

Securing A Place for Women:  
Infusing Inclusivity Within Human Rights

Monica Mecca  
Justice and Peace Studies  
Senior Thesis

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## Introduction

“Women’s Rights are Human Rights.” This slogan came to represent the revitalized and concerted effort—no, demand—for recognition of women’s international human rights in the 1990s. The simplicity of the slogan is deceptive, for it what lies behind it is a history of the marginalization and/or exclusion of women’s issues in the international human rights debate.<sup>1</sup>

Since the reinvigoration or modernization of the human rights debate after World War II, women’s issues and concerns have been cast aside in favor of more ‘fundamental’ debates. The international community faced more pressing issues regarding the universality vs. relativity of human rights, ‘generation’ rights, and the division between public and private competencies—all, of course, in the context of the emerging Cold War. The discourse evolved to dichotomize and hierarchize human rights, favoring Western, individual political and civil rights that were incapable of dealing with issues of gender-specific violations.

The results of the dichotomization of the human rights discourse are numerous and debilitating. It effectuated a crucial separation and prioritization of rights, through which the necessarily interdependent issues of gender, race, class—desperately needing to be addressed in simultaneity with questions of human rights standards—were marginalized.<sup>2</sup> In doing so, the traditional discourse has delayed the realization of an indivisible, comprehensive, holistic and dynamic framework that recognizes and interprets the complex interdependencies among race, class, gender and human rights violations and standards.

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<sup>1</sup> I do not mean to homogenize women’s concerns into one category; indeed the issues facing women in the world community vary depending on the socio-political context within which a woman lives.

<sup>2</sup> While issues of race and class were also marginalized in the same way as gender issues, we will extract—as far as possible—gender issues from issues of race and class so that we may see how the human rights discourse has specific consequences for women, as such.

We continue to face the repercussions of the politicized dichotomization of the human rights discourse; therein lie the roots of many present-day implementation weaknesses. In this respect, the traditional human rights discourse went relatively unchallenged, insofar as it did not allow for, or at least did not respond to, criticism(s). One challenge to the discourse arose and continues to arise from the women's movement. With its unique position within (and without) the discourse, the women's movement enjoys a particular capacity to access the human rights framework. It challenges the discourse to respond to inadequacies in the classification and implementation of women's human rights—thereby forcing the discourse open for revision. Hence, the women's movement has a distinct potentiality for changing the tide of the human rights discourse toward a holistic framework.

As the women's movement re-infuses the human rights discourse with a fuller appreciation for the here-to marginalized relevance of women's issues and gender-specific violations, progress is manifest. But the many challenges (for the women's movement) that remain unanswered, or even worse—silenced, ignored, or deliberately unheard—are testimony to the compromising position in which the human rights discourse could/does find itself. Both the inherent, theoretical value of the discourse on human rights and its unparalleled functionality (and potentiality) guarantee its significant contribution to international society. Human rights are too great to be compromised, especially to debilitating, dichotomizing politics. We must secure their unrivaled location within the international community by infusing the international human rights discourse with a strengthened progressive and dynamic framework.

## **Women's Rights as Human Rights: History of the International Women's Movement**

The slogan “Women’s Rights are Human Rights” originated out of the 1993 Second World Conference on Human Rights in Vienna, as the Global Campaign for Women’s Human Rights mobilized its network to ensure that the relevant and interdependent issues of women’s rights were addressed simultaneously with human rights.<sup>3</sup> While it came to symbolize the international movement for women’s rights, the slogan revealed a fundamental insight into the location of women’s rights in the international discourse, namely in opposition to a threatening and (politically/historically) powerful adversary who there-to defied and denigrated women’s human rights.

The Vienna conference was the first concrete attempt on the part of the women’s movement’s (1990s) activism to combat the opposition. The conference provided a (non-gender-related) forum for the movement to break through to the international community and legitimize their agenda, i.e. to infuse the arena with the relevance of women’s rights. The Vienna conference was a microcosm for worldwide events, and acted as a catalyst for subsequent efforts in the 1990s, including many other trend-setting conferences.

The international movement for recognition of women’s rights as human rights, however, had formally begun with the founding instrument for the protection and promotion of women’s rights: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Adopted by the United Nations General Assembly in 1979, the convention is a follow up to the 1967 Declaration on the Elimination of Discrimination Against Women

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<sup>3</sup> Manisha Desai, “From Vienna to Beijing,” in Peter Van Ness, ed. Debating Human Rights (New York: Routledge, 1999), 188.

(DEDAW)—a somewhat weaker version of the Convention.<sup>4</sup> Ideally, it serves as a primary tool in the fight for recognition of women’s rights, and actively promotes progressive policies for the implementation of women’s rights. Part V of the Convention, Articles 17-22, provide for the creation of the Committee on the Elimination of Discrimination Against Women (COM). This Committee, along with the pre-existing Commission on the Status of Women, transforms the Convention into a pressure mechanism. It is endowed with the power to draft recommendations to the United Nations and review reports on state compliance with the Convention, and otherwise maintains an active role in securing the implementation of women’s rights as explicated in the Convention.<sup>5</sup>

Directly preceding the adoption of CEDAW was the proclamation of International Women’s Year in 1975, during which was held the First World Conference on Women in Mexico City. As a consequence of the women’s movement’s 1970s activism, this conference was the first time that a gendered lens took hold of the international human rights arena—where women’s concerns were being addressed as such.<sup>6</sup> The goal of the movement for women’s rights was hence conceived: to infuse the traditional human rights discourse with a new conceptualization of (the relevance of) women’s rights. The discourse thereto was recognized as unequipped to effectively protect and promote the agenda of women’s rights, and—most practically—to combat gender-specific violations (as we will soon discover).

The United Nations Decade for Women (1976-1985) was another milestone, as were the Second and Third World Conferences on Women (held respectively in 1980 in Copenhagen and

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<sup>4</sup> See Lars Adam Rehof, Guide to the *Travaux Preparatoires* of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Boston: Martinus Nijhoff Publishers, 1993).

<sup>5</sup> Winston E. Langley, Women’s Rights in International Documents (North Carolina: McFarland & Co., Inc., 1991), 153-180.

