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ANTI-ESSENTIALISM, RELATIVISM, AND HUMAN RIGHTS

TRACY E. HIGGINS*

Feminism is the fire that melts, but does not destroy.

—Dr. Nahid Toubia¹

INTRODUCTION

During the Fourth United Nations World Conference on Women,² cultural differences among women presented a series of practical and theoretical problems. The practical problems arose out of the enormous task of negotiating among a large group of people a single, albeit complex, document that would set an agenda for addressing the problems of women globally.³ Differences in culture, language, religion, and education presented complications at every stage of the process. As a theoretical matter, such differences presented a less immediate but in some ways more difficult and persistent problem: In the face of profound cultural differences among women, how can feminists maintain a global political movement yet avoid charges of cultural imperialism?⁴

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¹ Nahid Toubia, *Foreword* to *WOMEN OF THE ARAB WORLD: THE COMING CHALLENGE* at xii (Nahid Toubia ed. & Nahed El Gamal trans., 1988).

² The United Nations-sponsored conference was held in Beijing in September 1995. An affiliated gathering of nongovernmental organizations (NGOs) was held in Huairou, a suburb approximately 30 miles from the official conference site in Beijing.

³ The media widely documented these complexities, especially as they played out in Beijing. In addition to the inevitable practical problems facing a global conference, the participants were frustrated by the interference of the Chinese government, particularly at the affiliated meeting of NGOs. See, e.g., Patrick E. Tyler, *Meddling by China is Seen as Marring Meeting on Women*, N.Y. TIMES, Sept. 2, 1995, at A1; Seth Faison, *Chinese Jostle Thousands of Women at Forum*, N.Y. TIMES, Sept. 7, 1995, at A11.

⁴ Although the Beijing document ultimately reaffirmed the universality of human

This theoretical dilemma has become a serious political hurdle for global feminism as the challenge of cultural relativism⁵ permeates the politics of any discussion of women's rights on the international stage. For example, at the 1994 United Nations Population Conference in Cairo, the Vatican joined with several Muslim governments to condemn what they viewed as the imposition of Western norms of sexual license and individual autonomy on the rest of the world.⁶ Although most advocates of reproductive control at the Population Conference did not attempt to translate policy claims into the language of international human rights,⁷ the issue of cultural relativism was central to the debate over differing visions of the family and the role of women.⁸ For example, although she acknowledged that substantial problems of overpopulation plague many Muslim countries including Pakistan, Prime Minister Benazir Bhutto joined with the Vatican in criticizing what she perceived as Western efforts to impose norms of radical individualism on the rest of the world.⁹ In Beijing, a variety of groups once again levied this charge of imperialism against Western feminists expanding it beyond issues of sexuality and reproduction to include women's roles within the family and in public life.¹⁰

rights, debate over a footnote that would have recognized cultural differences remained a point of disagreement late into the drafting process. Moreover, a number of nations entered reservations, many of which were based on cultural differences. See Seth Faison, *Women Carry Hopes as Conference Ends*, N.Y. TIMES, Sept. 16, 1995, at A5.

⁵ I use the term cultural relativism to mean a commitment to one or both of the following positions: that transcendent standards for evaluating cultures are unavailable and/or that all cultures are equally valid. See discussion *infra* text accompanying notes 31-33.

⁶ See, e.g., Barbara Crossette, *Vatican Drops Fight Against U.N. Population Document*, N.Y. TIMES, Sept. 10, 1994, at A5; Dick Kirschsten, *A Page Was Turned in Cairo*, 26 NAT'L J. 2178 (1994); Alan Cowell, *U.N. Population Meeting Adopts Program of Actions*, N.Y. TIMES, Sept. 14, 1994, at A2.

⁷ Vice-President Gore characterized the issue of abortion as a matter of national sovereignty, not a human right to which women are entitled. See Alan Cowell, *Vatican Says Gore Is Misrepresenting Population Talks*, N.Y. TIMES, Sept. 1, 1994, at A1.

⁸ Several Muslim countries, including Saudi Arabia and Sudan, boycotted the talks altogether while others attended but voiced objections to the proposed document. See Alan Cowell, *Vatican Rejects Compromise on Abortion at U.N. Meeting*, N.Y. TIMES, Sept. 7, 1994, at A1, A8 (quoting an Islamic newspaper describing the conference as "hailing promiscuity, calling for abortion and extramarital sex, and pointing to an era with no morals, where all values are trampled underfoot").

⁹ Cf. Doug Struck, *U.S. Tries to Defuse Abortion Issue*, BALTIMORE SUN, Sept. 6, 1994, at 1A, 7A (quoting Prime Minister Bhutto, "Kill not your children on a plea of want. Islam, except in exceptional circumstances, rejects abortion as a method of population planning.").

¹⁰ Interestingly, conservative groups within the United States and the Vatican seemed to assert the charge of imperialism most strenuously. Non-Western women's groups more often framed their objections as a challenge to the relevance of the Western women's agenda than complaints of coercion. See Barbara Crossette, *The Second Sex in the Third World*, N.Y. TIMES, Sept. 10, 1995, at A25.

Feminist responses to this charge are complicated and sometimes conflicting. On the one hand, feminists note that culture and religion are often cited as justifications for denying women a range of basic rights, including the right to travel, rights in marriage and divorce, the right to own property, even the right to be protected by the criminal law on an equal basis with men.¹¹ Women have much to lose, therefore, in any movement away from a universal standard of human rights in favor of deference to culture. On the other hand, feminists acknowledge that feminism itself is grounded in the importance of participation, of listening to and accounting for the particular experiences of women, especially those on the margins of power.¹² Indeed, much feminist criticism of traditional human rights approaches has focused on the tendency of international policymakers to exclude women's experiences and women's voices.¹³ Thus, the claim that Western concepts of women's equality are exclusionary or imperialist strikes at the heart of one of feminism's central commitments—respect for difference.

In short, both the move to expand universal human rights to include those rights central to women's condition and the move toward a relativist view of human rights are consistent with and informed by feminist theory. Indeed, the tension between them reflects a tension within feminism itself, between describing women's experience collectively as a basis for political action and respecting differences among women. Addressing this tension, this Article endeavors to sort out the degree to which feminism, by virtue of its own commitments, must take cultural defenses seriously, particularly when articulated by women themselves.

Part I reviews the challenge cultural relativism presents to universalist theories of human rights generally and to global feminism in particular. Part II argues that feminist anti-essentialism¹⁴ has raised objections to general theories of women's oppression similar to those raised by cultural relativism and suggests that feminist anti-essentialism and cultural

¹¹ See Donna J. Sullivan, *Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution*, 24 N.Y.U. J. INT'L L. & POL. 795 (1992) (discussing general reservations grounded upon personal status laws that states have entered to the Women's Convention).

¹² See *infra* part II.B. (discussing anti-essentialism and respect for difference).

¹³ WOMEN IN INTERNATIONAL LAW INTEREST GROUP, AMERICAN SOCIETY OF INTERNATIONAL LAW, RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 93–170 (Dorinda G. Dallmeyer ed., 1993); Rebecca J. Cook, *State Responsibility for Violations of Women's Human Rights*, 7 HARV. HUM. RTS. J. 125 (1994); Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993). See generally HUMAN RIGHTS OF WOMEN (Rebecca J. Cook ed., 1994).

¹⁴ I use the term anti-essentialism to refer to the rejection by many feminists of the idea that particular characteristics can be identified with women over time and across cultures. Feminist anti-essentialists tend to emphasize differences *among* women as well as differences *between* men and women. See discussion *infra* part II.

relativism share a critical stance toward universal accounts of women's condition. By emphasizing the overlap of anti-essentialism and cultural relativism, Part II raises the question of the degree to which relativist defenses of culture threaten global feminism. Part III attempts to answer this question by analyzing the logic of cultural relativism and feminist anti-essentialism and distinguishing them according to their different normative commitments. Finally, Part IV elaborates a vision of international feminist theory as poised between universalism and cultural relativism and explores the implications of this position for constructive cross-cultural evaluation.

I. CULTURAL RELATIVISM VS. UNIVERSALISM

The debate over the universality of human rights is almost as old as the movement toward universal human rights standards in international law. Following World War II, as the Universal Declaration of Human Rights was being drafted, the Executive Board of the American Anthropological Association (AAA) warned that the Declaration would be "a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America."¹⁵ The Board added that "standards and values are relative to the culture from which they derive" and thus "what is held to be a human right in one society may be regarded as anti-social by another people."¹⁶ A global audience found this position of moral relativism particularly troubling in the wake of the Nazi Holocaust and feared that it would wholly undermine the nascent human rights agenda.¹⁷ Thus, notwithstanding the efforts of the AAA and the emergence of conflicts of values among participating nations,¹⁸ the Declaration embraced the assumption of the universality of human rights.¹⁹

¹⁵ American Anthropological Ass'n, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539 (1947).

¹⁶ *Id.*

¹⁷ See J. Roland Pennock, *Rights, Natural Rights, and Human Rights—A General View*, 23 NOMOS 1, 5 (1981) (discussing how a renewed commitment to human rights emerged in response to the totalitarian abuses of the second quarter of the 20th century).

¹⁸ For example, Arab states challenged the right to change religion, a standard contrary to the tenets of Islam. See HOWARD TOLLEY, THE U.N. COMMISSION ON HUMAN RIGHTS 1, 22 (1987). The Soviets were opposed to the preponderance of Western civil liberties. *Id.* at 21. Western nations were persuaded to include economic, social, and cultural rights in the document only after having been persuaded that it would not be legally binding. *Id.* at 21–22.

¹⁹ The Declaration states:

The General Assembly [p]roclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms and by progressive

Despite the general consensus reflected in the Declaration, differences have persisted over the scope and priorities of the international human rights agenda, differences that are translated with surprising frequency into the rhetoric of universality versus cultural relativism, imperialism versus self-determination.²⁰ Notwithstanding the language of universality, the question remains: To what extent may a state depart from international norms in the name of culture? Both the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights contribute to this tension in their recognition of the importance of the collective right to self-determination.²¹ These documents do not clearly resolve the degree to which citizens, exercising their right of self-determination, may subordinate other protected rights in the interest of security, development, or culture.²²

Apart from any ambiguities in human rights instruments themselves, non-Western states have argued that the very hierarchy of human rights established in those instruments privileges civil and political rights over economic, social and cultural rights in a way that is biased toward both Western political traditions and the wealth of Western states relative to the rest of the world.²³ Strategic enforcement of existing

measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

G.A. Res. 217(A)(III), U.N. Doc. A/180 (1948).

²⁰ It is not self-evident why the debate should take place on the more general level of the status of rights and their universal application rather than over the substance and interpretation of the rights themselves. It may be that casting the debate on this general level allows opponents of an international human rights agenda to convert their argument from "anti-rights" to "pro-culture" in much the way pro-life and pro-choice advocates have struggled over language and labels. Whatever the reason, the universality/relativism debate has permeated human rights discourse from the academy to the press to local politics.

²¹ Both Covenants include as Part I, Article I, Section (1) the following language:

All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

International Covenant on Civil and Political Rights, U.N. Doc. A/6316 (1966) (emphasis added); International Covenant on Economic, Social and Cultural Rights, U.N. Doc. A/6316 (1966) (emphasis added).

²² David P. Forsythe, *Socioeconomic Human Rights: The United Nations, the United States, and Beyond*, 4 HUM. RTS. Q. 433, 434-35 (1982).

²³ The circumstances under which that document was drafted support the perception that early human rights documents, particularly the Universal Declaration of Human Rights, reflect a Western bias. The membership of the drafting committee, the Commission on Human Rights, was overwhelmingly Western. In addition, the U.S. Department of State orchestrated the early drafting of a proposed constitution. See TOLLEY, *supra* note 18, at 3. Finally, most of the critical meetings took place in the United States, and American NGOs were extremely influential in the process. See John P. Humphrey, *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character*, in

standards,²⁴ coupled with the persistence of discrimination and economic inequality in Western nations, have further called into question the adequacy of Western concepts of civil and political rights to ensure human well-being. Finally, postmodernism and identity politics within the academy have contributed to the critique of universalism by questioning its very philosophical foundations.²⁵

Located within this political and intellectual milieu, contemporary defenses of universalism range from natural rights arguments²⁶ to positivism²⁷ to utilitarianism²⁸ to social contract theories.²⁹ Regardless of

HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION 21 (B.G. Ramcharan ed., 1979).

