We can feel European and French and Breton all at once. But the answer is to remain open. If not, you become a bastion, a Serbia'.

The article reports that in recent years 'greater tolerance has allowed for more teaching of Occitan, Basque, Corsican and Alsation in France's schools'. The trend, reflecting a larger one in Europe as a whole, has its sharp critics. The head of the French Academy observed that teaching regional languages is 'an enterprise that can destroy the unity of the nation . . . Why sacrifice a glorious language to local dialects'. Other national examples include the return of Gaelic to schools in Scotland and Wales, school courses in Northern Italy in Friulian, Dutch radio broadcasts in Frisian, and Finnish broadcasts in Saami. A German author on regional identity observes:

> Brussels bureaucrats may try to steamroller us into oneness, but people are stubborn. The more global and uniform our civilization, the more people want to anchor themselves in their own culture. The fact is, Europe has a few thousand years of settled cultures. It can't simply turn into an American-type melting pot.

Such ideas figure importantly in the ongoing debates about cultural relativism and cultural integrity in relation to universal human rights that are described in Chapter 6.

NOTE

Consider:

BRITANNUS (*shocked*):
Caesar, this is not proper.
THEODOTUS (*outraged*):
How?
CAESAR (*recovering his self-possession*):
Pardon him Theodotus: he is a barbarian, and thinks that the customs of his tribe and island are the laws of nature.

George Bernard Shaw, *Caesar and Cleopatra*, Act II

The following articles examine cultural relativism from the perspective of two major religions and related national cultures: Hinduism and Islam. They express two different but related approaches to this issue.

Pannikar inquires into equivalents of international human rights in a non-Western culture. He concentrates on India, and on the 'traditional Hindu, Jain and Buddhist conceptions of reality'. He takes the broad position that '[t]there are no trans-cultural values, for the simple reason that a value exists as such only in a given cultural context. But there may be cross-cultural values, and a cross-cultural critique is indeed possible'. Noting that human rights are 'trampled upon in the East as well as the West', he asks whether human rights perhaps are not observed today 'because in their present form they do not represent a universal symbol powerful enough to elicit understanding and agreement'.

An-Na'im examines the 'Muslim world'. Committed to international human rights and of the Islamic faith, he argues that 'human rights advocates in the Muslim world must work within the framework of Islam to be effective . . . [and] should struggle to have their interpretations of the relevant [Islamic] texts adopted as the new Islamic scriptural imperatives for the contemporary world'. Those interpretations would be broadly consistent with the norms of international human rights. An-Na'im is then attentive to the relation between the international system and a given religious tradition, and to the possibility of reconciliation through reinterpretation of the tradition, rather than through identification of cross-cultural values among different systems.

PANNIKAR, IS THE NOTION OF HUMAN RIGHTS A WESTERN CONCEPT?

120 Diogenes 75 (1982)

. . .

I. The Method of Inquiry

It is claimed that Human Rights are universal. This alone entails a major philosophical query. Does it make sense to ask about conditions of universality when the very question about conditions of universality is far from universal? Philosophy can no longer ignore this inter-cultural problematic. Can we extrapolate the concept of Human Rights, from the context of the culture and history in which it was conceived, into a globally valid notion? Could it at least *become* a universal symbol? Or is it only one particular way of expressing—and saving—the *humanum*?

Although the question posed in the title is a legitimate one, there is something disturbing in this formulation as it was given to me. At least at first glance, it would seem to offer only one alternative: either the notion of Universal Human Rights is a Western notion, or it is not. If it is, besides being a tacit indictment against those who do not possess such a valuable concept, its introduction into other cultures, even if necessary, would appear as a plain imposition from outside. It would appear, once again, as a continuation of the colonial syndrome, namely the belief that the constructs of one particular culture (God, Church, Empire, Western civilization, science, modern technology, etc.) have, if not the monopoly, at least the privilege of possessing a universal value which entitles them to be spread over all the Earth. If not, that is, if the concept of Universal Human Rights is not exclusively a Western concept, it would be difficult to deny that many a culture has let it slumber, thus again giving rise to an impression of the indisputable superiority of Western culture. . . .

