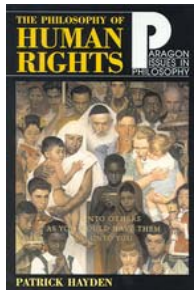


Questioning the Universality of Human Rights

By Paul J. Magnarella



A review of Universal Human Rights? edited by Robert G. Patman. New York: St. Martin's Press, 2000. 244pp.

and

Dealing with Human Rights: Asian and Western Views on the Value of Human Rights edited by Martha Meijer. Bloomfield, CT: Kumarian Press, 2001. 183pp.

and

The Philosophy of Human Rights by Patrick Hayden. St. Paul: Paragon House, 2001. 686pp.

Over the past fifteen years, especially, scholars, human rights advocates, and government officials have been promoting or critiquing the claim that human rights, as conceptualized in major U.N. conventions, are universally valid. The three books reviewed here address this question. The volume edited by Robert G. Patman, a senior lecturer in political studies at the University of Otago, emerged from papers delivered at the 33rd Otago Foreign Policy School in Dunedin, New Zealand. The theme of this July 1998 conference was “universal human rights?” with an emphasis on the question mark. The collection edited by Martha Meijer, Director of the Netherlands Humanist Committee on Human Rights, contains relatively short chapters by Dutch and Asian writers, addressing Western and Asian views of human rights. Patrick Hayden’s book differs from the previous two in that it is a comprehensive reader covering philosophical issues associated with human rights. The editor, an assistant professor of philosophy at New England College, explains that he designed the book “as a text for undergraduate and graduate courses in social and political philosophy, moral theory and applied ethics, and international politics” (Hayden, xv). This review essay will cover only the two sections of this book that deal with the question of the universality of human rights—the focus of this review essay.

Conceptualizing Human Rights

In his contribution to the Patman book, Chris Brown, professor of international relations at the London School of Economics and Political Science, asks the critical question of whether “the current international human rights regime, far from being genuinely ‘universal’ is actually a form of

cultural imperialism, promoting the values of one civilization, that of the ‘West’, and undermining those of others” (Brown in Patman: 33). He notes that Confucians and other supporters of “Asian values” criticize the individualism of Western notions of human rights in favor of family and extended kin group values, while some Islamists reject the notion of gender equality and religious freedom.

Brown correctly cautions that the term “West” is an analytic construct, not a description of a real unity. “There are as many ‘Wests’ as we want there to be, none of which can claim authenticity” (Brown in Patman: 33, note 3). Brown maintains that it is convenient for the rulers of illiberal regimes to dismiss criticism of their rule as being stimulated by alien values. However, even in authoritarian states, such as China, Malaysia, and Zimbabwe, there are citizens who advocate universal human rights.

Brown acknowledges that international human rights as currently conceptualized are based on Western European notions of rights with corresponding duties and natural law. He explains that the idea of restraining rulers via rights emerged in Western Europe during the Middle Ages as part of an inheritance from classical Rome and Greece combined with the Germanic tribal culture that dominated Europe after the fall of Rome. During the Middle Ages consensual elements of Germanic governance were combined with the Roman concept of contract with the result that political authority came to be understood as being based on and limited by agreements between ruler and ruled.

For the English, the 1215 Magna Carta was an agreement between King John and the barons. This contract, like others in Europe between ruler and ruled, exhibited a number of features. First, the agreement involved reciprocal rights and correlative duties. Second, the rights and duties are rather specific. Finally, the rights and duty holders are specified. These features were carried forward into modern times and characterize the positive law of rights established by modern Western liberal democracies.

The idea of contract was combined with the idea of natural law, which derived from Greco-Roman and Medieval Christian thought. According to the latter, natural law holds that all humans have a common essential nature that determines that certain kinds of goods and behaviors are essential for human development. Combined with this essential human nature is a common or universal moral standard that governs all human relations. Human reason can discern the natural order and the common moral standard, which applies to all, regardless of political affiliation, race, creed, or location.

