, 191-92. In this perspective, individual
is that, as individuals shift from group to group, they must now receive rights and privileges for themselves, not for their specific groups, because they may not know what group they will belong to next.\textsuperscript{205}

On a more general note, Robert Cover reasons that the jurisprudence of rights has gained ascendance in the Western world as a response to the rise of the nation-state "with its almost unique mastery of violence . . . to counterbalance the development of the state with a myth which . . . potentially justifies individual and communal resistance to the Behemoth."\textsuperscript{206} Even while contesting the universality of human rights, Pannikar concedes that human rights are imperative for an authentic human life to be possible within the modern technological and pan-economic world.\textsuperscript{207} Expounding a comparable theory, Donnelly explains that if we remove the pressures of necessity and the social support and protection provided to the individual by the traditional community, it would be difficult to justify or compensate for the continued absence of individual rights. In his view,

Westernization, modernization, development, and underdevelopment--for better or worse, the dominant contemporary social and economic forces--have in most places significantly separated the individual from the small, supportive traditional community . . . . Society . . . now autonomy was—and is—the reverse of alienation as powerlessness, the lack of control over his conditions of living. The coming social order was being contrasted with the traditional order of feudal society in which an individual's life chances are strongly determined by his position in the social order, based on birth and the rights to which his estate entitles him.

The emerging social order was being interpreted in terms of social progress, the development in the direction of a better society, in which the position of everybody will be based on individual qualifications and achievements . . . . This image of society implied increasing individual occupational and social mobility together with a growing equality of [opportunities] . . . .

\textit{Id.} at 191-92.

\textsuperscript{205} Human rights refer to the individual beyond the particular social relationships or collectivities which issue the positive norms in question; hence the qualification of the principle of nonintervention in the affairs of sovereign States. See Berting, \textit{supra} note 204, at 193.

\textsuperscript{206} Robert Cover, \textit{Obligation: A Jewish Jurisprudence of the Social Order}, 5 J.L. & RELIGION 65, 69 (1987). He maintains, however, that "[i]n a situation in which there is no centralized power and little in the way of coercive violence, it is critical that the mythic center of the Law reinforce the bonds of solidarity. Common, mutual, reciprocal obligation is necessary." \textit{Id.} at 68.

\textsuperscript{207} The notion of Human Rights is bound up with and given its meaning by these developments. \textit{See} Panikkar, \textit{supra} note 106, at 101.
appears, in the form of the modern state . . . as an oppressive, alien power that assaults people’s dignity. . . . The individualism of human rights is a response to objective conditions.208

Expositions such as Donnelly’s may rest on a problematic premise. No doubt the oppressed of a culture are often disposed to welcome corrective interventions. But, is it obvious that the voices from below consider the individualistic bent of human rights inevitable? Granting that the infrastructures of the nation-state and the market have recharacterized and unbalanced the average social order is not coterminous with rejecting the profound reserve of indigenous values for the pursuit of community. Some may prefer prescriptions ecologically grounded and restorative of collective ideals to those that elevate the sovereignty of self and the cult of individualism. The paradox of cultural transformation in some spheres is that it has come with both radical and conservative effects. As much as things have changed in many developing nations, the idea of a linear transition “from status to contract” in many of these communities may be more ostensible than real. The complex structures and processes of modernity have not totally separated the self from the whole in these societies. Several of their inhabitants may still aspire to and achieve the security of socioeconomic status, not necessarily autonomously, but by varying degrees of reliance on traditional institutions and ancillary networks of support.

Globalization generates material conditions and moral conundrums over shared interests and responsibilities that, as opposed to being peculiar and specific to localities, transcend spatial boundaries to signify respective degrees of overlaps and commonalities in experiences. It even attenuates the reach of the nation-state, constraining its sovereignty from above—by the mobility of capital, goods, and information across borders, the integration of world financial markets, and the transnational character of industrial production—while simultaneously instigating challenges from below via the resurgent aspirations of subnational groups.209 Globalization is a universalizing process which creates common problems that different milieux can address with similar solutions. Impulses and aspirations to cultivate structures for global governance and the rule of law run into complications when the set of norms