<sup>6</sup> Berta Esperanza Hernandez-Truyol, “Human Rights Through a Gendered Lens: Emergence, Evolution and Revolution,” in Kelly D. Askin and Dorean M. Koenig, eds. Women and International Human Rights, Vol. 1 (New York: Transnational Publishers, Inc., 1999), 31.

1985 in Nairobi). It seems, however, that a more concerted effort had taken shape in the 1990s, with the succession of six “gender-marginalization-shattering conferences which were critical to the inclusion of, participation by, and concern for women in the global agenda.”<sup>7</sup> The conferences referred to are: the Rio Conference in 1992 (“Earth Summit”); the 1993 World Conference on Human Rights (“Vienna Conference”); the 1994 International Conference on Population and Development; the 1995 World Summit for Social Development; the 1995 United Nations Fourth World Conference on Women (“Beijing Conference”); and the 1996 United Nations Conference on Human Settlements. Each has contributed significantly to the evolution of the international women’s rights movement by offering the opportunity to restate and reinforce its stance on many global issues that decidedly and, in many instances, disproportionately affect women. The conferences provided a platform for the movement to express and advance its agenda, a crucial step in the struggle to gain an explicit international recognition of women’s rights within a human rights framework.

The international community seemed receptive to affirming the role *of* women and the impact *on* women of the diversity of the issues at hand. The number of ratifications to CEDAW implies a commitment to the advancement of the goals of the movement’s agenda. But to what extent have these forums concretely aided the movement? At the very least, CEDAW and the conferences have gained a definite recognition of the movement’s agenda. However, obstacles still remain for achieving women’s collective ‘self-determination’ in the world community; many derive from the weak links of compliance and accountability in institutionalizing and (more importantly) implementing CEDAW and other relevant declarations combating violations of women’s human rights.

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<sup>7</sup> Ibid.

## *Implementing Women's Human Rights: Practical Impediments*

Since the Beijing Conference in 1995, the international movement for women's rights has better understood the problems related to the (lack of) compliance and accountability mechanisms of CEDAW.<sup>8</sup> (The Convention itself is powerful and binding only inasmuch as there are mechanisms to hold the signatories responsible for the violation of women's human rights.) While over 120 nations have ratified the convention—thereby firmly committing themselves to the advancement of women's human rights—the number of reservations attached to CEDAW surpass those of any other convention.<sup>9</sup>

Justifications vary for making reservations. An important example is the claim that some (many? all?) principles in CEDAW undermine (some? many? all?) rights of minority cultures. This reservation responds to a principle in CEDAW obliging the state to remove inconsistencies between international human rights law and the religious and customary law operating within its territory. Many times, governments claim to have to 'strike a balance' between conflicting loyalties towards, on the one hand, a historically grounded (and prioritized) protection of ethnic, religious and cultural minorities (as per the United Nations Declaration on the Rights of Minorities), and on the other, the promotion and protection of women's rights. Unfortunately, the balance struck can never be equal, and usually favors minority rights at the expense of women's.

One weakness of the language regarding the intersection of minority and women's rights is its assumption that a contradictory and antagonistic relationship inherently and necessarily exists between the two. Agreed that this is historically accurate, one task of the women's

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<sup>8</sup> Desai, 191-2.

<sup>9</sup> See Liesbeth Lijnzaad, Reservations to UN-Human Rights Treaties (Boston: Martinus Nijhoff Publishers, 1995), 298-370.

movement today is to show that multi-culturalist stances are not wholly and/or inherently contradictory with the goals of the women's movement. Compatibility between minority and women's rights must be sought; however, minorities that violate women's rights must be held accountable.

This example illustrates the need for revision of the practices and language that fail to protect women. Dismantling codes and practices embedded within cultures that perpetuate the denigration of women is necessarily a broad and pervasive agenda. The question (or answer) seems not to be a matter of whose 'right' outweighs the other—this only serves to pit one against another, alienating the possibility of mutual existence. However, what should be understood is how both minority rights and women's rights might co-exist—thereby helping to effectuate the goal of infusing all aspects of the human rights discourse with an understanding of the pervasive nature of violations against women.<sup>10</sup>

Here lies a first evidence of the dichotomization of the human rights discourse that alienates violations against women within private sector. Cultural practices have historically been considered a private sphere where government may not intrude; unfortunately, it is also the sphere where many (if not most) of the violations against women's human rights occur. The weakness for the implementation of women's rights lies in the mechanism's inability to unequivocally halt violations against women because it is barred from accessing the private sphere.

We will return to this point later on. For now, it is useful to understand how (and by whom) women's rights are compromised. Reservation issues in regard to CEDAW, however, do

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<sup>10</sup> The issues relating to the intersections between multi-culturalism and women's rights are obviously more complex than here-stated. For a greater understanding, see Joshua Cohen, Matthew Howard, Martha C. Nussbaum, eds. Is Multiculturalism Bad for Women? Princeton: Princeton University Press, 1999.

not extinguish implementation weaknesses for the women's movement. CEDAW, according to Article 20, provides a window of a mere 2-weeks annually for COM meetings. In such a short span, can the Committee adequately review reports and materials in order to make its recommendations? The Committee's effectiveness is in this way seriously jeopardized.<sup>11</sup>

Other setbacks are apparent in strengthening the presence of women in the international community. While we are far from the time of Olympe de Gouges—guillotined for a feminist critique of the French Revolution's 'enlightened' manifesto, *The Declaration of the Rights of Man*—women in the public sphere and the international process continue to be marginalized. One manifestation is within the United Nations, heralded (ironically) as the foremost proponent of international women's rights (as it is through its institutions that the movement's goals are effectuated). While women have recently gained access to prominent positions, notably in the case of Mary Robinson as the soon-to-be-former High Commissioner for Human Rights, they continue to be denied a presence in other ground-breaking committees—as in, for example, the International Law Commission, the premiere law making body of the United Nations.<sup>12</sup>

The lack of physical presence and direct participation of women in law making processes is a microcosm for the historic rebuff of women's concerns within the human rights discourse. Since law is the foremost institution through which women's rights may be and have been implemented, the implications of this marginalization are more pervasive than they might seem, given an understanding of the historic progression of the modern international human rights discourse.

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<sup>11</sup> See Langley.

<sup>12</sup> Hernandez-Truyol, 29.