. . . [T]he problem is how, from the [locus or context] of one culture, to understand the constructs of another. It is wrong-headed methodology to begin by asking. Does another culture also have the notion of Human Rights?—assuming that such a notion is absolutely indispensable to guarantee human dignity. No question is neutral, for every question conditions its possible answers.

. . . Meanings are not transferable here. Translations are more delicate than heart transplants. So what must we do? We must dig down to where a homogeneous soil or a similar problematic appears: we must search out the *homeomorphic equivalent*—to the concept of Human Rights in this case. . . .[1]

. . . If, for instance, Human Rights are considered to be the basis for the exercise of and respect for human dignity, we should investigate how another culture satisfies the equivalent need—and this can be done only once a common ground (a mutually understandable language) has been worked out between the two cultures. Or perhaps we should ask how the idea of a just social and political order could be formulated within a certain culture, and investigate whether the concept of Human Rights is a particularly appropriate way of expressing this order. A traditional Confucian might see this problem of order and rights as a question of 'good manners' or in terms of his profoundly ceremonial or ritual conception of human intercourse, in terms of *li*. A Hindu might see it another way, and so on.

. . .

. . . Human Rights are one window through which one particular culture envisages a just human order for its individuals. But those who live in that culture do not see the window. For this they need the help of another culture which sees through another window.

II. Assumptions and Implications of the Western Concept

. . .

1. At the basis of the discourse on Human Rights there is the assumption of a *universal human nature* common to all peoples. Otherwise, a Universal Declaration could not logically have been proclaimed. This idea in its turn is connected with the old notion of a Natural Law.

But the contemporary Declaration of Human Rights further *implies*:

a) that this human nature must be *knowable*. . . .

b) that this human nature is known by means of an equally universal organ of knowledge, generally called *reason*. Otherwise, if its knowledge should depend on a special intuition, revelation, faith, decree of a prophet or the like, Human Rights could not be taken as *natural* rights—inherent in Man. . . .

c) . . . Man is the master of himself and the universe. He is the supreme legislator on Earth—the question of whether a Supreme Being exists or not remains open, but ineffective.

2. The second assumption is that of the *dignity of the individual*. Each individual is, in a certain sense, absolute, irreducible to another. This is probably the major thrust of the Modern question of Human Rights. Human Rights defend the dignity of the individual *vis-à-vis* Society at large, and the State in particular.

But this in turn implies:

a) not only the distinction but also the *separation* between individual and society. In this view the human being is fundamentally the individual. Society is a kind of superstructure, which can easily become a menace and also an alienating factor for the individual. Human Rights are there primarily to protect the individual;

b) the *autonomy* of humankind *vis-à-vis* and often versus the Cosmos . . . The individual stands in between Society and World Human Rights defend the autonomy of the human individual;

c) . . . The individual has an inalienable dignity because he is an end in himself and a kind of absolute. You can cut off a finger for the sake of the entire body, but can you kill one person to save another?

3. The third assumption is that of a *democratic social order*. Society is assumed to be not a hierarchical order founded on a divine will or law or mythical origin, but a sum of 'free' individuals organized to achieve otherwise unreachable goals. Human Rights, once again, serve mainly to protect the individual. Society here is not seen as a family or a protection, but as something unavoidable which can easily abuse the power conferred on it (precisely by the assent of the sum of its individuals). This Society crystallizes in the State, which theoretically expresses the will of the people, or at least of the majority. . . .

This implies:

a) that each individual is seen as equally important and thus equally responsible for the welfare of society. . . .

b) that Society is nothing but the sum total of the individuals whose wills are sovereign and ultimately decisive. . . .

c) that the rights and freedoms of the individual can be limited only when they impinge upon the rights and freedoms of other individuals, and in this way majority rule is rationally justified. . . .

. . . [The Universal] Declaration clearly was articulated along the lines of the historical trends of the Western world during the last three centuries, and in tune with a certain philosophical anthropology or individualistic humanism which helped justify them.

III. Cross-Cultural Reflections

1. Is the Concept of Human Rights a Universal Concept?

The answer is a plain *no*. . . .

