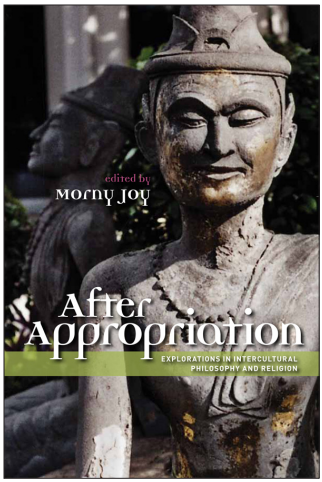
University of Calgary Press
www.uofcpress.com



AFTER APPROPRIATION: EXPLORATIONS IN INTERCULTURAL PHILOSOPHY AND RELIGION

edited by Morny Joy

ISBN 978-1-55238-584-5

THIS BOOK IS AN OPEN ACCESS E-BOOK. It is an electronic version of a book that can be purchased in physical form through any bookseller or on-line retailer, or from our distributors. Please support this open access publication by requesting that your university purchase a print copy of this book, or by purchasing a copy yourself. If you have any questions, please contact us at ucpress@ucalgary.ca

Cover Art: The artwork on the cover of this book is not open access and falls under traditional copyright provisions; it cannot be reproduced in any way without written permission of the artists and their agents. The cover can be displayed as a complete cover image for the purposes of publicizing this work, but the artwork cannot be extracted from the context of the cover of this specific work without breaching the artist's copyright.

Women's Rights as Human Rights: Explorations in Intercultural Philosophy and Religion[1]

MORNY JOY
University of Calgary

The subject of women's rights as human rights has been a topic of much discussion in a number of disciplines recently. It seems to me that many of the issues raised in connection with women's rights have a particular resonance with religious matters. Unfortunately, however, these matters have not been treated in a sustained manner within the discipline of Religious Studies.[2] This is because religion is often viewed as one of the principal obstacles to women's rights. It is basically from this problematic perspective that women's rights have been approached in Religious Studies, with an emphasis on fundamentalist forms of religion.[3] One of the reasons for this is that a number of countries have refused to be full signatories at the United Nations to declarations where women's rights are concerned. They have claimed reservations because of tradition and/or culture – which are basically shorthand terms for religion.[4] While there have been various eloquent indictments of this situation by feminist philosophers, political

and legal theorists, and activists of many stripes,[5] there have been few voices from feminists in Religious Studies, especially from a comparative outlook.[6] In this essay then, I would like to undertake some preliminary observations as to specific areas of interest that hold promise for a comparative study of women's rights and religion. In the present climate of fundamentalist claims, this would seem to be a matter of some urgency. Until there is a form of co-operative dialogue between women scholars of various religious backgrounds, who also support women's rights, it appears that the present unproductive exclusive divide between the secular and religious domains, as mirroring exactly the liberal separation of the public and the private worlds, will remain entrenched. This is not to say that I oppose the separation of church and state as a general principle, but I think that, in particular circumstances, religion can no longer claim to be a private haven, shielded from the law when the law has been violated. The finer legal details of this needed modification are beyond the scope of this paper,[7] but what I plan to describe in this essay are some of the problematic areas concerning the interaction of religion and the rights of women where I believe that women scholars in religion could contribute both pertinent and valuable insights.

WOMEN'S RIGHTS AND RELIGION

In 1997 Martha Nussbaum published an article entitled: "Religion and Women's Human Rights."[8] In it she made a statement to the effect that no systems of religious law should be allowed to interfere with the basic rights of citizens. Her particular concern was the situation of women throughout the world where religions have not always respected women's rights, in accordance with the equal dignity and the inviolability of their persons, as promulgated by the United Nations in Universal Declaration of Human Rights (1949) and the Convention on the Elimination of all Forms of Discrimination Against Women or CEDAW (1979). For Nussbaum, this manifests itself in the need to control women, specifically in matters involving sexuality, marriage and divorce, reproduction and guardianship or custody of children. Since this publication, much discussion has occurred on the merits of Nussbaum's liberal political position, and of certain inherent tendencies that have been labelled by postcolonial

thinkers or conservative religious figures as "western" or "Northern" impositions on women in cultures where secular values, such as equal rights are inapplicable.

