
WOMEN'S RIGHTS IN A MUSLIM CONTEXT: FROM THEORY TO ADVOCACY

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Academic debate on the relationship between Islam and the Western human rights canon has been dominated and debilitated by the theoretical battle between cultural relativists and universalists. Combined with the undiscerning treatment of Islam as a monolithic entity, this highly polarised academic discourse has provided an inadequate theoretical framework for the development of strategies by advocates of women's rights. This article seeks to redress the balance by developing a two-dimensional women's rights advocacy paradigm. The first dimension of this paradigm breaks down 'Islamic society' into three foci of advocacy action, namely jurisprudence, culture and political structures. The second dimension consists of delineating five strands within the universalist-relativist theoretical spectrum, namely assimilatory universalism, tolerant universalism, pragmatic relativism, constructive relativism and conservative relativism. It thereby seeks to provide a theoretical foundation for a more varied and sophisticated approach to women's rights advocacy.

INTRODUCTION

The treatment of women in many Muslim countries seemingly contradicts standard established by the international community. Stimulating an adherence to international standards in these countries is both a key concern of legal scholars and a central tenet of women's rights advocacy. Much has been written about the complex relationship between human rights and Islamic society and the extent to which culture may mitigate deviation from international standards. Yet in this context, the realm of human rights advocacy, the issue of which strategies may instigate the desired improvement in women's lives, remains largely unexplored. This article argues that the nature of the academic debate about culture and human rights, in particular the dominance of the theoretical struggle between universalism and cultural relativism, hinders a theory based development of advocacy strategies.

The article will firstly briefly summarise some of the existing anomalies between internationally established women's rights and Islamic law. Secondly, it will outline the contending arguments advanced by universalists and cultural relativists. It then posits that two traits of this discourse, the stark dichotomy of views and the treatment of Islam as a monolithic entity, are difficult to reconcile with the needs of advocates. It contends that to draw on the insights of theorists, an alternative advocacy paradigm is required. The first dimension of this paradigm involves breaking down 'Islamic society' into three foci of advocacy action, namely jurisprudence, culture and political structures. It will assess the

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extent to which each may be compatible with the Western human rights doctrine. The second dimension of this paradigm consists of delineating five strands within the universalist-relativist spectrum, namely assimilatory universalism, tolerant universalism, pragmatic relativism, constructive relativism and conservative relativism. A categorisation of advocacy strategies advanced in the literature will be made according to these strands. Finally, the article will draw both elements together, to sketch a theoretical framework which may assist comparative analysis, and thus the future development, of advocacy strategies.

INTERNATIONAL WOMEN'S RIGHTS DISCOURSE IN A MUSLIM CONTEXT

Some feminists argue that discrimination against women has largely been overlooked by international law compared, for example, to racial discrimination.¹ Nevertheless, clear provisions for the protection of women are established within international law. Article 2 of The United Declaration of Human Rights (UDHR) establishes the right of freedom for all “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion.”² These rights are further echoed in Article 2 of the International Covenant on Civil and Political Rights (ICCPR)³ and this equality is extended in the areas of economic, social and cultural rights in the International Covenant of Economic, Social and Cultural Rights (ICESCR).⁴ Numerous other international conventions, such as the 1958 ILO Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value support the rights of women in specific domains.⁵ The most substantial instrument for the protection of women was established in 1979 with the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶ Article 3 of CEDAW calls on State Parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women.” Specific provisions are made, among others, in the fields of education (Article 10), employment (article 11) and health care (article 12). A particularly controversial provision for many Muslim countries has been Article 16 which seeks to ensure equality with regard to marriage and family relations including an equal right to enter into marriage (16a) and equal rights and responsibilities towards children (16f).

Al-Hibri identifies three areas in particular where the rights expressed in Western human rights doctrine conflict with the Personal Status Codes⁷ that have been established

¹ See H. Charlseworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), chapter 7.

² GA Res. 217A (III), 10 December 1948, Article 2.

³ Relevant extracts reprinted in H.J. Steiner and P. Alston (eds.), *International Human Rights in Context* (2nd edition) (Oxford: OUP, 2000) pp.1381-1391.

⁴ *Ibid.*, pp.1395-1401.

⁵ See A.A. An-Na'im, “The Rights of Women and International Law in the Muslim Context”, *Whittier L. Rev.*, Vol. 9 (1987), p.507.

⁶ Steiner and Alston, *op cit.*, pp.1402-1409.

⁷ Personal Status Codes address family matters and have been adopted, for example, in Algeria, Egypt, Morocco, Tunisia, Syria, Jordan and Kuwait.

in many Muslim countries.⁸ Firstly, Muslim women must contract a marriage through a guardian.⁹ Secondly, the woman's duty is not to leave the home without the permission of the husband. Thirdly, the decision to divorce is primarily the right of the husband. Another Islamic practice controversially decried by Western writers is veiling, viewed to be highly symbolic of the perpetual suppression of women.¹⁰ A myriad of examples of contraventions in human rights can be found in other Muslim countries, such as Saudi Arabia, where women are effectively excluded from public life, restricted in terms of access to education and financially disadvantaged through laws on inheritance and property rights.¹¹ Such systematic discrimination, termed "gender apartheid",¹² came dramatically to the world's attention in Afghanistan with the rise to power of the Taliban. Their policies, including prohibitions on the use of public transport, public baths and education for girls, flagrantly breach antidiscrimination laws.¹³

