

Empowering the Invisible: Women, Local Culture and Global Human Rights Protection

Sirkku K. Hellsten

Embassy of Finland, Nairobi and University of Helsinki, Finland

Sirkku.Hellsten@formin.fi

Thought and Practice: A Journal of the Philosophical Association of Kenya (PAK)

New Series, Vol.2 No.1, June 2010, pp.37-57

thoughtandpractice@gmail.com OR thoughtandpractice@uonbi.ac.ke

<http://ajol.info/index.php/tp/index>

Abstract

This paper examines the problems that various contemporary human rights discourses face with relativism, with special reference to the global protection of women's rights. These problems are set within the theoretical debate between the Western liberal individualism on the one hand, and African, Asian and Islamic collectivist communitarianism on the other. Instead of trying to prove the superiority of one theoretical approach over the other, the purpose here is to point out some of the most common logical fallacies and cultural biases that have led to false polarizations between the various theoretical foundations of human rights discourse. The paper highlights these errors and inaccuracies with a view to diminishing the dichotomies between the various philosophical foundations of human rights, particularly in connection to the promotion of women's rights. This is done in order to pave the way for more open and impartial political, cultural and gender dialogue in the promotion of human rights both in theory and in practice.

Introduction: False Dichotomies between Relativism and Universalism

When we talk about human rights – and particularly women's rights protection in a multicultural environment and/or global context, we tend to easily run into the conflict between two apparently quite different theoretical and ethical frameworks,

namely, individualism and communitarianism. The former demands cultural detachment in its methodology, and is usually tied to the Western, philosophically universalistic human rights tradition. On the other hand, the latter (communitarianism),¹ which focuses on our cultural attachment, social ties and responsibilities as well as our shared, traditional values is usually seen as relativistic, and is used as a theoretical foundation particularly for African, Asian and Islamic concepts of human rights. While in human rights discourse individualism and communitarianism are often set against each other, both approaches are criticized by feminism for their tendency to ignore the gender inequalities in our social practices (Howard 1996a and b).

Thus in international human rights discourse, there appear to be two theoretically incompatible views. Third World communitarians claim that the attempt of the Western liberal individualists to universalize their value orientation is a form of cultural imperialism that smuggles the undesirable Western egoist life-style into non-Western traditional communalist cultures. On the other hand, from the point of view of individualist liberalism, the communitarian approach and its cultural attachment makes its argumentation so culturally embedded that it cannot rise above the idea of the tradition it defends, and as such cannot provide moral impartiality. Thus individualist liberalism claims that communitarianism advocates for collective values and consensus, even if this means trampling on the rights of individual members of these (as well as other) communities. In other words, in this debate, the communitarian position seems to equate liberal, individualistic promotion of universal values with cultural assimilation that results in the fragmentation and demise of various traditional cultures. Liberal individualists, on the other hand, blame communitarian relativism for its oppressive tendencies and conservatism towards those minorities who do not agree with the commonly adopted values and social norms.

¹ The communitarian view itself, however, takes various forms, and its arguments are much more complex in relation to the liberal approach. When studied in depth, it becomes evident that the communitarian view, particularly in its Western formulation, is normatively not as far apart from the liberal agenda as it is often claimed to be. For the liberal-communitarian debate in Western political theory see Mulhall & Swift 1992, Hellsten 1999 and Howard 1995b. For contemporary liberal contractarianism see Rawls 1971, 1994. It should also be noted that communitarian reasoning with origins in more collectivist cultures may differ greatly from the Western communitarian view. For African communitarianism see for instance Wiredu 1996. I have discussed the different forms of communitarian thought elsewhere in greater detail (see Hellsten 2000).

The logical conclusion would then appear to be that these two theoretical frameworks of human rights discourse are necessarily incompatible with each other, and that a productive dialogue and ethical concurrence between them is not possible. However, this paper argues that if we take a closer look at the main arguments presented by the various sides (chiefly individualists and communitarians as well as feminists), it becomes evident that in the end they all face the same challenge of relativism, particularly in relation to the promotion of women's rights, while having similar normative universalistic tendencies and ethical claims. Failure to recognise this fact has resulted in several errors.

The first error is the false dichotomy between universalization of our ethical norms and the relativist demand for cultural autonomy. Second, hasty generalizations are made about the relationship between cultural practices and cultural values in the context of individualism and collectivism. This leads to naturalistic fallacies based on cultural biases, in which the existence of local traditions are taken to entail some normative moral knowledge, even in cases where these traditions contradict the very traditional values they are claimed to promote. Recognizing these problems is particularly central to the promotion of women's rights, because in many parts of the world women's rights are still systematically ignored, violated or denied either in the name of cultural integrity, or, quite ironically, in the name of individual choice and freedom.

Feminism and the Respect for Difference

Feminists criticize both the individualist and communitarian theoretical approaches for disregarding human rights violations against women. They note that individualist attempts to universalize human rights standards have not succeeded in guaranteeing equal rights to women, as such standards themselves are historically in all traditions based on the experiences of men rather than those of both men and women. The individualist universalization of the concept of equality appears to be based on an illusionary image of human beings, because it sets idealistic standards of 'humanity' by emphasizing universal principles of reason by autonomous moral agents. Thus, it allows discrimination against those who fail - for whatever reason - to fulfil these preconditions. In many cases this means ignoring human rights violations that are perpetrated particularly against women (such as domestic violence, rape and other

forms of sexual and reproductive violence and social coercion). These types of violations have never been experienced directly as problems by men. In fact, as Catherine MacKinnon (1998, 101-115) has pointed out, in many parts of the world and in many cases types of violations that are almost exclusively done by men to women have in practice come to be considered as natural 'privileges' of men.