### *Language Barrier: Theoretical Impediments*

The inaccessibility (futility?) of institutions and mechanisms that could facilitate the inclusion of women's issues in the human rights discourse (but do not/cannot) evidence the practical impediments facing the movement.<sup>13</sup> In particular, the lack of women in the law-making process provides an excellent window into the ways in which the human rights discourse has traditionally excluded or marginalized issues surrounding violations against women, whether intentionally or not. How were such practical inadequacies spawned? If we look to the evolution of the human rights discourse, we may see the theoretical inadequacies that have served to alienate (the implementation of) women's rights.

When we look to the language of the discourse, the sources of the inadequacies for addressing violations against women are apparent. It comes down not only to men making the laws (and women having to live with them), but also that the men in the human rights discourse at the time were not facing pertinent or visible issues of violations against women: such issues were not yet fully understood (nor, it seems, did many want to understand them). The way in which the discourse emerged was through institutions dominated by males, excluding females from meaningful participation (with the glaring exception of Eleanor Roosevelt). This exclusion resulted in a language devoid of consideration of women's concerns, in which androcentrism prevails—that is, taking the male as norm for standards of human rights violations.<sup>14</sup>

This evidence of androcentrism during and since the inception of the modern human rights discourse consequently placed the issues facing women's violations on the backburner—many times in favor of other politically relevant issues (as we will see in the chapter to come).

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<sup>13</sup> See John Valery White and Christopher L. Blakesley, "Women or Rights: How Should Women's Rights Be Conceived and Implemented?" in Kelly Askin and Doreen Koenig, eds. Women and International Human Rights Law, Vol 2, 51-75.

The language created in the latter half of last century was indeed not meant to and has hence been rendered incapable of dealing with the pervasive nature of violations against women. What we need is a more inclusive language to help us come to a holistic (legal?) comprehension of how and where women's rights are violated. Before we come to terms with this issue, we must first understand how the human rights discourse—through its 20<sup>th</sup> century political ties—has rendered itself incapable of addressing the pervasive issues of women's rights.

## **Evolution of Human Rights**

### *Western Origins, Universal Applicability*

The discourse on human rights alienates issues of women's rights mainly through its bifurcation, which was formally effected by United Nations covenants. Such covenants, however, were not the beginning of the discourse itself; they only evidence its modern interpretation. In fact, unlike the covenants, the human rights discourse is not a product of the 20<sup>th</sup> century. Before the time of international law and international organizations, the theory of natural, inalienable rights had been contemplated for some time.<sup>15</sup> Originating under the pretext of 'pre-modern natural law doctrine of Greek Stoicism,' and re-emerging more recently during the Enlightenment under the guiding hands of such influential philosophers as John Locke and Jean Jacques Rousseau, the idea of *human rights*, as such, is indeed Western in origin.

The Western origin of the human rights discourse, it should be noted, does not limit its applicability or suitability. On the contrary, the universal scope and breadth of human rights is affirmed—regardless of the doctrine's origin—in the spirit of its conceptual framework and

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<sup>14</sup> For further discussion of the concept of androcentrism, see Sandra Lipsitz Bem, *The Lenses of Gender* (New Haven: Yale University Press, 1993).

sentiment. After all, “all cultures and civilizations in one way or another have defined rights and duties of man in society on the basis of certain elementary notion of equality, justice, dignity, and worth of the individual (or the group).”<sup>16</sup>

### *Universality v. Relativity: Classic Debate Reconceived*

Here, it is necessary to diverge from the main framework to address fundamental attacks on the human rights discourse. The necessity of establishing a universal framework to human rights is essential, as for our purposes it is within this compelling universality that the context of women’s rights is steeped. The relativist stance in regard to the human rights discourse could have grave implications insofar it attempts to undermine the universality framework. Although flawed, the relativist critique plays an instrumental role by providing a forum to articulate the debilitating political dichotomization of the rights discourse.

Many cultures express concerns in regard to the universality of the human rights discourse. To non-Western cultures, the discourse may be perceived as a threat because of its Western origin and Western imposition of standards that might not be appropriate for different cultures with different values. In effect, the most relevant part of the critique asks how human rights can be universal if not all cultures articulate rights in the same manner as the discourse; dissenting cultures and states claim that each culture promotes different rights to different extents in different ways. Indeed, according to this argument, it would be wrong to enforce the West’s human rights standards that ignore the uniqueness of approaches among different cultures. This mainly refers to the modern discourse’s homogenizing prioritization of individualistic political

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<sup>15</sup> See Iwe, Nwachukwu. *The History and Contents of Human Rights*. New York: Peter Lang Publishing, Inc., 1986.

<sup>16</sup> Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?* (New Jersey: Rutgers University Press), 437.

and civil rights—many times at the expense of more collective rights of an economic, social and cultural nature associated with non-Western traditions.<sup>17</sup>

This in itself is a constructive critique of the human rights discourse, one to which the discourse may appropriately respond. Indeed, forcing non-Western cultures and nations to adapt to Western standards of human rights is homogenizing, and should call for a reconceptualization of human rights. However, the relativist argument (thus conceived) usually does not stop there; it calls for a rejection of whole human rights discourse, conceived as a ‘Western homogenizing discourse’—a neo-colonialism of sorts, that is, the desire for the dominance of Western idea(l)s, standards and values.

While it is true that many evidences of Western hegemony remain embedded in the discourse, the response to such ‘homogenizing’ discourse is not to throw out the baby with the bath water. Relativism, in this context, forgets the core framework of human rights—a fundamental, minimal standard independent of culture, based upon a common existence or humanity. That means that all the (indivisible) rights articulated in the Universal Declaration on Human Rights, all cultures recognize in varying degrees as inherent goods. Vaclav Havel, himself a victim of human rights violations, suggests that we emphasize the spiritual source of human rights, in addition to the underlying and fundamental call for ‘humility, decency and solidarity’ by every religion and culture.’ We may thereby see the validity in assuming the universality and indivisibility of human rights that transcends culture:

...The concept of human dignity permeates all the fundamental human rights and human rights documents. We find this so natural that we see no point in asking what human dignity actually means, or why should humanity possess it; nor do we inquire why it is practical for us all to recognize it for one another...human beings derive their dignity, as well as their responsibility, from the world as a

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<sup>17</sup> For further discussion on the relativist claim, see Jack Donnelly, Universal Human Rights in Theory and Practice (New York: Cornell University Press, 1989) 109-124.

whole;...that is, from that in which they see the world's central theme, its backbone, its order, its direction, its essence, its soul—name it as you will.<sup>18</sup>

Governments who oppose the fundamental standard of human rights and undermine their implementation, many times react not to the genuine Universality of human rights but to the 'dominant strand' of a particularly Western universalism, as Nikhil Aziz tells us.<sup>19</sup> That is, they perceive some Western standards embedded in the discourse and erroneously judge the whole discourse as imperialistic, disregarding the relevance and pertinence of a Universal human rights discourse devoid of Western hegemonic standards.