THE UNIVERSALISM-CULTURAL RELATIVISM DEBATE

To what extent can these breaches in human rights be explained and justified by the cultural practices in which they are situated? The theoretical consideration of this question has been dominated by two opposing schools of thought.¹⁴ Universalists argue that international human rights have an equal validity everywhere in the world. Their position is characterised by a "vestigial distaste for the intrusion on the terrain of human rights by recourse to religion, tradition, and emotion."¹⁵ The universalist approach can be justified in various ways. For some, it derives from natural law, an assumption that there are common rights "held by all individuals simply by virtue of their status as human beings."¹⁶ For others, the act of ratification of human rights instruments demonstrates the recognition by all State Parties of the validity of the human rights concept contained within.¹⁷ Relativists counter that the human rights doctrine that is lauded as "universal" is

⁸ A. Al Hibri., "Islam, Law and Custom: Redefining Muslim Women's Rights", *Am. U. J. Int'l L. & Pol'y*, Vol. 12 (1997), pp.10-14.

⁹ The precise conditions for each of these three areas will vary from country to country, for example, in the case of marriage contracts in relation to the age and previous marital status of the women.

¹⁰ See K.Y. Schooley, "Cultural Sovereignty, Islam, and Human Rights - Towards a Communitarian Revision", *Cumb. L. Rev.*, Vol.25 (1995), p.677.

¹¹ A.E. Mayer, "A Benign Apartheid: How Gender Apartheid Has Been Rationalised", *UCLA J. Int'l L. & Foreign Aff.*, Vol.5 (20002001), p.253.

¹² *Ibid.*

¹³ See M.E. Ghasemi, "Islam, International Human Rights & Women's Equality: Afghan Women under Taliban Rule", *S. Cal. Rev. L. & Women's Stud.*, Vol. 8 (1999), p.445.

¹⁴ See Steiner & Alston, *op cit.*, pp.366-368.

¹⁵ Falk, "Cultural Foundations for the International Protection of Human Rights", in A. A. An-Na'im (ed.), *Human Rights in Cross Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992), p.45.

¹⁶ A.D. Renteln, "Unanswered Challenge of Relativism and the Consequences for Human Rights", *HRQ*, Vol.7 (1985), p.519.

¹⁷ M.J. Perry, "Are Human Rights Universal? The Relativist Challenge and Related Matters", *HRQ*, Vol. 19 (1997), p.484.

actually firmly rooted in Western political liberalism and individualism¹⁸ and has little resonance in societies where duties to family and society predominate.¹⁹ Many rights such as free speech or elections are a product of Western modern society and can hardly be considered inherent to human dignity.²⁰ Furthermore, relativists counter, taking the ratification of human rights instruments at face value ignores the potential political or diplomatic motivations underlying such actions. In short, universalism “finds little support - empirical, historical, philosophical, or otherwise - in the diverse human rights’ practices that characterise the contemporary global community.”²¹

For their part, cultural relativists argue that all rights are contingent on the understanding of the culture in which those rights are expressed. They fundamentally reject the implicit moral superiority associated with universal rights doctrine²² and point to real diversity in cultural practices even within relatively culturally homogenous regions.²³ Critics of the relativist stance provide philosophical, moral and political objections. They contend that relativism’s central tenet, that all values are culturally relative and that there is no moral hierarchy of values, is itself an absolutist proposition and one that therefore contradicts relativists own espousal of relativism.²⁴ Universalists also use examples, such as torture or rape, to illustrate that certain acts are abhorrent regardless of one’s cultural perspective, thereby claiming the relativist position to be fallacious.²⁵ More perniciously, they argue, cultural relativism encourages tolerance of unacceptable practice and “condon[es] a variety of unequal and oppressive patriarchal structures.”²⁶ Renteln provides a robust defence to the accusation that cultural relativism denotes tolerance or complacency in three ways. Firstly the cultural relativist may criticise other cultures, but still be aware of the ethnocentric nature of that criticism. Secondly, he can judge and criticize acts that violate the specific norms established by that culture. Finally, she posits that it is possible to discover true universal standards common to all cultures.²⁷

¹⁸ See M.W. Mutua, “Politics and Human Rights: An Essential Symbiosis”, in M. Byers (ed.) *The Role of Law in International Politics – Essays in International Relations and International Law* (Oxford: OUP, 2000).

¹⁹ B. Tibi, “Islamic Law/Shari’ah, Human Rights, Universal Morality and International Relations”, *HRQ*, Vol. 16 (1994), p.290.

²⁰ G. Binder, “Cultural Relativism and Cultural Imperialism in Human Rights Law”, *Buff. Hum. Rts. L. Rev.*, Vol. 5, (1999), p.214.

²¹ R.D. Sloane, “Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Rights”, *Vand. J. Transnat’l L.*, Vol. 34 (2001), p.560

²² A.D., Renteln, *International Human Rights: Universalism Versus Relativism* (Newbury Park: Sage, 1990), p.72.

²³ See for example the case of abortion in Ireland. C.M. Cerna, “Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts”, *HRQ*, Vol. 16 (1994), p.750.

²⁴ Renteln, *op.cit.*, p.72.

²⁵ Perry, *op.cit.*, p.471.