Furthermore, the feminist argumentation criticizes the communitarian emphasis on the ethical role of tradition, but simultaneously points out that even the Western tradition, despite its demand for universal equality and individual rights, was originally largely built on unequal gender practices, which for long time left women sidelined from the public sphere. Hence the traditional or non-Western, so called 'communitarian' cultures cannot be exclusively blamed for the disregard of women's rights: the Western 'tradition' must also take responsibility for the suppression and discrimination of women (see Howard 1995, 86-108; Ojo 1990, 120; An-Na'im 1987, 1990 183; Mackinnon 1998, 101-115).

Thus from the point of view of the feminist critique, there are two main obstacles to the promotion of women's rights globally. *First*, since human rights standards were originally set by men to protect men, and since the standards were justified by the idea of the social contract which, even in the West, historically and theoretically excluded women from equal participation as less rational and less autonomous and thus less human, women all over the world still struggle for recognition as 'full human beings'. *Second*, internationally, human rights are primarily enforced by states: states are the ones which agree on human rights standards, set conditions for their implementation, and are in charge of their protection. States can also enforce alternative human rights frameworks, such as the communitarian framework of collective cultural rights. In other words, while states are the ones recognized as violating human rights, they are simultaneously also the ones empowered to redress them (Cook 1995; Jones 1999; McFadden 1992; Mackinnon 1998; Mlawa 1998; Hellsten 2000).

If certain practices that violate women's rights are considered as matters for the state, and if certain actions are considered 'private' or 'domestic' affairs rather than 'public' or 'international' affairs, they are not easily captured by the human rights net. The situation is much the same as it has been with national laws, which can still easily overlook domestic and often particularly sexual violence as well as violations of

women's reproductive rights, seeing these as private and domestic rather than public, state matters. Thus as MacKinnon (1998) notes, whatever the human rights framework is, whether individualist or collectivist, there is always a way to find jurisdictional, evidentiary, substantive, customary or habitual reasons to overlook many of these violations. Consequently, violations of the rights of individual women can sometimes be defended by appealing to the very same individualist human rights standards that exist purportedly to prevent them. The appeal to cultural identities, autonomy and tolerance can be used to globally justify women's subordination to men not only by traditional communities, but also by the professing liberal democratic societies that claim to promote gender equality.² The communitarian tradition does the same in states with a more collectivist societal order, which frames women's rights violations as issues of cultural identity or collective rights of various indigenous cultural groups.

Relativism and the Challenge of 'Laissez-Faire Ethics'

The feminist critique shows that both subjectivism and cultural and ethical relativism are threats to the promotion of women's rights as human rights. When the individualist approach to human rights protection faces the challenge of relativism in the form of subjectivism, the abstract demand for the equal protection of autonomy easily turns into a fear of paternalism, even when it comes to traditions that suppress women in practice. From an extremely individualist point of view, any type of interference in someone else's choices in itself can be seen as a violation of presumed moral autonomy. Within the context of women's rights protection, this means that when people - men or women - with different cultural backgrounds insist on holding on to suppressive traditions (such as female genital mutilation), the international community is not at ease in getting involved in such 'domestic matters' (MacKinnon

² Despite their harmful effects, many patriarchal traditions are still persistently practiced in various communities around the world. In general the reasons given in defense of these practices may vary from one culture to another. If we take female genital mutilation (FGM) as an example, sometimes this practice also exists within a modern, multicultural society because the members of 'original' cultures claim they are merely exercising their 'individual' right to protect their own cultural identity. Thus even if we did not agree with the collective rights argument, we may also be misled by the individualist approach, because social coercion can easily disguise itself as individuals' autonomous choices. Since in the case of FGM women living in a pluralist society may themselves insist on maintaining the practice, 'interference' with their autonomy becomes controversial. However, it is now almost globally recognized that in general this practice is maintained through social coercion and subordination of women. Because of the direct physical harm caused by FGM, it is now more and more widely considered to be a violation of human rights. Even if the traditional communities may not agree with it, it is now considered to be legally justified to try to stop this cruel custom (see Hellsten 1999; Howard 1995a).

1998). This is more so when members of the communities involved claim to support these traditions, and particularly if these members happen to be women themselves, the trap of subjectivism tends to prevent liberal individualists from making any moral judgments on anyone else's behalf in the name of cultural sensitivity and tolerance. The result, oddly enough, is subjectivism that turns the universalist demand for respect for individual integrity into an overestimation of individual autonomy that regards even socially pressured or coerced decisions as independent choices. Subjectivist individualism then degenerates the liberal ideal of tolerance into a relativist *laissez-faire* (everything goes) ethics, which also gives normative support to radical cultural relativism, leaving our moral judgments void.³

In international relations and law, the protection of women's rights thus faces double jeopardy. The individualist subjectivism seems to be in agreement with the communitarian culturally relativist defense of tradition, social ties and cultural identities. If our ethical judgments are always tied to our cultural background, then liberal individualism must also be merely one ethical outlook among many others, with no basis for demanding the universalization of its individualist set of values - at least not outside the Western part of the world. The line between the individualist demand that every individual should be able to choose his or her way of life, and the communitarian one which asserts that every culture has a right to maintain its particular identity, is diminishing. This is creating an odd situation, in which apparently opposing views of individualism and collectivism have both degenerated into moral relativism, normatively supporting each other and leaving many women to live their lives under extremely suppressive circumstances (either in the name of individual autonomy or in the name of cultural identity).

