

**Debating the Universality of Human Rights  
A Plea for a Critical Perspective**

Ann Elizabeth Mayer

Samuel Huntington's thesis about the clash of cultures assumes that a monolithic West confronts a monolithic Islamic civilization, the latter being opposed to "Western" human rights. This thesis, I have argued elsewhere, is profoundly flawed.<sup>1</sup> In the face of strong criticisms, Huntington has hewed unrelentingly to his line on the clash of civilizations, and this line has remained popular in Western academic circles. When the issue of the universality of human rights comes up, one commonly encounters insistence that a cultural dichotomy divides the West, where human rights naturally belong, from the Muslim world, where human rights are alien. The assumption is made that human rights emerged in the West out of a cultural consensus and that these rights would be illegitimate outside the West if a similar cultural consensus were not first established. It is imagined that such consensus would not be forthcoming among Muslims, who are deemed to be possessed of uniform civilizational values hostile to human rights. Believing that culture is the source of validity of rules, including rules affecting rights, Huntington's allies will

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<sup>1</sup> "Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?" Michigan Journal of International Law 10 (1994): 307-404. See generally my book Islam and Human Rights 2nd.ed. (Boulder: Westview, 1995). Ernest Gellner's ideas deserve consideration in this connection. See his Postmodernism, Reason and Religion (London: Routledge, 1992), especially the discussion of "Relativismus ueber Alles," 40-71. Although not specifically addressing the debates about the universality of human rights, Gellner's attacks on the fallacies of fashionable cultural relativism are highly relevant for assessing the merits of claims that the Western origins of human rights preclude their being validly applied in non-Western contexts.

tend to take cultural relativist positions and to decry calls for universal observance of human rights, which will be attributed to Western ethnocentrism. According to this way of looking at things, the West (insensitively) presses universalism, provoking an Islamic reaction and a power struggle between Muslim countries and the West. In what follows, I critically appraise both the thesis of an East-West dichotomy on rights, arguing that the real struggles over human rights are waged instead within cultures, whether in the East or in the West.

Those who claim that human rights are Western creations may focus on the origins of human rights in the European Enlightenment and ignore developments in human rights over the last decades, during which the Third World has made important contributions to the evolution of international human rights.<sup>2</sup> When discussing modern human rights instruments, persons searching for vindication of Huntington's thesis may decide to turn the clock back almost fifty years to the first human rights document produced in the post-war era, the UDHR of 1948, when Western countries still did dominate the U.N. system. They may discount the views of Asian and Middle Eastern U.N. representatives who drafted the UDHR,

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<sup>2</sup> Significant advances in human rights have been made in the numerous human rights conventions and declarations in the 1970s, 1980s, and 1990s, when the North Atlantic countries had dwindled to a small minority in the U.N. and human rights developed to encompass Third World concerns. Since achieving independence, non-Western nations have been active in promoting a plethora of new human rights principles. Moreover, groups that are not susceptible of regional demarcation -- such as women or indigenous peoples -- have managed to increase their influence in drafting rights instruments.

characterizing them as alienated persons with excessively Western orientations, which render them "inauthentic" representatives of their cultures. More generally, supporters of human rights from the Global South may be discredited on the grounds that they are guilty of speaking without first establishing the cultural consensus needed to avoid imposing human rights on Muslims and other non-Westerners in disregard of their (presumed) cultural aversion to these. Of course, believers in Huntingtonian stereotypes about the perfect fit between human rights and the values of Western culture will not bother to inquire whether U.N. delegates from Western countries actually were authentic representatives of their cultures who acted on the basis of an established cultural consensus.

In keeping with Huntington's thesis that Muslim sentiment naturally opposes human rights, tests for cultural authenticity and accountability may be dispensed with when it comes to the stances of delegates from Muslim countries who speak against human rights, who are treated as authentic avatars of their cultures. When faced with stances like the Saudi Arabian U.N. ambassador's refusal to vote for the UDHR and Saudi officials' endorsement of the 1990 Cairo Declaration on Human Rights in Islam, which enfeebles rights,<sup>3</sup> advocates of "civilizational" approaches to human rights a la Huntington may not trouble to inquire whether these followed open debates that were sufficient to establish that

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<sup>3</sup> See the analysis in Mayer, "Universal versus Islamic Human Rights," 327-50, 375-377.

these were backed by popular opinion. Cultural relativists are not disposed to investigate whether a rights scheme like the Cairo Declaration might merely amount to cynical exploitation of "Islam" to rationalize existing hierarchies and oppression. However, since the Cairo Declaration affords no means for the ruled to hold their rulers accountable, an inquiry would seem to be in order regarding what, if any, cultural consensus supports the views of Saudi officialdom on this and other human rights instruments. In lieu of such inquiry, one often encounters casual acquiescence in the notion that an absolute monarchy that consults the opinions of retrograde `ulama should be deemed fully credentialed to represent Muslim opinion on matters of democracy and human rights.