Despite the dominance of the U.S. in the drafting process, the degree to which the document reflects Western rather than universal norms is contested. According to some, the notion that the standards embodied in the document are uniquely Western is itself profoundly racist. See RICHARD SCHIFTER, U.S. DEP'T OF STATE, *Human Rights: A Western Cultural Bias?*, in CURRENT POLICY No. 1105, 2-3 (1988).

²⁴ See, e.g., Richard Falk, *Intervention Revisited: Hard Choices and Tragic Dilemmas*, NATION, Dec. 20, 1993, at 755 (identifying and criticizing political motives underlying the United States' "humanitarian" intervention in Kuwait, Bosnia, Somalia, and Haiti); Robert S. Greenburger, *Restraint of Trade: Cacophony of Voices Drowns Out Message From U.S. to China*, WALL ST. J., Mar. 22, 1994, at A1 (discussing the controversy in U.S. human rights and business communities over the extension of "most-favored-nation" trade status to China). But see Tom J. Farer, *Human Rights in Law's Empire: The Jurisprudence War*, 85 AM. J. INT'L L. 117, 122 (1991) (arguing that military intervention is almost always motivated by political and humanitarian concerns and is therefore subject to multiple interpretations).

²⁵ See Steven Seidman & David G. Wagner, *Introduction to POSTMODERNISM AND SOCIAL THEORY* (Steven Seidman & David G. Wagner eds., 1992). Seidman and Wagner explain:

Central to postmodernism is its critique of the claim that scientific knowledge is universal and can be justified in a noncontextual way. Postmodernists contend that standards of truth are context-dependent Postmodernists tend to favor forms of social inquiry which incorporate an explicitly practical and moral intent, that are contextual and restricted in their focus (local stories are preferred over general ones), and that are narratively structured rather than articulating a general theory.

Id. at 6-7.

²⁶ See, e.g., Hedley Bull, *The Universality of Human Rights*, 8 MILLENNIUM: J. INT'L STUD. 155, 159 (1980) ("The validity of our beliefs about human rights does not depend on the amount of consensus that exists in favor of them"); Josef L. Kunz, *Natural-Law Thinking in the Modern Science of International Law*, 55 AM. J. INT'L L. 951, 958 (1961) (viewing natural law not as "a system of legal norms, but a system of highest legal principles").

²⁷ See JAMES L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* 49-50 (Humphrey Waldock ed., 1963); Rudolf Bystricky, *The Universality of Human Rights in a World of Conflicting Ideologies*, in INTERNATIONAL PROTECTION OF HUMAN RIGHTS 83 (Asbjorn Eide & August Schou eds., 1968).

²⁸ See, e.g., RICHARD BRANDT, *A THEORY OF THE GOOD AND THE RIGHT* (1979) (offering utilitarian analysis of human rights); Richard M. Hare, *Justice and Equality*, in JUSTICE AND ECONOMIC DISTRIBUTION 116, 130 (John Arthur & William H. Shaw eds., 1978) (defining the critical question as "[w]hat principles of justice, what attitudes towards the distribution of goods, what ascriptions of rights, are such that their acceptance is in the general interest?").

²⁹ The most widely known of modern social contract theorists is, of course, John

which form the arguments ultimately take, assertions of the universal nature of such claims tend to rest upon an epistemological assumption about the universality of human reason rather than a metaphysical claim about their correspondence with a reality independent of human understanding.³⁰ Under such immanent universalist theories, truth is a product of the right functioning of human reasoning. This claim about human knowing, in turn, has the consequence of privileging the thinker, the philosopher, the scientist, or the lawyer in the debate over the meaning of human experience. The truth claims that emerge are normative and are understood as substantially independent of history, individual choices, and human experience. Disagreements over human rights are errors in reason, logical mistakes which can be resolved through better thinking.

Opposing the various theories offered as justifications for the existence of universal human rights, cultural relativism reflects skepticism about the availability of universal norms.³¹ Like universalism, cultural relativism takes a number of different forms.³² Generally speaking, however, cultural relativists are committed to one or both of the following premises: that knowledge and truth are culturally contingent, creating a barrier to cross-cultural understanding; and that all cultures are equally valid.³³ Combined with the empirical observation of cultural diversity worldwide, these two premises lead to the conclusion that human rights norms do not transcend cultural location and cannot be readily translated

Rawls. See JOHN RAWLS, *A THEORY OF JUSTICE* (1971); JOHN RAWLS, *POLITICAL LIBERALISM* (1993); see also John Rawls, *The Law of Peoples*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 41* (Stephen Shute & Susan Hurley eds., 1993) (applying constructivist view of justice as fairness to derive universally applicable human rights principles).

³⁰Richard Rorty describes this movement away from metaphysical realism as reflecting the waning relevance of moral philosophy to the human condition:

Why has knowledge become much less important to our self-image than it was two hundred years ago? Why does the attempt to found culture on nature, and moral obligation on knowledge of transcultural universals, seem so much less important to us than it seemed in the Enlightenment? Why is there so little resonance, and so little point, in asking whether human beings in fact have the rights listed in the Helsinki Declaration? Why, in short, has moral philosophy become such an inconspicuous part of our culture?

Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS*, *supra* note 29, at 111, 120.

³¹Rorty describes cultural relativism very simply as "den[ying] the existence of morally relevant transcultural facts." *Id.* at 116.

³²See, e.g., JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 109–10 (1989) (distinguishing among three different types of cultural relativism based on each one's assumption about the degree to which culture dictates moral norms).

³³See generally RUTH BENEDICT, *PATTERNS OF CULTURE* (1934); Fernando R. Teson, *International Human Rights and Cultural Relativism*, 25 VA. J. INT'L L. 869, 870–71 (1985); Jack Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303 (1982).

across cultures.³⁴ The two premises of cultural relativism deprive human rights advocates of both a transcendent justification for human rights standards (i.e., notwithstanding disagreement, human rights exist as a product of the human condition) and a hope for consensus (by bridging the barriers of cultural difference). Cultural relativism raises the possibility that the category "human" is no longer sufficient to enable cross-cultural assessment of human practices or the actions of states.

Although this debate over the philosophical foundations of human rights raises interesting theoretical questions, one must acknowledge that encroachments on human freedom are not generally the result of metaphysical errors.³⁵ Indeed, one can fairly accuse academics of overstating the risks posed by such metaphysical errors. For example, universalists who reject the significance of culture often reinforce their argument by citing the threat of nihilism or radical moral relativism.³⁶ Such arguments have led anthropologist Clifford Geertz to observe, "There may be some genuine nihilists out there . . . but I doubt very many have become such as a result of an excessive sensitivity to the claims of other cultures."³⁷ On the other hand, relativists who privilege cultural difference may overstate the threat of imperialism posed by human rights advocacy, deferring to cultural practices that seem clearly oppressive.³⁸ Caught

³⁴ Early influential relativist works include Franz Boas, *The Mind of Primitive Man*, 14 J. AM. FOLKLORE 11 (1901) (suggesting that there may be other civilizations, "based perhaps on different traditions and on a different equilibrium of emotion and reason, which are of no less value than ours"); BENEDICT, *supra* note 33, at 278 (arguing for tolerance of "the coexisting and equally valid patterns of life which mankind has created for itself from the raw materials of existence"); and MELVILLE J. HERSKOVITS, *MAN AND HIS WORKS: THE SCIENCE OF CULTURAL ANTHROPOLOGY* 63 (1964) (arguing that "[e]valuations are relative to the cultural background out of which they arise"). See also ELVIN HATCH, *CULTURE AND MORALITY: THE RELATIVITY OF VALUES IN ANTHROPOLOGY* (1983) (advocating relativism to the extent that it supports tolerance for other cultures, but condemning coercive practices); DAVID B. WONG, *MORAL RELATIVITY* (1984) (attempting to reconcile a commitment to cultural relativism with the exercise of objective moral judgment).

³⁵ As my colleague Ben Zipursky points out, rejecting (or embracing) Kant is not likely to solve many of the world's problems.

³⁶ Some have worried about the implications of relativism for progressive politics. See, e.g., Susan M. Okin, *Gender Inequality and Cultural Differences*, 22 POL. THEORY 5 (1994) (asking, "Doesn't stressing differences, especially cultural differences, lead to a slide toward relativism?"). Others have embraced the relativist stance. See, e.g., STANLEY FISH, *DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES* (1989) (rejecting the availability of substantive norms and emphasizing the role of power in imposing a criterion of truth).

³⁷ Clifford Geertz, *Distinguished Lecture: Anti Anti-Relativism*, 86 AM. ANTHROPOLOGIST 263, 265 (1984).

³⁸ Martha Nussbaum cites several examples that, in her view, illustrate the degree to which radical relativism has undermined a progressive human rights agenda. She describes a conference in which scholars praised the integration of home and workplace reflected in the existence of a menstruation taboo in both spheres and lamented that the introduction of the smallpox vaccine destroyed the cult of Sittala Devi, the goddess to whom one might pray to avoid the disease. See Martha Nussbaum, *Human Functioning*

between the poles of nihilism and imperialism, human rights activists are forced to choose between the rhetoric of cultural sensitivity and claims of universal truth. Thus, the importance of the universalist/relativist debate for feminist human rights activists lies less in the philosophical debate itself than in the way that debate has influenced the politics of human rights advocacy.

The influence of the universalist/relativist divide on the politics of human rights is perhaps nowhere more evident than in debates over women's rights as human rights. Cultural relativists have targeted feminism itself as a product of Western ideology and global feminism as a form of Western imperialism.³⁹ Ironically, cultural relativists have accused feminist human rights activists of imposing Western standards on non-Western cultures in much the same way that feminists have criticized states for imposing male-defined norms on women. The complexity of this debate has sown confusion among feminist human rights activists, undermining the effectiveness of the global feminist movement. In the remaining sections of this Paper, I attempt to clarify some of the arguments, dispel some of the confusion, and turn to feminist theory itself for a way out of the universalist/relativist dilemma.

II. THE CHALLENGE OF FEMINIST ANTI-ESSENTIALISM

Feminist concerns with difference and exclusion have created some of the same dilemmas within feminism that cultural relativism has generated in the realm of international human rights. Indeed, debates within feminism concerning the degree to which women's condition transcends boundaries of culture, race, and class parallel the struggle between universal and culturally specific visions of human rights. Not surprisingly, therefore, feminist theorizing on the global level is often divided between relativist and universalist approaches.⁴⁰ This section explores the

and Social Justice: *In Defense of Aristotelian Essentialism*, 20 POL. THEORY 202, 203–05 (1992). She notes, "Under the banner of their radical and politically correct 'anti-essentialism' march ancient religious taboos, the luxury of the pampered husband, ill health, ignorance, and death." *Id.* at 204.

³⁹ See, e.g., Micaela di Leonardo, *Introduction: Gender, Culture, and Political Economy: Feminist Anthropology in Historical Perspective*, in GENDER AT THE CROSSROADS OF KNOWLEDGE: FEMINIST ANTHROPOLOGY IN THE POSTMODERN ERA 1, 10 (Micaela di Leonardo ed., 1991) (asking, "[H]ow could we analyze critically instances of male domination and oppression in precisely those societies whose customs anthropology was traditionally pledged to advocate?").

⁴⁰ Some feminists have acknowledged the importance of differences among women and yet, when advocating changes to human rights approaches, have tended to treat the category of women as monolithic. See, e.g., Charlotte Bunch, *Transforming Human Rights from a Feminist Perspective*, in WOMEN'S RIGHTS HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 11 (Julie Peters & Andrea Wolper eds., 1995); Hilary

assumptions that feminist theory shares with both universalism and cultural relativism. It first describes the emergence of feminist anti-essentialism as a challenge to the universal scope of feminist politics and the persistence of essentialist theories of women's oppression in the face of this challenge. It then discusses the implications of anti-essentialism for feminist human rights activism.