No concept as such is universal. Each concept is valid primarily where it was conceived. If we want to extend its validity beyond its own context we shall have to justify the extrapolation. . . . To accept the fact that the concept of Human Rights *is* not universal does not yet mean that it *should* not *become* so. Now in order for a concept to become universally valid it should fulfill at least two conditions. . . . [I]t should be the universal point of reference for any problematic regarding human dignity. In other words, it should displace all other homeomorphic equivalents and be the pivotal center of a just social order. To put it another way, the culture

[1] The two words Brahman and God, for instance, are neither analogous nor merely equivocal (nor univocal, of course). They are not exactly equivalent either. They are homeomorphic. They perform a certain type of respectively corresponding function in the two different traditions where these words are alive.

which has given birth to the concept of Human Rights should also be called upon to become a universal culture. This may well be one of the causes of a certain uneasiness one senses in non-Western thinkers who study the question of Human Rights. They fear for the identity of their own cultures.

. . .

The following parallelism may be instructive. To assume that without the explicit recognition of Human Rights life would be chaotic and have no meaning belongs to the same order of ideas as to think that without the belief in one God as understood in the Abrahamic tradition human life would dissolve itself in total anarchy. This line of thinking leads to the belief that Atheists, Buddhists and Animists, for instance, should be considered as human aberrations. In the same vein: either Human Rights, or chaos. This attitude does not belong exclusively to Western culture. To call the stranger a barbarian is all too common an attitude among the peoples of the world. . . .

There are no trans-cultural values, for the simple reason that a value exists as such only in a given cultural context. But there may be cross-cultural values, and a cross-cultural critique is indeed possible. The latter does not consist in evaluating one cultural construct with the categories of another, but in trying to understand and criticize one particular human problem with the tools of understanding of the different cultures concerned, at the same time taking thematically into consideration that the very awareness and, much more, the formulation of the problem is already culturally bound. Our question is then to examine the possible cross-cultural value of the issue of Human Rights, an effort which begins by delimiting the cultural boundaries of the concept. The dangers of cultural westocentrism are only too patent today.

a) We have already mentioned the particular historical origins of the Declaration of Human Rights. To claim universal validity for Human Rights in the formulated sense implies the belief that most of the peoples of the world today are engaged in much the same way as the Western nations in a process of transition from more or less mythical *Gemeinschaften* (feudal principalities, self-governing cities, guilds, local communities, tribal institutions . . .) to a 'rationally' and 'contractually' organized 'modernity' as known to the Western industrialized world. This is a questionable assumption. No one can predict the evolution (or eventual disintegration) of those traditional societies which have started from different material and cultural bases and whose reaction to modern Western civilization may therefore follow hitherto unknown lines.

. . .

b) We may now briefly reconsider the three assumptions mentioned above. . . . We shall limit ourselves here to [examining the assumptions of the Universal Declaration with respect to] the very broad umbrella of a pre-Modern, non-Western state of mind.

i) There is certainly a *universal human nature* but, first of all, this nature does not need to be segregated and fundamentally distinct from the nature of all living beings and/or the entire reality. Thus exclusively *Human* Rights would be seen as a violation of 'Cosmic Rights' and an example of self-defeating anthropocentrism, a novel kind of apartheid. To retort that 'Cosmic Rights' is a meaningless expression

would only betray the underlying cosmology of the objection, for which the phrase makes no sense. But the existence of a different cosmology is precisely what is at stake here. We speak of the laws of nature; why not also of her rights?[2]

. . .

Thirdly, to proclaim the undoubtedly positive concept of Human Rights may turn out to be a Trojan horse, surreptitiously introduced into other civilizations which will then all but be obliged to accept those ways of living, thinking and feeling for which Human Rights is the proper solution in cases of conflict. . . .

ii) Nothing could be more important than to underscore and defend the *dignity of the human person*. But the person should be distinguished from the individual. The individual is just an abstraction, i.e. a selection of a few aspects of the person for practical purposes. My *person*, on the other hand, is also in 'my' parents, children, friends, foes, ancestors and successors. 'My' person is also in 'my' ideas and feelings and in 'my' belongings. If you hurt 'me', you are equally damaging my whole clan, and possibly yourself as well. Rights cannot be individualized in this way. Is it the right of the mother, or of the child?—in the case of abortion. Or perhaps of the father and relatives as well? Rights cannot be abstracted from duties; the two are correlated. The dignity of the human person may equally be violated by your language, or by your desecrating a place I consider holy, even though it does not 'belong' to me in the sense of individualized private property. You may have 'bought' it for a sum of money, while it belongs to me by virtue of another order altogether. An individual is an isolated knot; a person is the entire fabric around that knot, woven from the total fabric of the real. The limits to a person are not fixed, they depend utterly on his or her personality. Certainly without the knots the net would collapse; but without the net, the knots would not even exist.

