

(Women's) human rights: paradoxes and possibilities

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Human rights is the idea of our time, the only political-moral idea that has received universal acceptance.¹

Such is its pervasiveness that human rights discourse is used to legitimise humanitarian and military intervention in the affairs of other states, provide a rationale for 'ethical' foreign policy, justify the punishment of war crimes, and validate the formation of international coalitions mandated to eradicate terrorism wherever it is found. At grass-roots level, human rights talk is deployed to lobby governments and to press for socioeconomic and legal change, to combat the dehumanising treatment of specific populations, to ground educational initiatives and spawn local, national, international, and sometimes global networks oriented to its advancement, and to induce the patient and meticulous documentation of its violations. In terms of women, human rights activism has been instrumental in problematising violence against women, prompting the recognition by the UN Human Rights Commission in 1992 of rape during war as a form of torture, and as a war crime or crime against humanity in the Rome Statute of the International Criminal Court (which came into force in 2001). It also led to the appointment in 1994 by the UN Human Rights Commission of Radhika Coomaraswamy as the first Special Rapporteur on Violence against Women and its Causes and Consequences. Activities centring on human rights produced the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly on 18 December 1979 and became operational as an international treaty on 3 September 1981 when it was ratified by its twentieth signatory.² The Convention was, in its own words, 'the culmination of more than thirty years of work by the United Nations Commission on the Status of Women', a body instigated in 1946 specifically to 'monitor the situation of women and to promote women's rights'.³ Women's human

* An earlier version of this article was presented at the 'Negotiating Difference/Negotiating Rights' workshop organised by the BISA Gendering International Relations Working Group. Thanks to all those who participated in the workshop and, in particular, to Marysia Zalewski and Roberta Guerrina for their helpful feedback.

¹ Louis Henkin, cited in David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto, 2002), p. 1.

² Significantly, the US has still not agreed to abide by its terms.

³ *Convention on the Elimination of All Forms of Discrimination against Women*, (<http://www.un.org/womenwatch/daw/cedaw/text/econvention.html>), accessed 1 December 2004.

rights advocates, moreover, have argued for the 'indivisibility' of the civil, social, political and economic rights outlined in the UN Declaration of Human Rights (1948), contending that women's experience shows that the exercise of civil and political rights is contingent upon 'access to economic resources, as well as on social support and the cultural endorsement of women in decision-making positions'.⁴

Despite this catalogue of some of the uses to which human rights discourse has been put, my aim in this article is not to chart human rights politics. Neither will I focus on the actions of states in the maintenance, advocacy or, indeed breach of human rights or upon the legal mechanisms supporting them. Instead, I will develop what I call a critical theory of human rights, centring on the paradoxes and potentials of human rights discourse for women and feminism. As such, my aim is not to defend human rights or, indeed, to refute their validity; it is not to seek to define human rights *per se*; and it is not to examine human rights with regard to ethical or moral considerations. It is, rather, to explore the *politics* of human rights; to think, that is, about what human rights both make possible and what they disallow in terms of international politics as it relates to women. My project should be construed, therefore, as contributing to the practice of political theory understood as critique. Following Wendy Brown and Janet Halley, I see the aim of critique as analysing 'existing discourses of power to understand how subjects are fabricated or positioned by them, what powers they secure (and disguise or veil), what assumptions they naturalise, what privileges they fix, what norms they mobilise, and what or whom these norms exclude'.⁵ A critical theory of human rights will hold human rights up for examination, therefore, in order to interrogate the effects that human rights have in determinate contexts. So, while I expressly do not assume that human rights have *a priori* political importance, neither do I reject human rights *per se*. Even if current conceptualisations and practices of human rights entail specific problems of, *inter alia*, exclusion or depoliticisation, they nevertheless also contain the potential (within