²⁶ S. Desai, “Hearing Afghan Women’s Voices: Feminist Theory’s Re-conceptualization of Women’s Human Rights”, *Ariz. J. Int’l & Comp. L.*, Vol.16 (1999), p.813.

²⁷ Renteln, *op.cit.*, p.74.

The theoretical fixation with the dominant Standard (Western human rights doctrine) and the subordinated Other (non-Western cultures)²⁸ can lead Western writers to understate intra-cultural differences within Islam and thus simplify it into a monolithic entity.²⁹ A simple comparison of the divergent Personal Status Codes referred to above illustrates the potential inadequacies of this approach. This criticism is predominantly one levelled by universalists at cultural relativists, who accuse the latter of ignoring the local voices in women's rights debates who support the notion of universal rights.³⁰ However, universalists are equally guilty in this respect by overstating the coherence in existing Western human rights standards³¹ and ignoring palpable cultural divergence on 'Western' human rights issues.³²

UNIVERSALISM, CULTURAL RELATIVISM AND WOMEN'S RIGHTS ADVOCACY

The often acrimonious³³ theoretical debate between universalism and relativism presents a number of problems for any women's rights advocate attempting to draw on theoretical insights for the development of advocacy strategies. Primarily, the academic literature provides two contending and irreconcilable presentations of the Muslim world. One caricatures a society where the Shari'a is used as a weapon to oppress women and thwart nascent notions of rights and justice.³⁴ The alternative portrayal is of a society in which women are reconciled to Islamic justice and the influence of human rights is marginal.³⁵ As a result of this universalism-cultural relativism dichotomy, "the important issues of global diversity are clouded and silenced."³⁶

A caricatured or monolithic presentation of Islam that fails to identify its varying constituent elements provides an inadequate theoretical basis for the development of advocacy strategies. Successful strategies depend on a comprehensive understanding of

²⁸ See D. Otto, "Rethinking the 'Universality' of Human Rights Law", *Colum. Hum. Rts. L. Rev.*, Vol. 29 (1997) pp.20-24.

²⁹ See T.E Higgins, "Anti-Essentialism, Relativism, and Human Rights", *Harv. Women's L. J.*, Vol. 19 (1996), section III.B.1 (no page references available).

³⁰ A.E. Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct", *Mich. J. Int'l L.*, Vol. 15 (1994), pp.382-383.

³¹ Tibi, *op.cit.*, p.293.

³² See Cerna, *op.cit.*

³³ The crushing 'success', on the one hand of having universal human rights reconfirmed in Vienna 1993 "regardless of ...political, economic and cultural systems" (Vienna Declaration) and the association of revived relativist dynamism with disreputable regimes on the other only increased intransigence between the two opposing parties. See the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights 24 June 1993, U.N. Doc. A/Conf. 157/24. For a discussion thereof, see Cerna, *op.cit.*

³⁴ As Mayer contends, "the various national versions of Islamic law...may be rejected by many, if not most, of the Muslim women affected thereby," Mayer, "A Benign Apartheid: How Gender Apartheid Has Been Rationalised", *op.cit.*, p.257.

³⁵ "[T]here is a body of general principles and detailed [rules which the Muslims as a whole accept as the authoritative statement of Shari'a." An Na'im, *op.cit.*, p.494.

³⁶ D. Otto, *op.cit.*, p.17.

the specific realities of individual societies.³⁷ Islamic society is complex and multifaceted. An advocacy strategy that fails to acknowledge this is unlikely to bear fruit. To use the example of Afghanistan, a legal positivist approach centred on human rights treaties may resonate with the educated women of Kabul, but will be inappropriate to the cultural realities of women in rural communities.³⁸ Instead, there is a need to refocus on the various elements of each Islamic country that hinder its reconciliation with the human rights doctrine.

The polarised nature of the universalism-relativism debate also accentuates the idea of two alternative and mutually exclusive approaches to women in a Muslim context. As Higgins recognises, human rights advocacy is “forced to choose between the rhetoric of cultural sensitivity and claims of universal truth.”³⁹ If rights are universal, and not culturally contingent, the corresponding advocacy strategy that embodies this notion should be applicable in all contexts. This theoretical basis would imply the choice of one-dimensional and easily transferable strategies.⁴⁰ Unfortunately, the cultural-relativist counterpart, that rights are culturally contingent, would initially appear to offer little theoretical support for proactive, human rights advocacy. Unlike theorists, advocates need to acknowledge that both phenomena, a growing understanding of human rights and deeply embedded cultural views, resonate in all societies⁴¹ and accordingly develop different advocacy strategies that accommodate both viewpoints.

Given the limitations of the universalism-relativism debate, should advocates simply set theory aside? In the light of ineffective rights-base advocacy, Sadasivam envisages “results-oriented strategies” dedicated to addressing women’s practical needs.⁴² However, isolating action from the human rights framework may prove illusory. Sadasivam’s targets include “family-planning counselling, information, education,”⁴³ which are themselves entwined with the values of local customs. Divorced from a human right framework, such strategies may lose their validity or even their rationale. Advocates, most often initiating action in societies that are not their own,⁴⁴ should be wary of casting off the human rights mantle that justifies their presence in the first place. Advocates need both to utilise the considerable moral and legal power provided by universalist arguments while nurturing the cultural sensitivity offered by the relativists. To do so requires a different paradigm from the bifurcated one currently provided.

