

Forum Introduction

Negotiating difference/negotiating rights: the challenges and opportunities of women's human rights

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States Parties shall take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹

The year 2004 marked the 25th anniversary of the signing of the Convention on the Elimination of All Forms of Discrimination Against Women. A significant landmark in the development of a coherent strategy for the promotion and protection of women's human rights, it established the principle that for women to enjoy equal rights, they needed an extra layer of 'protection'. More importantly, it detailed states' legal obligations in the area of women's rights. Since then, the development of women's human rights has continued to challenge the boundaries between the public, the private and the international. It was in this context that the Beijing women's conference (1995) created a climate of expectation among women's groups and non-governmental organisations (NGOs) that the project to advance women's human rights in practice might gather and sustain momentum. Yet, it is evident that there remains an enormous gap between the rhetoric and realities of women's human rights, whereby women's rights continue to be contested in countries across the world and governments are often unwilling to fulfil their international obligations.

Historically, the adoption of the Beijing Declaration and Platform for Action in 1995 was an important milestone in the development of women's human rights. The purpose of the Beijing Conference was to draw attention to the problem of women's social, economic and political inequalities. However, the discussions that took place highlighted the difficulties in creating a monolithic instrument for tackling gender inequalities. During the course of the conference it became increasingly clear that it was impossible to deal with women's human rights as a single issue and/or treat

¹ Article 3, United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 1979. Available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

women as a homogenous group. Despite these controversies, women's human rights were included in the final Declaration and the Platform of Action outlined the areas most in need of attention and change.

Following Beijing, the last ten years bear witness to an increasing interest in the issue of women's rights and women's human rights. Yet as the article by Steans in this Forum highlights, some feminist scholars have been vocal in challenging the value of an approach to women's rights and human rights that does not take into account the importance of social and cultural norms. Others have argued that such an approach is necessary to promote the cause of women's rights at the national and international level.

The first review of the Platform for Action took place in 2000 through the 'Beijing+5' process. This was a special meeting of the UN General Assembly – 'Women, 2000: Gender Equality, Development and Peace for the Twenty-First Century' – that established a regular process of review of the implementation of the Beijing Platform which is intended to culminate with a more detailed assessment of the achievements of this instrument ten years after its adoption. The latest review of the achievements of the Beijing platform in the spring of 2005 highlights the amount of work that still needs to be done in order to promote women's rights in national and international law.²

Particularly interesting for the analysis presented in this Forum is the debate that has ensued with reference to the relationship between rights and culture. Specifically the arguments that have been put forward argue against the implementation of a universalist framework for women's human rights on the grounds that gender and gender structures emerge from cultural norms. As such, the development of universalist rights has been constructed as diametrically opposed to the establishment of group and cultural rights. As it stands, the UN framework for women's rights promotes the rights of women above those of cultural groups. Indeed, culture cannot be cited as an excuse and/or justification for discrimination and discriminatory practices.³

The development of women's human rights in the political sphere has been mirrored by the growth in feminist scholarship. There is now an impressive range of feminist work that theorises the link between social exclusion and gender, drawing specific attention to how human rights are differentially and unequally applied to women. Some feminist scholars have reiterated the calls from other critical perspectives that contest the 'universality' of rights. From these positions conventional approaches are necessarily exclusionary and authoritarian, and as such have to be refused. Two questions emerge from this comment: Is it then possible to assert a claim with subject status (women)? Can one recognise the strategic need to make such a claim, yet retain a critical awareness of the processes of construction?

² United Nations, *Beijing to Beijing+5: Review and Appraisal of the Implementation of the Beijing Platform for Action – Report of the Secretary General*, 2001. United Nations, 'Governments pledge to accelerate efforts to achieve equality for women and fulfil Beijing commitments, as UN Commission concludes', press release, available at: <http://www.un.org/womenwatch/daw/Review/english/press-releases.asp> (accessed July 2005). United Nations, *Commission on the status of women – report on the 49th session*, 2005. Available at: <http://www.un.org/womenwatch/daw/csw/csw49/documents.html#fin> (accessed August 2005).

³ Sally Engle Merry, 'Constructing a Global Law – Violence against Women and the Human Rights System', *Law & Society Enquiry*, 28 (2003), pp. 941–77.

Feminist scholarship on human rights

Current feminist critiques of the human rights framework draw attention to well rehearsed debates about the tension between the universal and the particular. More specifically, they drive home the point about the dichotomous nature of national and international law, specifically highlighting the difficulties in reconciling universal principles with the cultural specific nature of gender structures and power hierarchies. The articles in this Forum critically assess and evaluate the women's human rights project in the immediate period following the 'Beijing plus 10' process, and in so doing they highlight the diversity of approaches currently driving the debate.