To aggressively defend my individual rights, for instance, may have negative, i.e. unjust, repercussions on others and perhaps even on myself. The need for consensus in many traditions—instead of majority opinion—is based precisely on the corporate nature of human rights.

. . .

iii) *Democracy* is also a great value and infinitely better than any dictatorship. But it amounts to tyranny to put the peoples of the world under the alternative of choosing either democracy or dictatorship. Human Rights are tied to democracy. Individuals need to be protected when the structure which is above them (Society, the State or the Dictator—by whatever name) is not qualitatively superior to them, i.e. when it does not belong to a higher order. Human rights is a legal device for the protection of smaller numbers of people (the minority or the individual) faced with the power of greater numbers . . . In a hierarchical conception of reality, the particular human being cannot defend his or her rights by demanding or exacting

[2] [Eds.] The author here uses a number of related concepts. *Cosmos* refers broadly to a universe regarded as an orderly and harmonious whole. *Cosmology* refers generally to a branch of philosophy concerned with the origin and structure of the universe. An *anthropocentric* view refers to one in which man is viewed as a central fact of the universe, and reality is interpreted in terms of human values and experiences. *Anthropomorphism* refers to the attribution of human characteristics to inanimate or natural phenomena.

them independently of the whole. The wounded order has to be set straight again, or it has to change altogether. Other traditional societies have different means to more or less successfully restore the order. . . .

. . .

IV. An Indian Reflection

. . .

The starting point here is not the individual, but the whole complex concatenation of the Real. In order to protect the world, for the sake of the protection of this universe, says Manu, He, Svayambhu, the Self-existent, arranged the castes and their duties. Dharma is the order of the entire reality, that which keeps the world together. The individual's duty is to maintain his 'rights'; it is to find one's place in relation to Society, to the Cosmos, and to the transcendent world.

. . .

3. Human Rights are not Rights only. They are also duties and both are interdependent. Humankind has the 'right' to survive only insofar as it performs the duty of maintaining the world (*lokasamgraha*). We have the 'right' to eat only inasmuch as we fulfill the duty of allowing ourselves to be eaten by a hierarchically higher agency. Our right is only a participation in the entire metabolic function of the universe.

We should have, if anything, a Declaration of Universal Rights and Duties in which the whole of Reality would be encompassed. Obviously, this demands not only a different anthropology but also a different cosmology and an altogether different theology—beginning with its name. . . .

. . .

6. Both systems (the Western and the Hindu) make sense from and within a given and accepted myth. Both systems imply a certain kind of consensus. When that consensus is challenged, a new myth must be found. The broken myth is the situation in India today, as it is in the world at large. That the rights of individuals be conditioned only by their position in the net of Reality can no longer be admitted by the contemporary mentality. Nor does it seem to be admissible that the rights of individuals be so absolute as not to depend at all on the particular situation of the individual.

In short, there is at present no endogenous theory capable of unifying contemporary societies and no imposed or imported ideology can be simply substituted for it. A mutual fecundation of cultures is a human imperative of our times.

. . .

V. By Way of Conclusion

Is the concept of Human Rights a Western conception?

Yes.

Should the world then renounce declaring or enforcing Human Rights?

. . .

No.

Three qualifications, however, are necessary:

1. For an authentic human life to be possible within the *megamachine* of the modern technological world, Human Rights are imperative. This is because the development of the notion of Human Rights is bound up with and given its meaning by the slow development of that megamachine. How far individuals or groups or nations should collaborate with this present-day system is another question altogether. But in the contemporary political arena as defined by current socio-economic and ideological trends, the defense of Human Rights is a sacred duty. Yet it should be remembered that to introduce Human Rights (in the definite Western sense, of course) into other cultures before the introduction of *technoculture* would amount not only to putting the cart before the horse, but also to preparing the way for the technological invasion—as if by a Trojan horse, as we have already said. And yet a technological civilization without Human Rights amounts to the most inhuman situation imaginable. The dilemma is excruciating. This makes the two following points all the more important and urgent.