Thus, two different accounts of rights emerged from the Middle Ages. One being a particularistic, contractual legal account resulting in positive law; the other a universal, moral account based on the requirements for human flourishing. The politics of the two are different. From the first tradition, persons possess rights by being citizens of a state that endows them with these rights through positive law (Brown in Patman: 38). If the state is governed by the rule of law, citizens are able to exercise their rights and have recourse to the courts to protect them. By contrast, persons cannot expect to be able to exercise natural rights based on an assumed universal moral standard unless these rights have been legislated into positive law and are supported by a law enforcement mechanism. Furthermore, unless these presumed natural rights are rendered specific as to their

rights and duty holders and content, they will be subject to controversy. The application of natural reason does not necessarily result in a general consensus.

Prior to 1945, the contractual language of rights existed on the local or country specific level. With the creation of the United Nations, the adoption of the Universal Declaration of Human Rights (1948) and the subsequent creation of numerous human rights conventions, the contractual language of rights was combined with a Western ideology of the universal moral standards necessary for human realization. International human rights legislation purports to create positive law in the same way that state legislation does. In practice, however, this is not the case since universally recognized, judicial enforcement mechanisms do not exist. The reason for this lack is that many states do not really want to see international human rights enforced. Even those that generally respect human rights are opposed to international supervision. The U.S., for example, refuses to recognize the jurisdiction of any international human rights court or of the new International Criminal Court.

Brown asks whether all human beings have the same needs that are everywhere wrong to resist and right to satisfy. Does humankind's common biology justify a common morality? He claims that twentieth-century philosophers, religion comparativists, and anthropologists have failed in their efforts to find those common characteristics in moral codes cross-culturally that establish a universal basis for human rights. The Universal Declaration's claim that "all human beings are born free and equal in dignity and rights" is denied by Hinduism; that men and women should be treated equally is rejected by traditional versions of Islam.

The existing human rights regime privileges a particular, liberal, Euro-American sense of what it means to be human. Does it do so, Brown asks, at the expense of valid alternatives? Probably so. Brown argues that those who promote human rights should employ a more culturally sensitive style of discourse that does not demean or belittle those to whom it is addressed. This would avoid playing into the hands of persons who seek confrontation and wish to use the alleged threat of Western imperialism to buttress their own authoritarian ambitions. "The need for a new way of talking about and promoting human dignity may itself be a feature of the politics of the next century" (Brown in Patman: 49). Brown's thoughtful chapter does not really solve the theoretical dilemma of the "West versus the rest." He simply offers human rights advocates the strategy of sensitive talk.

In the opening chapter of the Meijer book, Daan Bronkhorst, a publicist affiliated with the Dutch section of Amnesty International, discusses the origins, significance and future of the Universal Declaration of Human Rights. Bronkhorst's chapter sets the background and defines key human rights concepts for the general reader. He explains that World War II, with its holocaust, indiscriminate attacks on civilians, atomic bombing of Nagasaki and Hiroshima, and Nuremberg trials, was a turning point in the development of international human rights. Although many persons were instrumental in the drafting and promotion of the Universal Declaration, Bronkhorst gives special credit to the French legal scholar, René Cassin, and Eleanor Roosevelt, the First Chairperson of the then newly-created Commission on Human Rights that drafted the Declaration.

Bronkhorst defines common concepts, such as, integrity rights, civil and political rights, economic, social and cultural rights, declarations versus conventions, derogation, etc. He briefly covers some of the major theoretical criticisms of human rights. He depicts the communist critique

in terms of the class struggle. “Human rights are interests acquired from the government by the bourgeoisie but simultaneously entail suppression of the interests of the working class” (Bronkhorst in Patman: 22). The communitarian critique focuses on the allegedly excessive liberalism of individual freedoms of human rights, and advocates shared community values in their place. In contrast to the communist critique, pragmatist criticism questions claims of inborn or inherent human rights and maintains instead that society is based at most on a temporary consensus. The cultural relativist critique argues that because values vary with their particular cultural context, and because human rights as presently conceptualized developed mainly in a Western context, they are not universal.