³⁷ B, Sadasivam, “The Rights Framework in Reproductive Health Advocacy - A Reappraisal”, *Hastings Women's L.J.*, Vol. 8 (1997), p.338.

³⁸ Desai, *op.cit.*, p.9.

³⁹ Higgins, *op.cit.*, section I.

⁴⁰ Sadasivam reports this trend in relation to reproductive health advocacy, *op.cit.*, pp.338-339.

⁴¹ See R.E. Howard, “Group versus Individual Identity”, in A.A. An-Na'im and F.M. Deng (eds.), *Human Rights in Africa* (Washington: The Brookings Institution, 1990), p.160.

⁴² B, Sadasivam, *op.cit.*, p.345.

⁴³ *Ibid.*

⁴⁴ C.A.A. Packer, *Using Human Rights to Change Tradition: Traditional Practices Harmful to Women's Reproductive Health in sub-Saharan Africa* (INTERSENTIA, 2002, Utrecht), p.135.

CONSTRUCTING A WOMEN'S RIGHTS ADVOCACY PARADIGM

The first dimension of an advocacy paradigm needs to challenge the monolithic conception of Islam and identify different foci for advocacy strategies. The second dimension requires a reconsideration of the relativism-universality debate in a way that will draw on both to provide a range of potential strategy options.

FOCI FOR WOMEN'S RIGHTS ADVOCACY IN A MUSLIM CONTEXT

In order to develop credible human rights strategies in a Muslim context, the advocate must identify where potential obstacles lie. This section considers three main foci, namely Islamic jurisprudence, its underlying culture and political structures and their relationship to the Western human rights doctrine.⁴⁵

Islamic Jurisprudence

Many authors have focussed on the seemingly contradictory nature of Islamic law and the Western human rights canon. Certainly, if the considerable number reservations made by Islamic countries CEDAW are indicative,⁴⁶ the obstacles would appear to be insurmountable.

However, according to many authors, this superficial assessment belies the potential reconcilability of human rights and Islamic law. Rather than a formal code, Sharia is an extensive body of jurisprudence "in which individual jurists express their views on the meaning of the Qur'an and Sunna and the legal implications of those views."⁴⁷ The jurisprudence therefore reflects cultural as well as religious influence, as can be witnessed in the different approaches of different schools such as Maliki and Hanfi.⁴⁸ Given that Islamic jurisprudence is as much a human as a divine construction,⁴⁹ many authors have argued that a reinterpretation of the Qur'an and Sunna could reconcile the Shari'a with certain western human rights norms.⁵⁰ Rereading Islamic texts in the light of a modern society, it is possible, for example, to challenge the interpretation of the Sharia which justifies guardianship and control of men over women in family and marriage areas⁵¹ and establish that equality is central to the Qur'an.⁵²

The great divergence in Personal Status codes across the Muslim world would

⁴⁵ Clearly it is a somewhat perilous and arbitrary exercise to delineate religious, legal or political elements of any society, particularly in one where submission to God dominates all aspects of life. The primary purpose here is to demonstrate the need for advocacy approaches that consider the complex interaction of a wide range of factors.

⁴⁶ See Steiner, *op.cit.*, pp.439-444.

⁴⁷ A.A. An-Na'im, "Human Rights in the Muslim World", cited in Steiner, *op.cit.*, p.391.

⁴⁸ al-Hibri, *op.cit.*, pp.5-7.

⁴⁹ A.A. An-Na'im, "Islam and Human Rights: Beyond the Universality Debate", *Am. Soc'y Int'l L. Proc.*, Vol 94 (2000), p.97.

⁵⁰ J. Entelis, "International Human Rights: Islam's Friend or Foe?", *Fordham Int'l L. J.*, Vol. 20 (1997) p.1280.

⁵¹ An-Na'im in Steiner *op.cit.*, p.396 .

⁵² al-Hibri, *op.cit.*, p.37.

appear to support the notion that the ambiguities of religious texts can be exploited. Tunisia, in particular, has mitigated the disadvantageous position of women in marriage, by abolishing the husband's unique right of divorce.⁵³ However, many authors remain sceptical about reinterpretation, either due to the currently inauspicious conditions for reinterpretation⁵⁴ or the belief that were such a process possible, it should already have occurred.⁵⁵

Islamic Culture

For other commentators, the importance of the legal formalisation of human rights is secondary to the culture in which the Shari'a is embedded. Obiora's assertion that "law alone seldom changes behaviour"⁵⁶ is supported by the limited effect of new legislation ostensibly aimed at bringing change to cultural practices.⁵⁷ Many practices that appear to discriminate against women have gained a level of acceptance and value that withstands the "modernising" efforts of the lawmaker.⁵⁸ Some elements of Islamic culture, such as the Muslim sense of duty towards family and society are far more embedded than can be inferred from religious texts.⁵⁹ Changing Islamic perceptions of human rights is not simply a question of introducing new legislation, but rather requires a fundamental change to the "prevailing cosmological world view in the cultural system of Islam."⁶⁰ It is the belief that Muslim conceptions of rights and duties are deeply rooted in social and cultural mores that make cultural relativists wary of Western involvement in the rights debates in these countries. Unless the struggle for improved rights is initially a debate internal to that culture, any resulting norms may lack the necessary legitimacy.⁶¹

Others argue that the cultural underpinnings of many practices should not be overstated. For them, cultural justifications of human rights abuses present a romanticised view of Islamic or traditional society.⁶² The effects of globalisation, the mass media and industrialisation have already diluted what core values may once have been exclusive to

⁵³ C.M. Obermayer, "A Cross-Cultural Perspective on Reproductive Rights", *HRQ*, Vol. 17 (1995), p.378.