To accord priority to deciding whether individuals are authentic spokespersons for cultural traditions rather than focusing on whether undemocratic regimes possess the credentials to speak about human rights issues that are crucial for the welfare of their disenfranchised citizens is to depoliticize an issue that is deeply political. Nation-states are the ultimate decision-makers where human rights law and other facets of international law are concerned: individuals like their foreign ministers or U.N. ambassadors simply act as their agents. Since rules of international law are endorsed when and if governments decide that they appropriately regulate the way nations should conduct their affairs, one should examine whether the governments involved have any basis for claiming that their positions actually

correspond to popular sentiment.

The less democratic a system of government is, the more likely it is that it will either oppose human rights outright or offer mere rhetorical to homage human rights while intending to ignore them. Significantly, not one of the repressive governments actively campaigning along with Saudi Arabia against the universality of human rights and seeking to supplant international law by inferior, supposedly "Islamic" versions of human rights has assumed power after free, open elections. The rough correlation between more democratic governance and policies more supportive of human rights can be shown by contrasting the Cairo Declaration, which was fashioned by undemocratic regimes in the Organization of the Islamic Conference and which aims to strip people in Muslim countries of the rights that they have under international law, and the regional human rights system established by the democracies of the European Community, which affords stronger protections for rights than does the international system. That the OIC came up with lower standards of rights and the EC with stronger rights protections was entirely predictable, given the very different characters of the governments involved. If one believes that Muslims should enjoy the right to self-determination, one should question the entitlement of undemocratic OIC regimes to speak about Muslims' rights and to impose diluted, supposedly "Islamic" versions of human rights on Muslims whose views have never been consulted. Doing otherwise implies

agreement with King Fahd's 1992 claim that democracies are not suited to his region.<sup>4</sup>

That respect for Islamic culture and tradition has more compelling claims than human rights seems to be assumed by cultural relativists without factoring in what consequences will flow from according priority to cultural particularisms. These consequences will, however, be deleterious for Muslims. Now, there is the occasional country, and Iceland would seem to be a case in point, where cultural norms and human rights are so compatible that insisting on respecting traditions would not entail degrading rights protections. Elsewhere, deferring to local tradition can have only one result: lowering the standards of rights and freedoms that would be guaranteed to people under international law. Adhering to tradition necessarily entails turning to the past for guidance. After the end of World War II at the outset of the modern human rights system, it was understood that traditions could not serve as guidelines. After all "past practices," as they were then commonly known, were what had led to the very inequalities, oppression, and abuses that the new system of human rights was designed to cure.

More recently, delegates supporting women's human rights at the September 1995 Beijing Women's Conference perceived how deviations from universality based on deference to local tradition menaced the integrity of human rights. These delegates clashed

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<sup>4</sup> See Middle East Watch, Empty Reforms. Saudi Arabia's New Basic Laws, May 1992, 2.

with representatives of Muslim and Catholic countries who insisted that women's rights had to be subordinated to national and religious customs.<sup>5</sup> Women's rights advocates and NGOs from around the globe, in which Muslims participated, determinedly fought against this position, appreciating that granting priority to cultural particularisms was incompatible with ensuring human rights for women. There was no Huntingtonian East-West "power struggle" at the Beijing Conference over the universality of women's human rights; there was, instead, a struggle between the proponents of universal human rights and their enemies in the traditionalist camp, both forging alliances across regions, across religions, and across cultures.

Advocates of women's human rights commonly clash with traditionalists over the latter's predilection for sex stereotyping, which has been consistently used to rationalize keeping women in a subordinate position. One struggle at the Beijing Conference was over sex stereotyping and whether rights should be based on the notion of the complementarity of the sexes, meaning that women would be deemed biologically destined to play different roles from the roles that Nature had assigned to men. Although some associate the idea of complementarity with a peculiarly Islamic approach to women's status, complementarity is enthusiastically embraced by conservative Christians, including the Catholic Church, which readily forged an alliance with

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<sup>5</sup> See "Forum on Women Agrees on Goals," The New York Times, September 15, 1995, A1.

countries like Iran to combat the position put forward by feminists from both Western and non-Western countries to the effect that gender roles are mutable, being socially constructed rather than biologically determined.<sup>6</sup> Thus, in Beijing "sex" and "gender" became code words for the two sides, with opponents of change using sex stereotyping based on supposedly fixed biological differences to buttress calls for upholding the traditional family, and feminists arguing that gender roles can and should be reappraised with a view to critiquing traditions and advancing women's rights.

Just as there are cross-cultural parallels in the current resistance to women's human rights on the part of traditionalists in East and West, so there are parallels between Huntington's idea of an East-West cultural divide on rights and the stance taken by the colonial powers of yore, who, one recalls, excluded Muslims and other peoples they ruled from the ambit of the precursors of our modern rights protections. Although Huntington's clones and epigones seem reluctant to acknowledge that they are essentially rehabilitating the dual standard of rights mandated by European colonialism, that is what their position amounts to. After all, today's cultural relativists who deem Islamic culture inherently inhospitable to human rights effectively wind up saying that international human rights only cover Westerners, so that

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<sup>6</sup> See the items in AMEWS Newsletter [newsletter of the Association for Middle East Women's Studies] 10 (November, 1995): 2-3, 8-9, 11-12.

reactionary projects like the Cairo Declaration are plausible alternatives to the International Bill of Rights -- their diluted rights being deemed quite sufficient for Muslims. In terms of results, this replicates the European views in the Age of Imperialism, when human rights protections were reserved for people from the "civilized" West, whereas "Orientals" were excluded from the roster of peoples deemed worthy to enjoy them.<sup>7</sup>