⁴ Niamh Reilly 'Civil and Political Rights', (<http://www.whrnet.org/docs/issu-civilpolitical.html>) (accessed 1 December 2004). See also Ana Elena Obando, 'How Effective is a Human Rights Framework in Addressing Gender-based Violence', (<http://www.whrnet.org/docs/issue-genderviolence.html>), accessed 1 December 2004; 'What Are the Implications of a Rights Based Approach for the Struggle against Violence against Women? An Interview with Charlotte Bunch', (<http://www.whrnet.org/docs/interview-bunch-0402.html>) (accessed 1 December 2004); Isabelle V. Barker, 'Disenchanted Rights: The Persistence of Secularism and Geopolitical Inequalities in Articulations of Women's Human Rights', *Critical Sense* (Fall 2002), pp. 103–34; Susan Moller Okin, 'Feminism, Women's Human Rights, and Cultural Differences', in Uma Narayan and Sandra Harding (eds.), *De-centering the Center: Philosophy for a Multicultural, Postcolonial and Feminist World* (Bloomington, IN: Indiana University Press, 2000), pp. 26–46; Brooke A. Ackerly and Susan Moller Okin, 'Feminist Social Criticism and the International Movement for Women's Rights as Human Rights', in Ian Shapiro and Casiano Hacker-Cordón (eds.), *Democracy's Edges* (Cambridge: Cambridge University Press, 1999), pp. 134–62; Inderpal Grewal, 'On the New Global Feminism and the Family of Nations: Dilemmas of Transnational Feminist Practice', in Ella Shohat (ed.), *Talking Visions: Multicultural Feminism in a Transnational Age* (Cambridge, MA: MIT Press, 1988); Radhika Coomaraswamy, 'Reinventing International Law: Women's Rights as Human Rights in the International Community', Harvard Law School Rights Programme, (<http://www.law.harvard.edu/programs/HRP/Publications/radhika.html>), accessed 14 December 2004; Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives* (Philadelphia, PA: University of Pennsylvania Press, 1994); Radhika Coomaraswamy, 'To Bellow like a Cow: Women, Ethnicity, and the Discourse of Rights', in Cook, *Human Rights*, pp. 39–57; and Hilary Charlesworth, 'What are "Women's International Human Rights?"', in Cook, *Human Rights*, pp. 58–84.

⁵ Wendy Brown and Janet Halley (eds.), *Left Legalism/Left Critique* (Durham, NC and London: Duke University Press, 2002), p. 26.

specific locales) to be resignified outside their present confining frame. Indeed, I would go as far as to propose that it is precisely by identifying the kinds of problems human rights currently pose both within and for global politics that space is opened up to revision them in more promising ways. I will thus argue in this article that human rights discourse is at its most politically radical and progressive *for women* when it occasions a reconfiguration of the norms defining not just what is meant by human rights but, more potently, who is deemed to be 'human'. Stated differently, I view human rights as potentially most transformative when most contestatory of dominant, limiting norms.

In developing my argument I will be drawing on the work of Judith Butler. While I take my starting point from Butler, however, I contend that her account of the radical potential of human rights is, to borrow a phrase from Lois McNay, construed as 'an abstract potentiality',⁶ which needs, in my view, to be made more contextually and historically specific. In other words, to apprehend properly how this potential becomes actualised, one has to examine human rights activism within its particular historical and cultural contexts. This facilitates a better assessment not just of the potential for significant change but also of the specific resources and opportunities at hand through which such change may be/is enacted.

Human rights

One of the key questions for a political theory of human rights is the extent to which they can operate as a common standard of ethical/moral practice across the globe; that is, their capacity to be universal. Balanced against this is the perennial problem that human rights are also always subject to cultural mediation. As Michael Ignatieff points out, human rights have 'gone global' in the sense of 'going local', that is 'imbedding itself in the soil of cultures and worldviews independent [often] of the West'.⁷ Their implementation, both in formal legal terms as well as the way in which they galvanise local political activism, depends upon the particular cultural referents of the society in which they operate. This tension between universalism and particularism has been nowhere more apparent than in relation to women's human rights. Endeavouring to bridge this gap has, at times, almost paralysed feminism as it has tried to grapple with the question of how to accommodate specificity and difference. Given cultural diversity, the cultural mediation of (women's) human rights, not to mention resistance to human rights as a Western mode of thinking,⁸ then, in what sense can human rights be thought of as universal?

Universalism has constituted something of a problem in contemporary political thought. Anxieties about its loss have followed the break-up of the Eastern bloc and

⁶ Lois McNay, *Gender and Agency: Reconfiguring the Subject in Feminist and Social Theory* (Cambridge: Polity Press, 2000), p. 59.

⁷ Michael Ignatieff, *Human Rights As Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001), p. 7.

⁸ The UN Declaration of Human Rights is, of course, the product of a particular historical and geopolitical conjuncture and is underwritten by various cultural assumptions, not least the liberal opposition to secularism upon which it is based – hence the emergence of other regional HR frameworks. On this see Barker, 'Disenchanted Rights'. See also Coomaraswamy, 'Reinventing International Law' and Grewal, 'On the New Global Feminism'.

the emergence of belligerent nationalisms around the globe where particularistic and exclusionary politics appear to be taking hold. Clearly much could be said about the recent history of universalism.⁹ I want to concentrate, however, on Butler's discussion of universality and its utility for human rights thinking. In particular, I want to focus on the idea of the unrealisability of the universal. According to Butler, echoing the work of Ernesto Laclau, 'the universal cannot be identified with any particular content' and this 'incommensurability' between universal and particular means that any universal – including human rights – is only ever, at best, a contingent positing of a historically delimited universal, always subject to renegotiation.¹⁰ The universal is always, that is, a contingent construction and as such, ideas like the victorious triumph of a single unique universalism (such as human rights), or that all humans as humans share common values or a common vision, have to be abandoned. In a world of contingency all hopes of the closure promised by a pure universalism must be forsaken. Instead attention needs to focus on the political work involved in constructing these contingent universals. Laclau saw that construction as the effect of the political articulation of a particular with a universal, in which the particular might become universal in some sense. In contrast, Butler refuses the opposition between universal and particular, arguing instead that all universals are always already particular because they are always universals 'in culture',¹¹ and, following Joan Scott, because what might appear to be particular in one context may be universal in another.¹² In this respect, it is the clash of particular universals (rather than particular versus universal) that fosters ongoing political struggle, both protecting against the realisation of any permanent coincidence between universal ideal and contemporary reality, as well as mobilising political activity. In terms of a critical theory of human rights, therefore, apprehending human rights as constitutively indeterminate allows for a more politically sensitive understanding of how human rights are constructed (not merely represented or advocated), as well as their potential for transformation.