Bronkhorst counters each one of these criticisms. He argues that the Universal Declaration accommodates both liberal and communitarian views; that human rights belong to all people regardless of class, ethnicity, race, religion, etc.; and that universal values (e.g., freedom from torture) do exist.

Bronkhorst sees an expansive future for human rights. He notes that recent human rights declarations and conventions have gone beyond the Universal Declaration into areas of the environment, protection of cultural monuments, sustainable development, animal rights, and so on. Recently, some countries have engaged in humanitarian intervention to protect the human rights of the weak, and the U.N. Security Council has established two ad-hoc criminal tribunals to prosecute those responsible for humanitarian law violations in Rwanda and the lands of the former Yugoslavia.

East – West/North – South Divide?

Of the three non-Euro-American contributors to the Patman book, only Hishammuddin Tun Hussein, Malaysia’s Deputy Minister of Primary Industries, offers a critique of the “West’s” or “North’s” promotion of its version of human rights. Hussein describes what he sees as a widening divide between the North and the South over human rights. He claims that the North is largely at fault for this divide because it demands its own version of universality, while refusing to consider the principle of diversity. It also lectures the South on drug-trafficking, global warming, and individual freedom, although the North, itself, provides the largest illegal markets for drugs, consumes more than its share of natural resources, and experiences internal social decay. The North also fails to apply criticism even-handedly. It coddles human rights abusers, such as Israel, while ostracizing others, such as Myanmar. With respect to the implementation of democracy and human rights, Hussein argues that abrupt transplants never work. The North must understand, he insists, that Asian countries need to gauge for themselves the pace and depth of their development in these areas.

In contrast to Hussein, Vitit Muntarbhorn, a Thai professor of law and former U.N. Commission on Human Rights Special Rapporteur on the sale of children, child prostitution, and child pornography, criticizes Asian governments for not adopting the West’s view of civil and political rights. He writes that many Asian governments prefer to deal with economic, social and cultural rights rather than with civil and political rights. These governments maintain that their people prefer rice over rights. They also insist that human rights must be considered within the context of national and regional particularities and historical, cultural and religious backgrounds. Muntarbhorn notes that some Asian governments had been claiming that Asia’s economic success

(until the 1997-98 crisis) was due to peculiar Asian values, such as deference to authority, diligence, and the primordial concerns of community and family over individual interests. Muntarhorn contrasts this official relativist and communal position with that of Asian human rights NGOs, which strongly support the universality of human rights as presented in U.N. conventions.

Muntarhorn goes on to list a number of “negative particularities” found in Asia, which, he claims, need urgent reform. These include: lack of democratization and multi-party systems; constitutional processes that serve to perpetuate authoritarian governments; excessive national security laws; constraints on due process rights; extensive limits on freedom of thought, expression and assembly; impunity of state officials; compromised judiciaries; unbalanced development and inadequate social safety nets; exploitation of women and children; and racial discrimination.

Muntarhorn does see positive signs, however. These include the possibility that the Association of South-East Asian Nations (ASEAN) may establish its own regional human rights commission, and the fact that a number of Asian countries (the Philippines, Indonesia, Sri Lanka and India) now have national human rights commissions, while Thailand and Cambodia have parliamentary human rights commissions.

Fasil Nahum, a Special Adviser to the Prime Minister of Ethiopia, also supports the adoption of human rights values as explicated in United Nations conventions. He explains that the international human rights paradigm had a major effect on Ethiopia’s post-Marxist Mengistu regime. Nahum offers a detailed description of the human rights provisions in Ethiopia’s 1994 constitution. He claims that these provisions, which make up fully one-third of the constitution, cover a wide range of civil, political, economic, social and cultural rights. Nahum, admits, however, that the implementation of these rights represents a major challenge for his country.

