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Human Rights, Women and Culture:
An examination of the possibility for universal human rights in the culturally-diverse world, with particular regard to the area of women's rights

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Snjezana Bilic
(Bachelor of Psychology)

Supervisor Dr Rodney Fopp

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Abstract

Despite their 'universal' acceptance in 1948, the interpretation and implementation of human rights standards differ widely from and within different countries, regions and cultures. This thesis examines these differences in the light of the two main bodies of interpretation – cultural relativism and universalism. Particular emphasis is placed on the implementation – or lack thereof – of women's rights.

In-depth analyses of the ideas of two leading human rights academics Charles Taylor (1999) and Martha Nussbaum (1995) is followed by the conclusion that there exist ground for universal human rights in our culturally-diverse world. This conclusion is based on the findings, which indicate that the reality of the claims for human rights demonstrate that acknowledging and implementing universality of human rights standards is of enormous importance.

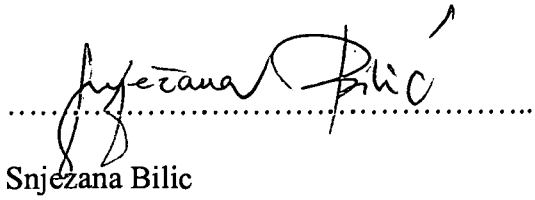
This thesis argues that human rights, as far as they define the universal interests of those excluded, discriminated against and powerless, can be considered universal and are thus necessary. On this basis of this argument, a proposal for the reconstruction of the current human rights model into one consisting of both global and cross-cultural perspectives to embody truly universal standards is presented. The approaches of Charles Taylor and Martha Nussbaum are considered as compatible theoretical preconditions for this purpose.

The proposal of this thesis about the assertion of the universality of human rights is not about suggesting that our views of human rights transcend all possible philosophical, cultural, or religious differences or represent a magical aggregation of the world's ethical and philosophical systems. Rather an emphasis is placed on the

reconstructed universal human rights framework to be more inclusive of the ideals and aspirations of all societies, and to reflect our common universal humanity, from which no human being must be excluded.

Statement of authorship

This thesis contains no material that has been accepted for the award of any other degree or diploma in any tertiary institution. This thesis contains no material previously published or written by another person except where due reference is made in the text.



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"The need for a new way of talking about and promoting human dignity may in itself be a feature of politics of the next century"

Chris Brown, 1999, p. 49

Introduction

Human rights are of enormous importance. The historical struggle for basic rights highlights this - from the assertion of baronial rights against kings in the Magna Carta, to the proclamation of citizen rights against feudal absolutism in the French Revolution, to the demand for social and economic rights in the era of industrial capitalism, the need for some implementation of rights conventions has been regarded as necessary (Dallmayr, 2002:173). Identifying such need the General Assembly of the United Nations in December 1948 proclaimed that human rights should be assigned a universal status as "all human beings are born free and equal in dignity and rights" (United Nations, 1993).

Fifty years since this Declaration we witness two occurrences of paradoxical nature. On the one side there is an increasing worldwide awareness about the existence of human rights conventions. However the other side highlights that this rising awareness about universal human rights does not seem to result in increasing implementation of its standards. Everyday we witness media reports on human rights violations, in which these are described as unlawful under international law. This fact highlights the heightened awareness about the issues while it also emphasises the ongoing occurrence of the violations. It would seem then that, although human rights today have become a part of global agenda, this acknowledgement has not meant global acceptance in practice.

Part of the explanation for this disjuncture between the established set of norms and their global applicability seems to reside in the controversial and two-sided nature of human rights debate. On one side of the debate there are those arguing that we need

human rights as these have always had the function of a protective shield that the weak and the dispossessed have used against the mighty and imposing. The other side questions this protective function of human rights and argues that, once taken out of their historical and social contexts, human rights are a double-edged sword, also serving as weapons of aggression and domination in the hands of the powerful. The issue arises once we recognise that it is these opposing arguments that have had an enormous impact in respect to the implementation of human rights conventions. In other words, the problem is that the conflicting debate is causing further stagnation in respect to adopting human rights standards worldwide.

The underlying basis for the divergence in the approaches resides in two conflicting theoretical discourses. One of the discourses proposes that human rights are essential and universal. Consequently, the argument goes, the universalist approach to human rights should be implemented. Those who hold this view of human rights are usually referred to as universalists. The other discourse argues that there are no epistemological or cultural bases upon which to establish universal human rights standards. Thus, the validity of human rights discourse is contested because cultural values differ and are relative to cultures. Those who uphold this position are usually referred to as cultural relativists.

In other words, while the first approach tends to argue in terms of affirmative principles of human rights, the latter argues that these affirmative principles are simply indefensible because the principles that we might use for judging behaviour are relative. The second approach also argues that universal human rights are Western phenomena, which are globally inapplicable as they embody values which

conflict with other strongly held values and conceptions. It is this argument that is often recognised as the justification for resistance to rights' universal conventions; non-Western governments and post-colonial critics argue that the entire human rights discourse is a product of Western neo-colonialism: a universalising Western viewpoint, which ignores the need for social and economic rights to take priority over individual rights (Stivens, 2000:19).

The impact of such arguments and the resistance that follows reveals itself particularly in the area of human rights for women, or women's rights. The universalist approach in the women's rights domain is seen by cultural relativists and by many non-Western governments as Western, absolutist, aggrandising and a threat because it contributes to the denial of the traditional and cultural identity of women. However, cultural relativism is also seen as problematic, as the advocates for universal human rights claim that it is used to justify the infringement of women's rights in the name of everything that one culture encompasses: tradition, religion, social cohesion, morality, or some complex of transcendent values (Afkhami, 2001).

Thus, universalist approach to human rights is problematic because there is no basis upon which we could establish universality of women's rights standards in our culturally diverse world. Cultural relativists and some non-Western governments who reject the implementation of women's rights conventions portray the promotion of women's rights as a neo-colonial move of Western feminists, which is, as such, inapplicable to women in non-Western contexts. Women, in non-Western societies are, argued to be, the symbol of a particular cultural order, in which to grant Western

notions of human rights is often seen as undermining the cultural framework of a particular society.

The relativist discourse, which asserts that all cultures have different values and those of a particular nation should be respected, is also problematic because it is often used as a justification by the governments that uphold the cultural practices which violate women's rights. Such cultural practices include genital mutilation, sati (Hindu widow immolation on a husband's pyre) and punishment according to Shari'a (Muslim Personal law), amongst others. Further issue arises as we witness that these cultural practices are imposed or exercised absolutely, thus highlighting that those enforcing them are absolutists and not relativists at all. In other words, although these governments are acting in ways that West defines as patriarchally autocratic they invoke the relativist argument to defend their right to act as they deem fit (and often in ways that the West would regard as abusing human rights). Aware of this apparent diversity, one cannot help but question whether the universality of human rights is indeed feasible in the culturally diverse world?

In order to address this question, the focus of this thesis will include an analysis of the two main (cultural relativist and universalist) discourses on human rights with particular interest as to the impact these have on women. The first aim of this thesis includes an analysis of these two theoretical accounts in order to address the validity of their claims. The second aim is to apply this analysis in order to determine which of these discourses provides a better framework for the protection of women's rights.

Accordingly, the chapters will include an analysis in the following order. In Chapter 1 the relativist discourse will be analysed. The aim of this chapter is to undertake a critical examination of the relativist language of human rights. The American pragmatist Richard Rorty will be used to exemplify this defence of cultural relativism.

Chapter 2 will include a discussion of the absolutist discourse of universalism. More precisely it will examine whether universal human rights are a Western construct and whether these can be applied universally. The analysis will include de-masking the theoretical basis of universalism and will consequently assess the practical validity of universalist claims as well.

The practical implications arising out of both discourses for women's rights will be analysed in Chapter 3. This Chapter will examine whether universalist or cultural relativist standards are more adequate to defend and justify women's rights. This examination will focus on women who come from diverse cultural backgrounds. The women's rights discourse will be analysed from the perspectives of Martha Nussbaum (1995) and Radhika Coomaraswamy (1999).

Chapter 4 will include a discussion of the potential theoretical approaches allowing for a defence of universal human rights. In particular, Charles Taylor's (1999) idea of the "overlapping consensus" will be explored. In this Chapter, Taylor's (1999) recognition of some of the issues with the current human rights discussions and possible resolutions for these will be discussed. In addition an examination of the implications stemming from the adoption of an "overlapping consensus" will also be included.

This will be followed by an analysis of Martha Nussbaum's (1995) approach in Chapter 5. Nussbaum's (1995) proposal for the capabilities approach will be examined as the one consisting of possible resolutions particularly for women's rights. The validity of this approach in respect to its resolutions for both universalist and cultural relativist issues within women's rights area will be a particular focus of this chapter.

Chapter 6 will consist of conclusion in which the possibility of universal human rights standards in a culturally diverse world will be reviewed. This thesis will consist of a proposal for all global schemes to incorporate diversity and protect cultural rights by including some safeguards for the protection of universal human rights.

The main argument of this thesis is that human rights need to be universal in scope and application. It will be argued that the universal status of human rights should be defended on the basis that the human rights movement enables the rights claimants to articulate their pain and suffering in a way that forces the world community to listen.

This thesis aims to contribute to the field of human rights, in respect to promoting the development of norms that are global in scope, while encouraging the recognition and concern for the gender diversity, diversity of culture, belief and value to be found among humanity. This approach to human rights allows for new areas of research and enables more attention to be paid to cultural, economic, political and social differences and their implications in respect to implementation of "universally" or internationally recognised human rights.

The next Chapter of this thesis will include an examination of a relativist discourse. The main theme of the chapter will include a review and an examination the validity of claims that the cultural relativists make in respect to universal human rights.

Chapter 1

Human Rights and Cultural Relativism

1.1 Introduction

This chapter will examine the relativist arguments commonly arising in debates about universality of human rights. This is followed by an analysis of various meanings and forms of relativism, including cultural relativism and value relativism. Finally, this chapter will include an examination of the validity of relativist claims particularly in respect to the evaluation of the status of values.

1.2 Analysis of relativist arguments about human rights

There are a plethora of perspectives on universality of human rights. The debate as to whether human rights should be considered universal or whether the concept of rights varies amongst cultures has been ongoing since the initial passing of Universal Declaration of Human Rights. For example, in 1947, when the Commission on Human Rights considered proposals for formulating a declaration on basic human rights, the American Anthropological Association submitted a statement expressing concern about the universality of the proposed declaration (Brown, 2000). The Association's main argument was that ideas about rights and wrongs, good and evil, in one society are not necessarily compatible with the ideas about these concepts in many other societies. In other words, ideas about rights and wrongs, good and evil, are relative concepts, varying from society to society. It is this debate about relativity of the cultures and values that has carried on into the present day, and consequently impacts on the universal applicability of human rights.

According to relativists the existence of universal human rights is contestable (Rorty, 1993; Brown, 2000). The basis for this claim resides in the notion that because there is no such thing as universal morality, there can be no universal human rights values either. Consequently, the attempts at ultimate justification for the universality of human rights are, as one of the most prominent relativist theorists on human rights Richard Rorty (1993:199) suggests, "basically misguided, even intolerable". Furthermore, human rights cannot be based on some notion of "human nature" as Rorty explains:

> ...because literature lacks useful work insisting on an allegedly ahistorical human nature; [considering this] there is probably no one such nature, or at least nothing in that nature that is relevant to our moral choices [that] separates human beings from animals except historically contingent facts of the world, cultural facts (Rorty, 1993:119)

Thus according to Rorty, there is no invariable human or cultural values which can justify a universalist approach to human rights. In this sense, his position is relativist.

Paradoxically, this does not stop Rorty from valorising Western notions of human rights at another level. According to Rorty (1993), the host "human rights culture" is the Western culture and this is made possible by economic and technological progress. Rorty (1993) elaborates on the Western "human rights culture" arguing:

> I quite agree that ours [Western culture] is morally superior, but I don't think this superiority counts in favor of the existence of a universal human nature ... We see our task as a matter of making our own culture - the human rights culture - more self-conscious and more powerful, rather than of demonstrating its superiority to other cultures by an appeal to something transcultural (Rorty, 1993:115).

Thus, despite Rorty's claim that Western culture is 'morally superior' the salient point to note is his relativism which challenges the universality of the human rights on the basis that there are allegedly neither universal moral standards nor an immutable

human nature on which to base universal notions of human rights. The latter are, for Rorty, a Western construct, on the basis of which he further implies their inapplicability, because what is relevant in the West may not necessarily apply in another (non-Western) context. It is precisely this argument that is often emphasised by non-Western governments in their rejection of universal human rights.

The universality of human rights is also challenged by non-Western governments on the basis that these are, as Rorty (1993) proclaims, a conception of 'West', which is inapplicable universally. Some non-Western governments[1] go further than Rorty, suggesting that, because human rights are a universalising viewpoint of the West, they ignore the need for social and economic rights to take precedence over individual rights (Bell, 2000). Consequently, the unsuitability of universal human rights standards is underlined as advocates of both Shari'a law and of Asian values argue that the rights of the individual in non-Western collectivist societies should never prevail over community (social, economic) needs (a notion which will be further illustrated in the Chapter on women's rights). Claims such as this, illustrate that these non-Western governments are arguing from a cultural relativist perspective emphasising that we cannot judge one culture by the standards of another. Nevertheless, in order to pursue further discussion we need to clarify the meaning of relativism.

1.3 The various meanings and forms of relativism

According to relativists, cultures and values are relative because we cannot and should not judge other cultures from the perspective of our own (Brems, 2001:23). One form

of this type of relativism is called cultural relativism. The cultural relativist approach emphasises the diversity and relativity of the cultures. An approach, according to which there are no independent criteria by which to judge between the competing values, is better known as value relativism (Flynn, 1973:43). Both cultural and value relativism will be examined more thoroughly in the following paragraphs.

1.3.1 Cultural relativism

The main argument of cultural relativism emphasises "the existence of infinite cultural variability" (Brems, 2001:23). While emphasising the sheer multiplicity of cultures, cultural relativists further assert that cross-cultural comparison and understanding is impossible because our own subjective cultural experiences cannot be used as a norm to perceive, let alone understand, another culture (Shestack, 2000:59). In other words, it is impossible to compare diverse cultures because everyone involved in the dialogue is unavoidably entrenched in their own specific cultural values (Marcuzzi, 2002:153). This often leads to an argument for tolerance of diversity (Brems, 2001:23).

1.3.2 Value relativism

While cultural relativism is an approach to the question of the nature and role of values in culture, which emphasises that those who observe other cultures are trapped by their own cultural frameworks (Herskovits, 1973:14), *value* relativism provides another explanation as to why universal values (including the values associated with human rights) are impossible to obtain. In this way, value relativism explains cultural relativism (at least partially); *value* relativism explains why, in the context of the

[1] In this thesis we will be referring mainly to governments from Asian and Islamic countries that reject

diversity of cultures it is impossible, as the cultural relativists insist, to avoid seeing others from the framework of our cultural lenses.

According to value relativists, the reason it is impossible to say that one cultural value is preferable to another is that it we do not have relevant neutral standards which apply across cultures (Flynn, 1973:43). This is because values cannot be measured by external, independent criteria, which would supposedly enable us to arbitrate differences between cultures (Fopp, 2001). Consequently, no reasons can be given to defend or justify one cultural value against any other; the independent space in which we could compare various cultural expressions and practices is non-existent. This epistemological view about the impossibility of arbitrating between different cultural values is sometimes known as known as "ethical relativism" but because this discussion is about values it is here called value relativism (Flynn, 1973:43). It is an epistemological view because it is based on a theory of knowledge, namely, without neutral and external criteria it is impossible to arbitrate between the beliefs, practices and values of other cultures.

1.3.3 The link between cultural relativism and value relativism

Non-Western governments and cultural relativists discredit the concept of universality of human rights arguing that in reality the standards the West identifies as universal "embody values which not only conflict with other strongly held values and conceptions, but which are incompatible with, and subversive of, certain forms of society and social institutions" (Macfarlane, 1985:1). From this argument it is apparent that when they are emphasising the "conflicting values" of diverse societies

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implementation of universal human rights standards

cultural relativists also reject universal human rights on the grounds of value relativism[2].

In other words, cultural relativists argue that it is impossible to establish universal human rights standards because everyone is locked within their own cultural frameworks (the essential aspect of cultural relativism resulting from the diversity of cultures). But the reason for this cultural relativist claim resides in their acceptance (however implicit) of the value relativist explanation according to which, it is impossible to arbitrate between the diversity of cultural beliefs, practices and values because there are no external, independent and neutral criteria by which to do so. In this way, value relativism, which while related to cultural relativism, provides the latter's ultimate defence. Value relativism is essentially an approach that acknowledges the epistemological[3] issues implicit in cultural relativism. In other words, cultural relativists make a claim that values cannot be compared, while value relativists show that this is because there are no independent criteria by which to adjudicate between these.