In the same year, another article in a similar vein appeared, "Is Multiculturalism Bad for Women?"[9] Here political scientist Susan Moller Okin worried that cultures "that endorse and facilitate the control of men over women in various ways – even informally – limit their capacity to live with human dignity equal to that of men and boys, and to live as freely chosen lives as possible."[10] Moller Okin was especially concerned about the way in which this played itself out when people from these cultures migrate to countries such as the United States. Okin's short essay provoked an extremely animated discussion. A number of responses were published in a volume with the same name as her essay, edited by Joshua Cohen, Michael Howard, and Martha Nussbaum.[11]

There were telling observations among these responses. One response from Nussbaum herself called on Okin to account for a seeming dismissive attitude towards religion as not having anything constructive to contribute to human beings and society.[12] Another reply from Homi Bhabha alleged that Okin depicted a stark dualism posited between religion and secularism that tended to reinforce existing stereotypes regarding the religious practices and orientations of minority migrant communities.[13] She was also criticized by Bhabha for her determinate view of culture as static[14] because it did not take into account the dynamic, if sometimes controversial, encounters that can often bring about positive change in attitudes and behaviour for both parties. Finally, she was also charged with ignoring the fact that women in minority cultures are not necessarily passive recipients and many resist existing conditions by protesting against imposed standards that do not acknowledge their integrity.[15]

In her response, Nussbaum also placed particular emphasis on the notion of freedom of religious expression, specifically as it is expressed in the American Constitution. Nussbaum acknowledged the complex and difficult nature of the competing claims of the right to equality of treatment with the right to freedom of religious practice, involving the constant testing of the limits of toleration in a politically liberal state.[16] She also admits that she is in favour of the position that such a state – specifically the United States – "would give religion specific deference, on the grounds that minority religions have been especially vulnerable in all societies and

are consequently in need of special protection."[17] Yet how congruent is this observation with her earlier remark that religious law should never impede the rights of citizens? For it would seem to me that deference to certain religious practices, which claim the authority of law and tradition, particularly in regard to women, could be extremely problematic. Are these practices then to be given deference or to be contested?

It is this contested area where I believe that there are no easy or immediate answers, especially in countries such as Canada, where multiculturalism has been official policy, in contrast to the United States where the metaphor of "melting pot" is preferred. These crucial decisions need to be painstakingly worked out through the courts, and through Parliament – at both federal and provincial levels – and in public debate. As an illustration of the way that the introduction of religion to these debates can complicate the question of women's rights in specific societies, I will present the basic outlines of two recent case studies in Canada. These are: 1. The situation of the Aboriginal women of Canada, particularly those on reservations governed by the Indian Act.[18] The rights of these women to housing, food, or shelter can still be lost if they marry a non-Aboriginal man – they become legally non-Indian. 2. The recommendation made in early 2005 in the province of Ontario in favour of permitting Islamic tribunals to use *Sharī'a* law to settle family disputes.

THE SITUATION OF ABORIGINAL WOMEN IN CANADA

The narratives of the Aboriginal women of Canada testify to injustices enacted, not only because of prejudices resulting from perceived differences of pigmentation or genetic inheritance, but specifically because of gender difference. This is evident in the ongoing failure to recognize Aboriginal women's rights to community or band membership and to respect their position as trusted guardians of the tradition. It is also manifested in the disproportionate rates of Aboriginal women subjected to judicial procedures and subsequent incarceration. But most especially and tragically it is all too obvious in acts of violence and murder that are inflicted upon them. These are forms of discrimination that contemporary justice has failed to rectify, and their continuation indicates a pattern of enduring injustice. As if to emphasize the seriousness of this situation, in 2004, Amnesty International issued a report entitled: "'Stolen Sisters': A Human Rights