As claimed in the Introduction, international human rights discourse and politics is most potent politically in my view when it is tied to resignifying the norms that define the *human*, for it is the operation of such norms that determine who is culturally intelligible as human as well as who is not. For Butler: 'When we start with the human as a foundation, then the human at issue in human rights is already

⁹ For an excellent discussion of the problem of universalism, see Linda M. G. Zerilli, 'This Universalism Which Is Not One', *Diacritics*, 28 (1998), pp. 3–20.

¹⁰ Judith Butler, 'Dynamic Conclusions', in Judith Butler, Ernesto Laclau and Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London: Verso, 2000), p. 161.

¹¹ Judith Butler, 'Universality in Culture', in Martha Nussbaum and Joshua Cohen (eds), *For Love of Country?* (Boston, MA: Beacon Press, 1996), pp. 45–52.

¹² Arguably Laclau also sees the relation between universal and particular as co-implicated, as when he charges that particularist demands imply the universal insofar as demanding special rights is often couched in terms of equal value or worth (a universal principle) and that universals imply particulars insofar as any right when claimed by a group or an individual becomes particularised. See *Emancipation(s)* (London: Verso, 1996). The difference is that Laclau makes the *a priori* assumption that the political field is divided between 'particularist' forms of resistance and forms that 'successfully make the claim to universality' (Butler, 'Dynamic Conclusions', p. 165), while Butler proposes that these forms of universality inhere in the particularities of specific movements. For further discussion of this point, see my *Judith Butler: From Norms to Politics* (Cambridge: Polity, forthcoming 2007), ch. 6.

known, already defined'.¹³ This is acutely problematic given that, historically, those foundational definitions have been structured particularistically, through such cultural frames as masculinism, imperialism, Western ideals, and orientalism.¹⁴ As such their definitions of the human have been predicated upon significant exclusions – not least, that of women. At such times, as Catharine MacKinnon notes, citing Richard Rorty, 'Being a woman [or, I'd add, any excluded category] is "not yet a name for a way of being human"'.¹⁵ For this reason Butler cautions, rightly, that it is a political mistake for any transnational advocacy movement like feminism to assume in advance *any* conception of the human. The category must always be subject to critical scrutiny and its construction, reconstruction and deconstruction interrogated.¹⁶ And, of course, examples of such contingent exclusions abound, not just in relation to women. The detainees at Guantánamo Bay denied the protections of international law and, more specifically, the legal rights stipulated by the Geneva Convention, are effectively denied human rights because they do not fit a Western/American conception of the human.¹⁷ 'Which combatants count as human' is, as Zillah Eisenstein comments, 'no longer clear'.¹⁸ Gays and lesbians have, as Butler contends, often been defined by groups advocating human rights in other avenues as, in effect, non-human. The case of the Vatican's objection to the use of the term 'gender' during discussions at the UN Meeting on the Status of Women in Beijing in 1995 is a case in point. Construing gender as a code word for homosexuality, the Vatican (and member states under its guidance) appealed to replace it with 'sex'.¹⁹ Women's rights, it appeared, applied only to heterosexual (maternal) women! The exclusion of the lesbian from human rights is significant not just because it is clearly discriminatory but for what it indicates, according to Butler, about the frontiers of universality; for 'to admit the lesbian into the realm of the universal might be to undo the human, at least in its present form, but it might also be to imagine the human beyond its conventional limits'.²⁰ Including the lesbian would, that is, be to subvert the normative framework within which the human is restrictively but impermanently locked.

Any attempt to construct an anti-imperialist, more inclusive, human rights politics must begin, therefore, by considering critically how the human is defined – who, that

¹³ Judith Butler, 'Beside Oneself: On the Limits of Sexual Autonomy', in *Undoing Gender* (London: Routledge, 2004), p. 37, and 'The Question of Social Transformation', in Butler, *Undoing Gender*, p. 222.

¹⁴ Razack cited in Grewal, 'On the New Global Feminism', p. 513; Judith Butler, 'Beside Oneself', p. 37. See also Butler, 'Question of Social Transformation', p. 222; and Coomaraswamy, 'To Bellow like a Cow', p. 41.