However, despite the claims to the contrary, cultural and value relativism do make claims which seem to use criteria to make judgements. For instance, although arguing that there are no criteria to judge, cultural and value relativists do judge human rights as being "incompatible with, and subversive of, certain forms of society and social institutions" (Macfarlane, 1985:1). Thus, a compelling question to ask is: if there are

[2] As discussed previously, value relativism claims that ethical (moral) values differ among individuals and cultures, and there is no criteria or method to decide between them, which leads to the conclusion that no moral truths exist (Brems, 2001:24)

[3] Epistemology is an approach that serves only as the basis for a discussion about the philosophical status of values (Flynn, 1973:39).

no independent criteria to judge, how can cultural and value relativists make such judgements?

1.4 Evaluating relativist claims in respect to the status of values

Cultural relativists argue that because there are no universal values, all we can do is suspend any judgment and engage in thoroughgoing relativism. In other words relativist principles are adopted as it seems that in face of such diversity the most appropriate approach to "cross-cultural understanding, the antidote to ethnocentrism, is simply to suspend judgment" (Calhoun, 1995:80).

Consequently, various cultural relativist theorists define relativism as an approach that is related to taking differences seriously and opening to new knowledge and understanding (Calhoun, 1995; Herskovits, 1973). In other words, these theorists propose a cultural relativist perspective because we are so embedded in our own culture that it is impossible to be liberated from our cultural blindfolds. In effect, cultural relativists emphasise that this lack of criticism implies that "our attitude should be one of tolerance and appreciation rather than the judgementalism that has so often marred human thought and practice" (Fay, 1996:3). The basis for the establishment of such associations lies in the postmodernist argument for tolerance which is based on the value relativist argument, that in our postmodern[4] world we are limited in standards and values, which could be used to argue between the diversity of conflicting values (Rosenau, 1991:114-115). As a result cultural and value relativism are often used as synonyms for cross-cultural tolerance and social diversity.

[4] The basis for this argument is gathered from the traits that encompass our postmodern world. These include: the primacy of experience, the subjectivity of truth, the complexity of human perception, the

However, the relativist approach does not seem to possess the consistent ground for such associations.

Cultural and value relativists, when claiming that "there are no absolute values, therefore we should be tolerant of others" are exposing the contradiction in their position. This is because according to this relativist position it is impossible to judge between diverse values and for this reason there can be no absolute and universal values (Herskovits, 1973:101). Thus the inconsistency within the position becomes evident once we consider that, if we argue along relativist lines and claim that we cannot judge between values, then we cannot judge whether the value of tolerance is superior to intolerance.

In other words, when arguing that "our attitude should be one of tolerance" cultural and value relativists seem to be proposing tolerance as the absolute and universal standard. When arguing about tolerance they are acting as if knowledge about values is possible; they seem to have decided in favour of a particular value, in this instance tolerance, although their relativist position denies them such a possibility (Fopp, 2001). This appears to be the case even in the relativist discussions about human rights values.

Relativists claim that in our diverse world, because there are no universal values, we need to be tolerant to all values of all cultures. However this argument implies that even if these diverse cultures value (and enforce) certain cultural practices that abuse human rights, they must not be criticized or interfered with. On the contrary,

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fragility of progress, the unreality of absolutes, the enormity of the spiritual, the plurality of worldviews (Rosenau, 1991:114-115).

according to cultural relativists, the human rights standards cannot and should not be enforced because they are subversive of certain forms of (Western) society and social institutions and are as such are intolerant of other (non-Western) societies and their social institutions (see Macfarlane, 1985). Here, cultural relativists again make a claim that invalidates their position. They claim that human rights standards are intolerant and should not be thus upheld, yet their position is that it is impossible to defend the proposition that tolerance is better than intolerance. This further highlights relativist claims about human rights standards as inconsistent.

The implications of the relativist perspective for human rights have obviously been troubling to many relativist theorists who, in personal terms, would like to see human rights values firmly ensconced in world affairs. Consequently they search for various justifications in order to affirm human rights, a search "which in itself speaks for the flimsy if not spurious, foundations of cultural relativism" (Shestack, 2001:61). As Shestack (2001) recognises, even theorists like Richard Rorty argue that human rights activists should not rely on reason and theory, but on passion and the courage of their convictions.

Thomas Brown (2000) [5] is another relativist who, like Rorty (1999), reveals his doubts

[5] Brown in his search for a perfect solution for the many issues surrounding universality of human rights argues that in order to avoid any form of moral relativism, we could reconstruct the universal model. This is where he introduces Jurgen Habermas's consensus model in which artificial foundation for moral debate within and between societies would be created under *ideal* conditions. Ideal conditions are emphasized, as lack of these would result in no consensus, but in differentials of power and interest. Namely, "the aim is to reach a situation where the force of a better argument will come through and be effective – once extraneous factors are removed and all voices are allowed to be heard an agreed framework for deciding normative issues is possible and transcultural notions of community can be argued without ethnocentrism" (Brown, 2000:44). However, Brown (2000) argues that to engage in this kind of dialogue is to undertake a re-evaluation of one's values that inevitably will be painful and with no guarantee that the eventual outcome will be more agreeable (Brown, 2000:44). In reality, Brown argues, that this ideal consensus is unachievable.

that there exists anything resembling universal values in the world. However, Brown (2000) at the same time recognises that the impossibility to find common morality does not mandate cultural or value relativism. According to Brown (2000), we need to construct a new approach to address human rights, and in this process value relativism is inadequate, because it disables any kind of cross-cultural communication and criticism, which further results in precluding "any notion of moral development over time within cultures" (Brown, 2000:43).

1.6 Conclusion

In this Chapter the claims of cultural relativists were analysed. It was recognised that the cultural relativists, in their arguments refute the universality of the human rights on the basis that it is impossible to compare and evaluate cultures because there are no universal moral standards.

Furthermore, cultural relativists defy universal human rights, arguing that these are of Western origins, and are as such, intolerant of other cultures and their practices. However such claims were found to be inconsistent with the relativist's theoretical position. In other words, an analysis of their claims highlights that, while relativists supposedly remove themselves from a position to judge values (for example, to evaluate whether tolerance is better than intolerance, or whether a more or less tolerant approach is adequate), they advocate and promote tolerance of cultural values, including those associated with different notions of human rights.

In order to justify their actions in another way, some cultural relativists, regardless of their theoretical frameworks, advocate that human rights activists should primarily

rely on passion and the courage of their convictions, rather than theoretical discourses. But if cultural relativists have chosen passion and conviction, they would seem to be arguing that passion and courage are preferable to reason and reasoning – a position denied by their value relativism which states that there are no criteria on which to base such judgements. Considering the inconsistencies found within the cultural relativist approach, the following Chapter will examine the validity of the human rights claims of the universalists.

Chapter 2

Human Rights and Universalism

2.1 Introduction

The previous Chapter examined the claims of cultural relativists in respect to human rights. The Chapter highlighted theoretical inconsistencies in the relativist position. This Chapter will aim to examine the validity of the universalist claims about human rights. The first section addresses universalist arguments about human rights. This is followed by an analysis of the validity of the theoretical grounds on which universalists base their arguments. Section three will include a discussion about the possibility of defending the existence of universal human rights values.

2.2 The analysis of the universalist arguments about human rights

The universalist conception of human rights states:

> ...that there are certain rights which, whether or not they are recognised, [that] belong to all human beings at all times and in all places. These are the rights which they have solely in virtue of being human, irrespective of nationality, religion, sex, social status, occupation, wealth, property or any other differentiating ethnic, cultural or social characteristic (Masykuri, 1996:11).

Universalists propose universal human rights because they are human moral rights of the highest order (Donnelly, 1990:40). This is because they are "the basis for claims that must take priority over considerations of utility, social policy, and other moral or political grounds for action" (Donnelly, 1990:40). Universalists also argue that because human rights are moral rights we, as human beings, are moral agents. Consequently it is our duty as such to judge human behaviour in moral terms in order to ensure that human rights of fellow human beings are secured (Langlois, 2000:147).

This idea of common morality can be recognised in the arguments of a universalist philosopher Alan Gewirth (1993). For example, Gewirth (1993:37) identifies morality "as a set of rules or directives for actions and institutions that bear especially on the interests of those other than the agents of those institutions", that is, its claimants. Morality principles, according to Gewirth (1993:37), dominate all other claims. Thus, Gewirth's (1993) argument resides in the notion that morality is the rule that institutions need to uphold, particularly toward those that make claims for a moral treatment. Furthermore, Gewirth (1993:37) makes a distinction between positive and normative conceptions of morality. The normative conception of morality refers to that which is actually upheld by persons, while the positive is a morality in which moral precepts or rules are valid and "thus, ought to be held"(Gewirth, 1993:30).

Consequently, Gewirth (1993) establishes the concept of human rights as the basis for a common morality that is normative at the philosophical level and universal in its scope. His argument consist of the premises that (1) rights protect interests everyone has in common; (2) commonly distributed interests are more fundamental than divergent interests; and (3) the status of these protected interests as rights is susceptible to rational proof (Gewirth, 1993:37-40). Gewirth's (1993) main argument defending the universal notion of human rights is based on the grounds that freedom and well-being are necessary goods and that the requirement of consistency establishes basic rights. Gewirth's (1993) position on human rights reflects the perspectives of most universalist advocates.

Like Gewirth (1993), universalist advocates often argue that rights should be established and implemented on the basis of a common humanity. This view of

humanity derives mainly from the Western philosophical conception of "natural law" regarding of human rights (Brown, 2000:37). According to the "natural law" theory all human beings have an essential human nature according to which certain kinds of human goods are necessary for human flourishing; this essential nature enables us, as moral agents, to think of the universal moral standards existing regardless of state, race, religion or civilisation; as moral agents we need to propose and advocate these standards as the basis and guideline of all human relations (Brown, 2000:37).

Most importantly, human rights under this "natural law" are seen as "innate to individuals, are an intrinsic factor in the quality of the human person" and as such must be secured by governments (Brown, 2000:37). They take precedence over state structures. This justification of rights on the basis of humanity is the idea that underlines the universalist conception of human rights (Camilleri, 1994:19). Paragraph five of the Vienna Declaration[1] reads:

> All human rights are universal, indivisible and independent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and on the same emphasis. While the significance of national and regional particularities and various historical,cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems to promote and protect all human rights and fundamental freedoms
> (United Nations,1993).

The Declaration's emphasis for human rights to be treated fairly and equally by all states has its roots in the natural law theory which sees rights as "the very prerequisite of civil coexistence between states" and for this reason the state that breaches these will legitimately be brought to account (Cassese, 1990:49).

[1] Detailed list of the Universal Declaration can be found in Appendix A.

2.3 The problems with universalism

2.3.1 Western influence

Universalists like Langlois (2001) and Taylor (1999) argue that there are two factors that enable the human rights discourse to claim universality. The first factor is the inclusive universal framework of human rights with its aim to deliver human rights for all universally. The second resides in the fact that human rights have been progressing rhetorically and practically in a dynamic speed throughout the world since their legal establishment in 1948. This dynamic nature of human rights is particularly evident as there are many nations that ratified the conventions or, if this is not the case, then a number of human rights non-governmental institutions and activists in these countries use the human rights rhetoric to pressure governments for implementation of the standards.

Nevertheless, both theorists agree that the crucial requirement for the discourse to continue claiming universality is that it must be open to debate, critique and expansion from diverse sources and traditions (Langlois, 2001; Taylor; 1999). However, in practice this rarely happens because, as Langlois (2001:147) argues, it challenges the Western liberal dominance of the world system. This is where the problematic nature of the universalist discourse becomes apparent.

The universal framework of human rights is established in a standard paradigm of liberal political thought (Langlois, 2001:147). However, such a framework has been often criticised as imposing Western liberal values. This is because liberal political thought proposes certain human behaviour as that of "the right reason". This "right reason" behaviour, although internationally agreed upon (but not by all countries), is

of Western basis. Nonetheless, in spite of this liberal universalists argue that such behaviour needs to have "normative force over all human persons" (Langlois, 2001:147).

Thus the problem with universalist discourse is that in theory it seems to be proclaiming that universal freedoms and rights are essential yet in practice this proclamation seems to be undermined due to the political dominance of just one cultural context that is Western. Similar claims about the political dominance of the West are used particularly by non-Western countries that reject the universal standards. The main justification for their resistance resides in the argument that Western liberalism is imperialistic and universal human rights, grounded in Western context, are a part of this imposition.

The non-Western countries that reject the universality of human rights have a point about the Western origins of human rights. After all, the notion that individuals possess rights, which they ought to be allowed to exercise against the state, did develop predominantly in the Western political environment: liberal individualism (Ignatieff, 2001:61). The fact that universal human rights are grounded in the Western political system is widely acknowledged and held even in Western universalist political opinion.

Universalists acknowledge that the desire to protect the rights of the individual belongs to the Western traditions. However they justify their universalist proposals by arguing that the Western influence is relevant only as it relates human rights primarily to the rights of individuals. The rights of individuals, according to universalists, might

have been acknowledged in the Western context but these are, nevertheless, the universal rights of all human beings and the violation of these by any other individual, group or authority is indefensible, regardless of the cultural context in which it takes place (Ignatieff, 2001; Donnelly, 1985; Halliday, 1995). Thus, universalists justify their arguments for universality on the basis that there are certain human rights values which are absolute and exist universally, even if not acknowledged as such. Such absolutist statements prompt further issues within the universalist framework.

2.3.2 Absolutist basis

The theoretical ground from which universalists argue is the opposite of that used by relativism. Universalists, when making claims about the existence of universal human rights do so from what is often regarded as an absolutist position. Absolutism, as the name suggests, is an approach that allows for judgments and claims to be made, and as such it is often associated with, imposing views on others.

Absolutism is, similarly to relativism, used in a plethora of ways.[2] However it is most often associated with a negative view about foisting views on others. Consequently many non-Western countries and cultural relativists recognise the universalist discourse of human rights as absolutist, aggrandising, imperialistic and as a discourse that imposes Western values on others (Stivens, 2000:19). In order to examine the validity of such criticisms, particularly the latter one, the following discussion will elaborate on universalists' claims about human rights values.

[2] There is an epistemological absolutism which is an approach that allows for open discussions, criticism and expansions (Fopp, 2001:200). Epistemological-value absolutism allows us to claim that values have the potential to be absolute or objective, however it does not call for imposition of values (Taylor, 1991:23).

2.4 Evaluating universalist claims in respect to the status of values

In this analysis the particular focus will be on assessing one of the principal claims that universalists rely on in their proposals about human rights, namely, whether universalists are legitimate when they argue that there exist universal values of right and wrong from which universal morality can be derived and defended.

According to universalists there are a number of philosophical common denominators between different cultures and political traditions that justify the existence of universalism (Tharoor, 2001:21). These common denominators highlight that the universality of human rights values is found in ancient and medieval sources as well as in non-Western cultures (Taylor, 1999; Langlois, 2000). Universalists even argue that such universal human rights values as condemnation of genocide, murder, torture, slavery are found in all cultures. The fact that different cultures did not espouse this view does not therefore invalidate it, is commonly accentuated by universalists

Furthermore universalists argue that "an essential universality even in the midst of considerable diversity" for human rights can be derived from the notion of "a large common core with relatively few differences "around the edges" (Macfarlane, 1990:6). The core of each human right has been argued by Tom Cambell (1986:10-11) to be both "the absolute and indefeasible element...the irreducible minimum which cannot be subject to any limitation" as well as

> the fundamental purpose or objective of the right in question, which forces us to think not only of the irreducible core but also of those consequential associated rights which are necessary for realisation of the central objectives of a human right.

In addition, the universalist discourse highlights that the universality of human rights can be derived from a mere fact that human right instruments are based on the assumption that they reflect universally accepted norms of behaviour. This assumption governed the approval in 1948 of the Universal Declaration of Human Rights by the General Assembly of the United Nations. It states that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (Baehr, 1999:9).

However, cultural relativists argue that the Universal Declaration is not universal as its basic principles that "all human rights are born free and equal in dignity in rights" is denied by Hinduism and that men and women should be treated equally is rejected by traditional versions of Islam (Brown, 2000:48). Consequently this argument inclines cultural relativists to suggest further that there does not exist anything resembling universal and absolute human rights values. To the contrary, relativists emphasise that twentieth-century philosophers, scholars who compare religions and anthropologists have all failed in their efforts to find those common characteristics in moral codes cross-culturally that establish a universal basis for human rights.

It is here that we recognise an aspect that needs further addressing. We witness that most universalist arguments are grounded in philosophical arguments about the existence of universal values yet the contradicting examples of Islamic and Hindu laws, that cultural relativists expose, underlines that in reality some of the universal human rights values are contested. Cultural relativists recognise and emphasise this

notion, suggesting that in practice universality of human rights values is an ideal that does not exist in practice.

2.8 Conclusion

The examination of universalist claims highlights that the idea of universal human rights is grounded in the theory of "natural law". According to the natural law human rights are seen as "an intrinsic factor in the quality of the human person" and as such these must be secured by governments. Furthermore, universalists justify their position on the basis that there are a number of philosophical common denominators between different cultures and political traditions which highlight that the universality of human rights values is found in ancient and medieval sources as well as in non-Western cultures (Taylor, 1999; Langlois, 2000). On the basis of this assertion, universalists even claim that such universal human rights values involved in the condemnation of genocide, murder, torture, slavery can actually be found in all cultures.