The ability to articulate the difference between genuine Universalism and Western universalism is a direct result of (the response to) the relativist critique, and hence we are indebted to relativists who have helped to elucidate this essential distinction. Unfortunately, the relativist argument has little other significance in this context because its basis and solution are misdirected, insofar as it (and mistakenly) suggests a rejection of the human rights discourse altogether.

What we should look to do, rather than reject human rights, is revise the discourse so that the Western particulars within the universal are cast out. This approach maintains the integrity of a genuine, holistic and comprehensive framework of human rights, and results in a genuine Universalism.<sup>20</sup> This genuinely Universal human rights discourse does not succumb to debilitating political dichotomies; it rather sees as interdependent all levels of, and issues

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<sup>18</sup> Vaclav Havel, untitled article in The Universal Declaration of Human Rights: Fifty Years and Beyond (New York: Baywood Publishing Co., 1999), 332-3.

<sup>19</sup> Nikhil Aziz, "Human Rights in an Era of Globalization," in Peter Van Ness, ed. Debating Human Rights (New York: Routledge, 1999), 41. It should be noted that, other times, relativist defenses are used to cover up or justify violations. See Aziz, 40; also, Linda Butenhoff, "East Meets West: Human Rights in Hong Kong," in same, p106, 116.

<sup>20</sup> Ibid.

pertaining to, human rights, which in turn effects a comprehensive implementation process through its integrative approach.

The instrumental value of the relativist critique lies in its facilitating an articulation of an important weakness in the human rights discourse, namely the discovery of some Western hegemonic standards. When nation-states dissent to the universality of human rights, many times the flaws they point to are not associated with human rights, as such, but rather are critiques of a particular brand—or the ‘dominant strand’—of human rights that has developed in the past century. The modern interpretation of human rights, characterized by a bifurcative dichotomy, is indeed a particular brand of human rights—a particularly *Western* brand.

The way to rid ourselves of this brand is to recognize and locate Western tendencies in the human rights discourse—only then can we legitimately incorporate different cultural approaches and women’s concerns, and also see the interdependence of these issues. We need to reconceptualize the discourse, which requires getting down to the basics. For a comprehensive approach to human rights, we need to de-fuse the traces of Western impositions, so that the discourse will once again look more as it did in the Universal Declaration of Human Rights.<sup>21</sup> Only then will the human rights discourse be stripped of a debilitating Western universalism, and re-energized with a genuine Universalism.

The relativist claim speaks against a particular Western brand of human rights, and so it is clear why the discourse, thus conceived, is alienating. It is possible to re-infuse the discourse with an appropriate language that brings it back to its pre-politicized/dichotomized roots, hence countering what at root is the relativist concern. This necessarily involves an understanding of

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<sup>21</sup> Some alterations and improvements in the Universal Declaration however still need to be made in terms of an explicit recognition of, for example, women’s rights as such.

how the human rights discourse has evolved as to include the debilitating dominant strand of a particular Western universalism.

Of course, Western origins remain in the human rights discourse, which itself does not limit its accessibility. What is limiting to the accessibility of the human rights discourse, however, are the Western characteristics prevail in the discourse, spelling Western hegemony to some. While not rendering the human rights language futile, invalid or inapplicable across the board, this insight does suggest that we must work to locate and expel Western particularisms within the conceptual framework of human rights—de-construct the discourse so as to de-fuse its Western hegemonic tendencies. Before this can be achieved, we must ask what those tendencies are that make the traditional human rights discourse particularly Western. Where can we find them? Through the agent that has realized the modern application of human rights discourse: the law.

### *Law as Agent of Western Influence*

The particularity of the historical and conceptual development of Western law is central to the discussion of how the West has inserted its traditions into the discourse. Although it masks itself under the guise of Universalism, Western universalism—with the law as its epitome—is indeed a particularity:

It portends a homogenized, hierarchized world which is sharply categorized into the modern and the primitive, the secular and the non-secular, the scientific and the unscientific, the expert and the layman, the normal and the abnormal, the developed and the underdeveloped, the vanguard and the led, the liberated and the salvable.<sup>22</sup>

How does the traditional human rights discourse accomplish this strict categorization? According to Nikhil Aziz, the universalization of what should be identified as a particularly

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<sup>22</sup> Aziz, 41-2.

Western tradition masks a hegemony of terms—demanding recognition for, and a prioritization of, Western secular, individualist thought.<sup>23</sup> The resources maintained by the West are its historically grounded particulars, embedded in the human rights discourse. In a preliminary way, the secular nature of the international human rights legal tradition allows us a window into the history of Western prioritized ideals.

The secular approach is steeped in the discourse and institutions of the world order.<sup>24</sup> The Western conception of law is divorced from religion/spirituality resulting from the separation of church and state in Europe since the Enlightenment. It evolved through the ousting of ‘divine rule’ and other arbitrary, authoritarian regimes, a result of a new formulation of accountability and individual autonomy. The ‘enlightened’ individual naturally endowed with rights, flourishes in this secular interpretation of the law by installing a comprehensive system of political and civil rights—the basis of any democratic political system.

The human rights discourse has, unfortunately, been made insensitive to issues involving other types of rights—those beyond the political and civil, beyond the individual, beyond the secular, and also beyond the male. The modern applications of the human rights discourse are rendered incapable of going beyond such Western ideals. Such applications are located in and defined through international legal documents.

Declarations, treaties, and covenants on human rights are all arbitrated through international law and the United Nations. Beginning with the Universal Declaration of Human Rights in 1948, we may see the modern formulations and political significance of the human rights discourse. The creation of the United Nations, along with its founding ‘declaration’ (a

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<sup>23</sup> Ibid.