2. Room should be made for other traditions to develop and formulate their own homeomorphic views corresponding to or opposing Western 'rights'. Or rather, these other world traditions should make room for themselves, since no one else is likely to make it for them. This is an urgent task; otherwise it will be impossible for non-Western cultures to survive, let alone to offer viable alternatives or even a sensible complement. Here the role of a cross-cultural philosophical approach is paramount. The need for human pluralism is often recognized in principle, but not often practiced, not only because of the dynamism which drives the paneconomic ideology, linked with the megamachine, to expand all over the world, but also because viable alternatives are not yet theoretically worked out.

. . .

ABDULLAH AHMED AN-NA'IM, HUMAN RIGHTS IN THE MUSLIM WORLD

3 Harv. Hum. Rts. J. 13 (1990)

Introduction

Historical formulations of Islamic religious law, commonly known as Shari'a, include a universal system of law and ethics and purport to regulate every aspect of public and private life. The power of Shari'a to regulate the behavior of Muslims derives from its moral and religious authority as well as the formal enforcement of its legal norms. As such, Shari'a influences individual and collective behavior in Muslim countries through its role in the socialization processes of such nations regardless of its status in their formal legal systems. For example, the status and rights of women in the Muslim world have always been significantly influenced by Shari'a, regardless of the degree of Islamization in public life. Of course, Shari'a is not the sole determinant of human behavior nor the only formative force behind social and political institutions in Muslim countries.

. . .

I conclude that human rights advocates in the Muslim world must work within the framework of Islam to be effective. They need not be confined, however, to the particular historical interpretations of Islam known as Shari'a. Muslims are

Mr. Jonsson of Unicef . . . labels those who would condemn many in the third world to practices they may desperately want to avoid as 'immoral and unscientific.' In their academic towers, Mr. Jonsson said, cultural relativists become 'partners of the tormentors'.

Jessica Neuwirth, an international lawyer who is director of Equality Now, a New York-based organization aiding women's groups in the developing world and immigrant women in this country, asks why the practices that cultural relativists want to condone so often involve women: how they dress, what they own, where they go, how their bodies can be used.

'Culture is male-patrolled in the way that it is created and transmitted,' she said. 'People who control culture tend to be the people in power, and who constitutes that group is important. Until we can break through that, we can't take the measure of what is really representative'.

. . .

NOTE

A federal criminal statute in the United States, entitled Female Genital Mutilation, was enacted in 1996, 18 U.S.C.A. §116 (West Supp. 1998). Section 116 provides:

> (a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.
> (b) A surgical operation is not a violation of this section if the operation is—[Clauses (1) and (2) refer to the operation's being necessary to health/medical purposes and being performed by a licensed medical practitioner.]
> (c) In applying subsection (b)(1) , no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

In arguing for this legislation while the bill was pending, Senator Reid urged the United States to be more attentive to this practice, and said (142 Cong. Rec. S8972, July 26, 1996):

> As African immigrants move throughout the world, taking this barbaric practice with them, many women are working to halt the practice in their new communities. Few are willing to speak up in their traditional communities. But this is occurring in countries where they immigrate. . . . The United States, I believe, is a world leader and needs to realize its influence in the world. I do not believe it is our place to go into other countries and dictate their traditions. But, at the same time, we need to show African governments that we take this issue seriously. We need help from others in the international community.

QUESTION

Serious issues involving cultural practices of immigrants have arisen in numerous Western states. For example, France witnessed a long-lasting dispute involving judicial decisions and passionate public debate over the question whether Muslim girls from North Africa or Turkey who were attending the state secular schools should be allowed to wear scarves, often associated with a sense of their practice and obligations as Muslim girls or women. What kinds of considerations would you think pertinent to a decision by a state whether to permit or ban a particular practice that deviated from community practice and norms—for example, the scarf at school that is generally denied to schoolgirls, or the instances reported in the article by Crossette involving conduct between spouses or between parent and child within the family? Should the immigrant, at least with respect to the applicability of the civil and criminal law, be fully assimilated to the long-present citizen?

2. RESERVATIONS to CEDAW

The Women's Convention (pp. 176–211, *supra*) remains the leader among human rights treaties with respect to the number of reservations that its states parties have entered. Some of these reservations deal with issues similar to those discussed in Section 1, namely conflicts between custom or religion and human rights norms. Others bring in different types of concerns about CEDAW.