However, this analysis also underlined a number of problems within the universalist discourse. The first is that the political basis of the discourse comes from one particular political environment: Western liberalism. Consequently, the universalist discourse grounded in Western liberalism was found to be inconsistent with its universalist claims about human rights. The second problem resides in the absolutist basis of the universalist discourse. Universalism with its theoretically absolutist approach is too often associated with negative sentiment, and thus criticised a discourse that imposes Western values on non-Western countries.

As a part of this antagonism, universalist arguments that there exist absolute universal values is found to be too often challenged and even refuted by many non-Western countries and by those that identify themselves as cultural relativists. This analysis highlighted that on one side there are universalists who propose the existence of universal values in a philosophical manner, and on the other there are sceptics who argue that the moral universals do not exist. For this reason the following chapter will address the applicability and validity of both discourses in the practical domain of women's rights.

Chapter 3

Cultural Relativism, Universalism and Women's rights

3.1 Introduction

The previous two chapters examined the theoretical claims of universalist and cultural relativist discourse in respect to comprehending the universality of rights. In order to examine the validity of claims of both universalists and cultural relativists in the practical domain, this chapter will explore the implications of the discourses on women's rights. It is in the area of women's rights that both discourses serve as very influential theoretical ground, thus impacting on implementation of women's rights conventions.

An analysis of the universalist discourse on women's rights will be addressed in the first section of this chapter. This part will specifically address the women's rights issues within the universal human rights framework[1]. In addition, the analysis undertaken will include a discussion of the introduction of the Universal Human Rights Declaration where certain states reserve their right to implement universal women's rights. Considering that states that dissent from implementing are usually defended under the cultural relativist umbrella, the second part of this chapter will explore the culturally relativist justifications that serve such resistance. The practical implications that result from this lack of implementation will then be analysed within

[1] It is important to note that in this chapter, women's rights will be discussed not as a separate concept, but as a part of universal human rights. This will be done on the basis of the 1993 UN Declaration on the Elimination of Violence Against Women which states that "the human rights of women and the girl-child are inalienable, integral and indivisible part of human rights (Bulbeck, 1998:71). Thus the terms "women's rights" and "human rights" will be discussed as representations of one and the same concept.

the Islamic and Asian context, as it is often these countries that pose challenges to the implementation of the universal convention for the protection of women's rights.

3.2 Identifying the issues within the universal women's rights framework

The Universal Declaration was proposed with the frame of reference for all citizens within their national contexts to make claims for their rights. However, it has been argued that the Declaration is potentially less than universal. The main argument used by the feminist theorists emphasises that experience shows that the Declaration is, in many respects, applicable only to men's rights[2] (see Kerr, 1993; Bulbeck, 1998). In recognition of this and in order to provide for specifically women's rights the Declaration has been supplemented with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[3] (Bullbeck, 1998). The discrimination referred to, is defined in Article 1 as:

> any distinction, exclusion or restriction made on the basis of sex which has the effort or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field
> (Magnarella, 2003:23).

According to Article 2, even if there is no discriminatory intent, a State Party might be held responsible for a breach of the CEDAW by virtue of practices that have a discriminatory effect.

One of the most distinctive features of the CEDAW is its requirement that States parties undertake affirmative steps to modify cultural practices that impair the enjoyment of equal rights between men and women. Thus, CEDAW requires

[2] The other implications arising out this will be addressed in section on problems with universal discourse.
[3] Detailed list of CEDAW texts is quite extensive, thus it was not included in the appendices. However it can be accessed at http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm

signatories to eliminate discrimination against women in civil, political, economic, and cultural fields (Leila, 2001). Signatory states must work to ensure equality in public and private life and, in particular, within the framework of the family. Article 5 (a) requires State Parties

> to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or an stereotyped roles for men and women (Magnarella, 2003:23).

The Convention permits ratification subject to reservations, provided that the reservations are not incompatible with its object and purpose. There have been numerous countries that have filed many formal reservations - perhaps more than to any other major human rights treaty (The UN website for the Division for the advancement of women). Some of these limit the obligations undertaken by the signatory in vague and sweeping terms, while others focus on areas of fundamental importance to the achievement of women's equality, such as family law. Consequently some reservations, indeed, appear to be inconsistent with CEDAW's "object and purpose" (Leila, 2001).

3.3 CEDAW reservations and inconsistencies

In order to explain these inconsistencies, it is worthwhile to firstly consider the following examples. For instance, Egypt has inserted the following reservation:

> The Arab Republic of Egypt is willing to comply with the content of (Article 2), provided that such compliance does not run counter to the Islamic Shari'a ... This is out of respect for sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses(Magnarella, 2003:24).

In addition, it is also interesting to consider the reservation entered by Iraq:

> Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by (certain of its) provisions ... (Iraq's accession) shall be without prejudice to the provisions of the Islamic Shariah[4] according women rights equivalent to the rights of their spouses so as to ensure a just balance between them ...(Magnarella, 2003:24).[5]

The inconsistency on CEDAW's object and purpose appear obvious, as with these reservations, Egypt and Iraq are not just protecting their religiously sanctioned customs but they appear, in using the language of "balance" between spouses, to take issue with the Convention's assertion that men and women should enjoy identical rights. The ideology conveyed through these reservations maintains that men and women are not identical and that even though many of their rights may be different, they are complementary and of equal value (Magnarella, 2003). Hence, for them, difference is not the same as discrimination or a breach of women's human rights. Nevertheless, it is such culturally particular laws that have been emphasised by many Third World countries in their rejection of, or the reservations placed on, the measures of CEDAW. Thus these Convention standards do not ensure the protection for human rights of all women[6].

However, the states that place reservations justify them by arguing along culturally relativist lines, claiming that the Convention have originated from a particular Western-individualistic context, and is thus inapplicable in the culturally-diverse world. In addition, some go even further to argue that these articles are nothing but forms of Western cultural imperialism – as attempts by the West to demean and alter

[4] For additional information on the "treatment of women's rights" under the Shari'a law, see Michael's D'Souza, (2000), "Democracy is that it?" *New Internationalist.* Issue 324, pp. 22-24

[5] Detailed list of CEDAW reservations is quite extensive, thus it was not included in the appendices. However it can be accessed at http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm

[6] In this thesis the particular focus will be on women from Islamic and Asian countries

traditional, religiously-based practices (Ignatieff, 2001). This provides even further justifications for the ratification of Convention with reservations that allegedly protect non-Western states religiously sanctioned customs.

3.4 The Islamic challenge

The Islamic challenge to women's human rights has been identifiable since the introduction of the Universal Declaration. When the declaration was being drafted in 1947, the Saudi Arabian delegation objected particularly to Article 16, involving the free marriage choice and Article 18 on the freedom of religion (Ignatieff, 2001). The Saudi delegate's proposal to the committee examining the draft to the Universal Declaration has been reverberating ever since in Islamic encounters with Western human rights. It stated:

> The authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by Western civilisation and had ignored more ancient civilisations which were past the experimental stage and the institutions of which, for example marriage, had proved their wisdom through centuries. It was not for the Committee to proclaim the superiority of one civilisation over all other[s] or to establish uniform standards for all countries of the world (Ignatieff, 2001:59).

This was, as Ignatieff (2001:59) recognises, a defence of Islamic faith and a defence of patriarchal authority at the same time. Consequently the argument of Saudi delegate emphasised that "the exchange and control of women is the very basis of traditional cultures and that the restriction of female choice in marriage is central to the maintenance of patriarchal property relations" (Ignatieff, 2001:59). On the basis of these objections to Articles 16 and 18, the Saudi delegation refused to endorse the Declaration (Ignatieff, 2001).

The antagonism of the situation has been growing since the 1970s. Advocates supporting the Islamic challenge have been emphasising that "the Western separation of a church and state, secular and religious authority is alien to the jurisprudence and political thought of the Islamic tradition" (Ignatieff, 2001:59). The freedoms articulated in the Universal Declaration make no sense within the theocratic bias of Islamic political thought (Bulbeck, 1998:74). In addition, the right to marry and found a family and to freely choose one's partner directly challenges Islamic law that insists on the family choice of spouse, polygamy and the keeping of women in puridah[7] (Ignatieff, 2001:60).

In Islamic eyes, the universalising rights discourse implies a sovereign and discrete individual, which is offensive from the perspective of the Koran (Stivens, 2000:20). According to Fatima Mernissi (1991:21-2; as cited in Bulbeck, 1998:74) in Islam "the idea of the individual in a state of nature, in the philosophical meaning of the word, is non-existent". Muslims see individual identity, as a disturbance of collective harmony and traditional Muslims should be submissive to the group. Liberal democracy with majority rule and individual rights cannot coexist with the application of Shari'a, "the expression of the will of God for the betterment of man"[8] (Bulbeck, 1998:74). Thus, neither universal human rights of men nor of women can be implemented under the Shari'a law. Under such law the needs of the individual can never prevail over community needs.

[7] "Puridah" is the practice that includes the seclusion of women from public observation by wearing concealing clothing from head to toe and by the use of high walls, curtains, and screens put up within the home. http://www.kings.edu/womens_history/purdah.html

[8] "Man" in this quote is used as a masculine noun referring to all human beings

Moreover, whilst the law proscribing individual rights can be damaging to men as well, Shari'a has particular impact on women, because of its patriarchal nature. The Islamic law makes distinctions between men and women; not all rights and privileges available to men are available to women (Bassiouini, 1988). Shari'a law maintains men as household heads with exclusive rights to allocate property and thus make all decisions in, and on behalf of, all the members of the family (Bulbeck, 1998:71). In addition, under Shari'a law, a male Muslim has the right to unilaterally divorce his wife, while she can only divorce her husband through a judge's determination (Bassiouini, 1988).

However, some Islamic theorists like Bassiouini (1988) would argue that the fact that there is not absolute parity in all rights and privileges does not mean that women do not share an overall equality with men. According to the Koranic principle upon which Shari'a rests on "they (women) have rights similar to [those] over them according to what is reasonable, but men have a degree [of responsibility] over them" (al-Baqara 228)[9]. However, such principle can also be considered as problematic as it does not ensure the equality of rights of both men and women.

The notion that men have the responsibility over women's rights could be argued as problematic, because such power can be misused by men (perhaps even out of the best intent, e.g. for the overall good of the community). One of the most extreme and distressing examples of the misuse of the power is evident from the Afghanistan, where under Shari'a law, the previous Taliban government violated the rights of women, depriving girls and women of their basic rights: education, health and

[9] Accessed at (http://answering-islam.org.uk/Sharia/)

employment outside of home; they became "veiled ghosts deprived of even the most basic of human rights" (Agosin, 2001:2).

Furthermore, the current misuse of power under the traditional Shari'a law is evident from the recent Amnesty International findings on women's situation is post-war Iraq. The findings highlight that Iraqi fundamentalists still perform "honour killings"[10] which are justified under Shari'a law. The police are unable or unwilling to act against these crimes (Amnesty International, 2005). The example of Iraq highlights just one example illustrating that certain cultural practices infringe upon basic human rights to life.

3.5 The Asian challenge

The universality of women's rights is challenged currently not only from the side of Islamic values but also from the Asian-Confucian side. Although the modern nation-states in Asia have risen to international economic and political prominence in the last two decades, leaders and individuals within these have reacted to universal human rights discourse with "the brand of outraged cultural relativism referred to as Asian values" (Bell, 2001:22). The principal agents of this counter trend have been state agencies and political figures from Singapore, the People's Republic of China and Malaysia (Bell, 2001:22-24).

Asian values are understood as an "emphasis on the community and the societal harmony, over the individual, a sense of loyalty and duty toward one's family, self-reliance, thrift, a general tolerance of benign authoritarianism" (Samuels, 1999:712).

[10] "Honour killings" refer to male relatives murdering girls and women for alleged immoral behaviour.

The concept is believed to have arisen from the patriarchal Confucian ideology, which maintains that harmony is to be maintained by adherence to the social order. In Asian countries upholding Confucian ideology, women are expected to remain at home and play no part in public affairs. They were advised to abide by "The Three Obediences"[11] and "The Four Virtues"[12] (Samuels, 1999:718). Under these cultural precepts women were absent from the public sphere, and practices such as foot binding and concubinage reinforced their subordinate position in society (Samuels, 1999:718).

Today, although there have been some major cultural transformations in respect to the role of Asian women in general, the unequal position of some Asian women is still prevalent (Nussbaum, 2000; Li, 1995). The majority of the reviewed literature on Asia lists women's rights and women's exploitation among a number of "negative particularities", which are claimed in need of urgent reform (see Ariel-Fagot, 2000:18). Although human rights theorists and activists in Asia have been arguing that certain civil and political rights, such as freedom of expression, are claimed necessary to promote the kinds of economic, social and cultural rights that would benefit those fighting against discrimination, there are women in some parts of Asia[13] who are simply not granted human rights.

[11] According to "The Three Obediences" women have no exclusive power of control, but rather the principle of the "three submissions": "while not yet married, she submits to her father; when married, she submits to her husband; when the husband is dead, she submits to her son." (Mingqui, 1997, 'The Four Books for Women: Ancient Chinese texts for the education of women').
Accessed on http://nacrp.cic.sfu.ca/nacrp/articles/fourbookwoman.html

[12] These include: female virtue, female speech, female expression, and female accomplishment; and these promote the "wise and worthy wives and good mothers" character model of Confucian ideology (Mingqui, 1997).

[13] This thesis particularly focuses on women in Asian countries that still uphold Confucian ideology

For instance, in China, the last decade has witnessed a steady decrease in women's participation at all political and managerial levels, and increasing confinement to health and family planning at grassroots levels [14] (Bulbeck, 1998:26). Thus, while the massive task of economic reconstruction in the 1950s needed the labour of women, the current growing urban unemployment highlights that the state is wasting education and training to ensure the status quo in gender relations that is seen as necessary for China's social stability (Rai, 1995:187).

The advocates supporting the status quo argue that to demand the equal status of women in accordance with universal criteria would damage the integrity of Asian culture[15] and tradition, making it more open to outside influences (Coomaraswamy, 1999:168). For this reason, such advocates argue that the idea of women's rights (or human good in general) cannot be drawn from universal principles but should be drawn from the local culture[16]. However, the local traditional cultural notions appear inadequate to provide for the basic rights of women in some parts of Asia. The case study of Xiarong Li (1995) illustrates this argument by highlighting how uncritical and unreflective local traditional cultural notions of women's well-being have been detrimental to women's struggle for a better quality of life in Confucian Asia.

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[14] The essay containing the analysis of women's positions in China and Taiwan is included in Appendix B.

[15] However, in reality, of course, there is no single Asian culture: each of these societies has modernised in different way, within different political traditions and with differing degrees of political and market freedom. In other words, it is useless to talk about "Asian values" because Asia is a diverse continent with many different religions, cultures, histories and traditions. Although these have some shared values and commonalities, such as the concept of duty and responsibility, ideal of equilibrium, concept of responsibilities to the family rather than to the individual, however clearly not all Asians share the same 'Asian values' (Mauzy, 1997:215; see also Freidman, E., (1999), *Asia as a Fount of Universal Human Rights*). Such recognition just confirms Ignatieff's (2001:44) assertion that all human rights are embedded in a social context [with their principal function being shaping social relations], implying that there is no special class of human rights that are rights of society or any other collectivity. On the contrary, it can even be argued that many of the Asian values are equally Western ones, and these values are constructed by Asian leaderships rather than beliefs held by ordinary people (Milner, 1999:58). Yet it has proven useful for Asian authoritarians to argue that they represent a civilisational challenge to the hegemony of Western models.

According to Li's (1995:409) study on the rights of women in China, "traditional accounts [of women's well being] are inadequate, as these most often tell us characteristics of the lives of women that derive from male desires to have power over them". Thus in China[17], patriarchy is justified under the notion that women are less reasonable or less rational than men and can only take submissive and obedient roles[18] (Li, 1995; Ackerly, 2001). This portrayal of women as inferior to and dependent on men is the underlying factor impacting on dominant gender ideology. Hence, patriarchy, ironically justified under the umbrella of cultural relativism is the prevailing gender ideology that has in both Islamic and Asian countries resulted in disadvantageous situations for women.

3.6 Analysis of the relativist and universalist discourses in women's rights domain

3.6.1 Problems with cultural relativist approach

3.6.1.1 Defiance of standards for human rights of women under the hidden patriarchal agenda

The central obstacle in the human rights discourse is, as the previous analysis underlines, the presence of culturally relativist dogma. Cultural relativists, as the Muslim secularist and human rights theorists Reza Afshari (1994:7) rightly points out, "share the view that human rights do not constitute the cultural ideal adhered by the world's ethical systems, with the exception of West". Afshari (1994:7-8) further identifies, what she calls "the most uncompromising" relativist stance according to which "local cultural traditions (including religious, political and legal practices)

[16] Martha Nussbaum (as cited in Li, 1995:409) calls this "local tradition relativism".