208. DONNELLY, supra note 25, at 59-60.
209. See Sandel, supra note 200, at 72-74.
and sanctions evolved to respond to the common incidence ignore the redeeming virtues of plural competing values to (re)produce Western hegemony. In such instances, it may well be, as Pannikar cautions, that to introduce human rights in the definite Western sense into other cultures before the introduction of techni-culture would “put the cart before the horse” and surreptitiously invade other civilizations with ways of living, thinking, and feeling for which human rights is the proper solution.\textsuperscript{210}

To deal with the apparent dilemma, Pannikar proposes that (1) other traditions should appropriate the space to develop and formulate their own views corresponding to or opposing Western rights; and (2) an intermediary space should be found for mutual criticism, fecundation, and enrichment.\textsuperscript{211} Along similar lines, others have recommended giving each cultural tradition an opportunity to contribute in the standard human rights formulation without allowing any tradition to dictate to the others, perhaps ultimately achieving a balance between competing worldviews, and thereby creating a system of “internal cultural discourse” coupled with “cross-cultural dialogue.” In this scheme, internal discourse would underscore the struggle to utilize a paradigm indigenous to the culture to transform perceptions and interpretations of its values and norms.\textsuperscript{212} It would explore the possibilities of intracultural reinterpretation and reappropriation, while cross-cultural dialogue would aim at facilitating intercultural consensus.

How much substantive change will these maneuvers precipitate? To a large extent, this is an empirical question. Nonetheless, it is safe to hazard a guess. Negotiations and dialogues do not take place in a vacuum. In the pluralistic international context, values and standards are seldom transcendent, and dominant codes may be frequently informed by norms which are at odds with the cultures of some constituent enclaves.\textsuperscript{213}

\textsuperscript{210} See Pannikar, \textit{supra} note 106, at 101.

\textsuperscript{211} Id.

\textsuperscript{212} These insights are confirmed by Norani Othman, a founding member of Sisters in Islam. See Norani Othman, \textit{Grounding Human Rights Argument in Non-Western Cultural Terms: Shari'a and the Citizenship Rights of Women in a Modern Nation State}, in \textit{The East Asian Challenge to Human Rights}, \textit{supra} note 181 (forthcoming 1997).

\textsuperscript{213} Speaking of the transformative tendencies of supposedly liberal process, Jaggar notes that intercultural dialogue and multicultural liberalism is likely to accord public recognition only to attenuated versions of cultures, manifest in such private or symbolic expressions as dress or diet. She concludes: “Whether redefining a culture in terms of such expressions while radically changing something as central as the position of women constitutes the transformation or death of the culture is a matter for debate. Certainly in such a liberalism, universal rather than ethnic identity remains primary.” Jaggar, \textit{supra} note 104, at 45.
Historically, the dynamics within the international community are skewed by the disparities of power and patterns of relationship among its members. In the United Nations, for example, most Member States have the appearance of a say. However, it is evident that some votes are more controlling than others. Taking stock of the structure and constitution of the United Nations Security Council does not leave one confident that submitting aspects of, say, Fiji and Western cultures for deliberations and voting will earn them equal attention. One is therefore inclined to be persuaded by Alain Pellet’s skeptical summation which holds that even if the United States and Fiji theoretically have equal rights, they are anything “but equal in fact and the result of a tête-à-tête negotiation between the two countries cannot but be detrimental to the latter.”

Charles Taylor suggests that a genuine, unforced, international consensus on human rights would mirror a Rawlsian “overlapping consensus” which would marry agreement on norms with disagreement on the rhetorical tropes and reference points by which the convergent norms become objects of deep commitment. The achieved consensus can be enhanced by a process of reciprocal exchanges to effect what Gadamer describes as a “fusion of horizons” in which the moral universe of the other becomes less strange and subject to borrowings to create new hybrid forms. With globalization speedily heralding a world where no one is “outside” and where preexisting traditions cannot avoid contact, the critical point is not that the other “answers back,” but that mutual interrogation of traditions and alternative modes of conduct, or in Richard Rorty’s memorable phrase, a “cosmopolitan conversation of humankind” is possible. As Anthony Giddens reminds us, “[c]ultural clashes in the global arena can breed violence; or they can generate

214. Some may maintain that even if all conditions were equal and genuinely democratic, it is not evident that the views will be reconciled or the controversy resolved, unless there are demonstrably cross-cultural universals and reliable means of ascertaining them. See generally American Anthropological Association, Statement on Human Rights, 49 AM. ANTHROPOLOGIST 539 (1947).