In an era when resentment over colonialism was welling up, the racist overtones of such dual standards on rights was perceived. During the San Francisco conference setting up the U.N., African, Asian, and Latin delegates rebelled against the plans to perpetuate the old scheme according to which rights would be reserved for Europeans and Europeans' descendants in places like the United States, Canada, and Australia, insisting instead that the new U.N. system had to incorporate the principle of human rights for all without discrimination.<sup>8</sup> Only decades later, when human rights had demonstrated their annoying capacity to become a source of embarrassment for undemocratic regimes, did governments of non-Western countries become nervous about the universal reach of human rights and start spearheading the notion that human

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<sup>7</sup> See the discussion in Ann Elizabeth Mayer, "Current Muslim Thinking on Human Rights," in Human Rights in Africa: Cross-Cultural Perspectives, Abdullahi An-Na'im and Francis Deng, eds. (Washington, D.C.:Brookings Institution, 1990): 151-53.

<sup>8</sup> See Paul Gordon Lauren, "First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter," Human Rights Quarterly 5 (1983): 15-20.

rights were too Western to apply outside the culture where they had originated.

Ironically, those of us who insist that Muslims are protected by international human rights law on a par with Westerners and who criticize ideologues and government officials in Muslim countries who are seeking to exploit "Islamic" criteria to reduce contemporary Muslims to the lowly, subjugated status that they formerly endured under their European colonial masters often find ourselves attacked as the minions of a Western hegemonic project. By insisting that human rights should apply universally and by criticizing laws and practices in Muslim countries that violate international norms, we expose ourselves to charges that we are engaging in cultural imperialism.<sup>9</sup>

International human rights law may be associated with Western policies of domination, as in a recent essay by the eminent Islamologist Mohammed Arkoun revealing definitely jaundiced -- but nonetheless extremely vague -- perspectives on the deficiencies of human rights. After calling for criticism of "the Western hegemonic model," he damns international law for setting up what he labels a system of inequalities on rights that favors the great powers and calls for a new thinking about national and international law.<sup>10</sup> However, Arkoun presents no

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<sup>9</sup> See e.g., Alison Dundes Renteln, International Human Rights: Universalism versus Relativism (Newbury Park: Sage Publications, 1990): 47, 77, 86, 139-40.

<sup>10</sup> Mohammed Arkoun, "The Concept of `Islamic Reformation,'" in Islamic Law Reform and Human Rights. Challenges and Rejoinders, Tore Lindholm and Kari Vogt, eds. (Oslo: Norwegian Institute of

concrete examples or analysis of specifics showing how international human rights law furthers Western hegemonism or why it would be advantageous for Muslims to scuttle the rights protections that it provides in favor of new approaches. One wonders if Arkoun, like so many others who take this line, is not confusing the biases and gross double standards that Western powers have displayed in their highly politicized and selective applications of human rights criteria with the substantive human rights principles themselves. The double standards apparent in Western policies on human rights are part and parcel of a more general problem infecting the U.N. system, where the pattern of slighting the rights and interests of Muslims has been so blatant and has so alienated Muslim public opinion that the survival of the U.N. may be being placed in jeopardy. However, the sad reality that the application of human rights by Western powers has been woefully unfair and that U.N. organs have been cynically misused to serve hegemonic agendas does not mean that the principles of human rights are themselves biased and deficient.

Like others who indulge in these sweeping generalizations, Arkoun declines, I have noticed, to descend from airy abstractions to assessments of international rights instruments as these relate to the rights abuses prevalent in Muslim countries. However, the adequacy of our present international human rights standards should be judged by precisely such assessments. To decide whether

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Human Rights, 1993): 22.

international human rights belong in Muslim countries, the appropriate question to ask is: Do these principles adequately address the actual rights problems facing people in Muslim countries and establish norms that, if observed, would mitigate, if not eliminate, oppression and abuses? If the answer proves to be affirmative, in what way could applying them be against the interests of Muslims? How would this favor the great powers? This is not to say that current human rights principles should be regarded as definitive; they can and should be discarded or modified when and if they are found not to be efficacious. However, they should not be rejected a priori on the basis of unexamined slogans or insinuations that they necessarily privilege Western values and interests.

One longs to see the opponents of universality present systematic, documented expositions that prove why international human rights cannot benefit Muslims. It would be appropriate to concentrate particularly on rights in the arena of criminal procedure and law, since the dossiers of human rights violations suffered by Muslims overwhelmingly concern these. What, for example, would be the neo-colonialist objective that is served by affording Muslims the ICCPR Article 9 guarantee against arbitrary arrest or detention and the rights to be informed at the time of arrest of the reasons for the arrest and to be promptly informed of any criminal charges, to be promptly brought before a judge, and to have a trial within a reasonable time or otherwise to be