[17] This is the case for other Asian countries still influenced by Confucian ideology, as well as for Islamic countries

properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society". According to Afshari (1994:8) "this position espouses the view that culture is the supreme ethical value, more important than any other. Human rights, in particular, should not be promoted if their implementation might result in a change in a particular culture". Afshari (1994) shows this approach as the one prominently used in the views of most conservative Islamists. On the basis of their culturally relativist beliefs, some Islamists, as Afshari (1994) illustrates, reject, explicitly or implicitly the universal applicability of the Universal Declaration of Human Rights.

Thus, the states that reject universal human rights justify this on the basis of cultural relativism, arguing that all cultures are particular and there is no such thing as a universality of principles. According to this relativist view, as Li (1995:410) indicates in the Chinese case, "any attempt to produce cross-cultural notions of human well-being is bound to protect certain understandings of the human good and to dismiss others". Thus these non-Western countries reserve their right to implement universal human rights arguing that because this is a Western concept it is bound to bring about Western understandings of human good, and dismiss non-Western ones.

Here it is important to note that the governments rejecting a universality of standards as Western, on the basis of cultural relativism, do not posses the ground for such claims. In other words, those that reject universal human rights standards because they claim that these are in reality Western, are not, despite their claims to the contrary, arguing along relativist lines but rather in an absolutist fashion. This

[18] This patriarchal notion is present to some extent in many Western countries, however the author here is using the extreme cases where tradition is used as an justifying argument in rejecting the universality of human rights

practice of absolutism is evident as Non-Western governments, whilst refusing the universal human rights, actually promotes the local and traditional laws in an enforced, absolutist way, as the only principles legitimate for the non-Western countries. In other words, non-Western governments in this ratifying process use the rhetoric of relativism but the practice of absolutism.

Nevertheless, Islamic and Asian countries further justify their resistance to the universal human rights standards arguing that these are inapplicable because they, are not only a Western construct, but are also of Western imperialistic nature. This was highlighted above in the discussion on the state reservations on CEDAW. The basis for rejecting the principles on the basis of this "Western imperialism" argument, as Li (1995) recognises, resides in the fear of non-Western governments that dominant social prejudices about the understanding of human value would be imposed on women by the stronger foreign culture, in this case Western culture. In respect to women's rights, considering that societies are often patriarchally structured and controlled by dominant groups, cultural relativists do have a point for suspicion: the dominant comprehension of human rights are more than likely to put females at a disadvantage[19] (Li, 1995:409).

However, the same difficulty besets cultural relativism itself for two reasons. Firstly, the countries that reject universal standards for women do so out of patriarchal reasons, amongst others. Secondly, adopting a culturally relativist approach precludes the possibility for the establishment of universal standards for all people. And yet the situation without universal norms begs the question of who will evaluate and arbitrate

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standards (particularly the case in many Islamic and Asian countries)

[19] This was illustrated by highlighting some of the inadequacies of Universal Declaration of Human Rights

on human rights and attend to the claims of all the rights claimants: should it be the local government (i.e. state), the traditional philosophical or religious doctrines, or women's own perceptions of their interest? As the analysis of Islamic and Asian contexts makes clear, the cultural laws, such as Shari'a and Confucian laws, have shown to represent the patriarchal status quo and put females at a disadvantage.

3.6.1.2 Inadequacy of local traditional relativism to provide for women's rights

Nevertheless, the justifications shielded under the umbrella of culturally relativist discourse hinder the universal standards with the notion that these, as Western constructs are culturally insensitive and neglecting of historical and cultural differences (Bell, 2000). Thus, the universality of human rights standards for women is inapplicable as different cultural traditions and communities diverge in their understanding of human values as well as of women's status and roles in society (Li, 1995:409). For this reason, the argument goes, cultural law should determine what kind of rights women would have. So, if Shari'a states that men should be the head of the family that make decisions on behalf of his entire family, then that should be so in practice. If this means that a woman in that family will not have equal rights to participate in decision-making processes, because this is culturally appropriate, then this is also justified under cultural relativism.

Consequently, this leads to the conclusion that the argument of such cultural relativists, according to which we cannot arbitrate between the cultural practices that a certain culture upholds and proposes, allows for the persistence of gender inequality. The case of East Asia where the plights of 'comfort women' are largely ignored, as

these women had no power or language to articulate their claims, can be used to support this argument.

3.6.1.3 The consequence: maintenance of status quo

The long-term problem with the adoption of the culturally relativist approach is that it results in what Li (1995) calls a "false consciousness" that further aids to maintaining the status quo. Li's (1995) study on women in China highlights this argument. The study showed that the results of maintaining the patriarchal status quo and long-term subordination results in "false consciousness", which further influences, the willingness for change for many women in China (Li, 1995). Women in China are still captive to their long-standing patriarchal society propaganda. Li (1995) has argued that "growing up in Chinese sexist morality, women have deposited within them a "psychological complex": the inferior morality" (Li, 1995:416). This attitude highlights the argument that women in China "have not transcended the male domination and have taken it so much for granted that they even inflict the repression on themselves" (Li, 1995:416).

Martha Nussbaum (1995: 61-105), a women's rights theorist whose approach will be discussed to a greater detail in the following chapters, warns us of this, arguing that implementation of universal standards is necessary as "one must not assume that the statements of the people who have long been subordinated are reliable indicators of what is really essential." For this reason we cannot rely on the unreflective and uncritical self-expressions serving as a justification for and highlighting the cultural relativist cause, as these are misleading. Instead, the implementation of universal human rights for women is crucial as this will provide education, raise consciousness,

and make sure that women have "adequate information about alternative ways of life and real freedom to form a conception of the good without fear" (Nussbaum, 1995:100-105). Nevertheless, for this to take place even the universal framework needs further reconstruction, as one of the main problems with the lack of implementation of women's rights in both Asian and Islamic countries resides even within the problematic nature of the universal framework.

3.6.2 Problems with the universalist approach

3.6.2.1 Defiance of standards for human rights of women under the hidden patriarchal agenda

The problematic nature with the universalist approach resides primarily in the universal model being restricted only to men's rights. Agosin (2001) rightly recognises that most governments that propose universal human rights, as well as non-governmental organisations (NGOs), still define universality of human rights in terms of male models and patterns of thinking. Consequently this is still causing women's rights abuses to be so pervasive and systematic that they are regarded as part of the natural order of things (Kerr, 1993). In other words, because the universal human rights are defined in terms of male models and patterns of thinking, some universalists tend to justify some of the women's rights violations under the notion of patriarchy. For instance, the fact that women are being denied their civil and political rights as equal citizens in China, might be justified by patriarchal universalists who might argue that these civil and political rights are important for men, and not so much for women. Such patterns of thinking will obviously lead to ignorance of the importance of all universal human rights to be applied to women equally.

3.6.2.2 Inadequacy of the current universalist approach to deliver human rights for all

The further problems with such a universalising approach are evident from the fact that the Declaration of Human Rights with its prioritising of civil and political rights has left the responsibility and protection of social and economic rights (reduced to a notion of basic needs) to national governments and international development agencies. The problem is that such responsibility was not, however, accompanied with any binding guarantee that civil and political rights for women actually exist in these states (Kerr, 1993).

Thus, relying on national governments to deliver civil and political human rights can be an uncertain and controversial process. In Islamic countries, the governments do deliver human rights within the Shari'a context. However as discussed above, this law does not ensure the equality of human rights to both men and women, and it is particularly damaging to women. In Asia, some governments that advocate Asian-values, propose that political and civil rights should be deferred until other, more pressing, economic rights are dealt with. For example, in a 1993 statement Singapore's then Minister for Foreign Affairs Wong Kan Seng declared that, if political and civil human rights are an obstacle to economic progress, they would not be accepted, and an overemphasis on individual rights would retard the process of development (Apodaca, 2002:886).

3.6.2.3 The consequence: maintenance of status quo

The consequences arising out of this lack of attention to human rights results in the absence of legal intervention to protect women in the community and in the home.

This further keeps devaluing women's roles and keeps even the traditional male-dominated hierarchy of the family intact (Coomaraswamy, 1999:170). Consequently the fact that civil and political rights focus on protecting the individual against the state in the public sphere, rather than addressing the private sphere of family and home, has meant that issues such as violence against women, including rape, are generally not considered human rights violations (Samuels, 1997:714).

Even today, although the recognition that the focus on civil and political rights ignored women's concerns has helped broaden the international human rights agenda (Samuels, 1997:714), we still witness the gender-based violations that cut across cultural, social and political lines. Many of these abuses discriminate against status as equal partners and citizens. Widow burnings (sati) and honour killings are just two of the most extreme examples[20] (Agosin, 2001:2).

Thus, one of the main issues within the universal framework is that in many ways it resembles male models and patterns of thinking, signifying a man, "endowed with reason, unfettered and equal to other men" (1999:170). However, it is also the fact that, regardless of its many flaws, a universal approach is essential and justified on the basis that women's rights would not have gained any ascendancy in the world today if there hadn't been a universal discourse.

Today, although the universal model still suffers from patriarchal theories and practices, liberal feminists have been working on extending this model to women, who should also be recognised as "endowed with reason and unfettered in spirit"

[20] Both sati and honour killings are illegal, however they are performed to this day in some Islamic and Asian societies.

(Coomaraswamy, 1999:170). This project has received widespread support from all sectors of the women's movement, especially at the international level. Many Third World feminists (Li, 1995; Coomaraswamy, 1999; Afkhami, 2001) who, while acknowledging their strong reservations about male-based ideas in their defining, classifying and excluding large segments of world's population, claim that they are active human rights activists who promote international standards and urge people to discipline and punish the violators of those standards.

3.7 Proposal for the universalising of women's rights standards

Thus the universal human rights framework is essential because, as Radhika Coomaraswamy (1999) a women's human rights theorist claims, it offers an acknowledged vocabulary to frame political and social injustices, which women use to articulate their grievances. Consequently the availability of human rights discourse for the translation of women's rights into internationally acceptable norms allows for a greater visibility for the issues of women's rights[21]. Furthermore, the diverse machinery of the Universal Declaration set up at the international level for the

[21] One way in which human rights doctrine is transformed is through a radical reinterpretation of the earlier generation of rights to meet the concerns of women. Thus, for instance, the rights to life and freedom from torture are being invoked as new rights that should be reexamined in light of violence against women (Coomaraswamy, 1996:178).
Coomaraswamy acknowledges another aspect of human rights doctrine that is challenged by women's rights - the right of self determination, which is a founding right and first article in both international covenants on civil and political and economic and social rights, and the ultimate basis for pluralism in the world today. According to Coomaraswamy, we have learned through this right to respect the rights communities to speak their own language, practice their own religion and live their own lifestyle. The UN declaration on the Rights of Minorities has made these norms into international standards. However, what if these cultures have aspects that violate the rights of women? This is perhaps the most controversial aspect of women's rights. The right to self determination is pitted against the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) articles, which oblige the states to remove any inconsistency between international and human rights law and the religious and customary laws operating within its territory (Coomaraswamy, 1996:179).
Though this dilemma of the self-determination of groups brings to mind issues such a genital mutilation ad Shari-a-type punishment, many states are guilty of violations because they do not want to antagonise their minorities. This is particularly true in the multi ethnic states of Asia where a pattern of live and let live has come to guide communal action. As a result the applicable personal law differs for women depending on which community they belong to. Marriage, divorce, custody of children, inheritance, maintenance and so on, are decided by which community they belong to and not by their national status. Many of these personal laws violate the basic tenets of the women's convention (Coomaraswamy, 1996:179). This can be seen from the above-discussed reservations of the various states.

promotion of human rights remains available for human rights activists (see Ackerly, 2001). This access to the international means of implementation is also an important development in the search for women's equality[22] (Coomaraswamy, 1999:170).

Human rights are adequate as they allow us to deal with issues of violence and injustice not only within many different indigenous traditions but also with some measures of universality and a common humanity (Coomaraswamy, 1999). The discourse has resonance in the everyday experiences of individuals. If this were not the case the concept of human rights would not develop so dynamically and would not have become used by such different groups throughout the world. Consequently, the acceptance of human rights as universal must result in worldly acceptance of women's rights under this framework of rights. As Coomaraswamy (1999:170) points out, this is a major landmark in the international struggle for women's rights

Finally, it could also be argued that women's rights have retained and thereby strengthened, the conceptual universality of human rights (see Cooke and Lawrence, 1993). Those who fight for women's rights are in fact struggling for the rule of justice. They are not, as patriarchal advocates argue, trying to claim for themselves rights and privileges at the expense of the general welfare. For a woman to be educated and to have equal access to work opportunities does not mean the end of the

[22] According to Coomaraswamy, equality is a fundamental principle of human rights and the first step in the recognition of women's rights. Recent arguments about universality and difference have been applied to the equality provisions of international human rights. The principle of non-discrimination against women is firmly entrenched in international law and is the anchor of all women's rights and the core subject of the women's convention. But feminist writings have experimented with the concept to bring in the issue of difference - the special quality of being female as an aspect that should be respected by the principle. Thus the feminist demand that the human rights conception of equality be reconstructed to include and understand gender difference (Coomaraswamy, 1996:179). Coomaraswamy elaborates on the idea, recognising that equality in the past meant women's access to places and positions that were traditionally male, however equality today means addressing gender-specific issues, such as treatment of pregnant women, violence against women and so on. Namely, it is argued that sex-specific violations should gain visibility as an aspect of equality in the world of international

family and the unweaving of the social fabric (Cooke and Lawrence, 1993:317). The elimination of discrimination against women is the indispensable step that must be taken if a just society is to be created.

3.8 Conclusion

There are universally agreed human rights laws and conventions, which guarantee rights and freedoms to all people. However, this universality, especially in regard to the status of women has been questioned due to the impact of universalist and relativist approaches on the women's rights discourse.

The women's rights issues that arise out of the Universal framework of human rights consist of the notion that the proposing (Western) governments define human rights in terms of male models and patterns of thinking leading to gender-based discrimination. Patriarchy is also the hidden but powerful agenda in both Islamic and Asian countries, as these challenge universal human rights discourse justifying this resistance in the name of cultural relativism. Whilst the Islamic and Asian reservations on the Women's Convention have been justified under the culturally relativist umbrella, the cause of the reservations has often been the patriarchal nature of the culturally specific laws.

Nevertheless, because this analysis demonstrated the imperative to implement human rights for women, we concluded that universal human rights discourse, because it consists of human rights agenda, has the most plausible ground to situate these. Nevertheless it needs to be emphasised that there are many flawed areas within the

human rights. If difference is accepted and recognised, then programs for affirmative action will have a higher possibility of being more firmly rooted (Coomaraswamy, 1996:179).

universally advocated human rights framework that need further restructuring. Thus what seems essential is an introduction of a model of universal rights that allows for diversity and unity (both gendered and cultured). It is this model that human rights theorist Charles Taylor (1999) proclaims as possible. The analysis of Taylor's approach will be undertaken in the following chapter.

Chapter 4

An "Overlapping Consensus" on Human Rights

4.1 Introduction

The previous chapter indicated that an approach for addressing women's rights issues could best be achieved by improving on the areas within the universal human rights framework. Thus, while not abandoning that framework, what seems essential is a possible reconstruction of a current model of universal human rights.

This chapter will propose the philosophical preconditions that would allow for a defence of universal human rights. In the first section of the chapter we will revise why universal human rights are important and necessary. The second section will introduce a universalistic model of human rights that allows for diversity and unity (both gendered and cultured). Here Charles Taylor's (1999) proposal of "overlapping consensus" on human rights will be considered.

4.2 Highlighting the importance of human rights

The claims for human rights by women in Iraq, Afghanistan and China, addressed in the previous Chapter, highlight the need for a universal model of human rights. It is such examples that accentuate the argument that universal human rights are important because these are usually sought and adopted by the individuals or groups who need to bring to the attention of their governments, or to the world their exclusion, suffering or discrimination (Halliday, 1995:163). Thus, considering that they define the universal interests of those excluded, discriminated against and powerless, human rights can be considered universal.

As argued previously, human rights discourse is the only universally available moral language that validates the claims of women and children against the oppression they experience in patriarchal and tribal societies (Ignatieff, 2001:60). Universal human rights are the only means that enable dependent persons to perceive themselves as moral agents and to act against practices such as honour killings, genital mutilation, arranged marriages, civil disenfranchisement, domestic slavery and so on, which are ratified by the weight and authority of their cultures. These agents seek out human rights protection precisely because it legitimises their protests against oppression (Ignatieff, 2001:58). If we abandon or compromise the universality of human rights the world community would be seen to be jeopardising the position of the weak and vulnerable within particular societies.

Thus, universal human rights are too valuable a method, for critiquing governments that do not secure human rights of its citizens, to be abandoned on the basis of cultural relativism. The universal human rights standards must be sensitive to cultural issues, which implies that, for instance, if women's rights are seen as too individualistic and are therefore not encouraged in collectivist society, we need to negotiate some culturally acceptable ways to achieve a consensus. However, this does not further entail that human rights should be jeopardised by culturally relativist arguments[1] (Xiaorong, 1995; Samuels, 1999; Stivens, 2000, Langlois, 2000). In other words, human rights are essential and:

> even if we are critical of the project of imposing a Western notion of universal human rights on peoples who have developed their own distinctive ways of asserting their humanity, we will almost certainly not wish to argue that any long-standing cultural practice is to be accepted simply because it is long-standing, since there are too many examples of long-standing injustices in the world for this to be acceptable (Brown, 2000:49).