⁵⁴ See R. Afshari, "An Essay on Islamic Cultural Relativism in the Discourse of Human Rights", *HRQ*, Vol. 16 (1994), p.286 (using the example of conservative Islamists unwilling to accept any reinterpretation that would weaken their hold on power) and Tibi, *op.cit.*, p.286 (pointing to the trend tends towards conservatism or fundamentalism).

⁵⁵ Mayer, "A Benign Apartheid: How Gender Apartheid Has Been Rationalised", *op.cit.*, p.298.

⁵⁶ A. Obiora, "Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign against Female Circumcision", *Case W. Res. L. Rev.*, Vol. 47 (1997), p.358.

⁵⁷ Egypt, Kenya and the Sudan, for example, have had laws prohibiting female circumcision for many decades, but the practice is still highly prevalent across these countries. See Packer, *op.cit.*, p.157.

⁵⁸ See for example, Schooley, *op.cit.*, p.677, (describing the resentment of women towards mandatory unveiling in Iran under the 1936 Unveiling Act).

⁵⁹ *Ibid.*, p.709.

⁶⁰ Tibi, *op.cit.*, p.296.

⁶¹ A. A. An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: the Meaning of Cruel, Inhuman or Degrading Treatment or Punishment", in A. A. An-Na'im (ed.), *Human Rights in Cross Cultural Perspectives: A Quest for Consensus*, *op.cit.*

⁶² See R.E. Howard, *op.cit.*

Islamic society.⁶³ However, the underlying assumption of this standpoint, that Islamic culture, through modernisation, is inevitably drawn towards Western human rights,⁶⁴ is not borne out by research. Women with a refined and ‘modern’ understanding of human rights often use this knowledge to fulfil rather than challenge traditional societal norms.⁶⁵ Certainly the advocate would be complacent to disregard the importance of cultural practice.

Political structures in Muslim countries

An alternative position adopted by numerous writers is that human rights abuses can neither be attributed to Islamic texts or culture, but rather reflect the interests and policies of specific regimes. In this view, authorities “inject Islam” into policy in order to shield it from criticism or challenge.⁶⁶ The agendas of the elite structure Islamic society and any reinterpretation of Islamic texts will reflect these political motivations.⁶⁷

Many will claim that there is nothing inherently Islamic about these structures. Entrelis demonstrates, for example, that the patriarchal structures associated with Algerian society are as much a product of the traditions pre-Islam tribes combined with the habits of French colonial rule.⁶⁸ Indeed the overarching political structure, the nation state, has “alien and transplanted, but essentially unalterable structures [that] have rendered the local tradition impotent.”⁶⁹ However, while the advocate should not focus on Islamic culture to the extent of ignoring dominant societal structures, a purely political approach to human rights would underestimate the deep-seated civilisational conflicts that exist.⁷⁰ In short, effective advocacy strategies must take sufficient account all of the three foci identified.

UNIVERSALISM AND CULTURAL RELATIVISM THROUGH THE PRISM OF ADVOCACY

As discussed above, a strict extrapolation of universalism and cultural relativism may imply a limited theoretical basis for advocacy strategies. However, an assessment of relevant literature suggests that different strands of thinking can be discerned within this theoretical spectrum, that are not adequately described by the terms universalism and relativism. For the purposes of this article, these strands will be characterised as ‘assimilatory universalism’, ‘tolerant universalism’, ‘pragmatic relativism’, ‘constructive

⁶³ See A.E. Mayer, “Current Muslim Thinking on Human Rights” in A.A. An-Na’im and F.M. Deng (eds.), *Human Rights in Africa*, *op.cit.*, p.144., and Afshari, *op.cit.*, p.240.

⁶⁴ See Sloane, *op.cit.*, p.561.

⁶⁵ Packer, *op.cit.*, p.145.

⁶⁶ Mayer, *op.cit.*, p.144.

⁶⁷ See the example of Khomeini’s Iran in A.E. Graves, “Women in Iran: Obstacles to Human Rights an Possible Solutions”, *Am. U. J. Gender & L.*, Vol. 5, (1996), pp. 8081.

⁶⁸ Entrelis, *op.cit.*, p.8..

⁶⁹ Afshari, *op.cit.*, p.259.

⁷⁰ Tibi, *op.cit.*, p.293.

relativism' and 'conservative relativism'.⁷¹ The following section will elaborate and illustrate each of these characterisations.

Assimilatory universalism

Taking international human rights standards as a reference point, assimilatory universalism aims to reform societies that do not adhere to these principles.⁷² Given the domination of assimilatory universalism in both academic thinking and human rights advocacy in practice, only a few illustrative examples are given here.