¹⁵ Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, MA: The Belknap Press of Harvard University Press, 2006), p. 43. There is, of course, a certain irony in juxtaposing the words of MacKinnon and Butler here since both conceive of themselves as engaged in quite different – even oppositional – political projects.

¹⁶ Butler, 'Question of Social Transformation', p. 222.

¹⁷ For a discussion of Guantanamo, see Judith Butler, 'Indefinite Detention', in *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), pp. 50–100. Of course, the Geneva Convention only pertains to signatory states

¹⁸ Zillah Eisenstein, *Against Empire: Feminisms, Racism, and the West* (London: Zed Books, 2004), p. 9.

¹⁹ Judith Butler, 'The End of Sexual Difference', in Elisabeth Bronfen and Misha Kavka (eds.), *Feminist Consequences: Theory for the New Century* (New York: Columbia University Press, 2001), pp. 414–34.

²⁰ Butler, 'End', p. 431.

is, has the 'right to be human'.²¹ One way to do this is to pay specific attention to what Butler, drawing on the work of Homi Bhabha, calls the 'labour of cultural translation'. As Butler rightly notes: 'there is no cultural consensus on an international level about what ought and ought not to be a claim to universality, who may make it, and what form it ought to take'. The universal is up for grabs. Furthermore, since the universal is, for Butler, performatively produced wherever it is claimed and given that the universal is always, and unavoidably, asserted in terms of cultural norms, it requires translation into 'the various rhetorical and cultural contexts in which the meaning and force of universal claims are made'.²² This is necessary if the universal is to traverse the cultural and linguistic boundaries it is allegedly able to traverse precisely because it is universal. If it cannot navigate such borders, then it will of necessity operate according to a colonial or imperial logic, imposing dominant values onto disenfranchised peoples and cultures.²³ Progressive human rights politics must, in this way, painstakingly negotiate the move from localised (particular) understandings of humanity (and rights) to more global (universal) understandings through cultural translation, since translation, for Butler, is seen as offering, potentially at least, a more radical and egalitarian outcome insofar as it opens up space for counter-colonial possibilities. And, in this context, the 'human', as Bhabha observes, constitutes a vital 'strategic and translational sign that gives ground to, or gains ground for, emergent demands for representation, redistribution and responsibility'.²⁴ Moreover, it reveals, as MacKinnon points out, that '[b]ecoming human in both the legal and lived senses is a social, legal, and *political* process'.²⁵

When subaltern groups claim 'universality' – when women, for instance, demand human rights – a performative contradiction occurs as those excluded from the term use it to make their demands. When claims are made for 'women's human rights', what appears paradoxical – the pairing of the particular (women) and the universal (human) – in fact highlights the contingency of the category of the human (the bearer of rights).²⁶ Or, as women's and human rights activist and scholar Charlotte Bunch puts it: 'Once we realize that many of women's experiences have by and large been absent from the prevailing discussions of human rights (and many other) issues, it becomes clear that women . . . must expand the scope of human rights if it is to realize its goal of being universal.' They need, that is, to 'define those particular things that

²¹ I take the phrase from Upendra Baxi, cited in Mallika Dutt, 'Reclaiming a Human Rights Culture: Feminism of Difference and Alliance', in Shohat, *Talking Visions*, p. 231.

²² Judith Butler, 'Restaging the Universal', in Butler, Laclau and Žižek, *Contingency, Hegemony, Universality*, p. 35. For a very different account of the iterability of human rights discourse and the universal, this time from a discourse ethics perspective, see Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004). Unfortunately given reasons of spatial economy I cannot engage with Benhabib's argument here except to note that she concentrates on the iterability of rights whereas I want to argue that what needs to be done is to reconfigure how the human is thought so that those who do not figure as human within human rights discourse can do so.

²³ It is, of course, worth noting that it is not only Eurocentric norms that serve colonial aims; structural inequalities (including access to global decision-making bodies such as the WTO or IMF) and global capitalism, with its differential modes of exploitation and patterns of transnational economic migration, plus the system of foreign debt, also contribute to the ability of a core of advanced industrialised nations in the West, headed by the US, to determine what counts.

²⁴ Homi Bhabha, 'Democracy De-Realized', *Diogenes*, 197:5 (2003), p. 32.

²⁵ MacKinnon, *Are Women Human?*, p. 2. Emphasis added.