released from detention? Where is the Western hegemonism in upholding Muslims' right under Article 10 to be treated with humanity and with respect for their dignity during detention? Where is the system of inequalities in affording Muslims rights under Article 14 to have fair and public trials by impartial tribunals with all the measures needed to safeguard due process, to be presumed innocent until proven guilty, and to appeal from a conviction? These ICCPR principles are aimed at abuses that pervade the criminal justice systems in Muslim countries, and any steps to enhance their observance can only alleviate the sufferings of Muslims. After dealing with cases in these areas for many years, I am still waiting for the day when a Muslim on whose behalf these ICCPR norms have been invoked protests my intervention on the grounds that I am using "culturally inauthentic" rights standards or pursuing the goals of Western hegemonism. On the contrary, every single intervention in which I have been involved has been welcomed by Muslim victims of violations of these ICCPR norms, who have been only too happy to have the moral authority of the International Bill of Human Rights invoked on their behalf. In the characterizations of human rights as excessively Western or inherently unsuited for use in Muslim milieus, the perspectives of the victims of rights abuses too often get overlooked -- as if it were somehow a given that their aspirations to have the same safeguards for their human rights as people in Western democracies were irrelevant. In these matters,

cultural relativists tend to accept stereotypes of culture rather than appraising empirical evidence of Muslims' actual attitudes towards rights.

In the Huntingtonian vision of an East-West dichotomy on rights, the battles within Western culture over rights are also not given their due. Western culture is conceived stereotypically; it is presumed to have such natural affinities for human rights that international law is readily complied with.

Consideration is not given to the reality that many Western countries until very recently had horrendous records of rights violations and that the records of many continue to be spotty. True, liberal democracies tend to have much better human rights records than other types of government, and the current prevalence of liberal democracies in the West does correlate with a general pattern of improved respect for human rights. However, the crucial factor is the form of the government, not an affinity for rights that has consistently pervaded Western culture. Nonetheless, stereotypes about human rights belonging in Western culture may lead people to overlook the conflicts over human rights in Western milieus.

In reality, human rights were and remain a matter of profound controversy within Western countries, especially in the United States, which is hardly an unimportant player. U.S. opponents of human rights have found them as culturally offensive as have Muslims like King Fahd, and Americans have condemned them as

threats to the U.S. Constitution, alien concepts that would erode Americans' rights and freedoms.<sup>11</sup> Consider, for example, that in the 1940s and 1950s Frank Holman, an influential former ABA president, attacked human rights, insisting that they were part of a Communist plan to destroy the American way of life.<sup>12</sup> The composition of the U.N. Commission on Human Rights disturbed him; true, Eleanor Roosevelt was a member, but, he complained, "all of the other members. . . were foreigners, including three Russians."<sup>13</sup> That is, an American who disapproved of human rights found it convenient to portray them as being shaped by people who were, at best, "un-American" and, at worst, nationals of America's terrible Russian nemesis. Similar views were articulated in 1951 by the ABA Journal regarding the proposed Covenant on Human Rights, which was later subdivided into the ICCPR and the ICESCR, denouncing the covenant as embodying an ideology alien to the United States, being marked by "the heavy imprint of Eastern philosophy."<sup>14</sup> U.S. opponents of equality had a point when they protested that the UDHR was culturally Eastern, because the egalitarianism that is central to the UDHR was tied to the Marxist ideology entrenched in countries from Eastern Europe to China, and it was the Communist countries that had insisted on the inclusion

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<sup>11</sup> See Natalie Hevener Kaufman, Human Rights Treaties and the Senate. A History of Opposition (Chapel Hill: University of North Carolina Press, 1990): 29, 43, 45, 50, 52-53, 62, 64, 69, 71, 177.

<sup>12</sup> Ibid., 16-19, 23.

<sup>13</sup> Ibid., 73.

<sup>14</sup> Ibid., 72.

of its strong equality guarantees.<sup>15</sup> But, was the real source of Americans' objections a distaste for Eastern values, or was the actual impetus the threat that the "extreme egalitarianism" of the UDHR could destabilize entrenched regimes of discrimination? That is, what was really at issue -- a disinterested concern for upholding Western values or a strategy of deploying "culture" as a pretext for upholding the status quo in rights matters?

Of course, in addition to the conservative opponents of international human rights in the United States, there have also been famous supporters of their universal application, but the latter have often expressed only the views of the Eastern Establishment. Consider Eleanor Roosevelt. There was a vast disparity between her liberal ideas and the views of the average American of her era. Had she needed to seek a popular mandate before voting for the UDHR, she could not have proceeded. For example, had she felt obliged to follow the U.S. cultural consensus on racial matters, as a representative of a country permeated by racism -- a truly "authentic" element of U.S. culture and also of home-grown religions like Mormonism and Southern Baptism, she would have had to defend racial discrimination and segregation and condemn the UDHR as culturally unacceptable. (Being preoccupied with the European colonization of Muslim lands, Middle Eastern specialists may miss how badly minorities can fare in democracies in the West, forgetting that Black Americans

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<sup>15</sup> See Johannes Morsink, "World War Two and the Universal Declaration," Human Rights Quarterly 15 (1993): 357, 363-65.

effectively remained colonized minority till the reforms of the 1960s and that rights protections sometimes have to be imposed and upheld against the wishes of the majority.) Although Eleanor Roosevelt's ideas were unusually progressive, in supporting racial equality, she was not altogether breaking with U.S. culture, either, because it, like cultures in all complex state societies, included an admixture of strains both favorable to and inimical to rights. Still, Roosevelt spoke for an enlightened minority, not for U.S. culture at large. Luckily for the world, Eleanor Roosevelt understood that her responsibility as a drafter of the UDHR did not require deferring to public opinion, which would have meant sinking down to the level of the lowest common denominator and putting the status quo in concrete. Instead, she grasped that human rights were intended to set aspirational norms and could not be invalidated by a showing that they were not backed by popular consensus or that they breached "authentic" traditions.