[1] These culturally relativist arguments emphasise that cultural values are different for each culture and thus there is no universal values upon which to judge about universal rights or wrongs.

If we were to accept any long-standing cultural practice simply because it is long-standing, this would, as Brown (2000:49) argues, "preclude any notion of moral development over time within cultures, and again most of us would not want to abandon this possibility". According to Brown (2000:49), this "version of relativism" is simply unacceptable, because such an approach disables any form of cross-cultural criticism. However, considering that the universalist discourse of human rights is problematic as well, what seems essential is a reconstruction of the universalistic human rights framework to more adequately attend to the claims of human rights claimants all over the world.

4.3 Proposing Charles Taylor's "overlapping consensus"

One of the possible ways of constructing a new model would be to include both global and cross-cultural perspectives on what truly universal standards might include. The achievement of such ideal forms of the universal model will have, as Langlois (2001) recognises, to bear the responsibility for engagement with others in open dialogue on the issues that affect the welfare of individuals as well as of communities. The dialogue must be open to everyone regardless of nation, gender, class, ethnicity, religion, or other characteristics. Such "cross-cultural dialogues" are argued to "represent the only hope for a conception of human rights that is truly universal" (Taylor, 1999:125; Fields, 2003). It is precisely this notion that is emphasised by Charles Taylor (1999:124), a human rights theorist who advocates this under the conception of an "unforced world consensus on human rights".

Charles Taylor (1999:124) proposes the "unforced consensus" as the one where:

> Different groups, countries, religious communities and civilisations, although holding incompatible fundamental views on theology, metaphysics, human

> nature and so on, would come to an agreement on certain norms that ought to govern human behaviour. Each would have its own way of justifying this from out of its profound background.

The adequacy of the unforced consensus idea for the reconstruction of human rights framework resides in Taylor's (1999) acknowledgment of the issues within the current universalist discourse, on the basis of which he proposes that, although there exists the ground for universal human rights, their implementation in our culturally-diverse world, will depend on an unforced cross-cultural consensus. Nevertheless, the consensus can take place only if the obstacles that are in its way, are addressed.

The language of human rights is the first obstacle that requires serious consideration. Human rights talk is rooted in Western culture (Taylor, 1999). Nevertheless, Taylor (1999) argues that this does not imply that the underlying norms expressed in the agenda of human rights are Western only; such norms are expressed in different language.

The second obstacle to the "unforced consensus on human rights", and this has been underlined throughout this thesis, is the issue of differing values. Taylor (1999) recognises this and even highlights that the Western emphasis on "human dignity" as a universal human right is very different to Eastern preference for the "pursuit of spiritual and material well-being" as a universal value (Taylor, 1999:125). Nevertheless, Taylor (1999) suggests that, whilst we might always be incapable of formulating the universal values, what we can do is formulate certain norms of conduct. Taylor (1999:125) justifies this argument by suggesting that:

> One can presumably find in all cultures condemnations of genocide, murder, torture, and slavery, as well as of, say, "disappearances" and the shooting of innocent demonstrators. The deep underlying values supporting these common

> conclusions will, in nature of the case, belong to the alternative, mutually incompatible justifications.

However, as Taylor (1999) stresses, the conduct of certain norms against genocide, torture and murder among others can only happen if a three-fold distinction is made. Thus, firstly we need such norms to be accepted in any given society (Taylor, 1999). Secondly, these norms need to rest on some widely acknowledged philosophical justification. And thirdly, such philosophically justified norms need to be enforced by legal mechanisms. Taylor (1999) proposes that an "overlapping consensus" on these would bring about human rights for all.

4.3.1 Taylor's exploration of the current universalist human rights framework

4.3.1.1 Identifying the issues and the consequent culturally relativist resistance

Taylor (1999) argues that one of the main problems with the current universalist framework of human rights, and its consequent culturally relativist resistance, resides in its two-fold set of norms that contrast the non-Western models of human rights. According to Taylor (1999:128) the Western human rights discourse consists of "a set of legal forms by which immunities and liberties are inscribed as rights, with certain consequences for the possibility of waiver and for the ways in which they can be secured...by constituted authority [or] ...fundamental law". In other words, human rights actually entitle a person to certain immunities and liberties and these, as such, must be granted by authorities for those who wish to claim them.

Furthermore, the current human rights discourse is also comprised of "subjective rights" which attribute great importance to the individual[2] thus making significant decisions on the basis of that individuals' consent (Taylor, 1999:128). In effect, this two-fold set of norms contrast with many cultures, even with the premodern West, not for the reasons that such immunities and liberties are absent from other cultures, but rather on the basis that these immunities and liberties have considerably diffident origins and justifications.

Consequently, those who protest against the Western notion of human rights usually object to both sets of norms that the double-folded universalist framework rests on (Taylor, 1999). Some governments, such as that of Peoples Republic of China, challenge the implementation of universal standards, arguing against both because individual liberties and 'subjective rights' are incompatible with non-Western cultures. This was illustrated in the analysis of women's rights in Asian context.

Nevertheless, there are countries that are willing to implement universal human rights standards. However the fact that human rights give priority to autonomous individuals complicates this process. For instance, as was shown in the previous chapter on women's rights, Islamic countries under the law of Shari'a reject the "subjective rights of an individual", as under the Islamic law the idea of the individual is non-existent (Bulbeck, 1998:71). The previous chapter indicated that Islamic governments see individual identity as a disturbance of collective harmony. Such diversity of

[2] This composition of human rights has been influenced by the theory of "natural law" (discussed in Chapter Two). "Natural law" theory underlines that human rights are "innate to individuals, [they] are an intrinsic factor in the quality of the human person" and as such these must be secured by governments and thus they take precedence over state structures (Brown, 2000:37).

perspectives on human rights can be united in one overlapping consensus, according to Taylor (1999).

4.3.1.2 Considering resolutions

An overlapping consensus on the diversity of cross-cultural perspectives on human rights can be achieved if, as Taylor (1999) suggests, Asian and Islamic governments that do not comply with universal standards, stabilise and channel their power into the support of constitutional rule and the defence of certain human rights. In other words:

> If a way could be found to draw on this [government's power], together with the legitimacy enjoyed by certain individuals of proven "merit" who are invested with moral authority...to enhance support for a democratic order respectful of those immunities and liberties we generally describe as human rights, the fact that it might deviate from the standard Western model of judicial review initiated by individuals should be accorded less importance than the fact that it protects human beings from violence and oppression. We would have in fact achieved convergence on the substance of human rights, in spite of differences in form (Taylor, 1999:143).

Thus, human rights can be established on the basis of an overlapping consensus on the common norms that are justified in very different underlying spiritual and philosophical outlooks (Taylor 1999). In further support of his claim Taylor (1999:143) provides an analysis of the convergences on norms out of Western and Eastern Asian backgrounds.

In this account Taylor (1999) draws attention to the Thai reformed Buddhist approach as consisting of an agenda for universal human rights which is also congruent with cultural values, as it actively advocates social justice and equality as well as ecologically oriented modes of development. The Buddhist approach reflects democratic principles in two ways. Firstly it stresses that each individual must take responsibility for his or her own Enlightenment. And secondly it aims for application

of non-violence, calling for autonomy of each person and demanding in effect a minimal use of coercion in human affairs" (Taylor, 1999:134). Taylor (1999) argues that these Buddhist practices defend human rights and democratic development, yet in a very different way from the Western advocates proposing these. The fundamental value of non-violence in Buddhist doctrine, underlines how alternative Thai Buddhist ways of proposing and establishing of human rights are to the Western conception, especially when we consider that the Western establishment of human rights involved "the politics of anger, indignation, and the imperative to punish historic wrongdoing" (Taylor, 1999:135).

Taylor (1999:134) exposes the human rights agenda in Thai Buddhist conception, arguing that the commitment of Thai Buddhists to helping people and to resolving environment-related issues enables them to become strong allies of the village communities, which fight to defend their land and forests from the state, and big business's development plans. Such Thai Buddhists' involvement highlights the group as an NGO that is committed to the decentralisation of the government's role and the recovery of the control of the local communities to make decisions (Taylor, 1999:135).

With this Thai Buddhist example Taylor (1999) accentuates that it is possible to achieve a universal human rights agenda through travelling a different route. In other words, with this example Taylor (1999) emphasises that although nations may not agree about the reasons, the values base, on which human rights are defended, they may agree about actual conduct. Thus, they may even have different reasons for

agreeing to the same actions, which may constitute some consensus about human rights.

Similarly, Simon Caney (2001:173) also contends that the Buddhist conception of well-being coincides with universal conceptions of human rights. The Buddhist belief that people are able to achieve personal fulfilment for themselves, and their emphasis on emancipation, may differ from Western liberal ideas about human rights; however these values are still compatible with human rights. By arguing this, Caney (2001) does not suggest that Buddhist values compel respect for human rights; they simply allow it. In effect, this illustrates the special significance that further entails the convergence between Buddhism and Western human rights as possible, contrary to the common criticism that human rights are alien to traditional non-Western values. Consequently, "the compatibility of human rights and Buddhist principles provides concrete evidence against such claims and avenues for promoting individual human rights in culturally-sensitive ways" (Caney, 2001:173).

Accordingly, such Buddhist practices should be considered as very valuable in the present international discussions about human rights as these provide the future example of how through an 'unforced consensus' different cultures travel towards the one universal goal: human rights (Taylor, 1999). The example of Buddhist principles, consisting of values consistent with a human rights agenda, illustrates the possibility for the realisation of an idea of unforced world consensus, where different cultures would agree on norms but would also be aware of the:

> profound sense of difference, of unfamiliarity, in the ideals, the notions of human excellence, the rhetorical tropes and reference points by which these norms become objects of deep commitment for us (Taylor, 1999:136).

This, Taylor (1999) underlines, is the only possibility that would bring about the universal consensus.

Most importantly, the achievement of such universal consensus could in the future:

> ...lead to mutual learning, moving toward a fusion of horizons in Gadamer's term, in which the moral universe of the other becomes less strange. Out of this will come further borrowings of the creation of new hybrid forms (Taylor, 1999:136).

An example of these forms would be some of the Gandhi's practices of nonviolent resistance that have been borrowed in the West by Martin Luther King in the American Civil Rights Movement (Taylor, 1999:136).

Nevertheless, in order to achieve such "overlapping consensus" on human rights it is important to consider that there are two crucial aspects of the cross-cultural convergences (Taylor, 1999). The first needs to involve the recognition that these convergences involve the meeting of very different minds, which are very different in their premises and unite only in their practical conclusions for human rights. The second needs to incorporate this recognition and aim for "such extreme distance [to] be closed', and 'that we come better to understand each other in our differences, that we learn to recognize what is great and admirable in our different spiritual traditions" (Taylor, 1999:133-137). Consequently the possibility for the consensus would be based on the premise, that "in some cases, this kind of mutual understanding can come after convergence, but in others it seems almost to be a condition of it" (Taylor, 1999:134).

4.3.3 Identifying the obstacles for the "overlapping consensus" on human rights

Thus, Taylor (1999:144) in his approach makes a proposal for the universalisation of human rights that is achieved while preserving one's own culture. However he recognises that one of the difficulties in an overlapping consensus resides in the inability of many Westerners to see other cultures as equal to the Western one (Taylor, 1999:144). In other words, Taylor (1999:144) emphasises that there are many alternatives and that possible obstacles to the consensus could arise because Westerners do not see "their culture as one among many". Taylor (1999:143) elaborates on this obstacle arguing that:

> To an extent Westerners see their human rights doctrine as arising out of the falling away of the previous countervailing ideas- such as the punishment scenarios of the ancient regime - that have now been discredited to leave the field free for the preoccupations with human life, freedom, the avoidance of suffering. To this extent they will tend to think that the path to convergence requires that others too cast off their traditional ideas, that they reject their religious heritage and become "unmarked" moderns like us.

On the contrary, he highlights that the universal consensus is impossible if does not consist of "creative reimmersions of different groups, each in their own spiritual heritage, travelling different routes to the same goal" (Taylor, 1999:144).

Furthermore, according to Taylor (1999), the Western position impedes the application of consensus, particularly in respect to gender equality. Consequently the further difficulty to "exporting" Western rights talk resides in the fact that the societies that are introduced to it, still consider certain social differences as very meaningful, and due to this meaningfulness these are linked to certain practices that Western societies regard as discriminatory (Taylor, 1999). Referring his discussion to the issue of gender inequality, Taylor (1999:138) reasons that "a certain way of framing the difference, however oppressive it may be in practice, also serves as the

reference point for deeply felt human identities". Here Taylor (1999) refers to the traditional understanding of male and female identities, and highlights that the rejections of the traditional framework can be:

> ...felt as the utter denial of the basis of identity for both of the genders. Whilst the denial of traditional identity can be an act of liberation, it can also be detrimental as without an alternative sense of identity, the loss of traditional one is disorienting and potentially unbearable (Taylor, 1999:140).

According to Taylor (1999) one way of achieving an unforced consensus on human rights, would have to include a redefinition of identity. A redefinition of identity would include "perhaps building on transformed traditional reference points in such a way as to allow for a recognition of an operative equality between sexes" (Taylor, 1999:140). Taylor (1999:140) recognises that, whilst this identity redefinition might not be to troubling for the West, it can be "maximally difficult when it comes across a brutal break with the past involving a condemnation and rejection of it". Consequently, the progress and change in respect to the area of gender equality will be a matter of two things: (1) the internal affairs and (2) the influence of the outside world. In respect to this latter one, Taylor (1999) emphasises the West, as having a particularly detrimental impact.

This detrimental effect that the West might have arises from the notion that:

> The more the outside portrayal, or attempt at influence, comes across as a blanket condemnation of or contempt of the tradition, the more the dynamic of a "fundamentalist" resistance to all redefinition tends to get in train, and the harder it will be to find an unforced consensus (Taylor, 1999:140).

This is, as Taylor (1999:141) identifies it, a "self-reinforcing dynamic", whereby condemnation of tradition adds to extreme reaction, which strengthens condemnation and so on, in vicious circle. Such unhealthy relationships between the West and the Islamic world, and to a smaller extent an Asian world, and their detrimental impact,

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can be witnessed even today. Thus, Taylor (1999:140) suggests that the consensus in such situation can be achieved "by the sympathetic understanding of each party by the other". However the question then becomes: can this overlapping consensus on gender issues be achieved just by mutual sympathetic understanding?

4.3.4 Identifying the issues with Taylor's approach

Taylor's (1999) claim, that an overlapping consensus can be achieved by mutual sympathetic understanding, invokes two issues that are worth mentioning. The first is that Taylor's (1999) suggested notion about the possibility for an overlapping consensus have been reviewed sceptically by theorists such as Chris Brown (2001:192 as cited in Langlois, 2001:147). And secondly Taylor's (1999) argument that a resolution with the issue of gender inequality in the non-Western countries resides in the mutual sympathetic understanding between the West and non-Western countries, does not seem sufficient to address the issue of gender inequality.

In respect to the first, Chris Brown (2001:192 as cited in Langlois, 2001:147) argues that an overlapping consensus is an ideal impossible to achieve. According to Brown (2001:192 as cited in Langlois, 2001:147)

> Nothing in the recent history of human rights protection gives reason for believing that a meaningful consensus on human rights – as opposed to a willingness to subscribe to unspecific norms, which do not, in practice, affect state behaviour – actually exists.

With such a claim Brown (2001) is implying that a meaningful consensus is impossible to reach, suggesting that even the adoption of universal declaration was implemented because such document does not actually affect state behaviour in a practical domain.

However there are other theorists like Cassesse (1990:64-65) who argue contrary to Brown's (2001) claim. Cassesse (1990) claims that there seems to be an agreement by all states in the world that some of the gravest violations of human rights are genocide, racial discrimination and the practice of torture. Consequently this would imply that the agreement in principle on essential core of human values has developed amongst all states in world, and thus, Cassesse (1990:64) predicts, that it is likely that such an agreement will gradually become a part of an increasingly wide range of human rights.

In respect to the second issue with Taylor's (1999) approach, it can be argued that Taylor (1999) does not provide an adequate answer to the issues of gender inequality in non-Western countries. Taylor (1999) claims that a resolution for the issue of gender inequality in the non-Western countries resides in the mutual sympathetic understanding between the West and non-Western countries. However, when arguing this Taylor (1999) fails to recognise that the gender equality is not dependent only on the agreements between the West and non-Western countries, rather it depends more on non-Western countries and the human rights claimants in these countries. In other words, Taylor (1999) in his approach, does not recognise that the gender equality as a human rights is not only sought out by the West, but it is also argued for and claimed by women from the non-Western countries.

Women's rights theorists like Masykuri (1996), Li (1995) and Coomaraswamy (1999) are just one of few non-Western feminists who emphasise that women from non-Western countries are the actual claimants of universal human rights standards. According to Masykuri, (1996:11):

> only if we ignore the complex ways in which third-world women have called upon, negotiated and deployed versions of the concept of human rights both in the past in the future, could we sustain the view that the women's human rights agenda is simply imposed on these women [by the West].