<sup>24</sup> See Ibid, 42-4 for further discussion on the secularization of law and its effects on the validity of the human rights discourse.

manifesto of sorts), was a way for the victorious allies of World War II to protect against future atrocities of unchecked fascist (or authoritarian) regimes—a way to, indeed, ensure that democratic, Western ideals were universally upheld. By placing a particular brand of human rights at the foreground of international relations, the West secured the prominence of the discourse on its own terms.

As an informal instrument—a statement of principles, if you will—appended to the Charter of the United Nations, the Universal Declaration of Human Rights sets forth a common standard of achievement for the international community. It calls for an upholding of the ‘inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.’ Problems arose, however, when the international community claimed the Universal Declaration to be unnecessarily ‘lofty.’ It was succeeded by more binding covenants specifically explicating the human rights protected under international law. As a preliminary formulation of fundamental freedoms, the Universal Declaration was followed in the 1960s by the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR)—both adopted in 1966.

This bifurcation, however, resulted not only in a dichotomization, but also a hierarchization of the human rights discourse. The indivisibility of rights heralded in the Universal Declaration was seemingly paralyzed in a Cold War battle, wherein the two covenants almost irrevocably de-legitimized the interdependence of rights by dichotomizing them.

*Politicized Bifurcation, Dichotomization and Hierarchization*

“The debate over including [political and civil, and] economic, social and cultural rights in a single Covenant became one of the most politically charged and emotive issues during the early years of developing a human rights regime.”<sup>25</sup> This was because the human rights discourse was manipulated to serve as a political battlefield on which the Cold War was fought. The division in the discourse, evidenced in the United Nations covenants (that between political and civil rights and economic, social and cultural rights) symbolized the ideological divisions between the east European socialist states (led by the Soviet Union) and the western democracies (led by the United States).

The reason that the discourse served a good battlefield is because the division made political sense in the context of the Cold War: the two key opponents did indeed have different ideologies as to what rights should be focused on. This, in turn, derived from differing views on the role of the state. For example, since capitalist states oppose references to state duties with regard to economic, social and cultural rights and relegate them to free market forces, it makes sense that political and civil rights (requiring minimal governmental intervention) are heralded. The United States’ democratic political ideology focuses more on political and civil rights of the individual, as evidenced in its Constitution. This is due to its own particular history, as Tony Evans tells us:

Those rights promoted by the United States derive from liberal ideology and include freedom of individual action, noninterference by the state in economic and social matters and the principle of laissez-faire. This meant that human rights became defined as those rights that required government abstention from acts that impaired the freedom of the individual...Applying the laissez-faire principle to human rights thus points to acts of omission rather than those of commission...Crucially, acts of omission confine human rights to civil and

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<sup>25</sup> Tony Evans, U.S. Hegemony and the Project of Universal Human Rights (New York: St. Martin’s Press, Inc., 1996), 125.

political rights, which some have argued demand little or no additional state resources to maintain...Applying the laissez-faire principle to human rights is exposed as part of a postwar program of reparation or punishment to be pressed upon the defeated by the victors.<sup>26</sup>

Of course, we must ask at what cost political and civil rights were promoted. And so we look to the other side, and see that the prioritization of political and civil rights came to the detriment of economic, social and cultural rights, namely those rights favored by the Soviet Union's communist ideology. These rights traditionally require affirmative action on the part of the state to protect and provide for the right to work, to education, to social security, etc. This coincides with socialist states affirming the state's role in promoting such rights.

In the same way, the evolution of the 'generation gap' can be viewed as an attempt to separate the different ideologies concerning the nature of government, namely the duties and responsibilities of the government toward its citizens. The human rights discourse began to distinguish between rights in terms of 'generations.' Simply put, 'first generation' rights are the political and civil rights that restrain government intervention; and 'second generation' rights are the economic, social and cultural rights that require state aid to provide such goods.<sup>27</sup> This explicit compartmentalization of the rights discourse, thanks, in part, to the French jurist Karel Vasak for coining the term 'generation right,'<sup>28</sup> is made visible through the auspices of international law in the United Nations covenants of the 1960s.

The distinction between political and civil rights, and economic, cultural and social rights (the former, of public scope, the later relegated to the private sector) has its roots in (Western) philosophical tradition. Its justification is the distinction between so-called 'negative' and

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<sup>26</sup> Ibid, 39.

<sup>27</sup> Later, we will see a third generation emerge, and a proposal for a fourth generation as well.

<sup>28</sup> Roland Rich, "Right to Development: A Right of Peoples?" in James Crawford, ed. The Rights of Peoples (New York: Oxford University Press, 1988), 41.

‘positive’ rights. The former are traditional political and civil rights, like those in the United States Constitution, that call for restraint from the State in interfering with the citizen’s right to life, liberty, equality, etc.<sup>29</sup> (Incidentally or not, these rights are embedded in Western history and aimed at securing the citizen’s liberty from arbitrary action by the States.) Thus, these ‘first generation rights’ are traditionally labeled ‘negative’ because they limit the extent of legitimate governmental intervention into the realm of human liberty, prohibiting the state from infringement. They ‘only’ require forbearance on the part of others, and so violating such a right traditionally requires an active causing harm.<sup>30</sup>

So-called ‘positive’ rights are those that traditionally require positive (‘interventionist’) action on the part of the state to provide access to such goods as education, food, employment, etc. These second-generation rights promote the involvement of the government in the interest of securing equality in political participation and in the distribution of social and economic goods.<sup>31</sup> They require others to provide goods or services if they are to be implemented; to violate a positive right, then, ‘merely’ involves failing to provide assistance.<sup>32</sup>

## **Remnants of the Traditional Human Rights Discourse**

### *The West’s Undue Influence: Paralyzing Particulars Turn Universal*

While there is a traditional philosophical distinction between such rights, history has created a ‘politicized dichotomy’ between them. Such a (false) dichotomy instated a conflicting and even contradictory relationship between these rights. We can see the (political) advantages

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<sup>29</sup> Ian Brownlie, Basic Documents on Human Rights (New York: Oxford University Press) 128-45.

<sup>30</sup> Donnelly, 33.

<sup>31</sup> Brownlie, 118-127.