Intra-Feminist Liberal-Communitarian Debate

Feminist discourse has pointed out that for a long time, 'womanhood' in general has been seen, and still is seen, as a form of abnormality, a deviance from the ideal norm of *manhood*. Furthermore, this biased conception of womanhood often fails to take into account how much influence our personal differences and social circumstances have on our well-being. Take for example issues of health care. Women have the reproductive burden (or privilege), and therefore need special health care services. In

³ On problems of subjectivism in liberal reasoning see, for instance, Hellsten 1999.

human rights practice, this means that even if women were considered truly equal to men, it would still be absurd to offer men and women exactly the same medical care and social services as long as it is women who get pregnant and give birth to children. Many human rights violations thus occur because women's special needs in reproduction make women sexually, and in general, physically vulnerable. On the one hand, this vulnerability does not justify inequality in rights protection. On the other, it does not call for special 'women's rights as women'. Instead, it makes demands for special attention to the special protection of women's equal (not necessarily exactly the same) rights⁴ However, the originally individualistic but universalistic premise of social contract based on presumed natural equality of 'mankind' is based on similarity or likeness of all 'men', and thus tends to overlook this gender-based vulnerability, seeing the only solution to the problem as the declaration and allocation of 'new' specifically women's rights.⁵

On its part, the communitarian approach takes gender differences and gender hierarchies to be part of culture and tradition. In order to correct the situation, feminist criticism tends to emphasize women's different needs and experiences, particularly in (reproductive) health issues. This emphasis, in turn, tends to lead to a universal demand for women's 'collective rights': this actually makes the feminist approach take a communitarian argumentative turn in apparently defending a type of minority right based on women's 'womanhood', rather than due to their shared humanity. This in turn easily makes women's rights issues into 'female rights issues'. This means that women's rights as group rights would come to be considered, as yet again, a deviation from 'universal human rights standards'. 'Womanhood' would remain lacking something from the standards of our 'common humanity'.⁶

⁴ On the problems of the global protection of women and women's rights see MacKinnon 1998, 105-115; for factual examples see McFadden 1992 and Mlawa 1998.

⁵ Increasing services and benefits to women, for instance, may sometimes backfire against women's best interests if the culture itself has not adopted gender equality in its social structures. For example, the Tanzanian suggestion to change the national laws to give women more maternal benefits was greeted with worry by many. If women in Tanzania's still rather patriarchal society would suddenly receive various benefits such as child allowance or maternity leave, their social position might actually not improve but rather decline. Men could force their wives to have more children and then take charge of the money that is to be gained by the additional children. Also women, many of whom still do not work outside the home, could not benefit from maternity leave to start with, while their husbands on the other hand could use the potentially shared leave, as paternity leave, whether or not they had any intentions of taking part in child care. In the end, it could be the men and not the women who are the actual beneficiaries of the well intentioned maternity support. See related problems, for instance Wolf 1999, 65-81.

⁶ In other words, women can then continue to be considered less perfect as human beings, incapable of

Then, in a curious manner, regardless of their apparently very different normative demands, some of the feminist arguments seem to coincide with the liberal as well as the communitarian ones. On the one hand, while criticizing liberal universalism and atomism, feminism still looks for universal status for all women's rights. On the other, feminism asks for a type of collectivist group rights along the lines of communitarian argumentation, thus falling into a relativist trap that takes difference rather than similarity as our starting point in human rights issues. This tends to lead towards specialized situation ethics, which further separates women and creates its own moral standards and norms, not only between genders and cultures, but within the feminist agenda itself.

First, if it is mainly the gender-difference that is emphasized, there is an evident danger that we may construct a distinct 'feminine' moral outlook, which cannot provide an impartial and at the same time normative basis for globally acceptable ethical guidelines, but separates 'women's special rights' from universal human rights. This leads us to think that women need special rights because of their gender, rather than reminding us that in order to get equal protection for women's human rights, we may sometimes need special legal and political arrangements, or rather, that we need to change the existing arrangements that allow inequality between the genders in human rights protection. *Second*, if it ignores the differences in women's needs and values within various cultural contexts, it cannot provide normative guidelines even within the feminist agenda itself. It then loses its common course and thus, ironically, becomes internally fragmented into liberal-feminism and communitarian-feminism depending on the cultural setting of the feminist argumentation itself (Eboh 1998; Hooks 1998a and 1998b; Wolf 1999).

