

The perpetual discussion: Culture and rights

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Historically, human rights have been perceived as moral concepts rooted in universal values beyond time, space and culture. But within the human right discourse, the deployment of talk of culture has become the norm, including culture as an object of rights. Jane K Cowan¹ writes that culture and rights traditionally have been perceived as contradictory, that one had to declare support for either culture or rights, but now both can be favoured. However, human rights activists have increasingly struggled to reconcile cultural diversity and transnational conceptions of human rights. Culture may be conceptualized in different or even contradictory ways as the concepts are very fluid, meaning that activists have to translate between global discourses and local context and meanings.² As such, cultural sensitivity has become essential in the advocacy of human rights.

Nevertheless, issues remain. On the one hand critiques of cultural relativism question whether the emphasis on cultural uniqueness is nothing more than an imaginary vision or a premise for those in power to control their subordinates. They will claim that human life is based on fundamental values that transgress ethnic, religious or any social or cultural markers of difference. On the other hand, proponents of a relativist understanding of culture will argue that a universal value system, such as the UN Declaration of Human Rights or correlated international laws have no “legitimacy” as there are no universal standards which cultures may be judged. All cultural practices must be accepted without prejudgement.³ Taken that laws and norms are reflections of a community’s shared ideas of local moral and ethics, it is claimed that discrepancies between international human right concepts (laws) and local cultures will easily surface and induce disrespect and inefficacy of a conformist institutionalization of universal human rights.

Cowan⁴ points out four distinct conjunctions between rights and culture in the realm of human right discourse. (1) rights versus culture, (2) the right to culture, (3) rights as culture (4) culture as “analytic” to rights. A focal point of the articles included in this issue of Journal of South East Asia Human Rights is the

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- 1 Jane Cowan, “Culture and Rights After Culture and Rights” (2006) 108 *Am Anthropol* 9-24.
 - 2 Sally Engle Merry, “Changing Rights Changing Culture” in Jane K Cowan, Richard Wilson & Marie-Benedicte Dembour, eds, *Cult Rights Anthropol Perspect* (Cambridge ; New York: Cambridge University Press, 2001).
 - 3 Arati Rao, “The Politics of Gender and Culture in International Human Rights Discourse” in *Womens Rights Hum Rights* (Routledge, 1995).
 - 4 Cowan, *supra* note 1.

juxtaposition of rights and culture and they each illustrate elements of the conjunctions outlined by Cowan.

The first four articles exemplify the notion that conceptualizing suppression or violence against women as a human right violation contradicts the absolute protection of culture. We categorize people according to race, religion, age, gender, etc, and gender division is the most prevalent and perhaps the deepest divide in the world today.⁵ The division is protected by boundaries set up foremost of privileged men and as the guardians of culture, religion, business, politics, etc., traditionally rooted in a patriarchal world view. Male dominance is regarded by many scholars to be the main obstacle for the general development of low –and middle-income countries and the empowerment of women.

The first article by Sukron Ma'mun demonstrates how a pervasive patriarchal interpretation of Islam is employed to marginalise the rights of women in majority Islamic countries. Verses of the Quran that at the time of the Prophet aimed to safeguard the rights of women are today interpreted to curtail the rights of women and protect a patriarchal culture. Scholars speak of “Islamic particularism”, but we can extent the concept to “religious particularism” as religious cultures generally have been used to rationalize the treatment of women and maintain the subordination of women.

The second article of this issue examines the role of the United Nations Fund for Women in upholding the rights of women who have suffered sexual violence in the Darfur region of Sudan. The analysis reveals the unspoken truth that wartime rape appears to be accepted by political and military leaders. Though wartime rape is regarded as a serious offence it is folded into a larger category of crimes against civilians, but not recognized as a crime of gender.⁶

Ngo Huong and Vu Cong Giao look into the trafficking of people in Vietnam, particularly women, who are the victims to this form of transnational crime. Importantly, the article highlights how existing laws are insufficiently applied and how victimization of women as partner of their own crimes prevents them from obtaining protection from the authorities.

Finally, the fourth article deals with the issue of statelessness of children in Indonesia. Though measures have been implemented to address this issue the article uncovers how initiatives in some cases fall short of legalizing the statuses of

5 Cynthia Fuchs Epstein, “The Politics of Gender and Culture in International Human Rights Discourse (2006 Presidential Address)” (2007) 72:1 *Am Sociol Rev.*

6 Catherine N Niarchos, “Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia” (1995) 17:4 *Hum Rights Q* 649–690.

these children due to discriminative measures against the mother within the domain of Indonesian law.

The centrality of the last article is also the topic of culture. The conjunction “right to culture” is particularly relevant for indigenous people whose culture and self-determination globally have been squeezed by nation states and the advancement of the dynamics of capitalist economies. The article of Fenny Tria Yunita et al provides a case study how this development has affected the Tengger tribe in Indonesia, and not least how the government has failed to support the sustainability of the local culture.

This issue of the Journal of Southeast Asia Human Rights affirms the conjunctions put forward by Cowan. Dominant male cultures have in many situations’ superiority to the rights of women and the respect of equal status between women and men. Secondly, certain groups in many societies are simply denied the right to uphold their distinct cultures, an issue that otherwise are within the terrain of human rights. Thirdly, by analysing existing cultures, that be in daily life or within the interconnection between government institutions and citizens we can extrapolate explanations for the suppression of human rights. The articles highlight the importance that all members of the society, especially the most disadvantaged and suppressed, are listened to and included in policy and program formulations, in other words: empowered. Traditions and norms may override laws that otherwise are put in place to protect human rights, indicating that the latter measures are not in themselves effective. The authors are telling us that we must develop a “culture of rights”.

The editorial office of the Journal of Southeast Asian Human Rights decided to select six articles that represent the current situation of human rights in Southeast Asia. It has, as always, been very hard to select the best articles. Thus, the editorial office would like to thank the many people whose hard work has ensured that the process of reviewing, editing, and publication of the selected articles met academic standards. The first thank you goes to the anonymous reviewers who generously gave their time to review the articles. The editorial office is also proud to have Cindy Claudia Putri as the copyeditor, who has always worked hard to ensure that the articles are of the highest quality by ensuring the accuracy of reference citations and journal structure. In the last year, our works have also been supported by Alex Cameroon who have always been very helpful for language clarity. Hopefully this edition will give new insights and knowledge on human rights issues in the region for all readers. Happy reading!