²⁶ Butler, 'Beside Oneself', p. 38. I am expressly not arguing, in this article, for a unitary category of women. For reasons of space, however, I cannot address all the issues attaching to diversity amongst women that I would like.

prevent the expression of their full humanity'.²⁷ The 'human' as previously defined is thus exposed as functioning to circumscribe the scope of international law in significant ways with respect to women. Women's human rights activism reveals, therefore, that women have distinctive rights that have yet to be acknowledged; indeed that cannot be acknowledged when the human is presumed to be male. When women claim human rights in such a setting, the universal is exposed as unrealised.²⁸ On such occasions, cultural translation works to resignify what it is to be human (ontologically, socially and politically). This does not mean that a truer criterion of universality has been attained; it just indicates that traditional, exclusionary, norms determining the universal – human rights – are susceptible to critique and thence to resignification in new directions. It reveals the universal as simply 'the fragile, shifting, always incomplete achievement of political action'.²⁹ For every attempt to define it is predicated upon constitutive exclusions, exclusions that may return to disrupt it, to contest its foundations and to force a 'radical rearticulation of universality itself'.³⁰

Here a crucial distinction is introduced, I want to suggest, that is pertinent to women's human rights. The aim of cultural translation is not to absorb alien or strange notions into an established idea of the human, a simple subsumption of the other into the vocabulary of the same, such that existing human rights discourse continues unaltered, for this would be a 'coercive universality'.³¹ Cultural translation requires, more radically, that 'the dominant discourse' changes 'by virtue of admitting the "foreign" vocabulary into its lexicon',³² breaking apart existing categories of the human and reconfiguring them. In this respect both the foreign vocabulary and the host language must be transformed. As Butler points out, addressing the exclusion of particular groups from the concept of the human demands more than just their entry into that category within its existing terms; it necessitates 'an insurrection at the level of ontology'.³³ This occurs when the dominant understanding of human rights, is forced, in true Hegelian fashion, into epistemic crisis; when that which is constitutively excluded – the spectral – not only lays claim to the universal but forces its rearticulation. When, that is, the parameters and presuppositions of the dominant idiom of human rights can no longer function with ease.³⁴ At such times, an alternative future for and formation of the universal – human rights – is forged or opened up.

We can see this dual trajectory – assimilation versus reconfiguration – in terms of feminist struggles around human rights. As Ackerly and Okin note, one of the

²⁷ Bunch in 'What Are the Implications'. See also Obando, 'How Effective'.

²⁸ Judith Butler, *Excitable Speech: A Politics of the Performative* (London: Routledge, 1997).

²⁹ Zerilli, 'This Universalism', p. 15.

³⁰ Butler, 'End', p. 431.

³¹ Dutt, 'Reclaiming a Human Rights Culture', p. 233.

³² Judith Butler, 'Competing Universalities', in Butler, Laclau and Žižek, *Contingency, Hegemony, Universality*, p. 168; see also Barker, 'Disenchanted Rights', p. 112. In making her argument, Butler is pursuing critical distance from a strain she perceives in Anglo-American feminism (associated with Okin and Nussbaum) that posits universal claims about women's rights (amongst other things) 'without regard to the prevailing norms in local cultures' and more importantly, 'without taking up the task of cultural translation' and which, thus, fails to question the partiality and parochialism of the norms called upon to adjudicate women's rights, norms that are complicit with US colonial aims and that efface 'local Second and Third World cultures' (Butler, 'Restaging', p. 35).

³³ Butler, 'Violence, Mourning, Politics', in *Precarious Life*, p. 33.

³⁴ Judith Butler, 'Changing the Subject: Judith Butler's Politics of Radical Resignification', in Sara Salih with Judith Butler (eds.), *The Judith Butler Reader* (Oxford: Blackwell, 2004), p. 339.

problems with the UN Declaration of Human Rights is that for all its rhetoric of sex equality, 'the "individual" whose human rights were protected was clearly, though not explicitly, the male head of the household'. Evidence of this can be found, they continue, in the fact that the state was conceived as the most likely agent to breach human rights and that 'the privacy of one's family life was considered to need protection as a right'. Critically, the Declaration did not envisage that human rights could be violated within the home by non-state actors and yet, for women, they regularly, and often violently, are.³⁵ It is clearly not enough in this context to assimilate women to the prevailing code of human rights when to do so would occlude the very serious violations of rights that women suffer *qua* women and when many of the rights that are protected under its auspices are ones women cannot easily access.³⁶ The passage of CEDAW, seen as 'the first international human rights treaty based on women's experience and needs', might, in this regard, be hailed as closer to Butler's second account of human rights where entry to the category of rights-bearer refashions in a significant way who counts as a *human*.³⁷ By enumerating the specific ways in which women's human rights are violated in both public and private realms and by acknowledging that states are not the only violators of women's human rights – by developing, that is, a gender-specific framework – CEDAW exposed the historically specific and contingent nature of the 'human' to whom rights conventionally pertained. By juxtaposing women and human, and revealing the politically invested nature of the latter, it forged a new understanding of the universal, of the human. Given, however, that the universal is never finally settled, it should come as no surprise that CEDAW too has come under scrutiny from feminists, not least for its purported over-concentration on political and civil rights and for its failure to include women's right to be free from violence. Endeavours have been made subsequently to displace the 'anti-discrimination paradigm' upon which the Declaration and CEDAW are based with one predicated upon the equal worth of all human beings, conceived as a 'universal mandate that requires local interpretation to be culturally relevant and critically useful';³⁸ that requires 'cultural translation' and a greater attention to difference.