In fact, within the feminist discourse, we can already detect an internal fragmentation based on the lines of liberal-communitarian debate, that is, between individualist and collectivist lifestyles and traditions. Sometimes this controversy is defined as the 'feminism' vs. 'womanism' debate, but it should be referred to more aptly as 'Western feminism' vs. 'non-Western (Third world) feminism' debate (see for

meeting the traditional standards for human rights originally set by men (see MacKinnon 1998, 101-115 and McFadden 1992).

example, Eboh 1998; Hooks 1998a and 1998b). Particularly women from non-Western, or in general from originally more collectivist cultures, are left to defend their traditions against liberal feminists who base their battle for women's rights on the individualist approach. At the same time, however, they want to try to improve the position of women within their own traditions.⁷

The recognition of women's varying experiences within different cultures is essential in pointing out that there is no global solidarity based on 'womanhood' as such. Furthermore, prejudice, racism and the suppression of women is not based merely on collectivist cultural tradition or on global patriarchy: women themselves may treat each other unequally, and be culturally biased and socially and/or racially discriminatory.⁸

Thus many women's rights advocates particularly in various African, Asian and Islamic communities defend the cultural position of women within their families, communities, traditions or religions against cultural assimilation into Western individualist ways of life. Protecting women's rights in a collectivist culture does not necessarily mean that women leave behind all that they cherish in that tradition. It only means that there are particular features or practices within these traditions which do not respect the values of collectivist and/or communalist ways of life, and thus should be replaced with more positive practices that better bring out the authentic values of the tradition. For example, if the values are claimed to be solidarity and egalitarianism, banning women from political participation or physically violating them would be an act against these esteemed 'cultural' values.

7 What has come to be called 'womanism' in SOME African, Asian and Islamic societies (also called non-Western feminism, black feminism, third world feminism, etc.) is then characterized by female bonding within local communities and shared family values, while recognizing that there is no global solidarity among women of different social classes, races and cultural backgrounds. Instead, women themselves can be - and often are - as prejudiced and suppressive against each other as they claim men are against women (see for instance Eboh 1998, hooks 1998 a and b).

8 Thus efforts at empowering women locally and globally must maintain respect for the cultural value choices women make, including their respect for community and family ties that can be promoted by 'wifeness' and/or 'motherhood'. In fact from non-western (African, Asian, Islamic, etc.) 'womanist' perspectives, Western feminism can be seen as overly individualist and culturally imperialist. Western feminists, on their part, tend to see communitarian 'womanism' as giving in to collectivism and thereby fostering the maintenance of the patriarchal social structures. However, African women's rights activists, for instance, deny this, claiming that 'womanism' derives its normative agenda from the discovered awareness by women of their indispensability to the males. They argue that Western feminists tend to ignore women's pivotal position in maintaining African societies - in taking care of the family and contributing to the livelihood of the community as a whole. Women in these societies do not need *more* independence, but what they need is increased solidarity and support from men as well as from other women - globally (Eboh 1998, hooks 1998a and b, Wolf 1999).

All in all, this intra-feminist debate demonstrates how significant a role our cultural attachment has in human rights issues, and proves the validity of the individualist-communitarian cultural debate, if not the theoretical one. At the same time, it makes it evident that while there is an urgent need for better universal promotion of women's rights, we can never claim full cultural detachment in our moral judgment. Instead, there is always a need for more cultural sensitivity and respect for cultural identities – no matter which approach to human rights we take. This awareness of one's cultural attachment does not have to mean insensitivity to cultural difference, neither does it morally justify drowning women into the traditions themselves.

What becomes evident is that in order to protect individual women and their rights, the theoretical feminist discourse should not give up on the ideals of 'common and shared humanity' in favor of the special status of women as women, or women as female members of particular communities. If we lose the notion of universal human rights altogether, we are left merely with collective notions of minority rights, group rights, disability rights, children's rights, and women's rights themselves which get further divided into Western women's rights, Islamic women's rights in pluralist societies and Islamic women's rights within the Islamic state, third world women's rights, colored women's rights, and so on *ad infinitum*. If this happens, the demand for the protection of women's rights may plausibly be seen to conflict with a 'competing' demand for the protection of patriarchal cultural practices, instead of being properly taken to be a demand for protection of individual rights not only in a particular community, but rather in all communities.

From the Common Good to the Utilitarian Maximization of the Overall Good

In protecting women's rights as human rights, the danger of relativism lurks in every corner. Relativist reasoning in general is considered to be an opposite view to the universalistic ethical outlook. Its normative emphasis is on the incompatibility of different value and belief systems, that is, it claims that there are no universal principles of justice that would apply to all cultures at once. This is a manifestation of subjectivism, as it means that individuals ought not to interfere with each other's value choices. Cultural relativism, on its part, indicates that members of one society

cannot legitimately interfere with the practices and traditions of other societies (Hellsten 1999, 69-83). At the same time, we should ask for universal respect for difference and impartiality between different value systems, but this equality should be in front of the law - particularly international law. The problem with group rights is also tied to relativist reasoning: who can decide which groups have the rights over other groups and individuals, whose traditions need protection and whose are to be sacrificed in order to maintain those of some others?

While the most efficient way to deal with relativism has in general been to point out its internal inconsistency, its appeal to universal rights while denying such existing rights when it comes to the individual members of a society (Williams 1982), there are other issues to be discussed in relation to collective rights. One of the central and less observed issues is that communitarian promotion of the common good tends to turn into utilitarian maximization of the overall good, and when rights talk turns into utilitarian practice there is no protection for an individual within a group according to the very utilitarian principles. The main problem is then that when collective rights are based on communitarian values and ideals, their political and legal institutionalization tends to turn them into utilitarian public policy based on calculation of the public interest and overall good of a society. When the protection of the tradition and culture or the promotion of the common good are guaranteed by the constitution and by national laws, the good of all individuals is turned into the good of the majority. In other words, the original promotion of the common good of a social collective is turned into a utilitarian calculation of the maximal good or benefit for the maximum number of people or the interest of the nation (Hellsten 2003).