More of the Same

Two of the North American contributors to the Patman book strongly advocate the continued developments of human rights along their present trajectory. Kathleen Mahoney, Professor of Law at the University of Calgary in Canada, discusses the history of rape as a crime against international humanitarian law. She favors widening the contexts in which rape can qualify as a war crime, crime against humanity, and/or an act of genocide. She offers a brief account of the 1998 *Akayesu* case (International Criminal Tribunal for Rwanda) which represented the first time that an international tribunal had considered wide-spread sexual violence against a particular group of women as a crime of genocide. Mahoney is incorrect, however, when she writes that “Article 7 [which defines Crimes against Humanity] of the Statute of the International Criminal Court . . . is the only definition to specifically address crimes of sexual violence” (p. 167). Both the statutes of the U.N. Yugoslavian and Rwandan Tribunals (in Articles 5 and 3 respectively) specifically list “rape” as an act that can constitute a crime against humanity.

Rex Honey, Professor of Geography and Director of Global Studies at the University of Iowa (USA), offers a series of recommendations for governments to follow in their foreign policies so as to promote human rights. These include: taking a kind of Hippocratic Oath of doing no harm to other people, rather than simply pursuing self-interest; promoting literacy programs including human rights education; aiding human rights NGOs; training officials in proper human rights

practices; taking human rights into account early in negotiations; extending human rights obligations to the World Bank, IMF, and WTO; and reducing human insecurity through the land-mine ban and other arms-reduction steps.

Dutch and Asian Views

The only chapter in the Meijer book that purportedly offers a pro-Asian values argument is presented in the form of a conversation between Fareed Zakaria (an American journalist-editor) and Lee Kuan Yew (Prime Minister of Singapore between 1959 and 1990). It originally appeared in a 1994 issue of *Foreign Affairs*. In general, Lee comes across as a very knowledgeable, intelligent and diplomatic statesman. Although he maintains that Asian cultures place more emphasis on family and community obligations than on individual freedom, and that under present circumstances many Asian countries need firm leadership at the top, he does acknowledge that cultures change and Asia's future picture may be different. Lee professes to admire much in the West, but he attributes the high crime, drug addiction and divorce rates in the U.S. to its excessive emphasis on individual self-interest. Many international observers describe Lee as an authoritarian ruler who managed a miraculous transformation in Singapore's economy while maintaining tight political control over the country.

In his chapter, Farish A. Noor, a Malaysian political scientist and human rights activist, advocates a need for a multicultural understanding of human rights in place of the present "Eurocentrism." He is especially critical of colonialism and what he refers to as the American hypocrisy of its claim to be the global defender and promoter of human rights. He faults the U.S. for being an international arms merchant, for supporting repressive regimes (such as those in Nicaragua, Chile, El Salvador, Israel, and Pakistan), and for polluting more, exploiting more, and consuming more natural resources than other countries.

Noor also faults the "Asian values" critique of human rights. He describes it as an "essentialist" argument, built upon the claim that certain cultural elements represent fundamental essences of Asian culture. Rulers, he maintains, select and promote those supposed essences, such as obedience to the ruler and divinely ordained power, that support their agendas, while ignoring other essences that advocate equality and democracy.

Noor offers an interesting case study to illustrate this last point. During the 13th and 14th centuries, Malay rulers borrowed selectively from Hindu and Buddhist culture to create their self-proclaimed divine monarchies, where the whim of the prince had the force of law. At the same time, Muslim Sufi preachers entered the region, spreading an ideology that held that people are rational beings, equal before god. The Sufis instilled a sense of personal worth in commoners and won their conversion to Islam. Malay-Muslim scholars wrote and preached about the duties of rulers toward their subjects and the role of the courts and laws in defense of the people. This Islamic ethical discourse, with its emphasis on universal human worth and government's obligations to subjects, became part of Malay culture.