Those who believe that universal human rights should be delegitimized if they fail to conform to the prevailing cultural norms of Muslim countries should, if they want to be philosophically consistent, complain about the disrespect that Eleanor Roosevelt showed for prevailing U.S. values. After all, in the United States of 1948 a democratic consensus in favor of the UDHR would never have been forthcoming for a variety of reasons, not the least of which was that endemic racism would have made the firm egalitarianism of the UDHR unpalatable to most

Americans.<sup>16</sup> They should be perturbed that a European-educated member of the aristocratic Roosevelt clan, whose attitudes were those of a small cosmopolitan elite, disregarded the deep convictions and feelings of the average American on issues like equality. However, when I encounter cultural relativists who are calling for human rights to be adjusted to fit Muslims' cultural standards, which always means adjustments downward, I do not hear them calling for repudiating the U.S. vote in favor of the UDHR on the grounds that it was not preceded by societal debates on its merits. This inconsistency prompts questions about what actually lies behind the selectivity in demands that cultural consensus should precede endorsements of international human rights, these demands being made with regard to certain regions and cultures and not with regard to others.

U.S. uneasiness with international human rights principles has persisted. As of 1996, the United States still remains reluctant to ratify most human rights conventions<sup>17</sup> and has become

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<sup>16</sup> In an earlier, less politically correct era than today, U.S. opponents of human rights outspokenly condemned human rights by reason of the threat they posed to the ingrained system of racial segregation and discrimination. See Kaufman, 18, 46, 55-59, 70, 184.

<sup>17</sup> The United States has continued to refuse to commit itself to respecting any of the social and economic rights established in the UDHR and in covenants like the ICESR. The United States has become notorious for imposing the death penalty in a racially discriminatory manner and upon offenders who are mentally defective or who were under eighteen at the time of their offenses, and it has refused to impose any restraints on hate speech. The U.S. unwillingness to undertake measures to end the disparity between U.S. laws and the principles in international human rights covenants has prevented the United States from ratifying most human rights covenants, including ones that almost

notorious for studding its occasional ratifications with so many qualifications (known as RUDs) that critics dismiss its ratifications as cosmetic or meretricious. Thus, a fundamental human rights norm like equality for women still remains a problem for the United States. Opposition to equality for women was mobilized by the religious right and other conservative forces via a well-financed campaign that resulted in the 1982 defeat of the proposed Equal Rights Amendment to the U.S. Constitution. This has left U.S. women bereft of a constitutional guarantee of equality and obliged to rely instead on jurisprudence developed under the Equal Protection Clause of the Constitution, according to which it is easier to justify sex discrimination than racial discrimination and under which women are classified in the second tier, along with aliens and illegitimates.<sup>18</sup> U.S. unwillingness to

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countries have found unobjectionable, like the Convention on the Rights of the Child. The United States has also failed to ratify the Women's Convention (CEDAW) and so has wound up in the company of Andorra, Monaco, and San Marino -- the only other U.N. members from the Western world not to become parties to a convention designed to secure equality for women. The U.S. position puts it in the company of Muslim countries like Bahrain, Iran, Mauritania, Saudi Arabia, and the United Arab Emirates, which have also refused to ratify.

<sup>18</sup> In the recent Faulkner case, a court reminded us of how different equal protection and equality can be, maintaining that the Equal Protection Clause did not mean that "all men are created equal," which it considered an "overly generalized statement." Instead, in ruling that women could be excluded from a state-sponsored military academy as long as women had the chance to attend an alternative state-sponsored school, the court advised that "the clause accommodates the opposite notion; that people are created differently. Fundamental injustice would undoubtedly result if the law were to treat different people as though they were the same." Faulkner v. Jones, 10 F.3rd 226, 230 (4th Cir. 1993). This ruling came notwithstanding evidence that the alternative offered to women would be of lower prestige and offer

accept the principle of equality necessitated adding an "understanding" to qualify U.S. adherence to Articles 2 and 26 of the ICCPR when in 1992 it finally ratified this convention.<sup>19</sup>

The difficulties that the United States has had accommodating basic rights principles like equality relate to its distinctive approach to human rights, one that might be described as "cultural" or "civilizational." The U.S. has tended to disregard developments in international human rights law, instead turning inward and upholding peculiarities of the U.S. common law tradition and domestic values, especially where these have been read into the U.S. Constitution. The insulation of U.S. law from outside influences not only stalls advances but can lead U.S. law to regress at the expense of human rights.<sup>20</sup>

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less rigorous training than the all-male Citadel, differences that would have meant that the segregation would have been unconstitutional had it been racially-based. Showing that what "equal protection" means is subject to conflicting judicial interpretations, in a similar fact situation in a related case, the Supreme Court majority condemned the sex stereotyping behind keeping such military academies all male and ruled that excluding women from the Virginia Military Institute violated equal protection. See U.S. v. Virginia, 1996 U.S. LEXIS 4259. The Court did not, however, rule that sex segregation should be as difficult to justify as racial segregation, nor did it treat the international human rights standard of equality for women as having any relevance.