The utilitarian calculation does not directly promote political participation, neither does it protect the rights of individuals. Instead, it favors central planning and administration of common affairs. It allows the state to sacrifice the individual citizen in the name of the overall good of the society. Collective rights based on communitarian social ideals turned into utilitarian practice returns to Jeremy Bentham's idea that talk of human rights was 'nonsense upon stilts', and that outcomes, that is, the general good, takes priority over individual rights and freedoms.

In this context it is important to make a clear distinction between 'the common good' and 'the overall good'/'the public interest', because the utilitarian benefit-

maximization gives a very different moral basis to political order than communitarian solidarity would. In its idealistic formulation, the communitarian good means ‘the good’ that is shared by all individual members of a particular community. The utilitarian calculation, on the other hand, merely attempts to maximize the good of the greatest number (or the majority) of the members of a society as a whole - or within a nation. The fact that such maximization may require sacrificing the rights and the good of a few (or more) individuals, does not affect the utilitarian political morality, which is based on the self-interest of individuals much in the same manner as the individualist social contract theory originally suggested.

If we settle on a political practice that accepts the utilitarian overall good as its goal, we cannot presume that the citizens, and particularly the rulers, have themselves adopted (or have to be successfully reeducated to adopt) the communitarian state of mind while enforcing utilitarian policies. The law cannot alone impose the self-realization of one’s inner morality. It can, however, offer a powerful means to societal decision-makers to advance their self-interests. In such a setting the communitarian values can turn, or can be deliberately turned by egoistic or incompetent and patriarchal leaders, against their original purpose. In the name of the common good individual rights can be ignored or refused; in the name of national consensus based on majority interests many intolerant policies and practices can be fostered. Moreover, in the name of tradition individual members - often particularly women - of different internal communities within a society, i.e., cultural, ethnic, tribal or religious groups, can be suppressed.⁹ In relation to women’s rights protection, this leads to justified suppression - if the majority prefers that women remain dependent, need no particular protection and should not object to oppressive traditions, beliefs and practices: in such a case, there is no argument to override the disregard for women’s rights.

Any law that gives priority to the overall good and social harmony tends to leave room for oppressive practices and discriminatory customary laws. While the focus is

⁹ For instance in Tanzania, after the Arusha Declaration of 1967 when *Ujamaa* (socialism) became state policy, the state machinery turned the idea of socialism as a state of mind into ideological propaganda. The failure to fully revive the assumed past tradition of sharing led to implementation of forceful policies of development -villages and other institutional attempts to promote solidarity in the form of the good of the nation. In the end, the present was sacrificed for the future because people were unable to relive and reproduce the ‘nostalgic’ past in its idealized form.

on the protection of groups rather than individual members of these groups, the violations of the rights of particular members of particular communities, like the rights of women in patriarchal communities, can be easily overlooked. In order to maintain harmony at the national level, the different communal traditions can easily be accepted in the name of pluralistic tolerance and equality between different communities. Men, who still make the majority of the public decision-makers, easily justify gender-based human rights violations as private matters rather than public concerns. In practice, women's cases are often treated differently from men's cases in local courts.

In general, the transformation of communitarian principles into legal practice seems to include the danger that they can be used to justify the subordinate position of women. Thus a constitution with an emphasis on 'the utilitarian overall good' or 'communitarian common good' does not grant equal legal status to women. This is due to two main reasons. *First*, when the protection of tradition and social harmony has priority over individual rights, despite the *Right to Equality* noted in the *Bill of Rights*, women are not considered equal to men by the ordinary or customary laws, which are based on tradition. Tradition, on the other hand, is to be protected as the peoples' collective cultural right. *Second*, since laws have priority over individual rights, women's rights can be systematically and legally denied, overlooked or violated by their communities.

When it comes to the application of communitarian ideals understood in utilitarian terms, there tends to be a conflict between women's individual rights and collective rights. Part of the problem is that the protection of tradition does not always make a clear distinction between the normatively valuable, rather abstract elements of the tradition, such as equality, solidarity and tolerance, and the undesirable, actual practices embraced by the same tradition. The problem of the communitarian ideal is that it tends not to recognize the oppressiveness of particular traditions within the collective tradition itself. Rather, it sees the collective way of life as a whole to be the tradition to be protected. Nevertheless, there are many collectivist practices and traditions which do not respect the 'intrinsic' collectivist values the communitarians are praising, such as solidarity, social responsibility and equality. These collectivist practices can be used to promote other goals such as the maintenance of a suppressive and patriarchal social hierarchy.

When applied within the utilitarian political and legal framework, the happiness of the majority outweighs individual rights. All in all, in utilitarian calculation, women usually lose out, as their rights are sacrificed in the name of the overall satisfaction of society. Evidence for this could also be found in transitional, post-communist societies, in which the quest for market economy and democracy has taken away the social and economic rights that women enjoyed in socialist times, while not being able to guarantee them full political and civil rights either (Einhorn 1993; Hellsten 2001, 2004, 2008).