<sup>32</sup> Donnelly, 33. We will continue with the positive/negative divide later on.

of doing so: once the dichotomy is set, it becomes possible to uphold only one set at a time—the indivisibility of the rights discourse is thus severed, and the stage is set for the hierarchization of one set of rights over another. Due to political circumstances that placed the United States at the head of international affairs, there came a prioritization of individual political and civil rights in order to advance the Western agenda and tradition, and export its values in order to maintain its dominance.

The installation of a dichotomy between rights led to the hierarchization of Western individual political and civil rights symbolizing a prioritization of its own tradition/agenda. The Western democracies (led by the United States) went to great pains to eliminate references to economic and social rights—terms suggesting ‘state socialism’ were perceived as (politically) threatening. In fact, in the escalated conflict of the Cold War, proposals to include second generation rights were thought to be an attempt by communist states “to ensnare the U.S. in a complex international legal system that sought to penetrate, influence and finally bring down the traditional social and political values for which America stood.”<sup>33</sup> The irony is that non-Western states accuse the U.S. of exactly what it attributes to the communists; they rebuke the West for instituting a linguistic hegemony of terms, particularistic tendencies, which are perceived as a threat to non-Western traditional socio-political values.

While the Western attempt to exclude economic, social and cultural rights was not wholly successful, the powerful and dominant position of the United States in world politics both during and after the Cold War effectuated the primacy of its own historical ties to political and civil rights. Unfortunately, the prioritization of one set of rights against another only serves to pit one group against another, infusing the discourse with debilitating particulars that render the discourse static, and incapable of realizing the indivisibility of human rights.

## *Dichotomized Rights: Implications for Women*

Indeed, there is a philosophical soundness to recognizing the different kinds of obligations that rights might impose upon governments. It is important to explicitly address where the government may interfere, and set certain boundaries. But we must be sensitive to such boundaries, sensitive not to hierarchize such rights. So, while it might be conceptually important to distinguish between the different nature of political and social rights in terms of ‘rights as limits’ and ‘entitlements to goods,’ the prioritization of one at the expense of the other is a historically political intrusion into the rights discourse that cannot be tolerated.<sup>34</sup>

For example, the setting of public and private competencies—those areas where government may intervene and those in which it must be isolated from—seriously affects the scope of the human rights discourse and jeopardizes the effectiveness of its mechanisms. It sets a periphery wherein violations may be addressed; outside such an area, human rights mechanisms are rendered futile.

Yet, in the outer core of the periphery, human rights violations persist; indeed, it is within this private, isolated arena where women’s rights are (mainly) violated. Economic, social and cultural rights competencies were privatized (namely, rendered outside the scope of international human rights law) due to the publicized nature of political and civil rights. Of course, within the traditional discourse, there was no way of reconciling the two sets of rights or the differing competencies because the rights were statically and rigidly in their respective (politicized) places.

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<sup>33</sup> Evans, 109.

<sup>34</sup> See Martin Golding, “Primacy of Welfare Rights,” *Human Rights* (Oxford: Basil Blackwell Publishers, 1984), 124.

The de-dichotomization of public and private competencies in terms of government intervention of human rights violations is crucial, especially when we consider that women's rights are (most) commonly violated in the private sector—i.e. within cultural practices, the family. When the scope of international human rights law is rendered incapable of interfering in such a vital sphere, the advancement of women's rights and the protection against violations are tragically compromised:

International human rights law reinforced the division between the public world and private life. By insulating the internal practices of states from scrutiny, it ensured that community and private life continues without any reference to international standards. There was considered to be a public sphere where the states and the international system may intervene and a private sphere where state intervention and international scrutiny were prohibited.<sup>35</sup>

Here again, there is a hierarchy of goods: the prioritization of the public life (political and civil features) at the expense of the private sphere (economic, social and cultural features).

With the bifurcation of the hr discourse, states were forced to take a stance—to which generation of rights do they belong? Are they socialist or capitalist? Do they ascribe to an interventionist government or a minimalist one? This kind of language forces the nation-state into a strict coherence with/interpretation of political doctrines, which in turn alienates concepts of inalienability, indivisibility, interdependence of rights. There seemed to be no going back once a state was placed in a 'generation'; the discourse was characterized as static, unable to see beyond white and black—negative and positive, public and private, first or second generation, capitalism or socialism, democracy or communism, West or East, North or South. Most importantly for the human rights discourse, a rigid, politicized dichotomy between rights was instituted.

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<sup>35</sup> Radhika Coomaraswamy, "Reinventing International Law," in Peter Van Ness, ed. Debating Human Rights (New York: Routledge, 1999), 170.

### *False Dichotomy Revealed*

In attempting to de-fuse the human rights discourse of the debilitating dichotomization of rights, we must look to the justification for the prioritization of political and civil rights. One example is based on the distinction between negative and positive rights. Since the nature of political and civil rights are ‘negative,’ they require much less effort to enforce. The argument goes that if negative rights only require the restraint of others not to infringe, they should be given first priority in terms of basic rights because they are, in effect, easier to implement. This logic is faulty; for even if the so-called ‘negative’ rights were easier to implement, the level of difficulty related to practical implementation should not be a criterion for its de-prioritizing rights.<sup>36</sup> This logic seems to have followed the human rights discourse, and is one reason for the problems of implementation: the stigmatizing ‘difficulty’ associated with social, economic and cultural rights stalls their realization. Unfortunately, many times such ‘difficult rights’ are the most pressing to implement.

Thankfully, the critique of the positive and negative divide has shattered the supposed ‘ease’ with which negative rights are thought to be realized. In the 1980s, groundbreaking work by Henry Shue crushed the dichotomy that was set up in the human rights discourse by attacking its very foundation. Jack Donnelly has continued his work, along with the contemporary Martha Nussbaum, allowing the human rights discourse to purge its infectious dichotomies. In a significant way, the catharsis of the human rights discourse is procured by upholding of an indivisible framework, as conceived in the Universal Declaration.