From the 17th to the 19th centuries, local leaders invoked these Islamic values to rally the Malay people against European colonial rule. Even today, activists refer to these now historic values to promote human rights and democracy. This Sufic-Islamic ideology is that part of Asian values that

present-day authoritarian rulers ignore. Noor claims this well-entrenched ideology can support a Malay version of human rights that would be free of the Euro-centrism that dominates the world scene today.

All the other chapters in Meijer, whether by Asian or Dutch writers, offer critiques of Asian positions and applaud the universalization of human rights norms. For example, Kim Dae Jung, a human rights activist and President of the Republic of [South] Korea critiques Lee's actual style of rule in Singapore and Lee's operating assumptions. Kim maintains that Lee's Singapore was a "near-totalitarian police state" that interfered in the private affairs of individuals and the family. Lee, he asserts, cracked down on dissidents and never gave democracy a chance in Singapore. Like Noor, Kim maintains that traditional Asian culture contains a strong value for democracy. He explains that almost two millennia before John Locke, the ancient Chinese philosopher Meng Tzu wrote that heaven bestowed on the ruler a mandate to govern righteously, and if he did not, the people had the right to overthrow him. Today, Kim contends, Asian authoritarian rulers misunderstand the relationship between effective governance and legitimacy. Both require the consent of the people.

Xiaorong Li, a native of China, vice-chair of the organization Human Rights in China, and research scholar at the University of Maryland, contributes a chapter that critiques the "Asian values" argument against universal human rights. She explains that this particular cultural relativist argument maintains that:

- human rights are culturally specific;
- the community takes precedence over individuals;
- social and economic rights take precedence over civil and political rights;
- rights are a matter of national sovereignty.

Li takes on the first three of these criticisms. She argues that values that originate in one cultural context are not *ipso facto* inappropriate to another. Asia, she maintains, has entered into historical circumstances where the affirmation and protection of human rights, as defined in major U.N. Conventions, are both possible and desirable. Certain civil and political rights, such as freedom of expression, are necessary to promote the kinds of economic, social and cultural rights that would benefit those fighting against poverty, corruption, discrimination, and community destruction. Li charges that certain state officials perform a deceptive conceptual maneuver by equating their regimes with community and labeling any criticism of the state as anti-communal and destructive of social harmony. She also contends that some officials create a false dichotomy by opposing civil/political rights to economic/social/cultural rights. These sets of rights, she maintains, are complementary and beneficial to both individuals and society.

Philosophy of Human Rights

Patrick Hayden's book covers philosophical issues associated with human rights and contains two sections that address the universalism/relativism question. Section four contains articles on non-Western perspectives with excerpts from Confucius, The Buddha, The Dalai Lama, and Abdullahi Ahmed An-Na'im on Islam and Kwasi Wiredu on the African Akan perspective on

human rights. Section six, entitled “Universalism and Relativism,” has selections from the writings of Fernando Teson, Xiaorong Li, and Charles Taylor.

The excerpt by Confucius from The Analects explains that rulers have a duty to be benevolent, while citizens have a duty to contribute to the harmony and unity of society. Confucius cannot be used to support the claim that human rights are individual claims against society. Similarly, the Buddha cannot be relied on to support universal individualism as an ideal, since his Middle Way prescribes the search for balance and the avoidance of extremes. By contrast, the Dalai Lama is a great supporter of contemporary universal human rights. In his selection, he writes that he disagrees with those “Asian governments that contend that the standards of human rights laid down in the Universal Declaration of Human Rights are those advocated by the West and cannot be applied to Asia and other parts of the Third World because of differences in culture and differences in social and economic development” (Dalai Lama in Patman: 293). He believes that the rights contained in the Universal Declaration are, or should be, universal. The Dalai Lama also calls for universal responsibility on the part of governmental leaders and ordinary individuals.