In order to root out suppressive practices, whether based on collective traditions or on economic 'rationalism', we need to make a sharp distinction between two matters: (1) collectivist values are valuable *per se*, and (2) there are particular collectivist practices that do not respect these very same values. We also need to make a distinction between the common good that is to be shared by all members of a society, and the public interest that satisfies the majority.

From the communitarian point of view, the ideal situation is one in which individual citizens are personally committed to the 'authentic' collectivist values. This would promote democracy by endorsing tolerance for cultural diversity, and by encouraging equal and committed participation in social cooperation. In less ideal situations, particularly in authoritarian and patriarchal communities, the same ideals can be used to justify the abuse of power and the maintenance of less desirable collective ways of life, which themselves do not respect collectivist values. Consequently, there is no need to approach cultural tradition as a 'whole'; instead, we can distinguish between various traditions and the values on which they are based, and thus evaluate the plausibility of their justification.

The Contradiction of Relativism and the Quest for a Globally Acceptable Concept of Human Rights

Once we acknowledge the tendency of collective rights promotion in the name of communitarian values to turn into utilitarian legal and political practice, we are one more step towards answering the question of why women's human rights need more attention - particularly in legal practice. It may also help us to find a way to avoid

extreme relativism in the form of a false polarization between the individualist and collectivist approaches to human rights. To better appreciate the fact that we are merely looking at different sides of the same coin, we need to distinguish more clearly between descriptive and prescriptive features of culture, that is, between the term 'collectivist' referring to 'oppressive practices' or to 'the promotion of egalitarian solidarity'; and the term 'individualist' referring to 'egoistic pursuits' or to 'an individual-respecting outlook'.

Thus we can see communitarianism within a patriarchal community as being oppressive towards women. However, in a culture in which families and communities are democratic and caring units of social cooperation, sharing responsibility in time of trouble may contribute to women's global empowerment.¹⁰ There are societies that actually respect equality in the form of traditional values of egalitarianism and solidarity. Consequently, the collectivist way of life may have many positive effects on both public and private life. Similarly, sometimes in an extremely individualist society the lack of social support leads women into a solitary competition against men. Individualism may in practice also leave many women under very harsh conditions. Nevertheless, sometimes it is not the values as such that facilitate the oppression of women, but the legal and political institutions that undermine the moral foundations of the claimed values.

The false polarization between Western individualism and non-Western collectivism seems to suggest that in the global context, we have two fundamentally different cultural positions that imply incommensurable, practically opposite moral values and principles. The collectivist view criticizes the Western individualistic approach for its

¹⁰ See Cheng *et. al.* 1998, 616-27 and Nakata *et. al.* 1998, 601-15. This collectivist, family-centered decision-making model is sometimes also called 'familism' in the East (see Fan 1998, 549-562) or 'communalism' in Africa (see Wiredu 1996, 71-73). The background to this family-centered decision-making model can be found in a very different cultural understanding of what constitutes one's moral personhood. In the individualist ethical framework, the individual is seen as a moral agent who is in the center of the decision-making process, but in collectivist cultures an individual's moral status depends on her relation to others, her role (as a mother, wife, daughter, sister or in-law of someone) in a larger community, and her place as an individual in the universe. If we take, for instance, medical decisions in Chinese ethical thinking based on the Buddhist world view, individuals have to follow what is seen as the natural course of things in the cosmos. In Buddhist thinking nature means something like the power of spontaneous self-development, and what results from that power. Interfering in the cause of nature can be thought to have bad consequences. From the point of view of reproductive health care, this belief might result in the family's unwillingness to allow physicians to conduct any testing or other prenatal treatment which can affect the development of the fetus and thus change the fate of the child (see Fan 1998, 555-559). On family-centered decision-making in health and medicine in Japan, see Nakata *et. al.* 1998, 608-609.

universalism which is allegedly tied to the tendency towards cultural neo-colonialism, with no respect for local beliefs and value systems. The individualist view, on its part, accuses collectivism of fostering suppressive traditions and for disrespect of individual rights. Thus this false dichotomy pits cultural traditions against each other.

The individualist cultural tradition is taken to present a rights-based theory against communitarianism, which is equated with the theory of collective social responsibility. Dialogue between the two sides is then easily deemed futile (Tangwa 1999; Hellsten 2002, 39-60, 2004). We therefore need to do away with the false dichotomies between value conflicts and claimed cultural frameworks. In most cases, we may find that it is not the values we have disagreements on, but the practices that are defended as promoting these values. The tables below illustrate this point.

Table 1. Polarizations between Individualism and Collectivism

1. Ethical - isms: Individualism	Collectivism
a) Uniformed (up to a degree) Western cultural tradition	b) Various non-Western (Eastern, Southern, etc.) cultural traditions
2. Theoretical framework: a) Liberal individualism - universalism - pluralism	b) Communitarian collectivism - relativism - particularism
3. Metaphysical worldview: a) Atomism	b) Holism
4. Defined values/ideals (desired positive outcomes): a) Equal individual rights and freedom, reciprocal individual interests	b) Social responsibility and egalitarianism, the common good
5. Actual/practical neg. outcomes and related practices: a) Egoism, self-interest, social disintegration/competition.	b) Suppression of individual, paternalism/totalitarianism

Table 1 illustrates that the polarizations we create can easily mislead us to see the cultural frameworks as normatively incommensurable, while in reality we can actually find similar values in them. The reason for this is that the polarizations tend to cross the different elements of the *-ism*. For example, in debates over conflicting values, we tend to set the values of one framework against the actual practices of another: (4a) defined and pronounced values/ideals, set against (5b), the actual negative outcomes and related practices; and vice versa (5a) against (4b) and so on.