The most obvious strategies in this strand are those of the UN bodies, such as the CEDAW Committee whose reporting system aims to pressure countries into adhering to the norms of CEDAW.⁷³ Such pressure can also be manifested through formal UN criticism.⁷⁴ Assimilatory universalist strategies may be economically tied⁷⁵ (although the wisdom of this approach is questioned⁷⁶) or subject to military support.⁷⁷

In the context of local advocacy, the dominant assimilatory universalist strategy is education. Education theoretically "enables women to assess the meaning human rights has for them, assert their rights...and bring about social, cultural, political or other forms of change"⁷⁸ Although considered the cornerstone of women's rights advocacy, the impact of women's education and empowerment has often proved disappointing.⁷⁹

Tolerant universalism

⁷¹ The purpose of these characterisations is to describe the dynamic relationship between theoretical standpoints and existing societal norms in a way that is more relevant to the advocate. It assumes that all advocates accept the value of advocacy and strive to alter conditions for women and therefore excludes cultural relativism in its purest form.

⁷² Such an approach is not inherently Western and is frequently adopted by local advocacy groups as well as international ones, Mayer, "A Benign Apartheid: How Gender Apartheid Has Been Rationalised", *op.cit.*, p.305.

⁷³ See J. Riddle, "Making CEDAW Universal: A Critique of CEDAW's Reservation Regime Under Article 28 and the Effectiveness of the Reporting Process", *Geo. Wash. Int'l L. Rev.*, Vol. 34 (2002), p.605 (summarising the inadequacies of this system).

⁷⁴ In the case of Afghanistan, see S.C.Res.1193, U.N. SCOR, 3921stmtg., 28 Aug. 1998, U.N. Doc. S/RES/1193 (1998) ("urging an end to all discrimination against girls and women and other violations of human rights").

⁷⁵ The US, for example, have conditioned loans to African countries on basis of revising FGM practices. See, R. Coomaraswamy, "Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women", *Geo. Wash. Int'l L. Rev.*, Vol. 34, (2002), p.492.

⁷⁶ See N. Gallagher, "The International Campaign against Gender Apartheid in Afghanistan", *UCLA J. Int'l L. & Foreign Aff.*, Vol. 5 (20002001), p.391 and Coomaraswamy, *Ibid.*, p.513. However, as a counterexample, see the positive impact on human rights of negotiations with Turkey on admission to the European Union. See Hicks, N., "Does Islamist Human Rights Activism offer a Remedy to The Crisis of Human Rights Implementation in the Middle East", *HRQ*, Vol. 24 (2002), p.380.

⁷⁷ Following the precedents of Albania and Kosovo, the justification of military action by the Security Council under Chapter VII may become increasingly attractive in cases of extreme systematic women's rights as seen in Afghanistan. See Verdirame, G., "Testing the Effectiveness of International Norms: UN Humanitarian Assistance and Sexual Apartheid in Afghanistan", *HRQ*, Vol. 23, p.751.

⁷⁸ Packer, *op.cit.*, p.135.

⁷⁹ *Ibid.*, pp.146-147.

A second strand of universalism which may engender alternative advocacy approaches is tolerant universalism. Tolerant universalist strategies are firmly wedded to international human rights standards, but look to engage local culture with a view to reconciling it with these ends. This process can be a deliberate one or one borne of necessity.

An-Na'im's quest for "universal cultural legitimacy" is located within this strand of thinking. An-Na'im does not challenge existing international human rights standards but looks to stimulate cultural support and sympathy for them. He considers this to be a two-stage process, firstly of asserting change within a culture and then initiating cross-cultural dialogue between cultures.⁸⁰ This strategy has its limitations. By pre-empting the outcome of discussion, the process resembles a monologue rather than a true dialogue.⁸¹ Moreover, the considerable cultural barriers to initiating dialogue render the process a perilous one for those involved.⁸² Nevertheless, a tolerant universalist approach that listens to Muslim voices can inspire advocacy strategies that are significantly different in tone and outlook than those characteristic of assimilatory universalism.

Tolerant universalism is equally a practical necessity inherent to human rights practised in the field. For example, confronted with an intransigent Taliban government, UN bodies in Afghanistan were obliged to sideline human rights principles, most notably nondiscrimination, in order to provide effective humanitarian assistance to those women most discriminated against.⁸³ Verdirame vilifies the UN for its action in Afghanistan, arguing that it lent moral support to the discriminatory policies of the Taliban and undermined the credibility of the UN as a norm-setting and protecting body.⁸⁴ While the interesting legal and moral conflict between two non-derogable rights (to life and non-discrimination) cannot be discussed here, the dilemma posed in Afghanistan illustrates the necessary recourse to flexible strategies, even within a universalist standpoint.

Pragmatic relativism

A third strand of action that can be identified is pragmatic relativism. Pragmatic relativism acknowledges and is sympathetic to Muslim cultural roots and attempts to develop strategies that will allow women to improve their lives without threatening

⁸⁰ An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: the Meaning of Cruel, Inhuman or Degrading Treatment or Punishment", *op.cit.* A similar concept of "overlapping consensus", "focussing on international political and legal standards that, at the same time, could be connected with the more specific perspectives of religious and cultural communities" is proposed by Bielefeldt. See H. Bielefeldt, "Muslim Voices in the Human Rights Debate", *HRQ*, Vol. 17(1995), p.616.

⁸¹ As Bielefeldt notes, "self-criticism of one's own human rights policy is a necessary precondition to any serious cross-cultural dialogue on human rights", *Ibid.*, p.615.

⁸² Falk, *op.cit.*, p.51.