A. Global Feminist Politics and the Appeal of Essentialism

Feminism has long been concerned with questions of difference. Initially, this concern focused almost exclusively on gender difference: how women may differ from men;⁴¹ how to account for those differences;⁴² whether and how those differences do (or should) matter in private life and public policy.⁴³ Although feminist theory continues to develop around these issues of gender difference,⁴⁴ the question of difference has multiplied.

Much incisive and insightful criticism, particularly by feminists of color, has revealed that treating gender difference as the primary concern

Charlesworth et al., *Feminist Approaches to International Law* 85 AM. J. INT'L L. 613 (1991).

Others have focused more directly on differences among women. See, e.g., Isabelle R. Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1992); Nancy Kim, *Toward A Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism* 25 COLUM. HUM. RTS. L. REV. 49 (1993).

⁴¹ Perhaps the most oft-cited example of this type of analysis is the work of Carol Gilligan, a psychologist who discerned different forms of moral reasoning among boys and girls through her study of adolescent development. See CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

⁴² Feminists and others have paid much attention to the sources of observed gender differences. This attention has had the effect of politicizing the line between biology and culture as sources of gender difference. See, e.g., Richard A. Epstein, *Gender Is for Nouns*, 41 DEPAUL L. REV. 981 (1992) (arguing that the role of natural gender difference in sex segregation in the labor market should be acknowledged); Kathryn Abrams, *Social Construction, Roving Biologism, and Reasonable Women: A Response to Professor Epstein*, 41 DEPAUL L. REV. 1021 (1992) (disagreeing with Epstein and arguing that gender differences are complex and based on multiple social and biological factors).

⁴³ A specific example of this focus on gender difference is the equal treatment/different treatment debate within feminist legal theory. Compare Wendy W. Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N.Y.U. REV. L. & SOC. CHANGE 325 (1984-1985) (advocating that employers treat pregnancy-related conditions and other temporary disabilities equally) with Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279 (1987) (advocating that employers treat pregnancy according to a standard that promotes women's equality).

⁴⁴ One peculiar example of this focus is the attention paid during the weeks preceding the Beijing Conference to the definition of "gender" in the document. Some suggested that it be defined as biological maleness and femaleness; others advocated a cultural definition of masculinity and femininity; still others suggested that use of the term reflected a lesbian agenda. See Stanley Meisler, *Women's Conference Bogs Down in Semantics*, L.A. TIMES, Sept. 1, 1995, at A25 (quoting Gary Bauer of the conservative Family Research Council as explaining that the concept of gender "has been used in

of feminism has had the effect of reinforcing gendered categories and collapsing differences among women.⁴⁵ These critics have argued convincingly that early feminist descriptions of women's experience focused on white, middle-class, educated, heterosexual women. Consequently, the political priorities of the women's movement in the West (e.g., equal access to education and employment, abortion rights) have reflected the most urgent concerns of a relatively more powerful group of women. Moreover, even shared concerns, such as domestic violence and rape, have often been described and addressed based on the experiences of a relatively narrow group of women.⁴⁶ Accused of essentialism,⁴⁷ feminists who theorized a commonality among women were criticized for committing the dual sin of reinforcing patriarchal assumptions about women as a group and marginalizing some women along the lines of race, class, and sexual orientation.⁴⁸

Despite its theoretical and political vulnerabilities, the practical appeal of essentialism, like the appeal of universalism, persists. Essentialist assumptions offer the promise of uniting women in a way that transcends or precedes politics.⁴⁹ Ellen Rooney has suggested that essentialism reflects a "desire that what unites us (as feminists) pre-exist[s] our desire to be joined; something that stands outside our own alliances may authorize them and empower us to speak not just as feminists but as women."⁵⁰

feminist literature to mean that gender is subject to change and that there exists a spectrum of genders, perhaps even five").

⁴⁵ See, e.g., Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-1990); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN'S L.J. 115 (1989); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988).

⁴⁶ For example, Angela Harris has argued that black and white women's experiences of rape have been qualitatively different, "an experience as deeply rooted in color as in gender." Harris, *supra* note 45, at 598.

⁴⁷ Diana Fuss defines essentialism as "a belief in the real, true essence of things, the invariable and fixed properties which define the 'whatness' of a given entity." DIANA FUSS, *ESSENTIALLY SPEAKING: FEMINISM, NATURE & DIFFERENCE* at xi (1989).

⁴⁸ See SPELMAN, *supra* note 45, at 3.

⁴⁹ Elizabeth Spelman explains this tendency in the following way:

[A]s feminists, our motivation for thinking, talking, and writing about any particular woman is that she is a *woman*; at the same time, the point is not to talk only about *one* woman, but about *women*—any and all women. So the logic of our inquiry and concern seems to lead us to focus on the "womanness" or womanhood of any or all women, just as the Platonist's interest directs his explorations

Id.

⁵⁰ Ellen Rooney, Interview with Gayatri C. Spivak, *In a Word. Interview*, in *THE ESSENTIAL DIFFERENCE* 151, 152 (Naomi Schor & Elizabeth Weed eds., 1994). Ellen

This desire may be felt even more urgently on the international level where differences among women threaten to outweigh commonalities.

Much feminist activism on the international level has been premised on two assumptions, both of which may be characterized as essentialist: first, that women share types of experiences and are oppressed in particular ways as women; and second, that these experiences are often different than those of men.⁵¹ These assumptions have led feminists to challenge the traditionally narrow definition of human rights and attempt to expand it to cover experiences shared by women as a group.⁵² Like universalist descriptions of human rights or human well-being, feminist essentialism has lent political coherence to the feminist movement and has provided a foundation for Western feminists' expansion of their political vision. Indeed, feminist progress in reshaping the scope of the international human rights agenda stands as an important example of the power of organizing around assumptions of commonality.

Perhaps feminism's most significant contribution in this context has been to expand the scope of human rights to include not just what nations do to one another or what nations do to their citizens, but what citizens do to one another.⁵³ Although some violations of women's rights fit easily into a civil liberties analysis, much of the abuse of women is part of a larger cultural and economic framework that renders women systematically vulnerable to private power.⁵⁴ Abuses of women's rights that are not attributable to state action narrowly defined fall outside a definition of human rights violations as solely a matter of state infringement of civil and political liberties. In contrast, the insistence at the United Nations Conference on Human Rights in Vienna and again at the Women's Conference in Beijing on the inclusion of violence against women as a human rights issue has roots in the insight that countries

Rooney explains essentialism as "a dream of the end of politics among women, of a formal resolution to the discontinuity between women and feminisms." *Id.*

⁵¹ Feminists' explanation of the mechanism of this oppression varies from a focus on a gendered division of labor, *see, e.g.*, WOMAN, CULTURE, AND SOCIETY (Michelle Z. Rosaldo & Louise Lamphere eds., 1974), to women's role in reproduction and the social meaning of mothering, *see, e.g.*, GILLIGAN, *supra* note 41; NANCY CHODOROW, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER (1978), to women's vulnerability to sexual violence, *see, e.g.*, CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987).

⁵² *See* Charlesworth et al., *supra* note 40 (applying many of the arguments and analyses developed by American feminists to international human rights).

⁵³ *See* Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486 (1990); Charlesworth et al., *supra* note 40.

⁵⁴ *See, e.g.*, Bunch, *supra* note 40, at 13-14 (arguing that states must be held accountable for sustaining conditions that enhance women's vulnerability to private violence); Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, in ON HUMAN RIGHTS, *supra* note 29, at 83 (discussing sexual violence as a weapon of war, particularly in the context of Bosnia).

create and sustain the conditions under which women are victimized and therefore should be accountable for the level of gender-based violence.⁵⁵

Feminists have therefore criticized the traditional focus on political rights, or negative rights against the state, in international human rights instruments as reflecting the view that the greatest threat to the life and liberty of a citizen is the state. According to many feminists, that view does not reflect the realities of women's lives.⁵⁶ Rather, the private exercise of male power, often reinforced by the state, more often threatens women's lives and liberty.⁵⁷ Thus, by focusing on women's common experience of private oppression, feminist work in international human rights has revealed a potential inconsistency between a vision of human rights as limiting state power and the need for state intervention to limit abuses of private power. In this sense, feminism has offered an external challenge to the adequacy of traditional human rights analysis.

B. Anti-essentialism, Cultural Relativism, and Feminist Human Rights Activism

Although feminists have criticized the *adequacy* of traditional human rights, they have less frequently attacked the *universality* of those rights. Rather, recognizing the threat that cultural defenses pose to women's rights, as defined from a Western feminist perspective, feminists have most often argued for an expansion of both the scope and the applicability of human rights standards.⁵⁸ Indeed, feminist efforts to expand the

⁵⁵This initiative on the international level parallels U.S. feminists' challenge to the public/private dichotomy emphasizing the importance of state intervention to regulate violence in the private sphere of the family. Compare CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (arguing that defining rights in terms of restrictions on the state may disable the state from intervening to reallocate private power in the family) with Bunch, *supra* note 40, at 13–14 (making a similar argument with respect to states' human rights obligations).

⁵⁶For feminist critique of the public/private distinction in international law, see sources cited *supra* note 13. See also Charlesworth et al., *supra* note 40, at 625–40; Bunch, *supra* note 40, at 13–14. But see Fernando R. Teson, *Feminism and International Law: A Reply*, 33 VA. J. INT'L L. 647 (1993).

⁵⁷This is not to suggest that women are not also the victims of traditional human rights violations—they are. Women are imprisoned, tortured, raped, killed, and silenced by state authorities in the same way men are. Yet, women are more commonly imprisoned, tortured, raped, killed, and silenced by their own spouses, lovers, and families. See MACKINNON, *supra* note 55.

⁵⁸For example, Georgina Ashworth argues:

The cry against “interference in culture” is used as a defense of men's rights, not of women's; it is used to avoid creating a “national shame” over the behaviour of one sex toward the other, at the expense of the second sex.

scope of human rights violations to include harms women suffer as a result of cultural norms or religious practices pose an even greater threat to cultural integrity than do traditional human rights standards. This increased scrutiny of the culture and its most central institutions, the church and the family, have made advocates of a global feminism a target of cultural relativists.⁵⁹

In addition to criticism from cultural relativists, this cross-cultural approach to women's oppression has not been immune from criticism within the feminist community.⁶⁰ Such cross-cultural analysis depends upon very broad assumptions about women's lives and experiences and therefore raises important empirical questions regarding the extent to which women's oppression is similarly constituted across cultures. It also raises issues about the formulation of those empirical questions themselves. An essentialist approach generally begins with the experiences of white, middle-class, educated, heterosexual women.⁶¹ Such an approach tends to attribute commonly shared forms of oppression to gender and specific forms of oppression to other sources such as race, class, or sexual orientation. Consequently, an essentialist approach risks becoming a least common denominator approach, allowing relatively privileged women's experiences to define the feminist agenda. This tendency, in turn, creates division among women. In short, when feminists aspire to account for women's oppression through claims of cross-cultural commonality, they construct the feminist subject through exclusions, narrowing her down to her essence. And, as Judith Butler has observed, "those excluded domains return to haunt the 'integrity' and 'unity' of the feminist 'we'."⁶²

Responding to this division, anti-essentialist feminists have attempted to rethink both the various descriptions of gender oppression that have been offered and the assumption that gender oppression can be described meaningfully along a single axis. Instead, they have focused on local,

Rights Strategies, 20 J.L. & Soc'y 6, 9 (1993) (quoting GEORGINA ASHWORTH, OF VIOLENCE AND VIOLATION: WOMEN AND HUMAN RIGHTS 8 (1986)). See also Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 MICH. J. INT'L L. 517, 545 (1992).

⁵⁹ See, e.g., Kim, *supra* note 40, at 61 (citing examples of relativist critique of international feminist practice, including feminist critique of purdah and female genital surgery).

⁶⁰ See, e.g., Gunning, *supra* note 40; Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 NEW ENG. L. REV. 1509 (1992).