This section starts with a description of the international law criteria for assessing the validity of reservations.

COMMENT ON TREATY RESERVATIONS

Article 2(1)(d) of the Vienna Convention on the Law of Treaties defines a reservation to mean 'a unilateral statement' made by a state when ratifying a treaty 'whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State'. Article 19 provides that a state ratifying a treaty may make a reservation unless it is 'prohibited by the treaty' or 'is incompatible with the object and purpose of the treaty'. Section 313 of the *Restatement (Third), Foreign Relations Law of the United States* (1987), is to the same effect. Comment (g) to Section 313 refers to the terms *declaration* and *understanding*.

> When signing or adhering to an international agreement, a state may make a unilateral declaration that does not purport to be a reservation. Whatever it is called, it constitutes a reservation in fact if it purports to exclude, limit, or modify the state's legal obligation. Sometimes, however, a declaration purports to be an 'understanding', an interpretation of the agreement in a particular respect. Such an interpretive declaration is not a reservation if it reflects the

> accepted view of the agreement. But another contracting party may challenge the expressed understanding, treating it as a reservation which it is not prepared to accept.

The International Court of Justice addressed the question of the effect of reservations to a multilateral human rights treaty in its 1951 advisory opinion on *Reservations to the Genocide Convention*,[1] which influenced the Vienna Convention's provisions above. The principal questions put to the I.C.J. by the UN General Assembly was whether a reserving state could be regarded as a party to the Genocide Convention if its reservation was objected to by one or more existing parties but not by others, and, if so, what effect the reservation then had between the reserving state and the accepting or rejecting parties.

In responding to that question,[2] the Court addressed the 'traditional concept . . . that no reservation was valid unless it was accepted by all the contracting parties without exception. . . . ' In the context of the Genocide Convention, the Court found it 'proper' to take into account circumstances leading to 'a more flexible application of this principle'. It emphasized the universal character and aspiration of multilateral human rights treaties. Widespread ratifications had 'already given rise to greater flexibility in the international practice' concerning them.

After concluding that the Genocide Convention (whose provisions were silent on the issue of reservations) permitted a state to enter a reservation, the Court considered 'what kind of reservations may be made and what kind of objections may be taken to them'. It underscored the special character of the Convention, which was 'manifestly adopted for a purely humanitarian and civilizing purpose.' In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest in the achievement of 'accomplishment of those high purposes which are the *raison d'être* of the convention'. In such circumstances, one cannot 'speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties'. Permitting any one state party that objected to another state's reservation of any type to block adherence to the convention by that other state would frustrate the convention's goal of universal membership.

On the other hand, the Court could not accept the argument that 'any State entitled to become a party to the Genocide Convention may do so while making any reservation it chooses by virtue of its sovereignty'. It followed that 'it is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation'.

The high number of reservations that have accompanied ratification of CEDAW have become a regrettably notorious feature of the Convention, which is in this respect first among the human rights treaties. By way of contrast, few states have

[1] Advisory Opinion, 1951 I.C. J. 15.

[2] The Court concluded (1) that a state whose reservation has been objected to by one or more parties but not by others can be regarded as a party to the Convention 'if the reservation is compatible with the object and purposes of the Convention', and (2) that a state party objecting to a reservation that it views as incompatible with the Convention can consider the reserving state not to be a party.

entered reservations to the Convention on Racial Discrimination. Moreover, many of the CEDAW reservations are directed to fundamental provisions.

Unlike the ICCPR, which is silent on the issue, CEDAW addresses reservations in Article 28(2), which prohibits those incompatible with the 'object and purpose' of the Convention. Tolerance of reservations has been urged on various grounds—for example, the desirability of securing widespread participation in treaties serving a 'purely humanitarian and civilizing purpose' (in the words of the *Genocide Convention* case above), and hence the reluctance to view a ratification as invalid because of its reservations. A commentator emphasizes another ground:[3]

> Most states are apprehensive about the possible consequences of accepting a human rights treaty, not least because such treaties may have a dynamic force and interpretation of their scope and impact is less certain that that of commercial treaties. . . . Reservations are seen to offer an assurance that the state can protect its interest to the fullest extent possible.