⁸³ As the UN Department of Humanitarian Affairs reported in 1997 reported: "In our view, the UN system has no real choice. It has to invest reasonable efforts into promoting a substantive dialogue with the Taliban simply to manage the existing gap between their vision of Afghan society, and the international standards to be respected." U.N. Dept. of Humanit. Aff. *Report of the DHA Mission to Afghanistan* (15 June, 1997) cited in G. Verdirame, *op.cit.*, p.758.

⁸⁴ *Ibid.*, pp.758-766.

underlying cultural values.

This strand is most clearly illustrated in the campaign on female circumcision. Here advocates have focussed on the practical health-related elements of circumcision, thus avoiding the more culturally controversial approach of highlighting how the practice breaches women's rights. Pragmatic strategies have therefore concentrated either on improving the skills of those attending the circumcision or having them performed in hospitals (clinicalisation) in order to counter the worst medical effects.⁸⁵ Symbolic "blood letting", a minor form of surgery, has also been proposed as a method of maintaining the cultural significance of circumcision but reducing sexual or reproductive impairment to a minimum.⁸⁶

The potential flexibility in interpreting Islamic jurisprudence, as illustrated above, may prove conducive to pragmatic relativism. Feminists in Iran have used the commonly understood Islamic principle that the husband has no right to his wife's labour to fight for legislation which ensures monetary compensation for past work in the case of divorce.⁸⁷ A system of alternative courts for nonbelievers and believers⁸⁸ is another pragmatic approach that may reconcile traditional and human rights elements and has precedents outside the Muslim world.⁸⁹ It is to this pragmatic relativist strand that An-Na'im appeals in suggesting that advocates focus on tightening procedural requirements to reduce the cases of hudud (hand-cutting) rather than seeking to have it abolished, a strategy that lies beyond even a liberal reinterpretation of Islam.⁹⁰

Constructive relativism

Other writers have sought an alternative human rights approach that recognises the value of human rights but calls for a reconsideration of what those rights may be. This fourth strand, characterised here as constructive relativism, demands both a substantive changes to the Western doctrine and to how those rights are developed.

A notable example of constructive relativism is Renteln's call for a cross-cultural search for common core of acceptable rights, principles that are truly acceptable to all cultures.⁹¹ Unlike An Na'im's 'universal cultural legitimacy' which imposes preexisting norms on cross cultural dialogue, "this approach offers the possibility of grounding international human rights in reality instead of naturalistic abstractions."⁹² Cross-cultural feminist dialogue is another variant of constructive relativism. Higgins proposes "a large,

⁸⁵ Obiora, *op.cit.*, p.363.

⁸⁶ It has been argued that even this form of circumcision may compromise the physical and psychological integrity of the women. See I.R. Gunning, "Uneasy Alliances and Solid Sisterhood: A response to Professor Obiora's Bridges and Barricades", 47 *Case W. Res. L. Rev.*, Vol. 47 (1997), p.457.

⁸⁷ Obermayer, *op.cit.*, p.379.

⁸⁸ Graves, *op.cit.*, p.86.

⁸⁹ Coomaraswamy, *op.cit.*, p.506 (citing the example of the Recognition of Customary Marriages Act in South Africa that, in an innovative way, provides women the access to either civil or customary law as they choose)

⁹⁰ An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: the Meaning of Cruel, Inhuman or Degrading Treatment or Punishment", *op.cit.*, p.36.

⁹¹ Renteln, "Unanswered Challenge of Relativism and the Consequences for Human Rights", *op.cit.*, p.538.

⁹² Renteln, *International Human Rights: Universalism Versus Relativism*, *op.cit.*, p.137.

multifaceted conversation about difference that will lead ineluctably to a greater recognition of commonalities".⁹³ A cross-cultural element is not essential to such strategies. The questioning and reinterpretation of Islam discussed above may imbue rights with a meaning different to both those currently upheld by international bodies or expounded by Islamic leaders. Alternatively, communitarianism also provides a useful foundation for reforming rights in a manner more consistent with Muslim culture, by restating the importance of group as opposed to the individual.⁹⁴ Such theories tend to come under attack because they underestimate either the role played by the state in maintaining the status quo⁹⁵ or the difficulties for women to challenge existing norms without being subject to accusations of promoting western imperialism.⁹⁶

Other writers have emphasised that not only the substance of human rights doctrine needs to be rethought, but also the structures in which human rights standards are developed. These structures reflect the historical context in which they were developed and unless challenged will reproduce the cultural inequalities of that time.⁹⁷ Falk argues that the effective exclusion of Muslim thought in the development of human rights "has produced a series of partially deformed institutions, practices and perceptions"⁹⁸ and elsewhere that "exclusion from the rights forming process is itself a denial of human rights."⁹⁹ A restructuring of the human rights apparatus may in itself enhance the relevance of human rights standards to Muslim societies.

Conservative relativism

Islamic countries have made several attempts, most notably the 1990 Cairo Declaration on Human Rights in Islam¹⁰⁰ and the Bangkok Declaration¹⁰¹, to reconcile human rights with current Islamic practices. Such initiatives can be termed conservative relativism.

Although agreed by Organization of the Islamic Conference, and couched in typical human rights rhetoric, many writers dismiss the Cairo Declaration as a cynical, political manoeuvre designed to dissemble abuses of human rights.¹⁰² Mayer argues that the failure of Islamic countries to fulfil the requirements of the Cairo Declaration

⁹³ Higgins, *op.cit.*, section IV, B.