Negative rights are traditionally thought to be rights that require abstention from interfering in the right of the individual to enjoy political and civil rights; positive rights

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<sup>36</sup> Donnelly, 32-3.

traditionally require a provision of goods. As Jack Donnelly tells us, however, this categorization is not unequivocally true:

The right to protection against torture is usually advanced as the archetypal negative right: it requires ‘nothing more’ than that the state refrain from incursions on personal liberty and bodily integrity. But assuring that such incursions do not occur...will in almost all cases require major ‘positive’ programs involving the training, supervision, and control of the police and security forces...In all circumstances, protecting people against torture requires significant positive endeavors by the state.<sup>37</sup>

In the same way, traditional ‘positive’ rights are no longer seen only as a positive provision of goods, but as additionally requiring the restraint on the part of the state. Henry Shue gives us the example of “government development programs that have encouraged producing cash crops for export rather than traditional food crops for local consumption. In such cases, the right to food would have been better realized if the government had done ‘nothing more’ than refrain from interfering with agricultural incentives.”<sup>38</sup>

The challenging of the discourse of ‘positive’ and ‘negative’ rights has shattered the traditional dichotomy between requirements for abstention and provision, and in doing so, the generational gap is rendered futile, as is the public and private dichotomy. The critique of such a dichotomy has shown the two sets of rights to be necessarily interdependent, both requiring simultaneous restraint and provision on the part of the state. With the false dichotomy revealed, we may see that the two sets of rights are not mutually exclusive; on the contrary, they are interdependent and need to be addressed simultaneously in a holistic and comprehensive framework of human rights.

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<sup>37</sup> Donnelly, 33.

<sup>38</sup> Ibid; see also Henry Shue, Basic Rights (Princeton: Princeton University Press, 1996), 41-5.

## **Women's Response: Finding a Place in the Discourse**

### *Potentiality: Access for the Women's Movement*

The women's movement is in a unique position to re-infuse the human rights discourse with a re-conceptualized language realizing the historic marginalization of many 'others.' Indeed, the realization of women's rights necessitates acknowledging that first and second generation rights are not mutually exclusive—for it is only in a recognition of the indivisibility and interdependence of human rights that women's rights may be effectively conceived and implemented. Women's rights is one area that has suffered at the hands of the politicized dichotomy; for it was such a dichotomy that has disallowed its meaningful inclusion into the traditional discourse. With such a claim at stake—indeed, its relevance in the discourse itself—the women's rights discourse is strategically located both inside and out of the traditional discourse, with a potentiality for a meaningful incorporation within. So that once we recognize the historical tendency/weakness of the human rights discourse in its Western particularism and hierarchization of rights, how do we reconcile it with the advancement of the women's agenda? Or can we? *Is reconciliation possible or desirable?*

### *Strategies for Re-Conceptualizing the Human Rights Discourse*

The politics of the Cold War, as we have seen, were unabashedly and unscrupulously extended to the human rights discourse. The dichotomy installed pitted social/economic rights as a threat to the democratic principles of political and civil rights. Now that the divide has been abandoned, what are the alternatives to the traditional dichotomization?

One alternative is a reinvigoration and re-conceptualization of the traditional discourse—a revision of sorts—that transforms the traditional discourse's dichotomies between rights into an

interdependence of rights. As the first attempted re-infusion told us, the traditional discourse was not only lacking an understanding of the interdependence among political, civil, economic, social and cultural rights, but also could not understand rights outside the individual context.

The developing South first attempted a revision of the human rights discourse, as it located some particulars in the discourse that inhibited a full realization of its concerns. The global South claimed that because the human rights discourse evolved through the binary system of categorization—namely, individual political and civil and social, economic and cultural rights—it was neglectful of their interests. Such interests had been historically and most capably handled through a collective, rather than an individualist rights approach: “In most non-Western traditions, it must be remembered that the individual does not possess an inherently conflictual relationship with his community. Indeed, very often it is through the community that the individual realizes his self by fulfilling both his rights and responsibilities.”<sup>39</sup>

With these concerns in mind, a third generation of rights was born in the late 1970’s, referred to as collective or solidarity rights. Third generation rights are a response to the phenomenon of global interdependence, in which individual states acting unilaterally were no longer able to satisfy their human rights obligations.<sup>40</sup> The problems that continue to face the international community, as a whole, require international cooperation between developed and developing nations, between enterprises and governments. The rights include the right to reasonable environment, economic development, international peace and security, common heritage of mankind, communications, and humanitarian assistance.

Such challenges, additions, and revisions to the human rights discourse acted as a catalyst for the women’s movement. After this first attempt by the global South to re-infuse the

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<sup>39</sup> Chandra Muzaffar, Human Rights and the New World Order (Penang: Just World Trust, 1993), p. vii.

<sup>40</sup> Rich, 41.

discourse with a better appreciation for the issues affecting it, the women's movement has attempted to find its own access to the discourse. Radhika Coomaraswamy has proposed for this access to come through the auspices of 'generational' language.

A fourth generation has been articulated that allows for a re-interpretation of human rights law in terms of the public and private dichotomy—traditionally relegated women's rights in the traditional discourse as marginal, tangential, peripheral—private.<sup>41</sup> For example, having the right against torture include violence against women in the home crucially allows the traditional discourse to open up to and understand the violations against women in the private sphere. The new legal doctrines that provide for a re-conceptualization of women's rights (as per the previous example) attempt to open up traditional human rights law. It seeks to define violations in the private sphere in public terms, strategically placing them under the scope and protection of human rights law.

With the proposal for the 3<sup>rd</sup> generation, the global South accused the North, it seems, of protecting the individual to the detriment of the collective, perceiving 1<sup>st</sup> and 2<sup>nd</sup> generation rights as inadequate to seriously address the problems that the South face in this era of globalization. The women's rights challenge shows how all three generations are inadequate for the realization of their concerns. None eradicate the dichotomization between the public and the private—no previous generation addresses the problems of the individual or collective rights *in the private sphere*, where many if not most of the violations against women's international human rights occur.

Conceiving human rights standards as primarily applicable to violations of 'negative' rights occurring in the public sphere disproportionately affects women by shielding the private sector—cultures, etc.—from accountability when they violate women's rights. We must change

the human rights standards that are only meant to penetrate public actors, which consequently render them futile in comprehensively protecting women against the many cultural (or ‘private’) infringements on their rights. Human rights violations occur not only in the public but the private sector; standards must be changed to realize this. One benefit of Henry Shue’s critique of negative and positive rights was to break down the divide between state requirements for restraint and provision, mainly in the public sphere. The women’s movement must continue to act on this platform by challenging the human rights discourse beyond the negative and positive/individual and collective divide, and into the public and private one.