Other commentators have considered reservations to Article 2 to be 'manifestly incompatible' with the object and purpose of the Convention.[4] As noted below, several states parties have objected to these reservations on grounds that they threaten the integrity of the Convention and the human rights regime in general. Reservations that purport to be applying and thus to be consistent with Article 28(2) of CEDAW raise issues of religious intolerance and of cultural relativism. The net result, claims one commentator, has been the diffuse and widespread view that international obligations assumed through the ratification of CEDAW are somehow 'separate and distinct' from and less binding than those of other human rights treaties.[5]

Consider the following suggestions of Rebecca Cook about criteria for distinguishing between reservations that are compatible and incompatible with the Convention:[6]

> The thesis of this article is that the object and purpose of the Women's Convention are that states parties shall move progressively towards elimination of all forms of discrimination against women and ensure equality between men and women. Further, states parties have an obligation to provide the means to move progressively toward this result. Although the Women's Convention envisions that states parties shall move progressively towards elimination of all forms of discrimination against women and ensure equality between men and women, reservations to the Convention's substantive provisions pose a threat to the achievement of this goal . . . Accordingly, reservations that contemplate the provision of means towards the pursuit of this goal will be regarded as compatible with 'the object and purpose of the treaty' as provided by article 28(2) of the Women's Convention and article 19(c) of the Vienna Convention. Similarly, any

[3] Rebecca Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, 30 Va. J. Int. L. 643, 650 (1990).

[4] Belinda Clark, The Vienna Convention Reservations Regime and the Convention on Discrimination against Women, 85 Am J. Int. L. 281 (1991).

[5] *Ibid.*

[6] Rebecca Cook, n. 3, *supra*, at 648.

reservation that contemplates enduring inconsistency between state law or practice and the obligations of the Women's Convention is incompatible with the treaty's object and purpose.

As of January 2000, 67 states parties to CEDAW had entered reservations or declarations, either addressed to a specific provision or of a general character that embraced the convention as a whole. Ten had registered objections to some of those reservations. Selected illustrations from several states, as well as a characteristic objection to a reservation by another state party to CEDAW, appear below.[7]

Austria

Austria reserves its right to apply the provision of article 7(b) as far as service in the armed forces is concerned, and the provision of article 11 as far as night work of women and special protection of working women is concerned, within the limits established by national legislation.

Bangladesh

The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of articles 2, 13(a) and 16(1)(c) and (f) as they conflict with Shariah law based on Holy Koran and Sunna.

Belgium

The application of article 7 shall not affect the validity of the provisions of the Constitution . . . which reserves for men the exercise of royal powers . . .

Brazil

The Government of the Federative Republic of Brazil hereby expresses its reservations to article 15, paragraph 4, and to article 16, paragraph 1(a),(c),(g) and (f). . . .

Egypt

Reservation to the text of article 9, paragraph 2, concerning the granting to women of equal rights with men with respect to the nationality of their children, without prejudice to the acquisition by a child born of a marriage of the nationality of his father. . . . It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a women

[7] The full text of all reservations etc. is available on the UN website at www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_8.html. Note that the reservations listed above made by Bangladesh in relation to Arts. 13(a) and 16(1)(f), and those made by Belgium and Brazil, have all subsequently been withdrawn.

to agree, upon marrying an alien, that her children shall be of the father's nationality.

Reservation to the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Shariah provisions where by women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. 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, not a quasi-equality that renders the marriage a burden on the wife. . . . The provisions of the Shariah lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Shariah therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.

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 Shariah.

France

The Government of the French Republic declares that no provision of the Convention must be interpreted as prevailing over provisions of French legislation which are more favourable to women than to men.

Ireland

[Re Article 16(1)(d,f)] Ireland is of the view that the attainment in Ireland of the objectives of the Convention does not necessitate the extension to men of rights identical to those accorded to women in respect of the guardianship, adoption and custody of children born out of wedlock and reserves the right to implement the Convention subject to that understanding.

Malta

The Government of Malta does not consider itself bound by subparagraph (e) of Article 16, in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion.

Singapore

In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise 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.

Singapore interprets article 11, paragraph 1, in the light of the provisions of article 4, paragraph 2 as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on work done by them where this is considered necessary or desirable to protect the health and safety of women or the human foetus. . . .