With this argument Masykuri, (1996:11) accentuates that human rights claims of the "third-world" women are not merely an individualistic project of "modern" autonomy-seeking women from West. Whilst recognising that such notions as equality, justice and democracy have undeniable origins in the West, Masykuri (1996:11) also underlines that the present meanings of human rights[3] within Islamic countries as well as within Asia-Pacific have a long and rich local history.

Furthermore, as Li (1995) and Coomaraswamy (1999) recognise, numerous numbers of women's groups working at the national level in many Islamic and Asian countries are urging the adoption of universal standards as they are facing innumerable obstacles in their struggle for these. In addition, they both recognise the national struggle to be the difficult fight not the international one. The previous chapter highlighted that it is particularly in Islamic and Asian countries that women's rights are paradoxical. This is because international standards of women's rights, which are at the frontier of human rights development "collide with cultural movements at the national level that question the very articulation of women in human rights terms" (Coomaraswamy, 1999:182).

Thus, whilst Taylor's (1999) approach of showing understanding for each party may have some validity the cross-cultural encounters it does not seem adequate to address

[3] Undoubtedly all societies have had systems of rights and obligations - although their terminology may have been different, as Karakala (1997) rightly points out. For instance, the pre-modern Europe had a system based on "Natural Right", while the ancient and medieval India had a system of caste/community "obligations" (Karakala, 1997).

internal and local encounters between women's rights claimants and those who condemn women's rights. Consequently, for the local resolutions on gender inequality, a different kind of an approach is essential. It can be argued that an adequate one resides in the universalising proposal of "the capabilities approach" by Martha Nussbaum (1995:93-96), considered in the following chapter.

4.4 Conclusion

The argument of this chapter is that universal human rights are essential and this necessity is justified on the basis that those who suffer and are discriminated against actually use human rights to articulate their claims. Human rights need to be upheld because we are all moral agents and as such need universal standards to be able to criticise and remind governments that they need to deliver human rights for all its citizens, our fellow human beings. Thus the universal model needs to be reconstructed to represent the truly universal human rights standards.

It has been recognised that cross-cultural dialogues represent the only hope for a conception of human rights that is truly universal and Charles Taylor's (1999) overlapping consensus, with some qualifications, provides an adequate framework to assist in the establishment of such dialogues. In his approach Taylor (1999) argues for universality of human rights standards emphasising that, whilst we might always be incapable of formulating the universal values, we can still formulate certain cross-cultural norms of conduct.

Taylor (1999) recognises that the overlapping consensus must consist of norms and must be obligatory. However he also notes that the norms encompassing the universal

human rights should come through an unforced consensus. The convergence of such norms should not come through a loss or denial of traditions, but through meeting of different minds from philosophical and spiritual backgrounds (Taylor, 1999). By providing an example of Thai Buddhists and their human rights agenda Taylor (1999) illustrates that such convergences of diverse backgrounds towards a similar goal are actually achievable.

However, there were two main criticisms of Taylor's (1999) approach. The first one is that the approach has been reviewed sceptically by theorists who highlight that in the practical domain nothing resembling a meaningful consensus on human rights has existed or is even likely. Nevertheless, Taylor's claim can be argued as valid as there are theorists like Cassesse (1990:64) who argues that an overlapping consensus on human rights is very likely to be established throughout the world.

The second criticism of Taylor's approach is the one that requires particular attention, because Taylor's (1999) arguments were shown as being inadequate to deal with the issues of gender inequality. For this reason the following chapter will address an approach that possesses more adequate theoretical grounds to address particularly gender issues within the human rights framework. The following chapter will include an analysis of "the capabilities approach" by Martha Nussbaum (1995), a women's rights theorist.

Chapter 5

"The Capabilities Approach" to Human Rights

5.1 Introduction

The previous chapter analysed Charles Taylor's proposal (1999) for the overlapping consensus on human rights. We discovered that Taylor's (1999) argument that, whilst we might lack the capability to formulate universal human rights values, we can, nevertheless, formulate certain cross-cultural norms of conduct, is of great relevance for human rights discourse. Taylor's proposal is particularly useful for cross-cultural dialogues about human rights as he emphasises that the cross-cultural conduct of norms should not come through a loss or denial of traditions but through meeting of different minds from philosophical and spiritual backgrounds. Nevertheless there were also a few inadequacies within his approach, one of which was being unable to offer resolutions for gender inequality in the non-Western countries.

This chapter will examine possible resolutions in the encounters for internal and local encounters between women's rights claimants and those who condemn women's rights. The resolutions provided for such issues are offered by Martha Nussbaum's (1995:93-96) universalist "capabilities approach". Considering that the capabilities approach promotes claims for a defence of universal human rights and for resolutions of the issues within women's rights framework, this chapter will discuss this discourse and its validity. The analysis will also consider the perspectives of Xiarong Li (1995) and Sandra Harding (1992) as these approaches greatly contribute to our discussion of women's rights issues undertaken in this chapter.

5.1 Proposing Nussbaum's "capabilities approach"

Women around the world have been demanding the universal implementation of human rights standards (see Kerr, 1993). Nevertheless women's rights can be considered as the most overlooked aspect in the human rights framework (Kerr, 1993; Coomaraswamy, 1999; Masykuri, 1996). In order to improve this flawed area of the universalist discourse, we need to find a suitable human rights model that effectively addresses gender issues. Martha Nussbaum's (1995) approach is particularly appropriate for our analysis for two reasons. Firstly, Nussbaum (1995) recognises, contrary to Taylor (1999) that women's rights do not constitute a "part of the Western human rights talk" but are nonetheless universal and are in need of serious consideration. And secondly, she proposes an approach that consists of resolutions for women's rights issues.

According to Nussbaum (2000:1), addressing women's human rights issues must be considered a priority because "women throughout the world are so often treated unequally and as the means rather than as the ends in their own" (Nussbaum, 2001:1). In other words:

> ...Women in much of the world lack support for fundamental functions of a human life. They are less well-nourished than men, less healthy, more vulnerable to physical violence and sexual abuse. They are much less likely than men to be literate and still less likely to have professional or technical education. Should they attempt to enter the workplace, they face greater obstacles, including intimidation from family or spouse, sex discrimination in hiring and sexual harassment in the workplace - all frequently, without effective legal recourse. Similar obstacles often impede their effective participation in political life. In many nations [as highlighted in this thesis] women are not full equals under the law: they do not have the same property rights as men, the same rights of association, mobility and religious liberty. In all these ways, unequal social and political circumstances give women unequal human capabilities (Nussbaum, 2000:1).

Consequently the potential preconditions that could improve such a grim picture of women's rights, Nussbaum (2000:5) proposes in her "capabilities approach". The competence of the "capabilities approach" resides in its aim to provide the basis for the conception of minimal constitutional principles that should be respected and implemented by the governments of all nations. The basis for these constitutional principles would include "a minimum of what respect for human dignity requires" (Nussbaum, 2000:5). Thus the achievement of such social minimum would be provided by the approach that focuses on human capabilities with what people are able to do and to be. Nussbaum (2000:5) sees this approach as the "best solution for the women's rights issues".

In order for the approach to deliver women's human rights, Nussbaum (1995:88) firstly emphasises the necessity for the universalisation of human rights standards. Human rights standards need to be universally adopted for all people because, as Nussbaum (1995) highlights, human beings (irrespective of the cultural contexts they live in), once provided with the rights to education and material support, can become fully capable of their "self-actualising" development (Nussbaum, 1995:88). In other words, the capabilities exist in the metaphysical realm and this existence makes the reference to their functioning. If they are deprived of these capabilities, these human beings are nothing "but a shadow of themselves" (Nussbaum, 1995:88). If the functioning of these capabilities ceases to appear, these human beings will not realise their full potential. Nussbaum (1995:88) does recognise the philosophical nature of this argument, but argues "that certain basic and central human endowments[1] have a

[1] These endowments include: a fear of and aversion of death; the bodily needs for food and drink, shelter, sex, and mobility; the capacity for pleasure and pain; the cognitive capabilities; early childhood development; practical reason, affiliation and concern for other human beings; relatedness to other species and to nature; humour and play; and separateness (Nussbaum, 1995:75).

claim to be assisted in developing and exercise that claim onto others, especially on governments".

The basic and central human endowments actually make up the universal conception of humanity, according to Nussbaum (1995). This conception of humanity arises within history and from experience and it can be consequently observed as grounded in human experience (Nussbaum, 1995:69). Nussbaum (1995) emphasises the human experience is the essential proof that supports this notion of universal humanity as it is precisely our experience that shows this universal humanity existing in all cultures. Citing Aristotle, Nussbaum (1995) argues that: "One may observe in one's travels to distant countries the feelings of recognition and affiliation that link every human being to every other human being (Aristotle, viii.i; as cited in Nussbaum, 1995:69). If the Aristotelian argument is taken into consideration, the next point we could draw from it is that human rights and their claims such as the equal dignity of human beings resonate universally, in all cultural traditions of the world. Thus, like other universalist proponents, Nussbaum (1995) argues that the idea of equal human rights is found in ancient and medieval sources as well as in non-Western cultures[2].

In addition, in her capabilities approach Nussbaum (1995) also claims that the basis for universal human rights resides in the notion that human capabilities exert a moral claim that they should be developed for all human beings (Nussbaum, 1995:88). Thus Nussbaum (1995) like the other universalists mentioned in Chapter two, argues that we must not ignore the claims for human rights, because as human beings we all

[2] Alan Gewrith (1993: 40-43) argues the same highlighting the fact that just because different cultures do not typically espouse a Western human rights perspective does not therefore invalidate the universality of human rights.

possess a common aspect which is that we are moral agents that as such need to judge human behaviour in moral terms (see Langlois, 2000).

Furthermore and most importantly for women's rights, Nussbaum (2000:5) argues that these human capabilities need to be pursued for each and every person, "treating each as an end and none as a mere tool of the ends of others". This is particularly relevant in the context of this Chapter since, as Nussbaum (2000:2) recognises, women have rarely been "treated as the ends in their own, persons with dignity that deserves respect from laws and institutions". Instead, according to Nussbaum (2000:2), women "are treated as mere instruments of the ends of others - [as] reproducers, care givers, sexual outlets, agents of a family's general prosperity". It is for this reason that the proposal aiming to pursue human capabilities for all has a particularly critical force with regard to women's lives.

An additional positive aspect of Nussbaum (2000:5) approach for universal applicability resides in her argument that these human capabilities can be the object of the "overlapping consensus among people who otherwise have very different comprehensive conceptions of good".[3] This can be achieved by considering the experiences and sense of important functions from women as well as from men (Li, 1995). Thus, as Xiarong Li (1995:424), a Chinese feminist, recognises

> Nussbaum's vague and universal form is meant to provide sufficient overlap to sustain a working conversation between different plural specifications. This approach would retain rich and full formation of a conception of women's well-being, to be gathered from the women's voices and would criticise

[3] Here Nussbaum (1995) suggests that we should not ignore the local voices, but should even retain the plurality through "plural specification" and "local specification" of the components of human life in specific and historically rich cultures. The focus should be on the similarities: what is common to us all, rather than differences (Nussbaum, 1995:63).

> traditional approach only when it prevents women from functioning in a fully human way.[4]

6.2 Nussbaum's resolution for the issues justified in the name of cultural relativism

Nussbaum (1995:75) proposes the conception of universal women's human rights standards as achievable by grounding these in a cross-cultural assessment of women's well being. Such cross-cultural assessment is feasible by applying a "conception of the good" that encompasses "the shape of the human form of life" and a good human life, which "abstract[s] from traditional gender distinctions" (Nussbaum 1995:75). Here Nussbaum (1995:75) develops her proposal of universal humanity further illustrating traditional gender distinctions as socially constructed and dependent on the local contexts that reinforced them. Nussbaum (1995:75) starts from the intuitive idea of human being as "capable and needy" and suggests that:

> ...a life, if it is constituted by certain traits such as the fact of mortality (a fear of and aversion of death); the bodily needs for food and drink, shelter, sex, and mobility; the capacity for pleasure and pain; the cognitive capabilities; early childhood development; practical reason, affiliation and concern for other human beings; relatedness to other species and to nature; humour and play; and separateness... is characteristically human, no matter within what culture it is lived".[5]

Whilst treating all of the capabilities or traits mentioned above as good and essential Nussbaum (1995:84) does attribute "a special role" to two of the capabilities, practical reason and affiliation. Practical reason is the capability that allows human being to be able "to form a conception of good and to engage in critical reflection about the

[4] Similar has been argued by Farley (1993) who argues that common features of experience, such as capacities for suffering and joy that are commonly recognizable in spite of differences in gender, class, race and culture. Farley argues that working by analogy we can recognise similarities as well as differences, while not at the same time relying on relativism as it "in self-contradictory fashion counsels noninterference". She states that "to take this position on the difficulty or even impossibility of overcoming such conflicts is not to counsel silence, apathy or a sophisticated version of "anything goes"" (Farley, 1993:237).

planning of one's own life (Nussbaum, 1995:84). According to Nussbaum (1995:78), the capability of practical reason can be expressed in different forms and as such it is linked to the "other capabilities, emotional, imaginative and intellectual. A being who altogether lacks any one of these capabilities would not be likely to be regarded as fully human in any society" (Nussbaum, 1995:78). The capability of affiliation consists of an idea that all human beings "recognize and feel some sense of affiliation and concern for other human beings. We live with and in relation to others, and regard a life not lived in affiliation with others to be a life not worth living" (Nussbaum, 1995:78).

Nussbaum (1995:82) emphasises both of these capabilities as she considers them to be "architectonic, holding the whole enterprise together and making it human". Whilst the other capabilities make human beings equal, these two distinguish them from other creatures. "What is distinctive and distinctively valuable to us, about the human way of doing all this is that each and every one of these [capability] functions is, first of all, planned and organized by practical reason and second, done with and to others" (Nussbaum, 1995:82). Here, Nussbaum (1995:82) argues that the development of the capability to evaluate, choose, plan and execute plans of life or conceptions of the good, and the capability to live to and with others, are said to need "special attention" because "none of the others will be truly human without them". These two capabilities of practical reason and affiliation are particularly relevant in respect to the attainment of women's rights in the practical context. Their practical implications will be addressed in the following discussion.

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[5] The full details of Nussbaum's discussion on these traits/capabilities can be found in her book, *Women, Culture and Development* (1995) on pages 76-81.

5.3 Applying Nussbaum's approach for the resolution of women's rights issues in the Asian context

The capability of "practical reason" is highlighted in the findings of Li's (1995) study on women in China. In this study Li (1995) emphasises Nussbaum's (1995) "capability approach" as adequate to take precedence over what she calls the "local tradition cultural relativism". "Local tradition cultural relativism" is essentially a form of cultural relativism, which emphasises that because we cannot judge one culture by the standards of another, the local traditional approach should be considered as the only relevant one for addressing women's rights issues in China. This type of cultural relativism arises from a fear that the universalism might take up the form of dominant ideology and thus impose its principles "upon the disadvantaged female in a society tormented by gender discrimination" (Li, 1995:422). As Li (1995:422) highlights, her study illustrated that:

> The cultural relativism's rejection of any universal or cross-cultural conception, and its proposal to assess women's conditions by "local traditional" norms, have not been able to avoid this danger in the case of China. Instead, such an approach has contributed to, as the Chinese case demonstrates, perpetuating the status quo.

The perpetuation of status quo in China has meant, according to Li (1995), the perpetuation of long-term subordination under the patriarchal ideology, which has been influential in maintaining that women are not capable of practical reason. Li's (1995) analysis of women's status in China shows that "growing up in Chinese sexist morality women have deposited within them a "psychological complex": the inferior morality (Li, 1995:416). As a result they feel comfortable with the idea that women are not expected to the same as men, which further gives way to women distancing themselves from political processes.

Considering such a scenario, Nussbaum's (1995) approach, according to which we need to call attention to the consent and nourishment of the capability to conduct practical reasoning, appears to consist of very adequate grounds for the promotion of universal women's rights. This is because the application of Nussbaum's (1995) approach would mean the encouragement by the Chinese government for Chinese women to decide and form a version of good and at the same time to engage in critical reflection about their lives would provide Chinese women[6] with power to reflect and criticise the pervasive social norms and to claim their rights.

Thus, the "local tradition cultural relativism", upholding the status quo, can be challenged if, as Nussbaum (1995) proposes, the voices of both women and men are heard particularly in regard to functions that both men and women consider important (Li, 1995). The result of the consensus should produce the emergence of new perspectives on the conception of human (and women's) good that had not emerged as so important on patriarchal agenda. This step will offset the institutionalised projection of male preferences in local culture (Nussbaum, 1995:93-96).