### *Revision or Rejection?*

This ‘revisionary’ strategy, suggesting a new generation for a new conceptualization of the human rights discourse for gender-specific violations, is one way for the movement to advance its goals. Now that this challenge is articulated, we must ask if it is prudent for the women’s movement to seek a ‘generational’ status. The generations themselves are (historically) a dichotomous categorization, a hierarchy of rights. Can they be reformulated in such a way as to not be hierarchical, or are they inevitably so?

The results that the 3<sup>rd</sup> generation solidarity rights have had are mixed. While the third generation is down on paper, much still needs to be done for them to be fully realized. Their implementation is slow and grueling, for accountability is elusory. The problems facing both 3<sup>rd</sup> generation and the proposed 4<sup>th</sup> generation women’s rights are derivative of, it might be argued, their attempt to buy into, or add on to a pre-existing framework that was not meant to include their concerns. This ‘additionalization’ approach inevitably continues to work in the same construct that has historically fought against it; it conforms to a language that has here-to

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<sup>41</sup> See Coomaraswamy.

marginalized it. It is, then, a ‘band-aid’ solution: in reality and practicality, there is no mending that can be done to the traditional discourse; any effort to include women in such a discourse has been rendered futile by the nature of its marginality. Therefore, finding a place for women in the discourse that has hereto worked to exclude them is fruitless.

We should, accordingly, create new terms. As the traditional rights discourse is not meant to include language for incorporating an understanding for gender-specific violations, the only way to get over the dichotomization of rights and the exclusion of women’s concerns is to reject such discourse in favor of another conceptual framework. And so, the suitability of a rights-based discourse for the advancement of the international women’s movement has come into question.

In order to comprehensively and effectively address the broad-based agenda of the women’s movement, the rights discourse itself may be a potentially alienating tool. Strategies have been suggested that change a rights-based dialogue to one of ‘capabilities’ (as per Martha Nussbaum<sup>42</sup>) or human dignity (as per Chandra Muzaffar<sup>43</sup>). The plea for a radical transformation of terms is evoked mainly because the concept of rights, as such, is inextricably linked to its historic generational hierarchization—the prioritization of the negative, political and civil, public, individual, secular, male, etc. The new approach is advanced as achieving a more just, holistic and universal than the Western conception of rights and law as it has evolved.<sup>44</sup>

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<sup>42</sup> See Martha Nussbaum, Women and Human Development (New York: Cambridge University Press, 2000).

<sup>43</sup> See Chandra Muzaffar, “From Human Rights to Human Dignity,” in Peter Van Ness, ed. Debating Human Rights (New York: Routledge, 1999).

<sup>44</sup> *Ibid*, 29.

## *Evaluating Strategies*

The two strategies—revision and rejection—are indeed very different ways to address the inadequacy in the traditional discourse. One believes that it is possible to include and integrate marginalized discourse within the dominant; the other upholds that integration cannot occur because of the dominant discourse's inadaptability to inclusion or change, hence favoring a radical transformation of terms. A problem, however, with the more radical offering is that it discards the potentiality of a rights-based discourse.

Of course, we want to make women's human rights language and implementation mechanisms as accessible as possible. As Radhika Coomaraswamy tells us, the rights discourse, in particular, enables us to access the full-range of the preexisting framework—language and mechanisms—in order to revise them in terms of women's rights:

Women are increasingly using this vocabulary [of rights] to articulate their grievances. The availability of the human rights discourse for the translation of women's rights into internationally acceptable norms allows for a greater visibility for the issue of women's rights. In addition, the diverse machinery set up at the international level for the promotion of human rights now remains available for women's rights activists. This access to international machinery of implementation is also an important development in the search for women's equality.<sup>45</sup>

And so it is indeed a difficult decision, and maybe not the most prudent, to have a radical transformation of terms. While there are advantages of, for instance, Nussbaum's 'capability' approach, they do not seem to outweigh the benefits of a revision approach. For it is possible to re-infuse the language with the sensitivity to women's rights that it once lacked. Once we have located the particulars—namely, the public and private distinction in the context of women's rights—we can work on re-interpreting the language so as to include all facets of the pervasive nature of the violations against women in the international community.

## Conclusion

There are many imperfections of the present international order and the human rights discourse that inhibit a full realization and implementation of women's human rights; many fundamental treaties still await ratification, supply reservations, and maintain non-binding jurisdictions. In practice, implementation is even/ever harder to monitor/enforce. However, this should not result in the rejection of the rights-based discourse, as such, but rather might call for a reconceptualization of international documents and institutions to make them more user-friendly. In a major way, this means improving accountability of both the public *and* private sector—extending the jurisdiction of international mechanisms to both spheres, in order that they become sensitive to where, why and how women's rights are violated.

There are structural social and economic problems that inhibit exercising civil and political rights, and vice versa. In this way, both the discourse and the mechanisms for the protection human rights must be made to comprehend the indivisibility and interdependence of human rights. The implementation problems currently facing the international human rights mechanisms would, in part, be alleviated if all rights were seen as interdependent and addressed accordingly. Issues of race, class and gender—of economics, society, culture, and politics—and human rights violations and standards are inextricable, and therefore need to be realized in relation to one another. This is the spirit of genuine Universality.

The human rights discourse needed to purge the paralyzing particularities that inhibited it from achieving a genuine Universality. In the traditional discourse on human rights, the law played a crucial role in perpetuating a Western hegemony. Now, the law has a chance to be the savior of genuine universality of human rights, if implementation procedures are

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<sup>45</sup> Coomaraswamy, 170.

reconceptualized to go along with a more sensitive language of human rights. In essence, the politicization of human rights needs to be replaced by humanism.

The traditional discourse had compromised the indivisibility of the Universal Declaration of Human Rights. The context of the women's movement challenges the dichotomized rights discourse by providing a forum to overcome the public and private divide: making that which was private, a matter for public scrutiny. And so, as we began with a rallying cry from 1990s women's activism (women's rights are human rights), we can now return to the roots of the (U.S.) women's movement for inspiration. We will find no more perceptive or concise recognition of where the traditional discourse on rights went wrong for women: in its failing to understand that the personal is political; the private is public.