⁶¹ This is not logically inevitable. An essentialist approach could begin from the experiences of any subset of women and generalize those experiences. Nevertheless, within Western feminist theory, essentialism has meant a generalization from the experiences of relatively privileged women.

⁶² Judith Butler, *Contingent Foundations: Feminism and the Question of "Postmodernism"*, in FEMINISTS THEORIZE THE POLITICAL 3, 14 (Judith Butler & Joan W. Scott eds., 1992).

contextualized problems of gender oppression.⁶³ In this sense, anti-essentialism's criticism of general accounts of women's oppression parallels cultural relativism's critique of universal theories of human rights. Like cultural relativism, feminist anti-essentialism seems to lead to the conclusion that gender inequality cannot be explained cross-culturally.

Thus, despite the general inclination of feminist human rights activists to side with universalists, feminist theory, specifically anti-essentialism, does resonate with relativists' concern over cultural imperialism. Indeed, global feminists' tendency to take for granted the adequacy of their own standards—reflected in their simultaneous insistence on both the inadequacy of traditional human rights norms and the universal application of amended, feminist standards—is precisely the tendency that generated the anti-essentialist critique within feminism itself.⁶⁴

Notwithstanding this resonance, some feminists have cautioned that radical anti-essentialism, like cultural relativism, threatens to undermine the central goal of feminist human rights advocacy: to identify and criticize systems of inequality and injustice that transcend cultural, political, and geographic boundaries.⁶⁵ The assumption that gender is culturally contingent not only calls into question universalist notions of gender justice but also renders problematic a feminist critique of legal institutions and legal reform outside of narrow, localized experience.⁶⁶ To the extent that feminist anti-essentialism questions the use of cross-cultural categories, it threatens to undermine the identification of broad structures of inequality premised on gender.⁶⁷

⁶³ See, e.g., Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1990) (examining and defending calls for contextual analysis); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 881 (1990) (advocating "positionality," a stance that acknowledges that "the individual perspectives that yield and judge truth are necessarily incomplete").

⁶⁴ As Karen Engle notes, when feminists "claim universal human rights in the face of a world that does not universally agree, they are plagued by the counter-claim of cultural relativism." Engle, *supra* note 58, at 545.

⁶⁵ Sabina Lovibond expresses the reaction of many feminists when she asks in response to postmodern critique, "How can anyone ask me to say goodbye to 'emancipatory metanarratives' when my own emancipation is such a patchy, hit-and-miss affair?" Sabina Lovibond, *Feminism and Postmodernism*, 178 NEW LEFT REV. 5, 12 (1989).

⁶⁶ It is precisely this disabling of broad social criticism that has led some feminists to question the usefulness of postmodern theory for feminism. See Kathryn P. Addelson, *Knower/Doers and Their Moral Problems*, in FEMINIST EPISTEMOLOGIES 265 (Linda Alcoff & Elizabeth Potter eds., 1993); Sandra Harding, *Feminism, Science, and the Anti-Enlightenment Critiques*, in FEMINISM/POSTMODERNISM 83 (Linda J. Nicholson ed., 1990) (arguing against complete relinquishment of modernist notions of epistemology as justificatory strategy); Sandra Harding, *Rethinking Standpoint Epistemology: What is "Strong Objectivity?"*, in FEMINIST EPISTEMOLOGIES, *supra*, at 49; Lovibond, *supra* note 65.

⁶⁷ See Nancy Fraser & Linda Nicholson, *Social Criticism Without Philosophy*, in FEMINISM/POSTMODERNISM, *supra* note 66, at 1, 25 (1990); ZILLAH R. EISENSTEIN, *THE FEMALE BODY AND THE LAW* 18–19 (1988).

It is perhaps this concern that has left feminist advocates on the international level much more reluctant than feminists within the United States to accept the implications of anti-essentialism. At least within a single state, cultural commonalities and legal institutions provide a common framework within which difference can be contained. On the international level, the parameters of such a framework are much more difficult to identify. Moreover, adherence to a universalist approach has been relatively successful for feminist human rights advocates. Although the effort to develop Western notions of justice has proceeded largely without women's participation—and indeed at times with the assumption that they are incapable of reason—women have made identifiable legal gains on the international level by resorting to claims of justice and equality. Feminists therefore fear that without an objectively defensible basis for evaluating the status of women, women will be left with power alone to dictate the outcome of competing claims of truth.⁶⁸ That prospect most frightens those who are most oppressed.

A feminist approach to international human rights therefore leads in two apparently conflicting directions at once: (1) increased awareness *universally* of the importance of cultural and economic rights for women, including such issues as the structure of the family; and (2) increased respect for cultural *difference* based on an awareness of the partiality of perspective, a skepticism of universal claims of authenticity. Is the tension irreconcilable? Does a feminist commitment to resist imperialism, a commitment born of women's own experience of powerlessness under patriarchy, leave us without a standard by which to condemn abuses of women throughout the world?

Increasingly aware of the diversity of women's experience, sympathizing with the claim that universalism may be barely disguised ethnocentrism, and embracing in large part a position of epistemological skepticism, feminists are faced with a dilemma. Should they move to expand human rights to encompass women's experience as though it were monolithic or, recognizing women's differences, reject the universality of human rights divorced from cultural context? The latter conclusion risks undermining feminist critiques of cultural practices that are deeply harmful to women. Women are economically disempowered in the name of culture. They are denied the right to be educated,⁶⁹ to travel,⁷⁰ to seek

⁶⁸ See, e.g., Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763, 1768 (1990) (warning that "[t]he emphasis on context and provisional truth does not remove the obligation to divide right from wrong and to retain justice as the goal of theory").

⁶⁹ See, e.g., THE WORLD'S WOMEN: 1995 TRENDS AND STATISTICS 90 (United Nations 1995) (documenting a lower literacy rate for women than men in every region of the world).

⁷⁰ For example, in Afghanistan, an Islamic fundamentalist group supported by Pakistan and Saudi Arabia has restricted women to the home, permitting them to leave their homes

paid employment,⁷¹ to divorce.⁷² They are denied legal protection against domestic violence, including spousal murder.⁷³ They are subject to painful, often dangerous surgery to ensure female chastity.⁷⁴ Together these practices and countless others create and sustain cultures of male privilege across the globe. Feminists must therefore respond to relativist or anti-essentialist arguments and take seriously issues of cultural difference without surrendering a critical stance toward the many forms of women's oppression.

III. UNPACKING THE LOGIC OF RELATIVISM

As the preceding section suggests, feminism reveals the existence of multicultural patriarchy, yet feminist commitments seem to render untenable both the acceptance of cultural practices that harm women and the unproblematic condemnation of such practices based on universalist standards. For feminists, the challenge is simultaneously to reject universalist human rights claims that fail to account for difference and to embrace a normative conception of gender justice that is critical of patriarchy across cultures. This section explores whether these commitments are inconsistent. The first part considers whether feminist anti-essentialism's assumption of cultural contingency renders evaluation impossible, as some cultural relativist arguments suggest. The second part explains the different conclusions reached by cultural relativists and

only if they are fully veiled and accompanied by a male family member. See John F. Burns, *From Cold War, Afghans Inherit Brutal New Age*, N.Y. TIMES, Feb. 14, 1996, at A1, A8.

⁷¹ See, e.g., THE WORLD'S WOMEN, *supra* note 69, at 108–09 (documenting women's disproportionate share of unpaid work and worldwide underrepresentation in the paid labor market).

⁷² See, e.g., Koki Muli, "Help Me Balance the Load": Gender Discrimination in Kenya, in WOMEN'S RIGHTS HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES, *supra* note 40, at 78 (describing the inequality between the rights of men and women in marriage and divorce in Kenya); Elizabeth H. White, *Legal Reform as an Indicator of Women's Status in Muslim Nations*, in WOMEN IN THE MUSLIM WORLD 52, 56–57 (Lois Beck & Nikki Keddie eds., 1978) (noting that despite reforms in divorce law, in the Muslim World, there is still a profound inequality in men and women's ability to secure a divorce).

⁷³ See, e.g., Hina Jilani, *Whose Laws?: Human Rights and Violence in Pakistan*, in FREEDOM FROM VIOLENCE: WOMEN'S STRATEGIES FROM AROUND THE WORLD 63, 66–73 (Margaret Schuler ed., 1992) (discussing legal barriers to combatting domestic violence in Pakistan); CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL 18–39 (Women's Rights Project of Human Rights Watch, 1991) (documenting spousal murder and available legal defenses in Brazil).

⁷⁴ See, e.g., Asma Mohammed A'Haleem, *Claiming Our Bodies and Our Rights, Exploring Female Circumcision as an Act of Violence in Africa*, in FREEDOM FROM VIOLENCE: WOMEN'S STRATEGIES FROM AROUND THE WORLD, *supra* note 73 (exploring the practice of female genital surgeries in Africa, particularly in the Sudan).

feminist anti-essentialists regarding the possibility of cross-cultural critique by analyzing their different normative commitments and assumptions about culture and coercion.

A. Contingency Does Not Entail Radical Relativism

The notion that the only coherent descriptions of knowledge or truth are dependent on human cognition and rooted in human history has informed both cultural relativism and feminist anti-essentialism.⁷⁵ Both cultural relativists and feminist anti-essentialists must therefore consider the degree to which this assumption of contingent knowledge undermines any basis for evaluation. Does a loss of faith in the existence of (or at least our access to) standards external to human experience lead to the conclusion that we can no longer credibly evaluate the actions of others outside our cultural location? Feminist anti-essentialism and cultural relativism offer very different answers to this question.

The assumption that knowledge is contingent is often taken to entail a retreat into extreme relativism.⁷⁶ Lacking, on the one hand, complete consensus about moral norms, or on the other hand, unmediated access to human nature, the relativist concludes that no legitimate basis for evaluation exists.⁷⁷ Yet, this argument jumps too easily from the recog-

⁷⁵ See Fraser & Nicholson, *supra* note 67, at 26 (noting that feminists "have criticized modern foundationalist epistemologies and moral and political theories, exposing the contingent, partial, and historically situated character of what has passed in the mainstream for necessary, universal, and ahistorical truths"); Geertz, *supra* note 37, at 263; MELVILLE J. HERSKOVITS, CULTURAL RELATIVISM: PERSPECTIVES IN CULTURAL PLURALISM 14 (Frances Herskovits ed., 1973) (noting that the principles that we may use for judging behavior "are relative to the cultural background out of which they arise"); Rorty, *supra* note 30, at 116 (defining the claim that "nothing relevant to moral choice separates human beings from animals except historically contingent facts of the world, cultural facts"); Bartlett, *supra* note 63, at 829 (emphasizing the importance of contingent, partial-knowledge claims in feminist theory and politics).

⁷⁶ Martha Nussbaum explains this reasoning as follows:

First an impossible demand is made, say, for unmediated presentness to reality as it is in itself or for an actual universal agreement about matters of value. Next, it is claimed that this demand cannot be met. Then, without further ado . . . the theorist concludes that everything is up for grabs and there are no norms to give us guidance in matters of evaluation.

Nussbaum, *supra* note 38.

⁷⁷ Anna Funder rejects this logic, explaining:

Westerners are used to thinking that for something to be true, it must be universally applicable: the idea of culturally different value systems threatens the truth of our values. This is an unnecessary logic: the issue is how and in whose interests culture or rights work, not whether they are true.

Anna Funder, *De Minimis Non Curat Lex: The Clitoris, Culture and the Law*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 417, 439 (1993).

nition that moral norms are contingent to the assumption that concededly contingent moral norms may not be applied cross-culturally. The apparent trap between universality and relativism is a remnant of the argument that links the legitimacy of knowledge claims to the existence of verifiably true or universally agreed upon neutral principles.⁷⁸ The relativist laments the demise of universalist certitude only if she believes it a precondition of political action.⁷⁹ Unwilling to act without such certitude, she has not fully relinquished the hope for universal foundations upon which to ground the exercise of power. It is this universalist hope that undermines action in the face of uncertainty, not the recognition of contingency itself. In contrast, detached from this universalist hope, radical relativism leaves us with no pre-political basis to choose between *tolerance* of other cultures and *destruction* of them.