<sup>19</sup> For the text see Multilateral Treaties deposited with the Secretary-General: Status as at 31 December 1994, UN Doc. ST/LEG/SER.E/12 (1995), 126. Briefly, the "understanding" provided that domestic equal protection jurisprudence would govern, not the equality principles in Articles 2 and 26.

<sup>20</sup> See, for example, the plans afoot in both the House and Senate to revoke Federal mandates requiring states to segregate juveniles from adults in jails and prisons. "Republicans Challenge Notion of Separate Jails for Juveniles," New York Times, June 24, 1996, A1. This would be in square violation of the ICCPR Article 10, but U.S. legislators are unlikely to be inhibited from

Those who assert the virtues of culturally-based approaches to rights should ponder the consequences of the U.S. practice of allowing rights to be determined by societal traditions or domestic consensus rather than by reference to international human rights law. They might consider the merits of the approach taken by Justice Scalia in writing for the majority of the Supreme court in deciding that it was constitutional for Kentucky to impose capital punishment on juvenile offenders.<sup>21</sup> Scalia discounted international human rights norms, writing as if the only criterion should be U.S. domestic standards of decency.<sup>22</sup> He ignored the

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undertaking such a step by worries that this would violate international law. See also the legislation dismantling the Federal welfare system. "Senate Passes Welfare Measure, Sending It for Clinton's Signature," New York Times, Aug. 2, 1996, A1. That stripping the most impoverished Americans, including women and children, of what could be needed to ensure them adequate food, clothing, and housing was in direct violation of the UDHR Article 25 did not deter U.S. legislators from voting to end a program on which poor Americans had depended for their sustenance for sixty years and did not prompt President Clinton to veto this measure.

<sup>21</sup> See his opinion in Stanford v. Kentucky, 492 U.S. 361 (1988).

<sup>22</sup> Ibid., 389-90. His position in this case had been presaged by his dissent in Thompson v. Oklahoma, 487 U.S. 81 (1987), when he had disagreed with the court plurality, which had ruled that it was unconstitutional to execute persons who were only fifteen at the time of their offense. Being geared towards tradition, Scalia was uninterested in applying modern human rights norms to this question, preferring instead to seek guidance from the British legal tradition in the eighteenth century (deemed relevant according to his "originalist" approach to deciding the meaning of the Constitution, seen as a product of the values of the eighteenth century). Ibid., 864. In insisting that the death penalty for a fifteen year old did not constitute cruel and unusual punishment, Scalia truculently dismissed the notion that the United States could learn anything from the community of nations, pronouncing:

The plurality's reliance upon Amnesty International's account of what it pronounces to be civilized standards of decency in other

pleas of the dissent to consider international standards and relevant legislation in other Western democracies and disregarded the implications of taking a stance that would put the United States in the same company as countries like Bangladesh, Pakistan, and Rwanda.

The notion that Islamic culture is problematic for rights but that secular, universal rights principles are readily digestible in Western milieus is hardly borne out by experience. For example, U.S. foes of the Women's Convention (CEDAW) have relied on U.S. domestic values in decrying the universal principles of CEDAW as inimical to U.S. religion and culture. In 1994 the president of the National Institute of Womanhood testified before the Senate Foreign Relations Committee, denouncing CEDAW and claiming that it would "establish an international policy instrument that can be used as a weapon against the family, the institution of marriage, cultural and religious values."<sup>23</sup> U.S.

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countries . . . is totally inappropriate as a means of establishing the fundamental beliefs of this Nation. That 40% of our States do not rule out capital punishment for 15-year-old felons is determinative of the question before us here, even if that position contradicts the uniform view of the rest of the world. We must never forget that it is a Constitution for the United States of America that we are expounding. . . where there is not first a settled consensus among our own people, the views of other nations, however enlightened the Justices of this Court may think them to be, cannot be imposed upon Americans. . . Ibid., footnote 4.

This tendency to turn to the past, to tradition and history as a guide for deciding what rights Americans may enjoy is discussed in Laura Kalman, The Strange Career of Liberal Legalism (New Haven: Yale University Press, 1996).

<sup>23</sup> See After 14 years, U.S. moves to OK women's rights pact, Chicago Tribune, Sept. 29, 1994, available in LEXIS, Nexis

Senators' concurrence with such "cultural" objections to CEDAW has been a factor in the U.S. refusal to ratify this important treaty.<sup>24</sup> U.S. conservatives found the ideals of universal women's human rights promoted at the Beijing Conference as obnoxious as CEDAW principles. The conservative Protestant group Focus on the Family vehemently denounced the 1995 Beijing Women's Conference as an affront to decency and Christian values, charging: "Most of what Christianity stands for will be challenged during this atheistic conference."<sup>25</sup> In an amendment that deserves more attention than it has received, just before the Beijing Conference, the U.S. Senate revealed what side it stood on, endorsing the idea of complementarity and instructing the U.S. delegation that it was to promote the value of motherhood, to uphold the traditional family as the basic unit of society, and to define gender as the biological classification of the two sexes.<sup>26</sup> (Not surprisingly, many in the U.S. delegation to Beijing declined to follow this diktat and deviated from the party line on the complementarity of the sexes -- to the anger of conservative

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<sup>24</sup> For an examination of the convoluted "cultural" arguments against the Women's Convention in the Senate, see Ann Elizabeth Mayer, "Reflections on the Proposed U.S. Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights?" Hastings Constitutional Law Quarterly 23 (1996): 813-19.