Arizona State University law professor Fernando Teson argues that cultural relativism does not justify the rejection of universal human rights, and Oxford professor Charles Taylor contends that differing philosophic and religious traditions can reach the same conclusion about human rights despite following diverse trajectories. Neither Teson nor Taylor regard cultural diversity as an impediment to the universalization of human rights.

A Muslim and African View

The excerpt by Abdullahi Ahmed An-Na'im, a Sudanese legal scholar now with the Emory University Law School faculty, offers both a critique of traditional *shari'a* (Islamic law) and a prescription for reconciling Islam with modern universal human rights standards through a reinterpretation of the *Qur'an*.

In his chapter, entitled “An Akan Perspective on Human Rights” Kwasi Wiredu, a Ghanaian professor of philosophy at the University of South Florida, claims that the traditional beliefs of the Akan, a people of West Africa (who include the Ashanti), contain principles of human dignity and justice that are similar to those found in modern human rights ideology. Wiredu fails to explain, however, that these Akan beliefs in the dignity of the person did not necessarily extend to others. The Ashanti, for example, supplied European merchants with slaves that they obtained through warfare with neighboring states. The Ashanti slave trade continued until the British declared slave trading illegal in 1807.

Understanding and Appreciating the Other

While all three of these books offer interesting and useful readings, with the exception of Hishammuddin Tun Hussein's contribution, they fail to present vigorous relativist or “non-Western” critics of universal human rights. For the most part, the anti-universalism arguments are presented rather abstractly by those who disagree with them.

There are a variety of ways to approach the universalism – relativism debate. One involves studying and comparing local religious and socio-political traditions to determine whether enough commonality exists to support a universal set of human rights. Another is to argue philosophically for or against universalism, as do most of the essays in these three books. Yet another approach is to examine how states from different traditions have reacted to specific human rights conventions, to determine why they refuse full acceptance, and assess the probability for future consent.

An ideal candidate for such an approach is the Convention on the Elimination of All Forms of Discrimination against Women (the Women’s Convention). Although several contributors to the books under review mention women’s rights, none deals in any depth with the negative reactions to the Women’s Convention. Although widely ratified, this convention is burdened with reservations that challenge its universality. Hence, an examination of the convention and its reservations should give us some insight into some of the specific reasons why some non-Western and Western states are critical of it and the notions of universalism.

Universal Human Rights for Women?

The U.N. General Assembly adopted the Women’s Convention¹ in 1979. It entered into force two years later. As of June 2002, 170 countries—almost ninety percent of U.N. Member States—were party to the Convention. Many of their ratifications and accessions, however, were accompanied by reservations designed to protect culturally-, politically- and religiously-sanctioned practices.

The central aim of the Women’s Convention is to eliminate all forms of discrimination against women, which Article 1 defines as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Article 2 of the Convention defines discrimination in terms of distinctions, exclusions or restrictions that have the effect or purpose of impairing the enjoyment of rights on a basis of equality between men and women. Therefore, even when there is no discriminatory intent, a State Party might be held responsible for a breach of the Women’s Convention by virtue of practices that have a discriminatory effect.

One of the most distinctive features of the Women’s Convention is its requirement that States Parties undertake affirmative steps to modify cultural patterns that impair the enjoyment of rights on a basis of equality of men and women. Article 5(a) requires States Parties “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

¹ U.N. General Assembly Resolution 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* September 3, 1981.

Similarly, Article 10(c) requires States Parties to eliminate discrimination against women in the field of education by, *inter alia*, eliminating “any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim . . .”

The implementation of this Convention has faced a number of challenges and obstacles. One major challenge is overcoming the charge of cultural imperialism. Many States have taken exception to the articles described above. Some view them as forms of Western cultural imperialism—as attempts by the West to demean and alter traditional, religiously-based practices. Consequently, many of these States have ratified the Convention with reservations that protect their religiously sanctioned customs. For example:

Reservation Entered by Egypt²

The Arab Republic of Egypt is willing to comply with the content of [Article 2], provided that such compliance does not run counter to the Islamic Sharia....This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementarity which guarantees true equality between the spouses...