Table 2. Polarizations, Naturalistic Fallacy and Cultural Generalizations.

	1. UNIVERSALISM	2. RELATIVISM
a) INDIVIDUALISM	Individual rights: VALUE/GOAL: universal respect for human dignity, difference and tolerance/freedom	Subjectivism: NEG. OUTCOME: Laissez-faire ethics, moral indifference and ind. Egoism /social fragmentation
b) COLLECTIVISM	Collective/group rights: VALUE/GOAL: universal respect for human dignity, difference and tolerance/freedom	Relativism: NEG. OUTCOME: Cultural relativism, tolerating intolerance, group self- interest/competition/social fragmentation

Table 2 shows how the descriptive elements can be set against the prescriptive ones, thus creating false dichotomies: universalistic individualism (1a) against relativist collectivism (2b) and vice versa. We can also recognize here how both frameworks share the problem of relativism: individualism turning into relativist subjectivism and collectivism into cultural relativism, neither in position to respect the rights of others universally or to maintain social harmony.

Towards a Global Understanding of Human Rights

What we need to recognize is that each culture, depending on its values, belief systems and history has a different way of interpreting the practical dimensions of human rights. This also means that in philosophical inquiry on the foundations of human rights, cultural attachment and cultural detachment are not directly normative terms. Nevertheless, it is helpful to recognize that cultural attachment also means learning to make culturally more impartial moral judgement. In other words, we can still look for universal rights for all humans, but admitting the impossibility of cultural detachment may help us to be more objective about the cultural biases we all have.

In order to do away with the false polarization between individualism and collectivism, liberalism and communitarianism, universalism and relativism, we need, *first*, to see what type of ethical issues as such are due to *cultural beliefs* (whether based on traditional beliefs and values, ignorance and lack of education, or misinterpretation of values in social practices). *Second*, we need to acknowledge which ethical issues are the results of *fundamental cultural differences* (respect for individual autonomy, collectivist decision-making processes). *Third*, we must identify those ethical issues that *appear* to be culturally bound, but are in fact the consequence of invalid logic, and/or misinterpretations of the values that we may already share, or their inappropriate implementation in practice (distribution of resources and maintenance of existing social hierarchies).

We should try to recognize the shared values trans-culturally, and agree on their global practicability despite their possibly very different cultural justifications, as well as the failure of various traditions to realize them in social practice. There is also the possibility of failure to realize that the social practices are not there to promote these said values at all, but rather exist for something else, for someone's or some group's personal benefit. The shared values that individualism, communitarianism and feminism are all asking for universally are tolerance of difference, and respect for human dignity and development as freedom to choose and maintain one's cultural identity.

Conclusion

In the quest for the universal promotion of human rights, particularly with regard to the protection of women's rights, the main challenge is to rise above the relativist trap that leads us to make polarizations between values even when these do not exist as such. Instead, we need to look for ways to promote the rights of individuals in any cultural context in a manner that does not force cultural assimilation, but rather works within the value system of any particular culture. In all countries there is a need to repeal laws which promote unjust practices and cause harm. In the same manner, international law must recognize that not all traditions are equally acceptable. Enforcing the law, however, does not mean disrespect towards a particular culture. On the contrary, treating everybody equally before the law - whether as individuals or as representatives of wider social entities - shows respect for integrity.

From the theoretical point of view, this means that we have to overcome the logical abstractions and cultural biases in debates among rival views on human rights issues, and find the shared features of the different approaches instead. Furthermore, feminism cannot replace either liberalism or communitarianism. Instead, it needs to be part of both of them. This is due to the fact that feminist critique could be an essential balancing force within both of these approaches, not outside them. On the one hand, liberal protection of individual rights has to find its way into collective social structures, instead of exhausting itself in its attempts to lift individuals above them. On the other, the communitarian commitment to shared values and social solidarity is needed if we want to build global protection for all our rights, despite our gender or cultural backgrounds.

In conclusion, instead of asking where human rights come from and giving various culturally embedded theoretical frameworks for their justification, maybe we should ask what human rights are good for. This gives us a better starting point for finding globally practicable shared values.

References

- An-Na'im, Abdullahi A. 1987. "Religious Minorities Under Islamic Law and the Limits of Cultural Relativism". *Human Rights Quarterly*, Vo.9 No.1, pp.1-18.
- . 1990. *Towards an Islamic Reformation: civil Liberties, Human Rights, and International Law*. Syracuse: Syracuse University Press.
- Benhabib, S. 1995. "Cultural complexity, moral interdependence, and the global