The *British International Studies Association Gendering IR Working Group* convened a workshop in April 2004 at the University of Surrey to discuss the problematques surrounding women's human rights.⁴ The essays in this special collection are the result of that workshop.⁵ One of the conclusions that might be drawn from these essays is that the value of rights discourse can and needs to be challenged, particularly in the context of women's private lives, which remain largely outside the scope of legal protection. More specifically, the continued reliance of liberal rights discourses on the public/private dichotomy raises serious questions about its use as a political tool for the advancement of the status of women. In this context, it is possible to conclude that the concept of rights might be so irredeemably gendered and tainted by its association with the Western liberal tradition that privileges a masculine and bourgeois conception of the human subject that it cannot be useful to women. Feminist analysis suggests that it is far from simple to apply such a universal concept in a global environment, highlighting the intricate but heavily contested interconnections between culture, difference and rights.

The first essay by Jill Steans offers a robust defence of the values and potential of human rights discourse for women. More specifically, she puts forward a strong defence of human rights and the establishment of a universal feminist project. Though recognising the difficulties engendered by the universalism seemingly inherent in the language of human rights, alongside the spectre of Western imperialism, Steans nevertheless wants to retain a sense of the political possibilities of the language, rhetoric and practice of human rights in a era when women's rights are under threat. She recognises the importance of acknowledging difference and diversity within the context of human rights discourse, but claims that the language of rights has the potential to challenge gender structures and injustice. This article also serves to expand more fully on, and clarify, the conundrums alluded to above.

The following four essays all focus on specific empirical issues which lucidly illustrate the issues raised in this Introduction. Juanita Elias takes issue with the International Labour Organisation's introduction of Core Labour Standards (CLS). Elias argues that this 'global' standard privileges a specific set of labour standards which possess the kinds of universalistic qualities associated with ideas of 'human rights' but do not necessarily do anything to help women workers who make up the majority of the workforce in employment in some of the most globalised, and insecure, industries in the world. She makes the case for critical feminist engagement with the gender-blind and neoliberal-compatible approach to economic rights as set

⁴ <http://ics.leeds.ac.uk/papers/index.cfm?outfit=bisagwg>.

⁵ Plus an additional article by Juanita Elias.

out in the CLS. Drawing upon the work of a number of feminist scholars working in the area of women's employment and corporate codes of conduct, she suggests that serious questions need to be asked concerning the possibilities and the limitations that the CLS opens up for women's human rights activism.

Jane Freedman begins her article with the furore over the decision made in France which effectively prevents female Muslims from wearing headscarves (*hijab*) in public schools. Freedman discusses this event in the wider context of women's human rights in an era of a growing fear of Islamic fundamentalism in order to analyse the ways in which Muslim women's rights are being supported or undermined in contemporary Europe. Overall she places these issues within the more general framework of whether a human rights discourse, and in particular a discourse which focuses on universal rights, is a suitable tool for defending the position of women from 'minority' ethnic and religious groups within Europe.

If Freedman and Elias urge caution in the use of the discourses of women's human rights and, as such, are less enamoured than Steans of the possibilities it provides, the essay by Silvie Bovarnick suggests that despite evidence for culturally specific manifestations of violence against women, there are also striking similarities in the way that they are allowed to persist, are justified and made invisible. She deploys her discussion of rape in Mexico and Pakistan to argue that there are global mechanisms that reproduce gender subordination in a predominantly patriarchal world.

The articles by Silvie Bovarnick and Jane Freedman look at the impact of cultural norms on the establishment of a framework for justice. By focusing on specific case studies, Freedman and Bovarnick highlight how power hierarchies manifest themselves through gender relations. The issue of difference, cultural and sexual, underpins the analysis presented in these articles. As Freedman points out, the discourse surrounding the policies around Muslim women's rights to wear the *hijab* is often framed in terms of a defence of Muslim women's rights and of the promotion of gender equality. However, a more in-depth examination of the debates surrounding this issue clearly reveal an international context of a growing fear of Islamic fundamentalism, and in many countries a shift in policy with regard to Muslim immigrants, from an assertion of the 'right to difference' to a more strongly assimilationist approach. Freedman's article explores these issues in order to ask how far Muslim women's rights are really being guaranteed in the contemporary European setting.