Consequently, in the Asian case, if both sets of voices are considered, women and men can both agree to uphold the Confucian virtues while still allowing women to have their human rights. The example of such a process would include the preference for goodness of excellence in professional careers. For instance, in the list of Confucian female virtues (instead of their "obedience to father, brother and husband) to become important now, as it has been regarded by recent female reflections (Li, 1995:425). These female reflections highlight that, for example, in respect to

[6] Nevertheless, more recent studies show that Chinese women are beginning to examine theories of women's social oppression, and in this political context have been protesting against the inequalities and discrimination they are

professional career, the majority of Chinese women make it clear that they do not want to leave work (just before the birth of their children), but rather, that it is the pressures of new social reforms that are pushing them in that direction (Chinese Education, Summer 1989, p.50; as cited in Rai, 1995:189). Thus, if such perspectives from women were considered this would add to the conception of human (and women's) good that had not been considered before, and most importantly such reflections would highlight the need for women's rights standards, such as gender equality to be implemented.

5.4 Applying Nussbaum's approach for the resolution of women's rights issues in the Islamic context

Nussbaum's approach can also bring about resolutions for women's rights and gender inequality in Islamic countries. Afshari (1994:13) in her analysis on Islamic context and gender relations highlights gender equality as gaining more and more importance (Afshari, 1994:13). In fact, numerous Islamic feminists who urge for a social reform emphasise that the Koran actually proposes equality for both men and women (see Afshari, 1994; Badran, 2002). In the Koran there are many *ayaat* (verses) that seem to declare male/female equality. One is Al- Hujurat:

> Oh humankind. We have created you from a single pair of a male and a female and made you into tribes and nations that you may know each other [not that you may despise one another]. The most honored of you in the sight of God is the most righteous of you [the one practicing the most taqwa] (Badran, 2002).

Recognising this, Islamic feminists have been campaigning for their rights, emphasizing that, according to the Koran, all human beings are equal and they are only distinguished among themselves on the basis of their rightful practice or implementation of the fundamental Koranic principle to be "moral" [meaning to be

facing (Rai, 1995:189; see also Li, 1995:422).

genuine and sincere] towards others (Badran, 2002). Thus, in order for a just and righteous society, as the Koran exhorts, both the voices of men and women need to heard. If this is achieved, and if the both women and men in Islamic context are fair towards one another, then gender inequality will be shown as unjust and as a result it will not be further reinforced.

Here the adequacy of Nussbaum's (2000) approach is also accentuated as she argues that one of the ways to overcome gender inequality would be to focus on similarities between women and men rather than differences. Consequently, such proposals and the others discussed in the previous paragraphs, underline that Nussbaum's (2000) approach possesses the basis to challenge the various forms of cultural or traditional relativism, which have been used to justify the rejections of the implementation of women's rights conventions. However Nussbaum (2000) emphasises that for the approach to deliver human (and women's) rights, it needs to be politically legitimatised.

5.5 Politically legitimising the "capability approach"

According to Nussbaum (1995) in order for human rights as human capabilities to be recognised and implemented universally the rights standards need to be politically legitimised.[7] This means that the established norms from the cross-cultural consensus would politically bind every government to propose and uphold human rights for all. Nussbaum (1995) makes such a proposal on the basis of the findings of Amartya Sen's

[7] Here Nussbaum (1995) argues similarly to Langlois (2001) as he also emphasizes that for the universality of human rights to be acknowledged and implemented the legitimacy of acceptance is essential to be brought about in the political domain. Langlois (2001) argues, as shown, in Chapter Two, that human rights are universal in the sense that the discourse of human rights illustrates human universality, which presupposes that we, as universal human beings, need to make moral choices about how we are to behave towards one another. The political aspect of this process is highlighted once we consider that these moral choices need to be normative, consisting of the

(1995) work, which indicates the preferences are highly malleable. In other words, many women would neither fight for participation in the workforce nor would they be aware of the high correlation between work outside of home and their advantages (particularly in respect to personal freedom and independence). As Sen (1995; as cited in Nussbaum, 1995:91) argues, such women might have fully internalised the ideas behind the traditional system of discrimination and may view their deprivation as "natural".

For this reason Nussbaum (1995: 61-105) urges the political legitimizing of the "capabilities approach", as she warns that the culturally relativist approach results in what Li (1995) calls "false consciousness" that further aids in maintaining the status quo. Li's (1995) study on women in China (analysed in the Chapter Three) highlights this argument, emphasising that "false consciousness" which "does not transcend the male domination has been taken so much for granted" by Chinese women that they "even inflict the repression on themselves", thus further influencing the willingness for change in many women in China (Li, 1995:416).

Recognising this, Nussbaum (1995: 61) argues that the implementation of universal standards is necessary, as "one must not assume that the statements of the people who have long been subordinated are reliable indicators of what is really essential". For this reason, according to Nussbaum (1995), we cannot rely on the unreflective and uncritical self-expressions serving as a justification for and highlighting cultural relativist cause, as these are misleading.

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norms based on the universalising consensus between diverse cultures and their values, and obligatory, meaning that the acknowledgment and implementation of these values must be legitimated by these diverse cultures.

It is here that Nussbaum's (1995) approach seems contradictory and exclusive. Nussbaum (1995) argues that we cannot always adopt the version of those that have been marginalised for so long. But there are feminists like Sandra Harding (1998), who argue that we must begin our research there[8]. Nevertheless, what Nussbaum (1995) implies with the above argument, and this has been argued by Harding (1998:580-584) as well, is that to start thought from marginal lives should not be understood as "incorrigible"- as the irrefutable grounds for knowledge. Instead "the best knowledge claims should", as Harding (1998:580) emphasises, "be true of the world in the sense of reflecting without distortion the way the world is, of corresponding to a reality that is "out there". Similarly Nussbaum (1995:61) in her capabilities approach accentuates this argument, claiming that "false consciousness is a distortion that can impact on the process of being able to formulate the truth about the required capabilities from the stories of women that have been long denied these capabilities".

Furthermore, while Nussbaum (1995) argues that universal human rights should be available to everyone, she also notes that governments are not supposed to push their citizens into developing a certain, more culturally valued, capabilities over others. Instead it is essential that governments provide all the necessary resources and conditions for a full development of all human capabilities in every individual (such as education, health care) and once these individuals are provided with these resources they have a choice whether to use or deprive themselves of these resources. Thus, by

[8] Sandra Harding (1993, 1998) is one of the standpoint epistemologists that have attempted to reform the conceptions and practices of, what she calls, a "standpoint" so that these serve the interests of the marginalised groups by identifying an epistemologically superior approach that can claim "strong objectivity." The standpoint could be defined "starting from the lives of the marginalized groups" and its emphasis has helped broaden the base from which knowledge is constructed (Soble, 1983:302). The importance of standpoint epistemologies is vital as without the voices from the marginalised[6] who had their rights violated the serious issues within the area of women's human rights would have remained invisible.

making the opportunities available, government enhances and does not remove choices[9] (Nussbaum, 1995:95).

Providing choice is one of the more important reasons why, as Nussbaum (1995:95) argues, the capability approach needs to be adopted. Nussbaum (1995:95) elaborates on this proposal arguing that the capability approach needs to be considered because "its own comprehensive concern with flourishing across all areas of life is a better way of promoting choice than is the liberal narrower concern with spontaneity alone". Nussbaum (1995) disregards the liberal approach to human rights as inadequate, arguing that it tolerates situations in which individuals are in other ways deprived of the fully human use of their faculties. Proclaiming that the "capabilities approach" improves on these flawed areas of the universalist framework of human rights, Nussbaum urges its implementation in the practical domain.

The capabilities approach does, in fact, seem plausible to deliver universal human (and women's) rights as it:

> aspires to deal with issues raised by local tradition relativism, by advancing a conception of women's well-being that attends fully to the rich culture and tradition of local communities, while opening up for cross-cultural examination" (Li, 1995:425).

This gives it a universal perspective and embodies hope to divulge "false consciousness"(Li, 1995:425). Such universalist approach to women's human rights is possible and can be realised, according to Nussbaum (2000:7) through a framework that is:

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[9] Nussbaum places choice as one of the central capabilities promoted by the conception. For detailed version of Nussbaum's list of capabilities see Nussbaum, 1995, *Women, Culture and Development: A Study of Human Capabilities.* pps. 72-86.

> committed to cross-cultural norms of justice, equality and rights, and at the same time sensitive to local particularity, and to the many ways in which circumstances shape not only options but also beliefs and preferences...[This approach] need not be insensitive to difference or imperialistic...[it] framed in terms of general human powers and their development, offers us in fact the best framework within which to locate our thoughts about difference.

5.6 Conclusion

The concluding argument of this chapter is that universal human rights are essential as that is what makes us human and moral beings. According to Nussbaum's (1995) approach it can be concluded that the universality of human rights lies in the exemplification of the universal need for human beings to make moral decisions based on the notion that human capabilities exert a moral claim that they should be developed. Nussbaum's (1995) approach, emphasizing focus on similarities rather than differences, was shown as adequate for addressing women's rights in both Asian and the Islamic contexts.

Nussbaum (1995) also emphasises that the moral choices about how we are to behave towards fellow human beings should be politically legitimate; politically binding every government to propose and uphold human rights for all. It is in this process that Nussbaum (1995) seems to exclude the voices of those that were long-oppressed. However, this argument (Nussbaum 1995) can be explained to some extent by noting that some women might lack the awareness that their actions are supporting the status quo. On the basis of this, some women might also lack the awareness of all the rights that they are entitled to, thus not asking for their enforcement. This was supported by Sandra Harding's (1992) elaboration on the standpoint reflections.

Nussbaum (1995) proposes that the implementation of standards is essential, as this will make sure that the governments offer resources to all human beings for their full development. Nevertheless, she also suggests that once the resources are provided, it is up to the individual recipients to choose whether to use such resources for development or not; these must not, under any circumstances be enforced upon them.

Chapter 6

Conclusion

6.1. Introduction

An analysis of the discourses on human and women rights indicate that they can be defended and justified. However, the universal model needs some reformulating and restructuring for it to overcome the flaws mentioned. In this respect, the approaches of Taylor (1999) and Nussbaum (1995) are useful and assist with providing the philosophical preconditions necessary for the reestablishment of the human rights framework. This and the previous analyses of this thesis chapter will be summarised in this Chapter in an attempt to outline the main argument of this thesis.

6.2 Outline of the argument

The common relativist argument which opposes the universality of human rights relies on the diversity of conceptions of human rights and, because there are no agreed standards by which to arbitrate between conflicting and diverse cultures and values, there is no method to establish absolute and universal human rights. Furthermore, they claim that the current universalist human rights framework does not propagate universal human rights values, but Western ones. Using this argument as their main justification, some non-Western governments, which in this thesis have been primarily those of Islamic and Asian descent, have rejected the implementation of human rights conventions.

There are a number of inconsistencies, which have been exposed in the cultural relativist claims about human rights. For instance, when cultural relativists defy

universal human rights arguing that these are of Western origins, and are as such, absolutist and intolerant of other cultures and their practices, they make a claim that seems to contradict and invalidate their own position. This is because an analysis of their claims highlights that relativists attempt both to remove themselves from a position to judge values (because, according to their position that it is impossible) and yet act in such a way that they do evaluate and judge, in this case arguing that, in the light of their advocacy of human rights, tolerance of different perspective and practices of human rights is preferable to intolerance.

Further inconsistencies within the relativist approach were also revealed when cultural relativists advocate that human rights activists should primarily rely on passion and the courage of their convictions, rather than theoretical discourses. When cultural relativists argue for passion and conviction, they appear to imply that passion and courage are preferable to reason and reasoning – a position denied by their value relativism which states that there are no criteria on which to base such judgments.

Nevertheless, considering that cultural relativists reject universal human rights and criticise its proponents for being Westerners and absolutists (implying imposers of Western values), an analysis of absolutism was included, in which its meaning and various forms were examined. It was found that, whilst there are various forms of absolutism (i.e. epistemological, political), universalist discourse is often negatively associated as being grounded in political absolutism, which imposes actions, beliefs and values on to others.

In one sense, the allegation about the discourse being imposing is not contested by universalists who argue that the human rights declaration is mandatory. However, there is a serious qualification here, namely, the universalist discourse mandates only one thing, and that is the right to choose. After the choice is provided, the notion of universal human rights "assumes that people probably are best suited and in any case are entitled, to choose the good life for themselves" (Donnelly, 1999:86). Universalists, whilst acknowledging the Western basis for universal human rights standards, also justify their position by arguing that the universality of human rights values is found in ancient and medieval sources as well as in non-Western cultures (Taylor, 1999; Langlois, 2000).

However, there are a number of deficiencies in the universalist discourse – including one inherent in Western liberalism from which the dominant human rights discourse has arisen. The universalist approach which is grounded in Western liberalism cannot and does not provide adequate political justification (considering that different cultures have different political systems) to legislate and therefore secure human rights in non-Western contexts and universally.

Furthermore, the universalist argument, according to which there are absolute universal values, has been too often challenged by cultural relativists as they highlight that the basic principles that "all human rights are born free and equal in dignity in rights" is denied by Hinduism and that men and women should be treated equally is rejected by traditional versions of Islam (Brown, 2000:48). This further accentuated the two-sided human rights debate with universalists who argue about the existence of universal values but mainly from the theoretical (philosophical) ground, on one side,

and, sceptics who claim that, in practice, the moral universals do not exist, on the other. Considering the theoretical inconsistencies and difficulties in the claims of both the cultural relativist and universalist approaches, the analysis of the validity of both discourses in the practical domain was explored in our discussion on women's rights.

The analysis that followed, demonstrated the imperative to implement human rights for women. However both the cultural relativist discourse, and the universalist discourse in a different way, are not conducive to defending and implementing human rights particularly those of women. One of the main reasons for this was found to be the patriarchy, which served as a hidden agenda. Women's rights issues that arise out of the universal framework of human rights are framed by (Western) governments defining human rights in terms of male models and patterns of thinking leading to gender-based discrimination.

Nevertheless, patriarchy was also found to be the hidden but powerful agenda behind the cultural relativist arguments used to justify the rejection of women's human rights standards. This occurred because non-Western opponents of human rights rely on the rhetoric of cultural relativism to challenge the universalist discourse. They proscribe human rights to women arguing that cultures vary and, therefore, universal human rights should not be imposed on an independent nation. Free of universal notions of human rights, the patriarchal nature of the cultural specific laws can then be imposed in an absolutist way.

Consequently it was emphasised that while the cultural relativism does not aid in granting the human rights for all, the universalist discourse, despite its flaws, possess

some credibility to address women's human rights, simply because it consists of the human rights agenda. Thus, this thesis illustrated that it is important that proposals for human rights to remain universal because we cannot accept the relativist approach hoping that it will secure human rights for all. As the previous analysis illustrated, the cultural relativist approach challenges the established human rights norms, and instead of recognising similarities between cultures or between women and men, only the differences become highlighted. Nevertheless, cultural relativists do have a point when they argue that some (liberal) universalists appear to be indifferent to "the positive aspects of community or collective rights, without which the tension between the universality - relativity dichotomy cannot be resolved democratically" (Kakarala, 1997)[1]. From this it seems to follow that the universalist discourse, if it is to deliver human rights comprehensively, must incorporate diversity and protect cultural rights within its global scheme.

Thus, considering that there are flaws within the current universalist human rights framework that need further restructuring, we considered a possible theoretical precondition, which could be incorporated to more adequately deliver *universal* human rights. The universalist model reviewed, upholds notions of diversity (both cultural and gendered) and it is envisioned in Charles Taylor's (1999) "overlapping consensus on human rights".

Taylor (1999) makes his proposition for an overlapping consensus on the basis that, whilst we might be incapable of formulating universal values with universal agreement, we can still formulate certain cross-cultural norms of conduct. According

[1] Accessed at http://www.nottingham.ac.uk/law/hrlc/hrnews/june96/indianpr.htm.

to Taylor (1999), such cross-cultural norms of conduct should come through the meeting of different minds from philosophical and spiritual backgrounds.

Taylor (1999) illustrates his proposal through the practical example of Thai Buddhists. According to Taylor (1999) Thai Buddhism consists of an agenda for human rights, as it actively advocates social justice and equality as well as ecologically oriented modes of development. Furthermore, by emphasising the fundamental value of non-violence in Buddhist doctrine, Taylor underlines how alternative Thai Buddhist ways of proposing and establishing of human rights are to the Western conception which involved "the politics of anger, indignation, and the imperative to punish historic wrongdoing" (Taylor, 1999:135).

Consequently, by using the Thai Buddhist example Taylor (1999) emphasises the possibility of the realisation of the idea that different groups may travel towards the same goal on different paths. This further accentuates Taylor's analysis as being particularly useful for cross-cultural dialogues about human rights, because it proposes engagement of diverse cross-cultural perspectives in 'unforced' dialogue on the issues that affect the welfare of both individuals and communities. Another advantage of Taylor's proposal resides in the fact that such dialogues can aid in creating the cross-cultural conduct on human rights norms.

However, there were two main criticisms of Taylor's (1999) approach. The first is found in the relativist criticism that Taylor's idea of a meaningful consensus on human rights is unachievable, because "nothing in the recent history of human rights protection gives reason for believing that a meaningful consensus on human rights

actually exists" (Brown, 2001:192 as cited in Langlois, 2001:147). With this argument Brown (2001) implies that even the adoption of the universal declaration is not upheld and promoted in practice. However this relativist argument is challenged by universalists like Antonio Cassesse (1991) who argues that the agreement by all states in the world on essential core of human values entails that the overlapping consensus on universal human rights has the potential to become achieved in the near future.