In the context of human rights, recognition that a particular standard is culturally contingent does not logically preclude its imposition cross-culturally as a principle of international law or a standard of evaluation. A state might formulate human rights standards and criticize the failure of other states to meet those standards, notwithstanding the lack of any philosophically or politically defensible universalist claim. With enough political power, that state might even force the offending government to cease the objectionable practice whether or not the enforced standard is acknowledged as universal. Nevertheless, the description of the standard as universal is significant in that it masks underlying normative judgments.⁸⁰ The universalist may simply dismiss a culturally based defense of violations of human rights norms as a failure of reason, evidence that the offending state is insufficiently advanced in its development or recognition of human standards. For example, the universalist may characterize the proscription of child labor as a civilizing impulse rather than the imposition of a culturally specific norm of childhood and family labor. Thus, the claim of universality sets up a hierarchy of cultural

⁷⁸For an explanation of the link between relativism, nihilism, and objectivism, see RICHARD J. BERNSTEIN, *BEYOND OBJECTIVISM AND RELATIVISM: SCIENCE, HERMENEUTICS, AND PRAXIS* (1983); Frank I. Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986).

⁷⁹Richard Rorty explains this point somewhat differently:

One reason [opponents of cultural relativism] reject it is that such relativism seems to them incompatible with the fact that our human rights culture . . . is morally superior to other cultures. I quite agree that ours is morally superior, but I do not think this superiority counts in favor of the existence of a universal human nature. It would only do so if we assumed that a moral claim is ill-founded if not backed up by knowledge of a distinctively human attribute.

Rorty, *supra* note 30, at 116.

⁸⁰As Jane Flax explains, "speaking in knowledge's voice or on its behalf, we can avoid taking responsibility for locating our contingent selves as the producers of knowledge and truth claims." Jane Flax, *The End of Innocence*, in *FEMINISTS THEORIZE THE POLITICAL*, *supra* note 62, at 458.

practices, leaving the enforcing state secure in the knowledge that its standards are transcendent.

Nevertheless, to relinquish the security of such universalist claims does not necessarily entail the abandonment of human rights activism and critique. Surrendering the assumption of a transcendent grounding for evaluative judgments deprives the critic not of her capacity for evaluation but of her confidence in the truth of her position. Judgments can be made; they must simply be made contingently. By undermining the hope for a source of knowledge that will guide political action unambiguously in the service of freedom, a skepticism toward universalism deprives the critic, including the feminist critic, of any *external* source of legitimacy. Without Nature or God or Reason as a basis for judgment, the critic must rely on her own conception of justice as a basis for action. Thus, the recognition of the cultural contingency of moral standards neither releases the critic into a realm of irresponsible relativism nor mandates a position of conservative nonintervention. On the contrary, it requires the critic to assume responsibility for the use of power in the service of a particular normative vision.⁸¹

Having assumed the contingency of moral norms, both feminist anti-essentialists and cultural relativists must consider the legitimacy of imposing contingent norms cross-culturally. But this is a distinct inquiry. A commitment to cultural contingency neither precludes feminism's cross-cultural critique nor requires cultural relativism's agnosticism. Both positions are consistent with an underlying recognition of the contingency, or relative status, of knowledge. The difference between feminism's, even feminist anti-essentialism's, persistent critique of patriarchy across cultures and cultural relativism's tolerance of cultural difference must therefore arise from a difference in their normative assumptions. In order to clarify the degree to which feminist and cultural relativist commitments are consistent, or, whether and to what extent feminists are vulnerable to relativists' critique, we must examine these assumptions.

Loss of faith in objectively valid universal norms leads to cultural relativism only when coupled with a particular normative view that

⁸¹ Joan Williams has explained the advantage of abandoning universalist arguments as follows:

A steadfast refusal to appeal *in any context* to objective moral certainties has, in my view, more than epistemological significance. It offers us a chance to step back and examine the structure of our form of life, to assess the hidden costs of our ideals. How the ideal of universal brotherhood is inevitably hemmed in by the arbitrary lines that people draw to define, and ultimately to limit, the scope of their moral responsibility.

Joan C. Williams, *Rorty, Radicalism, Romanticism: The Politics of the Gaze*, 1992 Wis. L. REV. 131, 139.

privileges cultural difference over cultural convergence. Such a view takes two common forms: the defense of cultural diversity for its own sake⁸² and a commitment to pluralist values.⁸³ The anthropologist might be inclined to the first view, lamenting the spread of Western culture or even Western medicine to corrupt heretofore isolated communities. This noninterventionist position reflects a clear normative commitment to diversity, not a thoroughgoing skepticism about the legitimacy of such judgments. After all, the emphasis on diversity as a good itself represents a contested normative principle.⁸⁴

The preservation of cultural diversity as a justification for a noninterventionist stance toward other cultures does not appeal to most feminists. Cultural relativism's normative commitment to difference conflicts with feminism's normative commitment to ending gender oppression. Although feminists may be concerned with respecting the variety of ways gender oppression is understood by women in different cultures, feminists are not inclined to value patriarchal cultures simply for their contribution to cultural diversity.⁸⁵ This commitment to cultural diversity for its own sake, although frequently a political barrier to feminist objectives, does not present a serious *internal* challenge to feminist theorizing about cultural difference or feminist critique of cultural practices.

The second common justification for agnosticism among cultural systems, a commitment to pluralist values, presents a more serious challenge to feminist universalist claims. Informed by liberalism or Western commitments to pluralist values,⁸⁶ this position rejects a universal con-

⁸² This uncritical defense of culture is most commonly found in the anthropological literature devoted to the study and preservation of culture. In an early and seminal work in this area, Ruth Benedict argues that cultural norms, although sometimes coinciding, are defensible only with reference to the culture itself. BENEDICT, *supra* note 33. Addressing a controversial example, she explains, "The tabus on killing oneself or another . . . though they relate to no absolute standard, are not therefore fortuitous . . . Taken up by a well-integrated culture, the most ill-assorted acts become characteristic of its peculiar goals, often by the most unlikely metamorphoses." *Id.* at 46. Although modern scholars rarely assume this tone of moral neutrality, many such works evince a thoroughgoing reluctance to evaluate substantively the practices of other cultures. See Nussbaum, *supra* note 38 (citing a number of examples); Craig Calhoun, *Culture, History, and the Problem of Specificity in Social Theory*, in POSTMODERNISM AND SOCIAL THEORY, *supra* note 25, at 244, 254 (discussing the problem of evaluation in the contest between Western and Chinese medicine).

⁸³ See *infra* text accompanying note 86.

⁸⁴ Indeed, some have argued that anthropology's commitment to cultural relativism, to the extent that it persists, derives from scholars' "hostility to the values of their own society rather than from [theoretical imperatives]." Wilcomb E. Washburn, *Cultural Relativism, Human Rights, and the AAA*, 89 AM. ANTHROPOLOGIST 939 (1987).

⁸⁵ See di Leonardo, *supra* note 39, at 10 (expressing the difficulty for feminist analysis presented by the anthropologist's noncritical stance); see also Marilyn Strathern, *An Awkward Relationship: The Case of Feminism and Anthropology*, 12 SIGNS 276, 286 (1987) (stating that "[f]rom the anthropological point of view" Western feminism tends to "embod[y] ethnocentric commentary upon the world").

⁸⁶ See, e.g., Bronwyn Winter, *Women, the Law, and Cultural Relativism in France: The*

ception of human flourishing because the imposition of such a conception would deprive each individual of the opportunity to determine and live by her own vision of the good. Under this view, cultural difference must be respected because the imposition of moral norms across cultures constitutes coercion, depriving individuals and communities of the ability to fashion their own standards.⁸⁷ Once again, this form of cultural relativism does not necessarily follow from a position of radical relativism or skepticism toward moral universals. Rather, the emphasis it places on individual freedom and cultural autonomy reflects a particular normative view of the prerequisites for human flourishing.⁸⁸

Nevertheless, for feminists, this principle of noncoercion coupled with a relativist view of culture provides the most serious challenge to the imposition of universal human rights standards. Unlike the argument from simple diversity, this concern with coercion is closely related to the politics of feminism. Having experienced the oppression resulting from the imposition of male-defined norms within their own cultures, Western feminists are reluctant to recreate that oppression cross-culturally. This concern is particularly acute when the arguably oppressive practice—for example, veiling or female genital surgery—enjoys support among or is controlled by women within the culture.⁸⁹

Case of Excision, 19 SIGNS 939, 952–54 (1994) (discussing the role of democratic theory in promoting tolerance of cultural diversity in connection with the practice of female circumcision in France).

⁸⁷ Reflecting a commitment to Western liberalism, existing human rights instruments embody principles of both individual autonomy and collective self-determination. The relativist-pluralist view takes the commitments further by rejecting any inherent or universal limits on the scope of self-determination. For a discussion of feminist criticism of both relativist and liberal pluralism, see *infra* part III.B. Although the principle of self-governance is embodied in universalist human rights documents, it stands in some tension with the majority of rights located in the individual. As articulated in the Universal Declaration of Human Rights, the principle of self-determination is limited by the strongly liberal-individualist model that seems mandated by the catalogue of civil and political rights. See Richard Falk, *Cultural Foundations For the International Protection of Human Rights*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 48 (Abdullahi Ahmed An-Na'im ed., 1992) (discussing the relevance of culture to human rights and noting that "[e]xclusion from the rights-forming process is itself a denial of human rights").

⁸⁸ Anthropologists and other defenders of cultural relativism have recognized the political implications of this noninterventionist stance. Attacking the concept of objectivity implicit in early defenses of relativism, defenders of cultural difference and self-determination have increasingly formulated their arguments in terms of ending oppression or, more specifically, colonialism. See, e.g., REINVENTING ANTHROPOLOGY (Dell Hymes ed., 1972) (emphasizing the need for anthropology to do something for the "oppressed" of mankind against their "oppressors").

⁸⁹ Feminist scholars have given considerable attention to the particular issue of female genital surgery. See, e.g., Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 J.L. & INEQUALITY 367 (1989); Engle, *supra* note 60; Funder, *supra* note 77; Gunning, *supra* note 40; Winter, *supra* note 86. The practice of female genital surgery poses a particularly difficult practical and theoretical problem for feminists, in that it is at once

Faced with differences across race, class, ethnicity, and sexuality, Western feminists have struggled with the exclusionary consequences of their own theories and political agenda. Expansion of this agenda cross-culturally, however well meaning, seems fraught with the risk of coercion. At the same time, by emphasizing the risks of international feminism, cultural relativism or anti-essentialism may serve as a justification for inaction or, worse, for accepting the vast inequalities in standards of living between women (and men) in the West and women (and men) in developing nations.

B. Two Views on Culture and Coercion

Although sharing a concern with cultural difference and a lack of faith in the availability of universal standards, feminist anti-essentialism and cultural relativism nevertheless reach different conclusions regarding the possibility of cross-cultural evaluation. As the preceding section suggests, cultural relativists and feminist anti-essentialists are each concerned with the implications of cultural difference and the problem of coercion, yet they view both culture and coercion differently. This section examines the concepts of coercion and culture as they are used in both feminist anti-essentialist and cultural relativist arguments and suggests that, despite its commitment to tolerance, the relativist view of culture tends to obscure issues of coercion at the heart of gender politics.

1. Cultural Relativism: Essentializing Culture, Obscuring Coercion

Feminists have questioned arguments based on a simple assertion of cultural integrity for several reasons. First, cultural relativists may inadequately attend to the degree to which power relationships within the culture itself constrain the ability of individuals to renegotiate cultural norms.⁹⁰ Yet, this inattention is inconsistent with a concern about coercion. The relativist cannot criticize Western imperialism and at the same

physically dangerous, deeply threatening to Western norms of female sexuality, reflective of patriarchal regulation of women's sexuality and, at the same time, performed by women on women and girls.

⁹⁰ Arif Dirlik notes:

A critical reading of culture, one that exposes it as an ideological operation crucial to the establishment of hegemony, requires that we view it not merely as an attribute of totalities but as an activity that is bound up with the operation of social relations, that expresses contradiction as much as it does cohesion.