Reservation Entered by Iraq

Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by [certain of its] provisions...[Iraq's accession] shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them....

By these reservations, Egypt and Iraq appear to take issue with the Convention's assertion that men and women should enjoy identical rights. Many Muslims maintain that men and women are not identical, and that even though many of their rights may be different, they are complementary and of equal value. Hence, for them, difference is not the same as discrimination.

The Committee on the Elimination of Discrimination against Women (CEDAW) is the monitoring body established by the Women's Convention. Its principal means of carrying out its duties is through its review and commentary on reports that States Parties are required to submit every five years. The large number and broad reach of the reservations to the Convention prompted the CEDAW in 1987 to request the U.N. General Assembly “to promote or undertake studies on the status of women under Islamic laws and customs and in particular on the status and equality of women in the family...taking into consideration the principle of *Ei Ijtihad* in Islam.”³ Bangladesh and Egypt reacted by accusing the Committee of cultural imperialism and religious intolerance. Subsequently, the General Assembly decided to take no action on the Committee's request. The Committee has, however, continued to express to States Parties its concerns about reservations to the Women's Convention.

A second challenge is overcoming the charge of homogenizing the world's rich array of cultures. Some countries are concerned that the Convention calls for a standardization of culture and society,

² The full list and texts of reservations are available at www.un.org.

³ Belinda Clark, “The Vienna Convention Reservations Regime and the Convention of Discrimination against Women,” *American Journal of International Law* 85: 285 (1991).

and that its implementation would violate the rights of minorities and indigenous peoples to preserve their distinctive cultures and conduct their affairs in accordance with their own indigenous laws. For example, the multi-ethnic state of Singapore entered the following reservation:

In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practice their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.

Indigenous peoples are concerned that the Convention fails to pay due regard to their rights to self-determination, as guaranteed by Article 1(1) common to both U.N. human rights Covenants: "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." The U.N. Draft Declaration on the Rights of Indigenous Peoples⁴ repeats Article 1(1) of the Covenants and adds that "[i]ndigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems..."

Another challenge concerns overcoming the charge that the Convention invades privacy rights. An example of this charge comes from the United States. The U.S. has not ratified the Convention. However, in its consideration of ratification, the U.S. Senate Foreign Relations Committee recorded the following objection and reservation:

*Individual privacy and freedom from governmental interference in private conduct are...recognized as among the fundamental values of our free and democratic society. The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 2, 3, and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States.*⁵

From this brief exercise we can see that reservations to the Women's Convention result from its perceived real or potential conflicts with religious law, with the principle of self-determination of minority and indigenous peoples, and with governmental respect for the right of privacy. Some of these reservations may not, however, be permanent. Cultures, societies, and religions do change. All of the U.N. human rights conventions are monumental achievements. Their general acceptance and faithful implementation will cause, in many instances, revolutionary sociocultural change. However, resistance to change is often greatest when change agents attempt to force their wills on others without demonstrating a sincere appreciation for the situations they are transforming. Meeting the challenges and overcoming the obstacles described above as well as achieving the universalization of human rights, require cultural sensitivity, education and patience.

Paul J. Magnarella is Professor of Anthropology and Affiliate Professor of Law, African Studies and Criminology as well as Director of the Anthropology and Law Joint Degree Program at the University of Florida.

© 2003, Center On Rights Development.

⁴ U.N. Doc. E/CNA/Sub.2/1994/2/Add.1, 20 April 1994, Article 4.

⁵ Proposed U.S. Reservations. Report of the Committee on Foreign Relations, U.S. Senate, E. Exec. Rept. No. 103-38 (1994).