The second criticism claims that several of Taylor's (1999) suggestions were inadequate to deal with the issues of gender inequality. In his proposal Taylor (1999) emphasizes that women's rights constitute a "part of the Western human rights talk" and thus Western and non-Western countries should come to an agreement with mutual sympathetic understanding. However the issue with this aspect of Taylor's (1999) argument is that the gender equality in non-Western countries is not dependent only on the agreements between the West and non-Western countries, but rather depends more on local agreements between non-Western governments (that reject the implementation of human rights) and the human rights claimants in these countries. In other words, Taylor (1999) does not recognise that the gender equality as human rights is not only sought out by the West, but it is also argued for and claimed by women from the non-Western countries.

Women all over the world have been striving for the universal implementation of human rights standards, and yet women's rights are most often undermined. Recognising this, we examined the proposal of Martha Nussbaum (1995). Nussbaum (1995) argues that the universalist approach to justify and secure women's rights is essential. The universality of human rights lies in the exemplification of the universal

need for human beings to make moral decisions based on the notion that human capabilities exert a moral claim that they should be developed (Nussbaum, 1995). Nussbaum (1995) proposes her capabilities approach, with its focus on similarities between women and men, rather than differences, as the one particularly compatible precondition for addressing women's rights universally.

According to Nussbaum (1995) the moral choices about how we are to behave towards fellow human beings should be the norm and thus, politically legitimate, particularly for those that have been oppressed for a long time. She proposes this on the basis that some women, who have been oppressed, might lack the awareness that what they advocate may be supporting the status quo. They might also not be aware that they are entitled to human rights, thus not requesting their implementation (Nussbaum, 1995).

Consequently, the political implementation of human rights standards is essential, as this will ensure that the governments are obliged to offer the resources to all human beings for their full development. Nevertheless, Nussbaum (1995) also argues that once the resources are provided, it is up to the individual recipients to choose whether to use such resources for development or not; and that these must not, under any circumstances be enforced upon them. The capabilities approach was found to be particularly helpful in providing a theoretical basis for the universalist framework to address the human rights of all, particularly women.

The analysis undertaken in this thesis illustrates that human rights are essential and necessary and for the sake of all claimants for these, they need to be universal. The

fact that human rights are mainly promoted by the West (and the fact that they evolved in the Enlightenment period[2]) does not undermine their importance; human rights can be argued as universal in scope and application. Taylor's (1999) example of Thai Buddhist practices supports this argument; further accentuating that human rights agenda does not entail adopting Western practices and ways of life (Coomaraswamy, 1999; Ignatieff, 2001). This is also evident from the situation in Afghanistan, as the women in Kabul who were coming to Western human rights agencies seeking their protection from the Taliban militias did not want to cease being Muslim wives and mothers; they wanted to combine the respect for their traditions with an education and professional health care provided by a woman. They were there in hope that the agencies would defend them against being beaten and persecuted for claiming such rights.

Examples such as this, highlight the importance of human rights, while at the same time, illustrating that the claims for human rights do not arise out of the opposition to community; on the contrary, once human rights claimants are liberated from predetermined definitions of gendered, racial, religious, and national identities, they still want to belong to their communities (Frank, 2001).

6.3 Women's human rights: practical domain

It is women around the world that have frequently adopted the language of human rights to force their governments or societies to acknowledge their problems and to

[2] The period is usually acknowledged as taking place in the eighteen century and it refers to fresh currents of thought wearing down institutionalised traditions. In this period, the foundation of the ethical and social gospel for natural rights theory was discovered. Consequently the natural rights were introduced into practical politics, thus gaining the dynamic force, which emphasised that, the liberty of the person, security of property and freedom of discussion were less rooted in abstract reason than in commonsense views of fundamental human needs, impulses and inclinations (Rempel, 2000).

consider their perspective in policy making (Kerr, 1993). Today not only the basic tenets of international law, such as state responsibility, but also human rights principles itself are being transformed by its discourse on women's rights[3] (Coomaraswamy, 1996:169).

The participation of women in the review and reporting of human rights conditions has grown in many ways. However there is still a long way to go. Cooperation and coordination of principled policies to address international guarantees of the human rights of women in the field remains underdeveloped in the programming of the United Nations. Thus, although there are improvements that have come with the establishment of CEDAW and in the UN's field-based programs in countries where women's rights are still challenged (i.e., Iraq, Afghanistan, China), the tendency to take an easier path – favouring a non-confrontational approach to humanitarian assistance as the Taliban case showed – "may overwhelm the need for direct and insistent action on the enforcement of international human rights guarantees to women"(Gaer, 2001:23). In other words, although the developments of the 1990s have spurred a fuller realisation of the human rights of women, the awareness needs to be followed by stronger and more widely spread action.

For instance, women's groups working at the national level in many Asian and African countries are still facing innumerable obstacles. As argued by Ackerly (2001:313), women's human rights activism demonstrates that the challenges of gaining recognition of women's human rights are as much the challenges of changing

[3] Thus it can be argued that civil and political rights are the first generation of human rights; economic, social and cultural rights are the second generation; and group rights and the right to self-determination are considered to be the third generation. It may be argued that women's rights are the fourth generation, radically challenging the private-public distinction in international human rights law (Coomaraswamy, 1996:169).

local social contexts as they are the challenges of promoting universal norms of human rights. Given that the universality of human rights, particularly women's human rights, remains contested both in theoretical discourse and on the international political scene, promoting human rights through changing local mores and practices is an essential strategy for realising women's human rights (Ackerly, 2001:313).

One path towards the realization of women's human rights is to rely on the notion of women's consent. This was illustrated in an analysis of Martha Nussbaum's (1995; 2000) capabilities approach. Women and men should be given the right to choose which law should govern their private lives. This notion of choice is, as both Nussbaum (1995) and Coomaraswamy (1999) recognise, integral to a human rights understanding of the issue of cultural pluralism, because as Coomaraswamy (1999) highlights, many feel that our attitude toward cultural diversity should be conditioned by this choice. In other words, "cultural diversity should be celebrated only if those enjoying their cultural attributes are doing so voluntarily" (Coomaraswamy, 1996:181). By protecting choice, voluntariness, and the integrity of female decision-making, we may be able, as Coomaraswamy (1996:181) argues, to reconcile the conflicts between cultural diversity and the need for the protection of women's human rights universally. Consequently,

> ...with this universalist notion in mind, one can only hope that the next decade will witness the triumph of the these common values over parochial forces that are attempting to confine women to the home. It is only then that we will be able to celebrate the true victory of women's rights being recognised as fundamental human rights (Coomaraswamy, 1996:182).

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Appendix A: The Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be

compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

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

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix B: The essay on the women's status in China and Taiwan

Women play a very important role in any society, not only as individuals, companions, wives and mothers, but also contributing as workers in many fields of endeavour. In this essay women's contribution in China and Taiwan together with their roles in these two industrialising countries in Asia will be discussed. The discussion of women's contribution will include their economic and social successes as well.

In China, Confucius directives on the position and treatment of women incalculably harmed their lot over the centuries (Roper, 1981:9). It was not until 1949 when it has undergone a revolution led by the communists, that women's question was addressed. Chinese communists were acutely aware of the oppression of women in their society and were committed to the cause of women's equality (Rai, 1995; as cited in Benewick and Wingrove, 1995:181), causing the status of women to improve greatly. Prostitution, child marriages, and concubinage were all banned by law and the sale of brides was forbidden. In the moral climate of the period sexual discrimination was a serious breach of Communist principles, for the constitution of PRC stipulates complete equality between men and women (Morton, 1995:271). Women in the paternalistic state in the Maoist period were liberated by being mobilised into the workforce (Rai, 1995:187).

However, the modernising state in the Post-Mao period is giving women choice-by allowing them to go back to being mothers and wives (Rai, 1995:187). The period after 1978 has along with greater freedom, which accompanied the thrust towards modernisation, ironically also brought with it a revival of some traditional forces,

including the rural patriarchal family (Mackerass, 1992:461). While the massive task of economic reconstruction in the 1950s needed the labour of women, growing urban unemployment in the 1990s means that the state is wasting education and training to ensure the status quo in gender relations that is seen as necessary for China's social stability. In 1986 it was reported that "among the unemployed young people in the country, the proportion of women rose to 61.5 per cent" (Chinese Education, Summer, 1989, p.28; as cited in Rai, 1995:187).

Even today women's unemployment is still an unresolved issue. Chinese companies in the drive toward modernisation are making every attempt to become profitable, which they achieve, for instance, by cutting back allegedly superfluous and less productive workers - women, in particular. Women account for 70 percent of all dismissals (Borchard, 1989:121). Managers do not want to give maternity leave benefits to their women employees, claiming that "the losses caused by women bearing children for the regeneration of the human race should not be borne by factories..." (Chinese Education, Summer 1989, p.86; as cited in Rai, 1995:188). In many areas women are being encouraged to take retirement at the age of forty five. As contractual work begins to replace tenured employment, managers can refuse to renew their contracts, and are doing so.

The ethic of the market is also used by the managers to "prove" the unsuitability of women in the public sphere – women are claimed to be not competitive and are plagued by divided loyalties. These conditions are making the market a hostile place for women, yet, the response of the party-state to this attack upon their rights to work has been muted. As a protector of women's social position, the state has exhorted

industrial enterprises to recruit women, but without confronting the question of the sexual division of labour (Rai, 1995:188).

Thus, patriarchy is furthered in both rural and urban China, being reinforced by official ideology which stresses the role of wife and mother and the educative role of women in creating a "new socialist spiritual civilisation" (Brugger and Reglar, 1994:302). The value of housework is still stressed, on which more time is spent than in almost any other country in the world. In respect to economic reforms in rural areas, they have served the causes of patriarchy as well. Women often not only have to bear the crushing burden of agricultural work and but also the responsibilities of looking after their children on their own as their husbands go to towns and cities in search of work (Tan, 2000:145).

Nevertheless, there are many women who feel better off than ever before. The de-collectivisation of agriculture and the introduction of the "family contract system" have resulted in significant expansion of cash from both the agricultural and non-agricultural sector (Rai, 1995:188). Clearly, women who sell produce on the open markets have more access to cash for their personal use and the simple acquisition of money earned in local enterprises instead of discriminatory work-points has produced much satisfaction, even though abolishing work-points took away from many individuals public recognition of the value of outside work (Davin, 1988, 141-2; as cited in Brugger et al., 1994:298). Many of the new specialised households are headed by women. Thus, new types of gender relations in various parts of South China are developing. These are still patriarchal, but in a sense that these women are aware that they live in a patriarchal society where sons are valued more, marriages are arranged

and men are favoured in employment, but "earning often more than their male kin, they do not care" (Woon, 1991; as cited in Brugger et al., 1994:298).

This notion of the individual initiative and opportunity replacing the previous social transformation and responsibility reflects the current situation in China to be full of promise as well as conflict. Great independence is being given to established self-governing organisations such as All-China Federation of Women to set their own agenda (Mackerras, 1989:254). However, the continued refusal of the party-state to consider significant power-sharing does not allow the deepening of political reforms. Yet resistance of particular features of state policies has been significant and in the main tolerated by the party-state. Further, the "opening up" of China to the rest of the world has meant the influx of new ideas and vocabulary. Chinese women, for example, are beginning to examine theories of women's social oppression not bound to the materialist model. In this political context Chinese women have been protesting against the new inequalities and discrimination they are facing (Rai, 1995:189).

The picture of situation of women in China is not uniformly grim. Although, it has been argued that women face considerably less discrimination than they did before the CCP came to power (Mackerass, 1992:461), Morton (1995) argues that distinct signs of reviewing bias against women are reappearing since about 1992 onwards. Women are discriminated against in jobs, in housing and in the allocation of land. Physical attractiveness is a vital factor in the hiring of women for positions in business offices. Taken together, these examples suggest that the renewal of bias against women is connected to the new emphasis on a money economy and the concomitant decline of central ideological control, which had improved the position of women (Morton, 1995:271). In addition, the Confucian ideas still underpin the attitudes toward women

in China and thus, influence their lives. Contemporary popular notions about female pollution, subordination of women as part of the "natural" order and division of labour based on sex all find support in the teachings of Neo-Confucianism, suggesting that in China forms change but the ideas continue (Hinsch, 1989:31).

The situation of women in Taiwan is much better when compared to China. Taiwan since the early 1970s entered the ranks of the newly industrialised countries (NICs) based on manufacturing for export, in which women play key roles (Salaff, 1992:267; as cited in Appelbaum and Henderson, 1992). Namely, the ready supply of female labour has reduced labour costs and increased Taiwan"s competitiveness in the world market (Cheng at al., 1992:235). Its female participation rate has grown rapidly, from 33% in 1965 to 46% in 1988, accompanying the increase in women's educational attainments. However, this rate has flattened out in the past decade, although women's educational level continues to grow steadily (Chuang and Lee, 2003:436). Nevertheless, the increase in education for women in Taiwan has only resulted in higher returns to their families from their exploitation (Cheng et al., 1992:235).

Thus, despite their contributions to the economic growth of Taiwan, women as a group have not been benefited equally in comparison to men. Women are still underrepresented in the upper levels of occupations (Y.-L. Liu, 1985, p.40; as cited in Cheng and Hsiung, 1992; as cited in Appelbaum and Henderson, 1992), and their average wage continues to be a fraction of their male counterparts (Bian, 1985, pp.270-271; P.K. –C. Liu, 1984, p.96; as cited in Cheng et al., 1992:234). Moreover, in contrast with male rates, female rates are more sensitive to changes in the world economy (Chiang & Ku, 1985, pp.8-9; as cited in Cheng et al., 1992:236), as they

correspond to business cycle in Taiwan (Chou, 1989, pp.437-438; as cited in Cheng et al., 1992:236).

In addition, the development of employment and promotion rules is developed with male workers in mind, disadvantaging women even further because of interruptions caused by domestic responsibilities. Due to the common attitude toward traditional gender roles, most working women have to balance family and work demands (Vella, 1994; Boden, 1999; as cited in Chuang and Lee, 2003:436). The data from the 1989 "Taiwan Women and Family Survey" show that 68% of the working women surveyed have withdrawn from the labour market at least once in their life (Chuang and Lee, 2003:436). These frequent and early exits from the labour market for reproductive and caring purposes perpetuate women's exploitation as cheap labour. In addition, the labour force participation and employment rates overestimate the progress women have made in remunerative work since both include a large number of unpaid family workers, most of whom are females. In every industry, the proportion of unpaid female workers exceeds that of their male counterpart. Among unpaid family workers, women exceed man by a large margin (Cheng et al., 1992:239).

Gender discrimination is widely recognised in Taiwan, although not as widely condemned. A study of employment advertisements, in newspapers reveal that males are preferred for higher-paying jobs, while for lower-paying jobs ads often specify that only "females may apply" (Funu Xinzhi, 59, 1987, p.8; as cited in Cheng et al., 1992:242). The state, on the other hand proclaims that men and women are equal, but on the other condones gender discrimination in its own employment practice.

Women are excluded from participating in civil service examinations for certain prestigious government jobs, such as high level jobs in the customs department, the diplomatic services, international journalism, and the labour department. When confronted with these and other discriminatory practices, government officials often respond by saying that it is better for women and for society if women concentrate on what they do best: "to take pride in freeing their husbands from family worries and not be so concentrated about whether or not they themselves can become department heads (Funu Xinzhi, 5, 1982, pp.13-14; as cited in Cheng et al., 1992:242).

Finally, women's subordination in Taiwan should not simply be considered as a continuity of traditional values and culture, rather it is a product of patriarchal capitalism in which the interests of the capitalist, the state, and the international market are served (Gallin, 1984b; Gates, 1979; as cited in Cheng et al., 1991:254). Through the mass media and educational system, the state plays an active role in encouraging "an ideological environment that relegates women to basic labour and household tasks" (Cheng et al., 1991:254). In this patriarchal capitalist system women's unpaid domestic and underpaid public labour are appropriated "without altering cultural definitions of male and female roles or transforming the structure of male status and authority within the family" (Gallin, 1984a, p.398; as cited in Cheng et al., 1991:254). Thus, working for wages is encouraged by the state as long as it does not interfere with women's roles as wives, mothers and daughters-in-law.

In conclusion in this essay women's roles in both China and Taiwan were discussed. In China, while the paternalistic state in the Maoist period liberated women by mobilising into the workforce, the modernising state in the Post-Mao period has

returned to the Confucian ideas allowing women to go back to being mothers and wives. The current situation of women's roles in both urban and rural China seem to reflect the official patriarchal ideology resulting in gender discrimination connected to the current emphasis on a money economy causing a decline of central ideological control which had improved the position of women. In Taiwan, although women play the key roles in respect to its manufacturing for export, their status is still given low priority. Taiwanese women are more economically independent than Chinese, however, their roles still reflect the traditional values and culture, being is a consequence of patriarchal capitalism which encourages women to work but it downgrades this work to basic labour and traditional work.

The list of References for this essay is included in the above Bibliography list.