216. Taylor, supra note 181. That is, different groups, countries, religious communities, civilizations, while holding incompatible fundamental views on theology, metaphysics, human nature, etc., would come to an agreement on certain norms that ought to govern behavior. Each would have its own way of justifying this from out of its profound background conception. See id. For more information, see generally JOHN RAWLS, POLITICAL LIBERALISM (1993).

217. Taylor, supra note 181.

218. See Giddens, supra note 201, at 100.
dialogue. In general, 'dialogic democracy'--recognition of the authenticity of the other, whose views and ideas one is prepared to listen to and debate, as a mutual process--is the only alternative to violence in the many areas of the social order where disengagement is no longer a feasible option.219 Failure to enter into dialogue and persuasion, while suspending the threat of violence, converts tradition to fundamentalism; for where talk stops, violence tends to begin.220

Through deliberate and committed orchestrations, the processes of global unification may mean that the differences in human society, or gender roles which are consistently misconceived as reflecting differentiations in the order of things, would be unmasked as mere revocable social constructs which have neither basis nor justification in the nature of things.221 Routinely subjecting gender-based traditions to interrogation means that behaviors and attitudes have to be backed by reasoned justifications, the corollary being that “where reasons have to be provided, differential power starts to dissolve, or alternatively power begins to become translated into authority.”222 The understanding is that the authority of formulaic truths enshrined in customs and traditions are likely to be deployed as the legitimating medium for incipient systems of power and undermining models of identity.223 Portions of the preceeding passages have already indexed how externally-calibrated denunciations and efforts to abolish gender bias in societies bitterly reeling from the adverse ramifications of the inevitable siege of incorporation into the world system may fuel the politicization of tradition and identity in proportions that may backfire for women.224

The history of the international movement to advance the status, roles, and rights of women has been one of triumphs and challenges. In 1979 the U.N.

219. Id. at 106. Giddens identifies disengagement from the hostile other, embedding of tradition, discourse or dialogue, and coercion or violence as respective modes of resolving clashes of values between individuals and collectivities. Id. at 105.
220. Id at 106.
221. Id.
222. Id.
224. Charles Taylor explains that because a certain way of framing difference, however oppressive it may be in practice, also serves as the reference point for deeply felt human identities, the rejection of the framework without an inspiring alternative can be felt as the utter denial of the basis of identity, even for the oppressed. The more attempt at influence comes across as a dismissive condemnation of or blanket contempt for the tradition, the greater the dynamic of a fundamentalist reaffirmations to all redefinitions for the purposes of an unforced consensus on human rights, which in turn provoke more strident denunciations that further feed the resistance. See Taylor, supra note 181.
General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women. The Convention, to date, has 139 signatories. While the Convention constitutes a benchmark for promoting human rights for women, its very basis—the principle of universality of human rights regardless of differences in political, economic, and cultural systems—has been a source of passionate protestations. As with the Convention, certain phrases in the Beijing Platform were seriously contested. In the draft Platform, references to “universal” consistently appeared in brackets which denoted dispute over encapsulated terms by entities who were averse to subsuming or encapsulating local traditions by Western predilections. In the wake of globalization, the recurrence of resistance to universalizing imperatives invites attention. There are lessons to be gleaned from both the resounding reservations and the tactics employed to attain compromises between seemingly far-reaching positions.

These lessons are bound to buttress the foregoing discussion, demonstrating that the prospects for the internationalization of conscience and control in the interest of women will be maximized by animating indigenous foundations for articulated ideals and by localizing the agency for reform. The bottom line is that, to the extent that a centrifugal tension exists between the integrating tendencies of the global political morality and economy on the one hand, and the politics of fragmentation on the other hand, common enterprises conceived to promote the regime of human rights cannot afford to be equated with coerced homogeneity. To paraphrase Sandel in conclusion, people are not likely to pledge allegiance to distant and imposing regimes, whatever their importance, unless the regimes are connected to arrangements that reflect the identity of implicated populations.


226. See Seufert-Barr, supra note 10, at 43. See also Abid Aslam, ‘Non-negotiable,’ but in Dispute, Populi, Apr. 1995, at 4, 4.