Arif Dirlik, *Culturalism as Hegemonic Ideology and Liberating Practice*, 6 CULTURAL CRITIQUE: THE NATURE & CONTEXT OF MINORITY DISCOURSE 13, 15 (1987).

time ignore non-Western states' selective use of the defense of culture in the service of state power.⁹¹ The risk of such intra-cultural coercion seems especially great when that selective invocation of culture has differential effects on groups within the state such as minority ethnic or racial groups or women.⁹²

Second, cultural relativist arguments may oversimplify the complexity and fluidity of culture by treating culture as monolithic and moral norms within a particular culture as readily ascertainable.⁹³ Yet, a single, inward glance at Western culture reveals the absurdity of this assumption. The multiplicity of beliefs in the United States (or even within a single community or family) about the legitimacy of abortion or the role of women in the family illustrates the complexity of translating imperfectly shared assumptions into evaluative standards.⁹⁴ Such oversimplification seems inconsistent with the very premises of cultural relativism. Indeed, cultural relativists' tendency to describe differences in terms of simple opposition—Western versus non-Western—without exploring how specific cultural practices are constituted and justified “essentializes” culture itself.⁹⁵ Treating culture as monolithic fails to respect relevant intra-cultural differences just as the assumption of the universality of human rights standards fails to respect cross-cultural differences. Cultural differences that may be relevant to assessing human rights claims are neither uniform nor static. Rather, they are constantly created, chal-

⁹¹ See, e.g., Ann E. Mayer, *Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES, *supra* note 40, at 176 (citing examples of the use of cultural or religious defenses by Islamic regimes accused of suppressing feminist dissent). It is also worth noting that the Vatican has invoked the language of cultural relativism, accusing the West of cultural imperialism, particularly in the realm of women's rights and the role of women in the family. Cf. *Vatican Denounces Europe as Anti-Family*, N.Y. TIMES, Sept. 10, 1995, at A10.

⁹² See, e.g., Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES, *supra* note 40, at 167, 169 (“No social group has suffered greater violation of its human rights in the name of culture than women. Regardless of the particular forms it takes in different societies, the concept of culture in the modern state circumscribes women's lives in deeply symbolic as well as immediately real ways.”).

⁹³ See *id.* at 172–73 (emphasizing the tendency to rely on so-called representative cultural practices without investigating the politics of their representative status).

⁹⁴ A good illustration of this point is the controversy within the United States over the content of the draft platform for the Women's Conference in Beijing. Some hailed the conference and the platform as an unambiguous advance for women globally, while others criticized it as promoting a radical feminist agenda and disregarding the interests of women in developing countries. Compare Geraldine A. Ferraro, *Women's Rights, Human Rights*, N.Y. TIMES, Aug. 22, 1995, at A15 (emphasizing the significance of the conference for women globally and urging the U.S. delegation not to boycott) with Camille Paglia, *A White Liberal Women's Conference*, N.Y. TIMES, Sept. 1, 1995, at A25 (accusing Western feminist ideology of at times “rid[ing] roughshod over the concerns of delegates from the third world”).

⁹⁵ See Bunting, *supra* note 58.

lenged, and renegotiated by individuals living within inevitably overlapping cultural communities.

This oversimplification of culture may lead relativists to accept too readily a cultural defense articulated by state actors or other elites on the international level, actors that tend not to be women.⁹⁶ Yet, it seems unlikely that a cultural defense offered by the state will adequately reflect the dynamic, evolving, and possibly conflicting cultural concerns of its citizens. Given the complexity and multiplicity of culture, the ability or inclination of heads of state to identify and translate cultural practices into specific defenses against the imposition of Western human rights norms is questionable. Feminists in particular have cited example after example in which culture has been selectively and perhaps cynically invoked to justify oppressive practices.⁹⁷

The apparent inconsistency between cultural relativists' fear of inter-cultural coercion and virtual neglect of intra-cultural coercion must be understood in light of relativists' assumptions about the relationship between culture and the individual. If culture is understood simply as a reflection of human will, then the existence of any particular social organization tends to become its own legitimation. Focused on defending cultural integrity from external encroachment, cultural relativists tend to be much less concerned with the way culture determines or limits the individual's possibilities for self-definition.

2. Feminist Anti-Essentialism: Complicating Coercion

Although cultural relativists and universalist defenders of the existing human rights regime are fundamentally opposed in their approaches, they find common ground to the extent that the existing regime embraces values of self-determination, both cultural and political. Yet, it is precisely this privileging of autonomy that triggers feminism's departure from both liberal pluralism and cultural relativism. The version of cultural relativism that is informed by liberalism's concern for autonomy and self-determination treats cross-cultural critique as an encroachment on cultural integrity.⁹⁸ To the extent that cultural relativists are concerned with coercion or cultural imperialism, they tend to associate an absence

⁹⁶ For an excellent example of such a claim, see Rao, *supra* note 92, at 170. Rao cites Kenyatta's invocation of culture as a defense to the practice of female genital surgery among Kikuyu. Rao urges the questioning of the "*politics*" of such a claim, particularly when it is made by a male national leader on behalf of the social group most directly affected by the practice: women." *Id.*

⁹⁷ Ann Elizabeth Mayer offers the example of the government of Egypt dissolving the Arab Women's Solidarity Association (AWSA) for political reasons but offering the post-hoc justification that AWSA had offended Islam. Mayer, *supra* note 91, at 180–81.

⁹⁸ A weaker version of cultural relativism concerned with problems of epistemology might treat cross-cultural critique as incoherent, except within the culture offering the

of cross-cultural critique with human freedom; thus, they confine moral judgments about intra-cultural coercion to the only standards that they deem coherent: local standards.⁹⁹ This argument privileging social autonomy creates an unlikely alliance between cultural relativists and liberal universalists, particularly with respect to issues emerging from the private as opposed to the public sphere.¹⁰⁰

In contrast to cultural relativists and liberal pluralists,¹⁰¹ feminist anti-essentialists are centrally concerned with the interplay between culture and self, exploring ways in which culture constructs gendered individuals. Unlike the cultural relativist model, which privileges the action of the individual or group in the creation of culture, much of feminist theory assumes a more complicated connection between culture and limits on human subjectivity.¹⁰² Unlike the liberal pluralist view, which focuses on state power and privileges private ordering, feminism emphasizes the role of private power. The most important premise of this feminist view is that the sex/gender system is substantially a product of culture rather than divine will, human biology or natural selection.¹⁰³ Implicit in this assumption is the claim that cultural norms—language, law, myth, custom—are not merely products of human will and action but also define and limit the possibilities for human identity.

Connected with this view of cultural limitations on human subjectivity is the notion that cultural norms function as a source of power and control within modern society.¹⁰⁴ Consistent with this recognition, many

critique, although not necessarily imperialist. Such a view would emphasize the futility rather than the illegitimacy of appeals to universalist standards.

⁹⁹It is important, of course, to keep in mind the possibility of intra-cultural critique and rebellion. Anthropologists and other defenders of cultural relativism who have tended to idealize non-Western cultures have had to confront the abuses by post-colonial regimes in Cambodia, Uganda, and Ethiopia, and the emigration of many citizens of those states to formerly colonial states in the West.

¹⁰⁰Bronwyn Winter illustrates the potential for coincidence of relativist and liberal arguments regarding the private sphere in her discussion of female genital surgery. See Winter, *supra* note 86, at 951–54.

¹⁰¹I use the term "liberalism" or "liberal pluralism" to refer to a commitment to the basic political framework that underlies existing human rights standards. "Universalism" refers to a commitment to universally applicable human rights norms, though not necessarily to those currently embodied in international law.

¹⁰²Although generalizing, I would argue that most feminists, whether or not they define themselves as anti-essentialists, posit an important role for culture in constraining women's subjectivity. It is this constraint in its many forms, and the belief that it is malleable, that animates much of feminist politics.

¹⁰³Feminist theorists sometimes express this relationship between subjectivity and culture as the distinction between sex and gender, a distinction perhaps first emphasized by Simone de Beauvoir in her claim, "One is not born, but rather becomes, a woman." SIMONE DE BEAUVOIR, *THE SECOND SEX* 267 (H. M. Parshley ed. & trans., Alfred A. Knopf, Inc. 1953) (1949).

¹⁰⁴Michel Foucault offered perhaps the most fully elaborated account of the exercise of power through systems of cultural regulations. See, e.g., MICHEL FOUCAULT, *Right of Death and Power Over Life*, in *THE HISTORY OF SEXUALITY* 135 (Robert Hurley trans.,

feminists have rejected a theory of power that posits monolithic control held by a coherent or unified sovereign.¹⁰⁵ Yet, it is precisely this model of power that traditional human rights standards are designed to regulate and to which cultural relativists often defer when exercised within cultural boundaries. In contrast, feminists, influenced by Foucault, have emphasized the degree to which power is exercised both from above, by sovereigns, and within concrete social interactions and relationships—in short, through culture.¹⁰⁶ For feminists, culture itself becomes a source of control and a site of resistance, a form of power that feminist human rights activists must engage directly along with more traditional public and private forms.¹⁰⁷

Feminist anti-essentialists' emphasis on culture's role in creating and regulating human beings helps to explain their departure from both liberal pluralism and cultural relativism. Although feminism, liberal pluralism, and some forms of cultural relativism share a concern over coercion, for feminists, simply preserving self-determination either on the individual or cultural level is an inadequate response. A focus on external coercion privileges a traditional model of power exercised by elites and treats local manifestations of that power, such as family relationships, as by-products of individual ordering. Yet, if the self is constituted by culture, as many feminists assume, equating emancipation from external coercion with individual freedom is problematic. Instead, feminists must consider a more complex process of emancipation that involves transformation of the self.

1978) (discussing the regulatory function of definitions of normal and deviant sexuality). Feminists have elaborated on Foucault's ideas, taking into account the gendered aspects of such regulation, an aspect that Foucault himself largely ignored. *See, e.g., FEMINISM AND FOUCAULT: REFLECTIONS ON RESISTANCE* (Irene Diamond & Lee Quinby eds., 1988) (collection of essays assessing the relevance of Foucaultian analysis for feminism); JANA SAWICKI, *DISCIPLINING FOUCAULT: FEMINISM, POWER AND THE BODY* (1991); SANDRA L. BARTKY, *FEMININITY AND DOMINATION: STUDIES IN THE PHENOMENOLOGY OF OPPRESSION* (1990).

¹⁰⁵ *See* Bidy Martin, *Feminism, Criticism, and Foucault*, in *FEMINISM AND FOUCAULT: REFLECTIONS ON RESISTANCE*, *supra* note 104, at 3, 6.

¹⁰⁶ *See, e.g.,* Jana Sawicki, *Identity Politics and Sexual Freedom: Foucault and Feminism*, in *FEMINISM AND FOUCAULT: REFLECTIONS ON RESISTANCE*, *supra* note 104, at 177 (emphasizing the importance of understanding the multiple sites of oppression).

¹⁰⁷ Acknowledging the importance of non-traditional sources of power, the Convention on the Elimination of All Forms of Discrimination Against Women obliges states to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise." Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 2263, U.N. GAOR, 34th Sess., Supp. No. 46, at 195, U.N. Doc. A/180 (1979).

IV. CULTURE AS A LENS ON GENDER

Feminism's general unwillingness to equate individual autonomy or cultural self-determination with noncoercion complicates rather than simplifies the problem of inter-cultural critique. Having rejected the imposition of an externally derived normative vision of the good, both liberal pluralism and cultural relativism rely in different ways on self-determination as a normative standard by which the exercise of power may be judged. Although feminism shares with relativism and liberal pluralism a concern with the risks of coercion and ultimately with self-determination, feminist theory's focus on the role of culture in limiting the self precludes an unproblematic reliance on internal norms. Just as cultural relativism calls into question the coherence of an external, universalist critique of cultural practices, feminist anti-essentialism also emphasizes the limits of a critique internal to the culture or even to the individual. This section explores the specific problems these conflicting commitments create for the feminist human rights activist and suggests some possibilities for inter-cultural human rights analysis given these limitations.