<sup>25</sup> Quoted in Mahnaz Afkhami, "Resisting Fundamentalisms," Speaking About Rights [Canadian Human Rights Foundation Newsletter] 10 (Fall 1995): 2.

<sup>26</sup> The amendment was made to the Foreign Relations Revitalization Act of 1995. See 141 Cong. Rec. S10,973 (July 10, 1995) (amendment of Sen. Hutchison) and 141 Cong. Rec. S10,961 (July 10, 1995) (statement of Sen. Hutchison).

forces, which have since mobilized to try to forestall further funding for U.S. delegations to attend such international human rights conferences.) Although ideological constraints meant that neither the U.S. Senate nor Iran was eager to draw attention to the fact that they were allied in combatting feminist ideas, conservative U.S. groups like Focus on the Family were prepared to acknowledge these cross-cultural affinities.<sup>27</sup> Where combatting women's human rights was the issue, even an alliance with Iran could become thinkable.

Ultimately, the U.S. "cultural" or "civilizational" resistance to international human rights standards turns out to be a cousin of the approach articulated in 1995 by Iran's Ayatollah

Yazdi, who proclaimed:

Some nations have their own cultures, some nations have their own religions, you cannot describe as human rights violations the issues which concern their religion and culture. You cannot impose the human rights as you have translated and defined them. . . Islamic human rights differ from the Declaration of Human Rights. Islam has its own rules and regulations. . . Human rights must be Islamic human rights.<sup>28</sup>

As the record amply demonstrates, Iran's rejecting the universality of rights and according priority to an ideologized version of tradition have correlated with a deficit in protections

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<sup>27</sup> Thus, lamenting the absence of conservative Protestants at the Beijing Conference, the president of the Focus on the Family asked who was there "to defend the principles you and I hold dear? It was Islamic nations and the Vatican that marched out to meet the radical feminists." Dr. James Dobson charges Clinton Administration with betraying American families in Beijing, PR Newswire, Oct. 2, 1995, available in LEXIS, Nexis Library.

<sup>28</sup> BBC SWB ME/2250/MED March 13, 1995, available and LEXIS, NEXIS Library.

for rights and many egregious abuses; sex discrimination and religious discrimination, persecution of minorities, repression of dissent, denials of religious freedom, disregard for due process, cruel and arbitrary criminal justice, and aggressive harassment and even assassinations of critics of the regime. Only a basic lack of sympathy for the proposition that all human beings are equally deserving of rights protections could lead one to applaud such experiments with using a "civilizational" standard for rights or to call for tolerating Islamic derogations from universality.

The United States is not the only Western society where conservatives and traditionalists anathematize human rights as a threat to culture. The French have hardly constituted a monolithic bloc of cheerleaders for human rights, which is noteworthy, since the modern system of human rights is more French than anything else, even though it has subsequently come to be associated in the minds of many with the United States. If any society should deem human rights an integral part of its own cultural heritage, it is France. The French Declaration of the Rights of Man and of the Citizen is the single most important early statement of rights and is the precursor of the UDHR, one of the main drafters of which was, not surprisingly, an eminent French jurist, Rene Cassin. But, even in France, human rights are a matter of contention. Consider the diatribe that Simone de Beauvoir's father spouted when his daughter rebelled against her

conservative upbringing, confounding the expectations of her family by insisting on pursuing advanced studies in philosophy and becoming a teacher. From her father's perspective, she was flouting "authentic" French culture, which was imbued with conservative particularisms that were antithetical to rights and to universal values. Georges Bertrand de Beauvoir associated his brilliant daughter's studies with:

the dangerous sect . . . the intellectuals . . . blinded by their book-learning, taking a stubborn pride in abstract knowledge and in their futile aspirations to universalism . . . sacrificing the concrete realities of race, country, class, family and nationality to those crackpot notions that would be the death of France and of civilization: the Rights of Man, pacifism, internationalism, and socialism.<sup>29</sup>

Georges Bertrand de Beauvoir spoke as if he were entitled to act as the arbiter of what constituted treason against French culture. Here his pedigree might seem to be in his favor, since he was as French as French could be.<sup>30</sup> However, he seems to have overlooked that his daughter Simone was equally rooted in French culture, which did not deter her from challenging the validity of received opinions in France about women's "natural" role, all the while remaining quintessentially French.

Fortunately for the women of the world, Simone de Beauvoir ignored her father's tirade and went on to write daring works like

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<sup>29</sup> Deirdre Bair, Simone de Beauvoir (New York: Simon & Shuster, 1990): 97.