⁹⁴ Schooley, *op.cit.*, p.705.

⁹⁵ See Afshari, *op.cit.*, p.248 and Desai, *op.cit.*, p.538.

⁹⁶ Coomaraswamy, *op.cit.*, p.478.

⁹⁷ Otto, *op.cit.*, p.22

⁹⁸ R. Falk, *Human Rights Horizons* (New York: Routledge, 2000), p.149.

⁹⁹ Falk, "Cultural Foundations for the International Protection of Human Rights", *op.cit.*, p.48.

¹⁰⁰ U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993). For an extensive discussion, see Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct", 327.

¹⁰¹ Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, Report of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, 29 Mar.-2 Apr. 1993).

¹⁰² Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct", *op.cit.*, p.329.

demonstrates the inauthenticity of the values presented.¹⁰³ However, as Otto argues, the Bangkok Declaration simply emphasises a cultural view of human rights reflecting UN Charter principles such as self-determination and sovereignty.¹⁰⁴ Whatever the political nature of these two initiatives, genuine attempts to reconcile Islam and human rights are made in Muslim countries, albeit with limited results.¹⁰⁵

The potential of conservative relativism to improve the condition of women should not be too hastily dismissed. As Mayer herself notes, legislation in individual countries, such as the Saudi Basic Law set considerably lower standards than those set in the Cairo Declaration.¹⁰⁶ It is interesting to speculate what stimulus to local human rights may have been provided, had other countries treated the Bangkok Declaration with some sympathy or support rather than dismissing it. Would a strengthening of women's rights in these limited terms already empower women to further improve rights at a future point in time? Dismissed as an attack on universal human rights, the potential of such strategies is often lost.

A WOMEN'S RIGHTS ADVOCACY PARADIGM

Universal human rights standards provide a moral and legal coherence which inspires advocates and undoubtedly mobilises worthwhile advocacy initiatives. However, as this article has illustrated, an uncompromising approach to women's rights may in certain situations inhibit change that would improve the condition of Muslim women, and alienate critical Muslim voices in their own societies. Where the Western human rights cannon proves fragile, either for political or cultural reasons, advocates must acknowledge and confront the limitations of universalism as a philosophical basis for their work. Rather than being inhibited by the polarised disputes of universalists and cultural relativists, women's rights advocates must reflect and draw on the relevant elements of both schools of thoughts to develop a range of advocacy strategies. Bringing together the foci for action and strands of universalist/cultural relativist thinking identified in this article, Figure 1 provides a two-dimensional paradigm which may assist in the characterisation and comparison of advocacy strategies. Some of the strategies referred to in this article are plotted within this framework.

Human rights advocacy is currently focussed almost exclusively on the top and middle-left hand side of the paradigm.¹⁰⁷ Yet the effectiveness of these approaches is highly suspect.¹⁰⁸ It is proposed here that multidimensional strategies drawing from right across the advocacy paradigm and taking into account the specific characteristics of the particular society concerned would be more effective in improving the condition of Muslim women. Such speculation would need to be tested by an in-depth, empirical and

¹⁰³ *Ibid.*, pp.348-349. One should note that this is an argument Mayer would presumably not apply to the Geneva Conventions

¹⁰⁴ Otto, *op.cit.*, p.9.

¹⁰⁵ See, for example, the Tunisian Human Rights League, Afshari, *op.cit.*, p.271.

¹⁰⁶ Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct", *op.cit.*, p.350.

¹⁰⁷ See, for example, Packer, *op.cit.*, p.205 (reflecting in particular on the failure of education programmes).

¹⁰⁸ *Ibid.* and Sadasivam, *op.cit.*, p.345.

comparative analysis of advocacy strategies and local women's rights advocacy of the sort currently lacking in the literature. This paradigm may prove useful for this exercise.

Figure 1 - Advocacy strategy paradigm and illustrative examples

	Universalism		Relativism		
	Assimilatory Universalism	Tolerant Universalism	Pragmatic Relativism	Constructive Relativism	Conservative Relativism
Culture	Education/empowerment	cross-cultural dialogue	clinicalisation of female circumcision	establishment of cross-cultural core rights	internal cultural dialogue
Jurisprudence	UN bodies/resolutions		legal 'modernisation'	reinterpretation of Islamic texts	'Islamic' human rights standards
Structures	economic/military pressure	pragmatic UN-local interaction		dialogue of elites in restructured UN norm-forming body	

CONCLUSION

Striving for Truths, as universalists and relativists do, is a valuable endeavour. The notion of universal human rights is a powerful vindication of the practice of human rights advocacy in a Muslim context. Nevertheless, where assimilatory universalist approaches such as education and empowerment appear to be failing to make an impact on Muslim women's lives, advocates need to consider alternative strategies. A bi-polarised universalism-relativism paradigm cannot assist advocates in this task. This article has sought to develop an alternative paradigm for the discussion and development of advocacy strategies. Fleshed out with detailed comparative analysis of those initiatives already underway, a theoretical framework of this kind can help stimulate a more critical and sophisticated approach to women's rights advocacy. Insight gained in this way may, in turn, help extricate universalists and cultural relativists from their current theoretical impasse.