A. Social Construction and the Problem of Agency

The notion that women may be oppressed in part through the internalization of cultural norms calls into question the reliance on individual accounts of oppression. At the same time, Western feminist human rights activism takes as its central principle the notion that women's power to control their own lives must be enhanced. If culture constructs women's experiences of their own flourishing, how should feminists outside the culture interpret those experiences? Should internal accounts be privileged as expressing an alternative, culturally situated vision of the good or discounted as a product of patriarchy? Assuming that culture is invoked at the local level by women who, in Western feminists' view, are oppressed by a particular practice, feminism requires a critique that respects the agency of the oppressed without ignoring the oppression.

Satisfied with neither cultural relativism nor universalism, feminists committed to cross-cultural political action must consider whether it is possible to distinguish between false consciousness, which should be exposed, and genuine cultural differences in conceptions of women's flourishing, which should be respected. One way to do so would be to return to a form of essentialism, favoring a presumption, perhaps qualified, of commonality among women. A core of shared characteristics or experiences could serve as a yardstick, albeit an imperfect one, against which oppression might be measured. Feminists could treat the relative

progress of women in the West as a standard, creating critical purchase against which the more severe problems of women in developing countries might be analyzed.

Pursuing this course, Susan Moller Okin has argued that feminist anti-essentialists mistakenly assume that differences among women necessarily overwhelm commonalities.¹⁰⁸ She insists that it is not necessarily inappropriate to translate to other cultures theories of women's oppression developed in the West. On the contrary, Western feminist theories have much to say about the conditions of women elsewhere.¹⁰⁹ Rejecting the anti-essentialist multiplication of difference, she suggests that the condition of poor women in developing countries can often be understood as "similar to ours but more so."¹¹⁰ Supporting Western feminists' liberal notion of women's emancipation, Okin argues that "we are not always enlightened about what is just by asking persons who seem to be suffering injustices what they want. Oppressed people have often internalized their oppression so well that they *have* no sense of what they are justly entitled to as human beings."¹¹¹ Apparently coming down squarely on the side of Western feminists' authority, or even obligation, to define norms of women's flourishing, Okin ascribes to false consciousness any potential disagreement arising from cultural defenses offered by women themselves.¹¹²

On the one hand, Okin's approach seems inconsistent with feminism's basic commitment to the enfranchisement of the powerless, the importance of attending to the experiences of the oppressed. Feminism is premised in part on the notion that women have something to say, that

¹⁰⁸ See Susan M. Okin, *supra* note 36. Okin concedes that the anti-essentialist critique is valid as applied to much early feminist work, *id.* at 6, but argues that feminists should not simply assume that cross-cultural explanations of gender inequality are impossible.

¹⁰⁹ See *id.* at 9-18 (comparing Western and non-Western women's experience in four areas: inattention to gender injustice, gender-based lack of equality of opportunity, injustice in the family, and policy implications of such inequality).

¹¹⁰ *Id.* at 8. Okin goes on to suggest that feminists should work from this presumption and that "the burden of proof is on the critic" to demonstrate the priority of difference over sameness.

¹¹¹ *Id.* at 19.

¹¹² She explains that "[c]oming to terms with very little is no recipe for social justice [C]ommitted outsiders can often be better analysts and critics of social injustice than those who live within the relevant culture." *Id.* at 19.

Hilary Putnam has made a related point regarding access to information necessary to such assessments:

The fact that someone feels satisfied with a situation means little if the person has no information or false information concerning either her own capacities or the existence of available alternatives to her present way of life. The real test is not what women who have never heard of feminism say about their situation

women are entitled to describe and define their own experience.¹¹³ Indeed, the emphasis of some theorists on so-called "standpoint epistemology" assigns particular significance to the voices and experiences of the oppressed.¹¹⁴ Across disciplines, feminists have grounded their methodologies in a special respect for women's voices speaking from their marginalized perspectives.¹¹⁵ Careful and specific attention to those perspectives has yielded new insights in a wide range of areas, from philosophy to literary criticism to adolescent psychology to legal theory.¹¹⁶ By emphasizing limitations on the consciousness of the oppressed, Okin downplays the liberatory and creative potential of allowing marginalized perspectives to redefine women's condition.¹¹⁷

Nevertheless, despite the emphasis of standpoint epistemologists on the importance of women's stories as understood by women themselves, the problem of untangling the connection between the oppression of women and their own definition of their condition persists. Should feminists simply accept all women's descriptions of their experiences and defenses of their cultures in the name of agency? This position, too, is

¹¹³ See, e.g., Kim, *supra* note 40, at 55 (describing this focus on women's experiences as the "common theme" among all types of feminist theory); Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 24 (discussing the significance and limits of women's perspectives on their own oppression).

¹¹⁴ See, e.g., Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763 (1990); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989). This approach works most effectively when the target is the oppressor group and the lines are clearly drawn. It works less well when the disagreement focuses on the nature of oppression and one is called upon to assess the deference due the perspective of the oppressed. See Scott Brewer, *Pragmatism, Oppression, and the Flight to Substance*, 63 S. CAL. L. REV. 1753 (1990) (discussing the tension between the procedural standard of deference to the point of view of the oppressed and substantive norms against which to measure the validity of that perspective).

¹¹⁵ See, e.g., Bartlett, *supra* note 63, at 837-49 (discussing the value of consciousness-raising as feminist legal method and the importance of "asking the woman question"); D. Kay Johnston, *Adolescents' Solutions to Dilemmas in Fables: Two Moral Orientations—Two Problem Solving Strategies*, in MAPPING THE MORAL DOMAIN 49, 50-60 (Carol Gilligan et al. eds., 1988) (describing methodology used for analyzing gender-differentiated responses to moral questions and arguing for the relevance of gender-differentiation to theories of moral development); MICHELLE FINE, *DISRUPTIVE VOICES: THE POSSIBILITIES OF FEMINIST RESEARCH* (1992) (surveying range of feminist research methods designed to incorporate women's voices).

¹¹⁶ See *supra* text accompanying notes 61-64 (discussing contributions of anti-essentialist thinking to feminist theory).

¹¹⁷ Another problem with Okin's analysis is that, by privileging relatively less-oppressed voices of Western women, Okin tends to ascribe complete agency to those women while explaining the perspectives of non-Western women as false consciousness. As Jane Flax points out in her response to Okin's essay, this logic ignores the degree to which non-Western women have themselves generated a vibrant critique from within the culture and the possibilities of false consciousness among Western women. See Jane Flax, *Race/Gender and the Ethics of Difference: A Reply to Okin's "Gender Inequality and Cultural Differences"*, 23 POL. THEORY 500, 503 (1995).

inconsistent with a basic assumption of feminist practice and theory: the possibility of internalized oppression and the role of consciousness-raising through self-examination and sharing of experiences.¹¹⁸ The concept of internalized oppression and the process of consciousness-raising both imply that every woman's report of her own condition may not be fully credited as a reliable guide to her own flourishing.

How can feminists reconcile the possibility of internalized oppression, or false consciousness, with the anti-essentialist rejection of any core of womanhood, or true consciousness? The first step must be to uncouple these two concepts, to recognize that false consciousness does not necessarily imply the availability of true consciousness.¹¹⁹ False consciousness should be measured not against true consciousness (objective, absolute, pre-political) but against feminist consciousness (subjective, contested, political). Feminist consciousness, in turn, must be understood as consisting of multiple and sometimes competing critical stances toward cultural oppression. These critical stances emerge from the political activity and theorizing of women whose experiences are both partially determined by oppression and partially independent of it.¹²⁰

Starting with the assumption that women are both free and unfree, and that the parameters of freedom are contested, reminds Western feminists of the partiality of their own perspectives and the possibility of their

¹¹⁸For a discussion of the role of consciousness-raising in feminist method, see MacKinnon, *supra* note 55, at 83–105; Bartlett, *supra* note 63, at 863.

¹¹⁹Catharine MacKinnon has stated the problem in the following way:

Not all women agree with the feminist account of women's situation, nor do all feminists agree with any single rendition of feminism. Authority of interpretation—here, the claim to speak for all women—is always fraught because authority is the issue male method intended to settle Treating some women's views as merely wrong, because they are unconscious conditioned reflections of oppression and thus complicitous in it, posits objective ground Both feminism and antifeminism respond to the condition of women, so feminism is not exempt from devaluation on the same account.

MacKinnon, *supra* note 55, at 115.

¹²⁰Christine Littleton observes that "[r]ather than viewing any woman's description as, on the one hand, potentially inaccurate, socially conditioned or merely the product of internalized oppression; or, on the other, individualized, attributable solely to determinants other than gender, or exceptional," feminists should assume that "women's descriptions of our experience are accurate, reasonable and potentially understandable given the conditions under which we live." Littleton, *supra* note 113, at 27 (emphasis omitted).

Within U.S. feminism, the problem of agency and coercion has emerged most visibly in the context of debates over women's sexuality and the possibility of pleasure under patriarchy. See Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995) (arguing for a theory of partial agency); cf. Joan Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559 (1991); James Boyle, *Is Subjectivity Possible? The Postmodern Subject in Legal Theory*, 62 U. COLO. L. REV. 489 (1991).

own internalized oppression. Recognizing both the constraints of culture and the possibility of increased freedom, feminists must examine the complicated and sometimes conflicting cultural texts of their own lives and those of other women. Simplistic assumptions about universality or cultural particularity are inadequate. Instead, differences must be explored critically with the goal of better understanding the multiple ways in which gender hierarchy may be embedded in culture.

It is critical at this juncture to examine more closely the relationship between the claim that all knowledge is culturally contingent and the claim that an individual's understanding of self and identity can be deemed incomplete. These claims seem at some level contradictory: if knowledge, including self-understanding, is culturally relative, in what sense can that knowledge be incomplete? Yet, the first claim calls into question the coherence of cross-cultural evaluation only to the extent that we seek a meta-explanation of moral conflict, one that transcends human experience. This argument does not engage the issue at the level of the individual psyche.¹²¹ To say that we cannot judge definitively among competing cultural norms is not to say that we cannot communicate across cultural divides. Thus, when feminists acknowledge both the contingency of knowledge on cultural location and the possibility of transforming consciousness, they are not making inconsistent claims. Rather, they are making two different types of arguments—one epistemological, the other psychological.

Understood in this way, cross-cultural feminist activism is fully consistent with the acknowledgment of the cultural contingency of women's experience and varying accounts of gender. Consciousness-raising is redefined as a process of transforming the consciousness of all the participants, not simply of exposing one falsely conscious to the truth of women's oppression. Moreover, if one understands culture as defining the limits of human subjectivity and shaping consciousness, cross-cultural communication, while difficult, becomes an important tool in revealing alternative manifestations of gender difference and its cultural meaning. Thus, in contrast to cultural relativists, who view cultural difference as an occasion for silence, feminists may view it as an opportunity to explore the many ways culture inscribes gender hierarchy.¹²² *Difference* makes the conversation interesting, not impossible.

¹²¹ Anthony Appiah makes a similar argument when he suggests that we reconcile the tension between structure and agency by distinguishing between logical arguments and psychological ones. The logic of structure and the experience of agency address different aspects of human experience and compete on different levels "not for causal space but for narrative space." Anthony Appiah, *Tolerable Falsehoods: Agency and the Interests of Theory*, in CONSEQUENCES OF THEORY 63, 74 (Jonathan Arac & Barbara Johnson eds., 1991).

¹²² Discussing divisions among Western feminists, Jana Sawicki suggests:

B. The Risks and Rewards of Cross-Cultural Feminism

By recognizing internalized oppression as a manifestation of the exercise of power, feminism avoids the mistake, shared by cultural relativists and liberal pluralists, of defining relationships, personal desires, and conceptions of the self as outside the realm of the political. By politicizing the personal and the cultural, feminist anti-essentialism calls into question even individuals' description of their own condition. Oddly egalitarian, such an approach destabilizes the position of Western feminists. It yields only contested norms and conflicting understandings, all of which can be described as products of patriarchy. Nevertheless, global feminism should not be understood simply as a large, multifaceted conversation about difference that will lead ineluctably to a greater recognition of commonalities. Such an approach personalizes the political by articulating claims in terms of universal womanhood rather than feminism and downplays differences as obstacles to be overcome in the movement toward universalism. Moreover, the metaphor of a conversation obscures the degree to which global feminism entails the exercise of power.