Turkey

The Government of the Republic of Turkey [makes reservations] with regard to the articles of the Convention dealing with family relations which are not completely compatible with the provisions of the Turkish Civil Code. . . .

Objections

Germany

The Federal Republic of Germany considers that the reservations made by Egypt regarding article 2, article 9, paragraph 2, and article 16, by Bangladesh regarding article 2, article 13 (*a*) and article 16, paragraph 1 (*c*) and (*f*), by Brazil regarding article 15, paragraph 4, and article 16, paragraph 1 (*a*), (*c*), (*g*) and (*h*), by Jamaica regarding article 9, paragraph 2, by the Republic of Korea regarding article 9 and article 16, paragraph 1 (*c*), (*d*), (*f*) and *g*), and by Mauritius regarding article 11, paragraph 1 (*b*) and (*d*), and article 16, paragraph 1 (*g*), are incompatible with the object and purpose of the Convention (article 28, paragraph 2) and therefore objects to them. In relation to the Federal Republic of Germany, they may not be invoked in support of a legal practice which does not pay due regard to the legal status afforded to women and children in the Federal Republic of Germany in conformity with the above-mentioned articles of the Convention.

This objection shall not preclude the entry into force of the Convention as between Egypt, Bangladesh, Brazil, Jamaica, the Republic of Korea, Mauritius and the Federal Republic of Germany.

QUESTIONS

1. Which of the preceding reservations do you view as objectionable? Which of them raise issues of cultural relativism? Only those based on a state's local custom or religion?

2. Consider the reservations of Bangladesh and Egypt. What arguments would you make for the validity of those reservations under the criteria stated in the Vienna Convention and CEDAW?

3. How do you assess the criteria suggested by Cook? Would any of the reservations above be treated differently by you under her criteria?

ADDITIONAL READING

On treaty reservations see: A. Pellet, *Fourth Report on Reservations to Treaties*, UN Doc A/CN.4/1999 (1999); B. Simma, 'Reservations to Human Rights Treaties: Some Recent Developments', in G. Hafner *et al* (eds.), *Liber Amicorum Professor Seidl-Hohenveldern (1998) 30; C. Redgwell, 'Reservations to Treaties and Human Rights Committee General Comment No. 24 (52), 46 Int. & Comp. L. Q.* 390 (1997)'.

B. RELIGION

No topic generates more controversy—or indeed more complex ideas—than relationships between (1) institutionalization of religion in the state or religious belief or practice and (2) human rights norms. From one perspective, religious beliefs and human rights are complementary expressions of similar ideas, even though religious texts invoke the language of duties rather than rights. Important aspects of the major religious traditions—canonical text, scholarly exegesis, ministries—provide the foundation for, or reinforce, many basic human rights. Evident examples include rights to bodily security, or to economic and social provision for the needy. From another perspective, religious traditions may impinge on human rights, and religious leaders may assert the primacy of those traditions over rights. The banner of cultural relativism may here be held high. If notions of state sovereignty represent one powerful concept and a force that challenges and seeks to limit the reach of the international human rights movement, religion can then represent another.

The topics in Section B explore selected issues within this large theme. They involve the distinction sketched by some scholars between freedom *of* religion, and freedom *from* religion. The first freedom is threatened primarily by state conduct that prohibits public expression of religious belief and sharply restricts religious practice or ritual. Such conduct may stem from an ideologically secular state (such as the Peoples' Republic of China) that seeks to limit the role of organized religions, or at the other extreme from fundamentalist states that will not tolerate other forms of religious expression. The second freedom *from* again is threatened primarily by the state, which may impose the beliefs or practices of an official or dominant religion on all citizens, whatever their religious community (if any, for some citizens will be secular or atheist). In such circumstances, human rights other than the right to freedom of religion may be implicated. Forms of gender discrimination enforced by the state may find roots in sacred religious text. The state may repress certain speech that is widely viewed as offensive to the dominant religion. And so on.

These issues do not involve a simple dichotomy of the 'state' and 'citizens'. As the materials in Chapters 5 and 6 have illustrated, religion-based restraints or obligations may be rooted in a broad religious culture that is both closely related to and distinct from the state, and that may be insisted on or enforced by a range of