- dialogical community". Nussbaum, M. ed. *Women, Culture and Development*. Oxford: Clarendon Press, pp.235-255.
- Cheng, M., K.K. Wong and W.W. Yan. 1998. "Critical care ethics in Hong Kong: Cross cultural conflicts as East meets West". *Journal of Medicine and Philosophy*, Vol.23 No.6, pp.616-627.
- Cook, R. 1995. "International human rights and women's reproductive health". Peters, J. and A. Wolper eds. *Women's Rights, Human Rights: International Feminist Perspectives*. New York: Routledge, pp.256-275.
- Eboh, M.P. 1998. "The Woman Question: African and Western Perspectives". Eze, E.C. ed. *African Philosophy: An Anthology*. Oxford: Blackwell.
- Einhorn, B. 1993. *Cinderella Goes to Market: Citizenship, Gender, and Women's Movements in East Central Europe*. London: Verso.
- Etzioni, A. 1999. *The Limits of Privacy*. New York: Basic Books.
- Fan, R. 1999. "Critical care ethics in Asia: global or local?" *Journal of Medicine and Philosophy*, Vol.23 No.6, pp.549-562.
- Hellsten, S.K. 1999. "Pluralism in multicultural liberal democracy and the justification of female circumcision". *Journal of Applied Philosophy*, Vol.16 No.1, pp.69-83.
- . 2000. "Communitarianism and the Western Thought". *Proceedings of the World Congress of Philosophy*. Boston: Boston University Press.
- . 2001. "Communitarianism, Traditionalism and African Political Thought: Human Rights vs. the Common Good in Tanzanian Constitutional Development". *Rättfaerd: the Nordic Journal of Jurisprudence*, Vol.24 No.4.
- . 2002. "Multicultural Issues and Human Rights in Maternal-Fetal Medicine". Dickenson, D. ed. *Ethical Issues in Maternal-Fetal Medicine*. Cambridge: Cambridge University Press, pp.39-60.
- . 2004. "Human rights in Africa: from Communitarian Values to Utilitarian Practice". *Human Rights Review*, Vol.5 No.2, January-March 2004, pp.61-85.
- . 2008. "Failing States and Ailing Leadership in African politics in the era of globalization: libertarian communitarianism and the Kenyan experience". *Journal of Global Ethics*, Vol.4 No.2, August 2008, pp.155-169.
- Heise, L. 1995. "Freedom close to home: the impact of violence against women on reproductive health". Peters, J. and A. Wolper eds. *Women's Rights, Human Rights: International Feminist Perspectives*. New York: Routledge, pp.238-255.
- Hooks, Bell. 1998a. "Racism and Feminism". Eze, E.C. ed. *African Philosophy: An Anthology*. Oxford: Blackwell.
- . 1998b. "Black Women: Shaping Feminist Theory". In Eze, E.C. ed. *African Philosophy: An Anthology*. Oxford: Blackwell.
- Howard, R. 1995a. "Women's rights and right to development". Peters, J. and A. Wolper eds. *Women's Rights, Human Rights: International Feminist Perspectives*. New York: Routledge, pp.301-313.
- . 1995b. *Human Rights and the Search for Community*. Oxford: Westview Press.
- Jones, N. 1999. "Culture and reproductive health: challenges for feminist philanthropy". Donchin, A. and L.M. Purdy eds. *Embodying Bioethics: Recent Feminist Advances*. Lanham, MD: Rowman & Littlefield, pp.223-237.
- Kuczewski, M. 1998. "Medical decision-making: a role for the family". *The Responsive Community*, Vol.8 No.2, pp.11-12.
- Kukathas, C. 1992. "Are there any cultural rights?" *Political Theory*, Vol.20 No.1, pp.105-39.

- MacKinnon, C 1998. "Crimes of war, crimes of peace". *Outlook: A Selection of Readings for the 50th Anniversary of the Universal Declaration of Human Rights*. Washington, DC: US State Department.
- McFadden, P. 1992. "Sex, sexuality and the problems of AIDS in Africa". Meena, R. ed. *Gender in Southern Africa: Conceptual and Theoretical Issues*. Harare: Sapes Books, pp.157-195.
- Mlawa, S.R. 1998. "Women in Tanzania: the impact of family violence on their health". *Women's Global Network for Reproductive Rights: The Newsletter*, Vol.62 No.2, pp.24-25.
- Mulhall, S. & A. Swift. 1992. *Liberals and Communitarians*. Oxford: Blackwell.
- Nakata, Y., T. Goto and S. Morita. 1998. "Serving the emperor without asking: critical care ethics in Japan". *Journal of Medicine and Philosophy*, Vol.23 No.6, pp.601-615.
- Ojo, Olusola 1990. "Understanding Human Rights in Africa". Berting, J. et. Al. eds. *Human Rights in a Pluralist World: Individuals and Collectivities*. Westport, Conn.: Meckler.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge: Cambridge University Press.
- . 1994. *Political Liberalism*. New York: Columbia University Press.
- Tangwa, G.B. 1999. "Genetic Information: Questions and worries from an African background". Thompson, A. and R. Chadwick eds. *Genetic Information: Acquisition, Access and Control*. New York: Kluwer Academic Publishers.
- UNICEF 1995. *The Girl Child in Tanzania: A Research Report*. Dar es Salaam: UNICEF.
- Wiredu, K. 1996. *Cultural Universals and Particulars: An African Perspective*. Bloomington: Indiana University Press.
- Wolf, S. 1999. "Erasing difference: race, ethnicity and gender in bioethics". Donchin, A. and L.M. Purdy eds. *Embodying Bioethics: Recent Feminist Advances*. Lanham, MD: Rowman & Littlefield, pp.65-81.