<sup>30</sup> He was of a distinguished family deeply rooted in the southwest of the country that could trace its ancestors as far back as Guillaume de Champeaux, mentioned in the year 1100 as a luminary of the Church and one of the founders of the University of Paris. Ibid., 22.

the seminal feminist study The Second Sex, published in 1949, becoming a renowned champion of the cause of women's equality in the process. Via her meticulous dissection of the particulars of women's inequality in the West, she stumbled upon universally valid observations, offering a critique of Western tradition that resonated across cultures, including the cultures of the Third World. The vehement condemnations of her life and her books by many of her compatriots bore witness to how deeply her ideas offended French mores, leading, among other things, to her work being placed on the Index by the Catholic Church.<sup>31</sup> Simone de Beauvoir's predicament should remind one that the universals of human rights are at odds with all cultural particularisms and that human rights, although first articulated in the West, emerged against the grain of Western culture. As in so many other instances, one sees that the great struggles over human rights issues are waged within cultures, between advocates and opponents of international human rights.

Human rights advocates in the Muslim world find themselves in a predicament like Simone de Beauvoir's. If they invoke the universal values of human rights, they risk being labelled traitors to their culture by those who claim to be defending "authentic" Islamic values. In this connection one should consider the implications of the demands for choosing representatives of Muslim nations who will authentically represent

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<sup>31</sup> Ibid., 456.

their traditions when determining stances on human rights -- without noting that "tradition" is inherently conservative and will naturally be wielded as a weapon against human rights by opponents of change, and especially against the human rights of women. By this same logic, Simone de Beauvoir, whose challenges to conventional ideas breached centuries of French tradition and Catholic teachings about women's role, would be disqualified from the task of talking about women's rights in France. The logic of insisting that discussions of rights be conducted by "authentic" cultural representatives would seem to dictate consulting Frenchmen like de Beauvoir's father or a Catholic Bishop, whose ideas on women's place would have been closer to the French mainstream. A sounder logic would, in my opinion, uphold the right of the radical daughter to represent French women on the grounds that she had produced an unassailable critique of women's status. That her insights were iconoclastic did not mean that they were not accurate and valuable. Similarly, where issues of Muslim women's rights are involved, de Beauvoir's counterparts -- courageous Muslim dissidents -- should be listened to; conclusive weight should not be accorded to the special pleading of the Saudi Arabian Ambassador, the Iranian government, or the Sheikh of al-Azhar, who will inevitably invoke religion and culture to buttress their rejection of equal rights for women.

Opponents of universal formulations of rights tend to associate human rights with the particularism of Western culture

in a way that leads them to believe that their having universal viability is precluded. Because human rights emerged first in Europe, they may be thought of as expressing values peculiar to European culture. However, universally valid human rights norms can be extracted from particulars because human rights did not emerge as endorsements of any cultural particularism but rather were developed as critiques of denials of rights and freedoms. Just as de Beauvoir's critique of the treatment of women in French culture turned out to have universal validity, so the critique of the ancien regime by the authors of the French Declaration of the Rights of Man resonated across cultures -- because the evils that it defined and attacked turned out to be prevalent elsewhere. Thus, when one accepts the universals in human rights, one is not endorsing the values of Western culture but remedial principles that emerged in consequence of negative appraisals of the repression, discrimination, and violence in Western cultures.

The brave protest petition submitted by Chinese intellectuals in March 1994 exemplifies non-Westerners' grasp of the cross-cultural utility of human rights. These dissidents wrote as heirs of shared experiences of the evils of tyrannical rule, praising the French Declaration of the Rights of Man for its diagnosis that human rights violations had been the sole cause of public misfortunes and corruption of government and for the rights that it proposed to cure these ills. They saw that China's history

confirmed the accuracy of its insights.<sup>32</sup> Muslim human rights activists and NGOs have likewise appreciated that international human rights address the very ailments that afflict their polities. Those who think that cultural values should be upheld in the face of conflicting human rights principles ignore that cultures can change and that abandoning some traditions may be all to the good. That within three decades of the publication of The Second Sex France had dismantled almost all of its strongly patriarchal institutions and implemented reforms designed to secure equality for women bears witness to the enormous power of de Beauvoir's critique.<sup>33</sup> These far-reaching reforms were based on ideas originally seen as radical and even heretical. They are now seen as "normal" in France, which proves the capacity of cultures to assimilate new ideas and to evolve in the direction of accepting human rights norms that initially seem incompatible with local mores. This change has not meant the death of French culture, pace Georges Bertrand de Beauvoir, only the death of particularisms that were not worth perpetuating. France is still its inimitable self, but, thanks to Simone de Beauvoir, it is a more enlightened nation on the subject of women's rights than it was in 1949. This history offers food for thought for those who

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<sup>32</sup> "Climbing a Tree to Catch a Fish," New York Times, Mar. 11, 1994, p.10.

<sup>33</sup> For a discussion of the French reforms and comparable reforms in Turkey and North Africa, where women's rights advocates confronted analogous patriarchal institutions, in Ann Elizabeth Mayer, "Reform of Personal Status Laws in North Africa: A Problem of Islamic or Mediterranean Laws?" Middle East Journal 49 (1995): 432-46.

imagine that universal human rights cannot or should not be accommodated within Muslim societies and that every institution that happens presently to be culturally sanctioned warrants preservation as a monument to local particularism regardless of its merits or costs.