As the Beijing Conference illustrates, positing widespread commonality among women as a descriptive matter is simply inaccurate. However, if feminists begin from an acknowledgment that their description of women's condition is not only culturally contingent but political, defending the accuracy of the description is less important than assessing the consequences of its inaccuracy. The development of feminist political strategies may stress shared problems or particular local manifestations of oppression without suggesting that either characterization fully captures women's experience. Once feminists acknowledge the politics of global feminism, the choice to focus on either difference or commonality can itself be made contextually by assessing the risks each strategy entails.

1. Risks of Assuming Commonality

Cross-cultural feminist analysis based on an assumption of commonality presents the risk that, by generalizing across a range of women, feminist theory that is derived from within any particular culture will oversimplify the experience of women in other cultures. This problem is presented when women with unequal power and resources make *consistent* claims based on very different experiences. In such a context, the presumption of commonality may mask significant differences in women's experiences that are relevant to strategies for reform, even when women's ultimate goals are not in conflict.

Surface similarities, buttressed by a presumption of commonality, may lead to a misdiagnosis of the causes of women's oppression and to ill-conceived policy solutions. For example, like their Western sisters, women in developing countries tend to face discrimination within, or even exclusion from, the labor market, to work a double shift when they are employed, and to have their family labor discounted as nonproductive.¹²³ Nevertheless, the specific economic and political implications of these problems depend upon the degree to which the economy is industrialized and the ways in which the family is organized.¹²⁴ Calls for desegregating the workplace or allowing women expanded access to wage work may complicate gender oppression through capitalist exploitation in ways that Western feminists have not anticipated.¹²⁵

Improving process, expanding communication, and making the politics of the feminist movement more inclusive may address the risk of oversimplification to some degree. However, the complexity of this task ought not to be underestimated. A process of collaboration premised on any hope of effective communication must address not only problems of language and literacy, but an historical legacy of unequal power, exploitation, and distrust. Western feminist activists must simply accept and work within this historical context without succumbing to a desire either to ignore persistent power imbalances or to deny their own complicity in this history of oppression.¹²⁶

Difference can be a resource insofar as it enables us to multiply the sources of resistance to the myriad of relations of domination that circulate through the social field. If there is no central locus of power, then neither is there a central locus of resistance. Moreover, if we redefine our differences, discover new ways of understanding ourselves and each other, then our differences are less likely to be used against us.

Sawicki, *supra* note 104, at 187.

¹²³ See generally PARTHA DASGUPTA, AN INQUIRY INTO WELL-BEING AND DESTITUTION (1993); VICTOR R. FUCHS, WOMEN'S QUEST FOR ECONOMIC EQUALITY (1988); MARILYN WARING, IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS 15-30 (1988) (discussing the exclusion of women's labor from international measures of productivity).

¹²⁴ For a specific example of the importance of local factors in reform efforts, see Faye V. Harrison, *Women in Jamaica's Urban Informal Economy: Insights from a Kingston Slum*, in THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM 173 (Chandra T. Mohanty et al. eds., 1991).

¹²⁵ For example, *The New York Times* recently reported the prevalence of kidnapping and domestic slavery in China. Women go to public marketplaces to sell their labor with the hope of escaping rural poverty, but are then kidnapped by slave-traders. Market wages attract these women from the relative safety of their villages to the domain of commerce where they are not adequately protected from exploitation. See Seth Faison, *Women as Chattel: In China, Slavery Rises*, N.Y. TIMES, Sept. 6, 1995, at A1.

This is not to say that Western women should judge for women in developing countries which choices they should make (rural poverty versus the risks of violence and exploitation) but rather to suggest that Western solutions such as expanded market opportunities for women must take into account the complexity of women's oppression in other cultural settings.

¹²⁶ Responding to the critique of feminists of color, a number of white feminists have begun to work specifically on the issue of racism and white women, arguing for

A second, arguably more complex, set of problems emerges when, despite communication and participation, irreconcilable differences persist in women's descriptions of oppression. What happens when women actually communicate and identify differences that genuinely divide them according to their own reports of their experience and their own visions of human flourishing? This problem arises within U.S. feminism, particularly in connection with theories of women's sexuality, where debate rages among feminists,¹²⁷ and abortion rights, where disagreement persists among women, although less so among feminists.¹²⁸ The possibility for division looms even larger on the international level.

Here feminists face directly the prospect of cross-cultural coercion—some women exercising power over others to enforce their own vision of women's emancipation. It is here that feminists find essentialism the most tempting. Assuming a common "essence" among women, whatever its origin, allows feminists to move in one of two directions. First, problems that are properly of the second type—that is, concrete differences in women's definition of their own flourishing—can be reassigned to the first category. Any disagreement can be treated as a failure of communication, a failure of the cross-cultural feminist process. Yet, despite the inevitable difficulties of international feminist politics arising from culture, language, and perhaps most importantly, power differences, it is a mistake to assign all disagreement among women about the nature and scope of their oppression to inadequate process. Often coming in the form of a call for more education by Western feminists of women of developing countries, such an assumption is not only arrogant but sets up a false hope of consensus through communication. By positing the possibility, or even inevitability, of consensus, essentialism undermines political action based on partial alliances among women.

Paradoxically, the second direction in which essentialism leads feminist politics is away from process and toward universalism. The essentialist assumption that all women's oppression shares a common core or

integrating an analysis of race and gender. See, e.g., Ann Russo, "We Cannot Live Without Our Lives": *White Women, Antiracism, and Feminism*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM*, *supra* note 124, at 297; RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* (1993); ZILLAH R. EISENSTEIN, *THE COLOR OF GENDER: REIMAGINING DEMOCRACY* (1994).

¹²⁷ Compare *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (Carole S. Vance ed., 2d ed. 1992) (essays discussing the possibility of affirmative or agentic female sexuality) and *POWERS OF DESIRE: THE POLITICS OF SEXUALITY* (Ann Snitow et al. eds., 1983) (same) with MACKINNON, *supra* note 55 (articulating a theory of women's sexuality as a product of male dominance). For a discussion of the continued relevance of this debate, see Abrams, *supra* note 120.

¹²⁸ For a discussion of the significance of this divide to feminist political claims, see Tracy E. Higgins, *By Reason of Their Sex: Feminism, Postmodernism, and Justice*, 81 CORNELL L. REV. 101 (1995). See also Linda C. McClain, *Equality, Oppression, and Abortion: Women Who Oppose Abortion Rights in the Name of Feminism*, in *FEMINIST NIGHTMARES: WOMEN AT ODDS* (Susan O. Weissner & Jennifer Fleischner eds., 1994).

that women's experience may be represented generally across cultures may lead to the conclusion that the process of inter-cultural coalition-building is merely strategic rather than substantive. So viewed, feminist cross-cultural communication, with all of its complexity, is justified only so long as it is necessary to widen the scope of a feminist vision of human rights. Viewed as a means rather than an end, it becomes subject to a utilitarian calculus. When force rather than consensus is a better tool, force may be used unproblematically.

2. Risks of Assuming Difference

Beginning with the assumption that cultural difference is primary, feminist anti-essentialists address some of the problems of misdescription and coercion by giving priority to cultural, racial, ethnic, economic, and religious differences among women. Radical anti-essentialism demands that feminists pay attention to the particularities of women's condition, especially those women who are relatively less powerful, by constantly questioning the validity of cross-cultural assumptions. At the same time, this emphasis on difference also entails risks that must be weighed against the benefits of anti-essentialist theorizing.

First, presuming that moral standards are necessarily local, and therefore that just solutions must be derived locally, dismisses the possibility that cross-cultural oppression in fact exists. Patriarchy is not a local phenomenon, although its particular manifestations may vary substantially from culture to culture.¹²⁹ If women's oppression is global, feminists should not surrender the task of thinking about its cross-cultural causes and explanations, even while realizing that any such theory will be imperfect or perhaps even highly problematic.¹³⁰ The task is not to settle on a fully elaborated theory that will perfectly describe women's condition, but rather to find partial, contingent theories that will usefully describe the condition of women for some cross-cultural purposes.¹³¹

Second, emphasizing differences rather than commonalities threatens to divide political alliances among women. Arguably, coalitions of women are simply better off focusing on what they share and formulating common descriptions of their problems, *even while recognizing that those descriptions may be incomplete*. This may be true even though the

¹²⁹ See Fraser & Nicholson, *supra* note 67, at 23-25 (criticizing Lyotard's "justice of multiplicities" as obscuring the possibilities of global systems of oppression).

¹³⁰ See Rooney, *supra* note 50, at 153 (discussing the necessity of taking the "risk of essentialism" or the "strategic use of a positivist essentialism" in an effort to further the political interests of women as a group). For further discussion of the usefulness of essentialism, see the essays collected in *THE ESSENTIAL DIFFERENCE*, *supra* note 50.

¹³¹ See Appiah, *supra* note 121, at 77 (arguing that "our theories are best conceived of as idealizations, and that this means that they are both (in some sense) approximately true and conditional upon false assumptions that simplify the theoretical task").

consequences of that incompleteness almost certainly will fall disproportionately on relatively less powerful women. Rather than choosing between a full account of women's difference on the one hand and a perfect description of women's sameness on the other, feminists must simply recognize that neither option is fully realizable. Instead, feminist theorists, advocates, and policymakers must strive for an account that will best address problems shared by many women, thereby serving as a basis for concerted political action.¹³²

Third, highlighting difference rather than sameness may encourage provincialism and justify isolationism among feminists. If feminists proceed under the assumption that women's experiences in one cultural location have no, or perhaps only limited, relevance for women in another, they will be tempted to mind their own problems. If one adds to that assumption the concern that cross-cultural advocacy or intervention is coercive or imperialist, feminists may be reluctant to intervene in support of women globally, despite the potential for progress in ending women's oppression. Attention to culture and respect for difference may be taken as a justification for inaction, especially in light of the inevitable complexity of any cross-cultural endeavor.

CONCLUSION

Confronted with the challenge of cultural relativism, feminism faces divergent paths,¹³³ neither of which seems to lead out of the woods of patriarchy. The first path, leading to simple tolerance of cultural difference, is too broad. To follow it would require feminists to ignore pervasive limits on women's freedom in the name of an autonomy that exists for women in theory only. The other path, leading to objective condemnation of cultural practices, is too narrow. To follow it would require

¹³² This being said, it is also important to heed the anti-essentialist warning that any such attempt to construct a cross-cultural theory, to posit sameness, will inevitably generate division. See Butler, *supra* note 62. This is a risk that must be a part of the calculus.

¹³³ The problem of imperfect perception is illustrated by Hilary Putnam in his quotation of William James's *The Will to Believe*:

We stand on a mountain pass in the midst of whirling snow and blinding mist, through which we get glimpses now and then of paths which may be deceptive. If we stand still, we shall be frozen to death. If we take the wrong road, we shall be dashed to pieces. We do not certainly know whether there is any right one.

This metaphor illustrates both the incompleteness of perception and the necessity of action. Putnam, *supra* note 112, at 1693–94 (quoting William James, *The Will to Believe*, in *THE WILL TO BELIEVE AND OTHER ESSAYS IN POPULAR PHILOSOPHY* 33 (1975) (quoting J. FITZJAMES STEPHEN, *LIBERTY, EQUALITY, FRATERNITY* 353 (1874))).

feminists to dismiss the culturally distinct experiences of women as false consciousness. Yet to forge an alternative path is difficult, requiring feminists to confront the risks inherent in global strategies for change.

Building upon women's shared experiences inevitably entails a risk of misdescription, or worse, cooptation but contains the promise of transforming and radicalizing women's understanding of their own condition. Emphasizing difference threatens to splinter women politically, undermining hard-won progress, but may simultaneously uncover new possibilities for re-creating gender relations. Forging a combined strategy that respects both commonality and difference requires feminists to acknowledge that we cannot eliminate the risk of coercion altogether, but the risk of inaction is also ever present.