On the other hand, Bovarnick's article looks at feminist critiques of human rights theory and practice currently emerging from non-Western discourses. More specifically, she looks at the link between gender, ethnicity and human rights in order to uncover the complexities that underpin current debates about universal justice and multiculturalism. By using this debate as the wider theoretical framework for her analysis, her essay explores the usefulness of human rights as a tool for women's empowerment, particularly addressing how and whether universal notions of justice and rights translate into different cultural contexts. She focuses specifically on the issue of violence against women, which according to human rights agencies, is the most fundamental and universal gender-specific human rights abuse. And she draws on the case studies of Mexico and Pakistan in order to highlight both differences and similarities with regard to how violence against women and women's rights are constituted. She concludes that, although it is important to be aware of cultural specificities, it is equally important not to lose sight of the global mechanisms of which these different manifestations of violence against women are part.

Miranda Alison also addresses rape but commencing from the realities of 'male rape' and 'women perpetrators' in wartime. More specifically, Alison illustrates how the practice of sexual violence in wartime is far more complicated than traditional explanations have allowed, involving at a minimum many intersecting ideas about masculinity and ethnicity. Alison uses this discussion to shed light on a major problem highlighted by critical feminist approaches to women's human rights, namely that the binary paradigm espoused by human rights discourses – (women/men) – not only reifies and upholds this gender binary, but serves to obliterate and obscure other forms of power. The basic claim made here is that both mainstream literature on ethnic conflict and mainstream feminist literature offer incomplete and to a certain extent inadequate theories about the occurrence of rape in conflict. Drawing upon the case studies of the former Yugoslavia and Rwanda, she maintains that to gain a greater understanding of rape in ethnic conflict, we need to have a deeper and more complex understanding of the constructions and interplay of both ethnic and gender identities in times of crisis.

As this discussion highlights, it is currently a matter of contention as to whether the 'concept' and/or the substantive content of human rights is gender-biased and/or gender-blind. The purpose of this debate is to establish the usefulness of such a concept for women's groups seeking to improve and advance the status and position of women. These debates highlight the vast amount of ground that remains to be covered before feminist perspectives are mainstreamed (if indeed that is to be desired) into the actions of international organisations such as the UN. That said, since the UN Decade for Women, and particularly post-Beijing, rape has been recognised as a political act rather than an act of individual transgression which has led to the recognition of rape as a war crime.

In the final essay, Moya Lloyd urges a further exploration into some of the complexities that underpin the issues raised in this Forum by looking at some of the theoretical considerations that define the very foundations of rights-based approaches. By evaluating the paradoxes and potential of human rights, she provides a detailed critique of the limits in the application of universalist discourse to women's human rights campaigns. Particularly important in the context of the discussion presented in this Forum is her call for a critical theory of rights. Lloyd argues that human rights should not be understood as static and (pre)determined, but rather indeterminate and as such a site for critical political contestation. She suggests that this offers a radical challenge, not simply in the context of the creation and implementation of human rights, but to the very constitution of what it means to be human.

It seems not to be doubted that women's human rights have served as a political tool to advance the position and status of women within specific societies across the world. Yet, there are some important questions that remain unanswered regarding their appropriateness for addressing discrimination against women in diverse cultural settings. Notions of duties, rights and obligations emerge in specific contexts and many cultures simply do not elevate the rights of individuals over the claims of the group. The negotiations at Beijing are testament to the fact that there are a number of conservative forces resisting the advancement and development of women's human rights. In this context, it is interesting to note how the politicisation of women's human rights has been at the expense of greater recognition of women's differences and cultural rights as outlined in Jill Steans' article. As result of this

process the battle lines between the 'Western' (liberated) women and their 'oppressed Muslim sisters' are being constructed and reproduced in powerful ways. Clearly this needs to be challenged, however it is also important to avoid falling into the trap of thinking about culture and differences among women within a universalist/cultural relativist dichotomy.

Given the issues raised by this collection of articles, it is possible to conclude that the analysis of the establishment of human rights as political rhetoric, public discourse and a legal framework for the advancement of women's rights draws attention to the complex set of values that underpin liberal ideals. Moreover, the critiques presented here highlight the limitations of universalist and culturally biased approaches to empowerment. The contributions of these discussions are thus twofold. Firstly, they reassert the complex interconnections between gender, culture and rights. In doing so, they highlight the importance of including a gender-sensitive and culturally aware framework to the analysis of human rights. Secondly, this discussion has important implications for the way in which scholars and policy-makers think about social exclusion and human rights and, in turn, construct a framework for the advancement of women's rights and justice in a national and international context.