As I indicated earlier, Butler's discussion of human rights and universality operates at quite a high level of abstraction. She supplies relatively little in the way of concrete historical and empirical examples to bolster her claims. While generally attentive throughout her work to unequal power relations, her examination of human rights makes little (or no) mention of the significant problems that may attach to their rearticulation. She overplays, theoretically if not empirically, in my opinion the openness of such rights to significant social transformation. The potential to radically resignify human rights depends on a number of contextual factors including access to channels of communication, a vibrant (albeit embattled) civil society, and active local and international NGOs in the area. It is also contingent upon specific opportunities for agency and action and upon different ways of practising both. I have sketched

³⁵ Ackerly and Okin cite evidence of violations within the home or local community of a range of rights including rights: not to be tortured, to mobility, to marry according to one's own choice, to education, to a basic standard of living ('Feminist social criticism', p. 147); see also Okin, 'Feminism, Women's Human Rights, and Cultural Differences'.

³⁶ Ackerly and Okin, 'Feminist Social Criticism', pp. 141–2, 147.

³⁷ Obando, 'How Effective'.

³⁸ Ackerly and Okin, 'Feminist Social Criticism', p. 141; see also Coomaraswamy, 'Reinventing International Law'.

two examples here of how human rights have been contested and, in one case, renovated by women's political activity in global civil society; far more needs to be said, however, about both examples to assess their full impact adequately.

It is important to acknowledge the critical fact that for some women the opportunities to claim human rights for themselves or to contest normative understandings of the human – to demand 'liveable lives' as Butler puts it – will be severely curtailed, if not totally (albeit temporarily) blocked. As, for instance, Radhika Coomaraswamy's report to the Economic and Social Council in 2000 makes clear, the fact that there was 'fundamentally, no civil society in Afghanistan' effectively denied Afghani women a space in which to act, let alone mobilise politically, and further produced a 'resulting lack of communal solidarity'.³⁹ A critical theory of human rights, operating within the analytic framework set out above, needs to examine not only what human rights discourse and politics allows and disallows. It needs also to consider what happens when transforming such discourses through activism is foreclosed or arrested by how the space for politics (and, indeed the space of the political) is configured within a determinate local, national or international context. Tracing how human rights, and the category of the human, are actually contested and reframed requires close attention to concrete cases.

It is important to note at this point, however, that it is not only through human rights activism in (global) civil society that limited and limiting notions of the human, in particular, can be challenged. There are feminist scholars, such as Inderpal Grewal for instance, who are deeply sceptical of the efficacy of the human rights framework in dealing with global inequalities, seeing its use as masking the hegemonic power of the US. Grewal continues, nevertheless, to argue for international feminist organising, calling for an examination of 'how gendering is a disciplinary practice in all societies'.⁴⁰ Similarly, Ana Elena Obando asserts: 'Conceptualizing the human rights framework as a paradigm that will solve everything as opposed to one indicator of how these mechanisms operate, only serves to divert our efforts to finding more radical solutions'.⁴¹ In the last section of this article, rather than pursuing more 'radical solutions', I want to sketch out some of the paradoxes (as well as potentials) that attend women's use of human rights discourse and activism.

The paradoxes and possibilities of women's human rights

As radical critics from Marx onwards have observed about rights, when they are conceived in abstract terms accruing to individuals regardless of any particular characteristics – by virtue of their shared humanity, in other words – there is the very real danger that such rights might depoliticise significant material and other inequalities. Marx was, of course, interested in liberal constitutions endowing

³⁹ *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Economic and Social Council, E/CN.4/2000/68.Add/4 (13 March 2000), p. 10.

⁴⁰ Grewal, 'On the New Global Feminism', p. 523; see also Barker, 'Disenchanted Rights', p. 117.

⁴¹ Obando, 'How Effective'.

abstract individuals, rather than ‘actual individual’ men, with formal equality, rights and freedoms. His concern was that such rights were based upon certain presuppositions concerning human nature that derived from bourgeois ideology – that man is, essentially, ‘egoistic man’.⁴² Marx’s argument has purchase in relation to human rights. First, as some contemporary Marxist critics have contended, human rights from 1945 onwards have developed in tandem with the expansion of neoliberalism. This has meant that the rights given priority by international institutions have tended to be civil and political rights rather than economic and social ones – that is, those that might pose a challenge to the economic system by calling for forms of redistribution at odds with global capitalism.⁴³ Second, a parallel critique has been developed by feminists. This calls attention not only to the masculinist assumptions underpinning human rights, which effectively occlude forms of oppression and human rights violations suffered by women as women, but also highlights the fact that human rights discourse often abstracts from the structural determinations that position diverse groups of women in fundamentally inegalitarian ways. Merely contending that all humans have certain rights as human does little concretely to overturn or to mitigate the conditions of subordination and oppression women actually suffer. In this respect, a doctrine such as the UN Declaration of Human Rights, for all its openness to interpretation, may do little to transform deep-seated structures of oppression and pronounced geopolitical inequalities. Even though human rights might be deficient practically in bringing about significant social transformation – and this is, of course, one of the most frequent criticisms levelled against them – they, nevertheless, serve an important function. As Patricia Williams notes, ‘For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity’.⁴⁴ The very receptivity of human rights – and in particular, the idea of the human – to appropriation and rearticulation by the outlawed that I outlined above becomes pertinent here. It provides a space to challenge ‘those normative conceptions of the human that produce, through an exclusionary process, a host of “unlivable lives” whose legal and political status is suspended’.⁴⁵

What of women’s human rights campaigns? Are they more effective than universal human rights campaigns in politicising the harms women suffer as women – be that rape or domestic violence? It is not clear that they are unequivocally so. Presuming too much commonality between women conceals significant structural inequalities between them, perpetuating the values and agenda of the most powerful against the least powerful. For instance, as Grewal discusses, when the case of violence against women is construed within the human rights paradigm, a paradigm that assumes private, autonomous beings as the holders of rights, problems emerge for subaltern groups both within and outside the First World. By treating violence in liberal individualist terms (that is, viewing harassment, sexual violence or domestic violence as violence that individual women suffer), she continues, consideration is denied to the political and economic structures that produce the conditions for violations of

⁴² Karl Marx, ‘On the Jewish Question’.

⁴³ See Obando, ‘How Effective’, Grewal, ‘On the New Global Feminism’, and Barker, ‘Disenchanted Rights’.

⁴⁴ Patricia Williams, *The Alchemy of Race and Rights* (London: Virago, 1993), p. 153.

⁴⁵ Butler, *Precarious Life*, p. xv.

women's rights in the first place.⁴⁶ The idea(l) of women's human rights thus masks – in particular contexts – severe material inequalities. There is, however, another paradox attending women's rights as human rights that I want to concentrate on here.

The idea of specific women's human rights, as captured in CEDAW, has been critical in politicising (some of) the ways in which women's rights have been violated. Obando, for instance, suggests that the codes against violence against women were important precisely because they legitimised and gave official recognition to the real, damaging, experiences women across the globe suffer. In contradistinction to Grewal, Obando suggests that the effect of such codes was not to individualise women's experiences but rather to make them the focus of collective concern: as experiences that governments have a duty to attend to, even though law enforcement will not always follow.⁴⁷ By making certain acts (such as rape or domestic violence) into criminal acts, punishable by the courts and prisons, and thus by generating certain international norms governing conduct, for Obando, greater visibility is given to women and the kinds of oppression they suffer. In this respect, 'Rights discourse offers a recognised vocabulary to frame social and political wrongs'.⁴⁸ Furthermore, it acts as a spur to women to act to change their situation, not least by endeavouring to hold governments accountable for human rights breaches. As Charlotte Bunch puts it, 'when women know that something is defined legally as their rights', and even when they cannot access that right, 'it can add to their determination to challenge the conditions that prevent the exercise of these rights'.⁴⁹ Nevertheless, paradoxically, distributing rights to women as women – whether these rights are positivised in national law or only codified in international law⁵⁰ – does not necessarily, as Wendy Brown notes, liberate women from being 'designated and subordinated by gender'. It may offer some defence against the worst features of that designation but 'it reinscribes the designation as it protects us' and it allows legal structures (state-based for Brown, or state and/or international on my reading) to regulate women as women.⁵¹ Rights accorded to women as women – be that the right to determine marriage partner or freedom from violence, say – may fortify opportunities for women to be both legally interpellated and normalised as women. While this may be most acute when human rights have been positivised, the point is that far from offering unalloyed benefits to women, human rights for women may actually renaturalise certain subordinating categories of identity. The purpose of my observation is not to suggest that women should either abandon the motivation to make human rights demands on behalf of women as women, or yield the space they have carved within the legal framework into which to interject concepts or ideas relating

⁴⁶ Grewal specifically ties her criticism to the ways in which this debate and campaign reinforced the hegemonic political agenda of the US.

⁴⁷ Obando, 'How Effective'.

⁴⁸ Hilary Charlesworth, cited in Coomaraswamy, 'Reinventing International Law'.

⁴⁹ Bunch in 'What Are the Implications'.

⁵⁰ I am using the term positivise in the sense deployed by Jeremy Colwill, in his *Universal Human Rights? The Rhetoric of International Law* (CSD Perspectives, 1994), as the practice of 'translating human rights, defined at the international level in highly generalised and universal terms, into a form that satisfies the requirements of positive law at the national level' (p. 3). As Colwill explains, the way that rights are positivised depends upon the actual code or set of regulations requiring translation and whether they confer individual rights and or impose obligations on states (towards other states).

⁵¹ Wendy Brown, 'Suffering Rights as Paradoxes', *Constellations*, 7 (2000), p. 232.

to women (and other groups). It is to point to a tension between women's deployment of a legalistic human rights agenda, which might be largely beneficial to women, and how those same rights are mobilised by states in ways that brace their regulatory and normalising power over specific female populations.

This takes me to my final related paradox concerning the site of human rights activism, and in particular women's access to human rights institutions. As Isabelle Barker points out, 'using human rights discourse is strategic at the level of both practice and theory as it has introduced a means to ground feminism within international institutions'.⁵² The issue here is that because of 'its reliance on the structure of the UN and other international governing bodies, feminist human rights activists have reproduced many of the obstacles feminists face when working with institutions of the nation-state'.⁵³ Amongst other things through their engagement with them, they have conferred legitimacy on existing international institutions even as those institutions may have been instrumental in women's oppression. Moreover, by operating not just with UN bodies in general, but with the international legal system (including the courts), they are depending for any change (even if only rhetorical) on institutions that feminists have long known to be anything but neutral with regard to women. As Grewal remarks, 'it is important to remember that human rights instruments only occur within politics, not outside them, so it is essential to understand political and ideological contexts'.⁵⁴ Such institutions frequently serve to entrench not just patriarchal power relations but also skewed geopolitical power relations, fostering in particular American hegemony. While it would be naïve to expect feminists to give up the gains they have made with regard to entering, influencing and engaging with such institutions, this paradoxical reliance for human rights advances upon the very institutions, including, of course, domestic state structures, that narrowly delimit, and in some cases, may violate those rights, suggests that alternative political strategies (in addition to human rights activism) are needed to engender effective social transformation. My claim here links back with my earlier point that a radical global politics needs to challenge normative and normalising conceptions of the human wherever they circulate. In this respect, human rights activism and recourse to legal solutions cannot be the only venue of political contestation.

Conclusion

I have argued in this article for a critical theory of rights. This takes as its starting point the idea that human rights are indeterminate, the product of and site for critical political contestation. This view has implications for conceiving the human; indeed my argument has been that human rights discourses and activism are at their most radical when they lead to a recategorisation of the human. I have suggested that the human should not, thus, be thought of as a preformed entity – the bearer of particular qualities or needs – but rather that human rights discourses and practices themselves constitute who counts as human. They do so, in part, by challenging

⁵² Barker, 'Disenchanted Rights', p. 108. See also Ackerly and Okin, 'Feminist Social Criticism'.

⁵³ Barker, 'Disenchanted Rights', p. 113.

⁵⁴ Grewal, 'On the New Global Feminism', p. 521.

culturally- or gender-specific incarnations of the human, as we witnessed in relation to women's human rights developed against the hidden masculinist assumptions of the UN Declaration. The consequence of such challenges, however, does not substitute a true for a false idea of the human; rather it demonstrates that the human is a site of ambivalence, agonism, and, of course, exclusion. As befits a *critical* theory of rights, politically this entails meticulous attention to the cultural frames that are used to generate not only who figures as human, but also who is figured as less-than-human or anti-human or not-human. Here the work of cultural translation, with its alertness to the ways in which dominant norms are often simply reworked but not displaced within human rights discourse, becomes particularly acute.

I have also argued against the idea, consequently, that the human should be conceived as a singular, universal entity – a unified world subject, as it were. Instead, the 'human' must be thought of as a complex, fluid and multilayered construction, generated and contested across a plurality of sites of power and modes of global 'governmentality' (to borrow from Foucault). This includes *within* human rights discourse and practice as it is articulated in a multiplicity of cultural sites. In this sense, I would go so far as to suggest that human rights – however nebulous a concept that is (in spite of its legal codifications) – is not universal in that it actually embodies a common moral standard applicable to all humans but rather because of the way in which indeterminacy and open-endedness lend themselves to the promise that one day a universal standard might be attained. It is this that keeps alive a politics oriented towards the development of a less exclusionary category of the human, predicated upon contesting and dismantling the cultural norms that cast some populations as sub-human (or worse) and resignifying human rights differently – more progressively – but always within specific determinate contexts.

Finally, I explored some of the paradoxes that attend human rights politics: the tension between the too abstract nature of universal human rights in the context of severe material and structural inequality and the fact of the amenability of such rights to seizure and renovation by subaltern groups; the clash between women's human rights as identifying specific harms that women face and yet providing fuel for legal and state regulation of women as women; and finally, the irony that the very institutions that have perpetuated human rights violations against women or constructed accounts of the human that exclude women become the same mechanisms through which women make demands for their own protection. My argument here is that a critical theory of human rights has to attend to these paradoxes in order to establish precisely what it is that human rights achieves, what effects it produces, what kinds of legal and state practices and discourses it both challenges and reinforces, what dangers it entails and what democratic possibilities it releases.