Response to Discrimination and Violence against Indigenous Women in Canada."[19] The then president of the Native Women's Association of Canada[20] (hereafter NWAC), Beverly Jacobs, a Mohawk member of the Six Nations of the Grand Rivers, wrote one of the reports presented to Amnesty. In documenting the untold instances of violence against the Indigenous women of Canada, Amnesty states: "The social and economic marginalization of Indigenous women, along with a history of government policies that have torn apart Indigenous families and communities, have pushed a disproportionate number of Indigenous women into dangerous situations that include extreme poverty, homelessness and prostitution." The report also states: "Despite assurances to the contrary, police in Canada have often failed to provide Indigenous women with an adequate standard of protection."[21]

Previous to the settlement of European immigrants, the status was very different for Aboriginal women. They were not regarded as inferior to men. Though Bea Medicine, an Indian Lakota anthropologist,[22] warns against any compensatory notion of an inclusive or universalized indigenous women's spirituality, given the many tribal differences and regional distinctions,[23] she does acknowledge that "in most pre-contact societies, Native women shared equally with men in social, economic and ritual roles."[24] Women were full participants in certain religious ceremonies where, though their roles differed from those of the men, they were equally regarded as ritual specialists. This, unfortunately, is not the representation of women that is found in early colonial studies. These works mirror the colonialist attitudes, which cast Aboriginal peoples in stereotypical dualist comparisons where they represented evil.

Today Aboriginal women are taking up their cause for recognition. Yet Emma LaRocque, a Métis scholar, is only too well aware that the attitudes of the Aboriginal peoples themselves have become influenced by the same colonialist imaginary, specifically in its contemporary views of women. She states: "Sadly, there are insidious notions within our own communities that we as Native women should be 'unobtrusive, soft-spoken and quiet,' and that we should not assume elected leadership, which is taken to mean 'acting like men.' That 'traditional Indian woman' is still often expected to act and dress like an ornamental Pocahontas/'Indian Princess.'"[25]

Other contemporary Aboriginal women, such as Teressa Nahanee, a lawyer and member of the Squamish Nation, affirm that the status and rights of women now need to be protected under the *Canadian Charter of Rights and Freedoms*[26] rather the Indian Act. Nahanee cites with approval the words of Mary Eberts, counsel for a successful appeal launched by NWAC in 1992 for protection of women's rights under the *Canadian Charter of Rights and Freedoms*: "Aboriginal women are at a watershed: taking action under the Charter provides them with perhaps their only opportunity to secure a future in which they will have available at least some tools with which to fight the massive, persisting systemic discrimination, on grounds of gender and race, which they face at every turn."[27]

Yet this strategy has not been welcomed in some communities. Joyce Green, a Métis scholar, has described the negative attitude that has arisen towards Aboriginal women who adopt this position: "Women advocating the explicit protection of women's equality rights were attacked for undermining the greater cause of Aboriginal rights."[28] Nahanee herself understands the situation as particularly fraught, but she refuses to let the situation be framed in terms of rights versus the community, which she views as counterproductive.[29] "As long as the dominant forces within the Canadian and Aboriginal patriarchy continue to use the prison of collective rights to denigrate the Aboriginal women's struggle for sexual equality rights as a dichotomy of individual/collective, women will be unable to capture popular support inside and outside the community."[30] Both Nahanee and Green consider the individual rights/community issue as a false dichotomy. Nahanee asserts: "Each and every individual comprises the collective; there is no collective without them."[31] She believes that an individual inextricably interconnected with their community in extremely complicated ways that are not always in accord with the dominant view.

Canadian Native women's struggle to regain their rights can also be viewed from the perspective of religion, where religion is cast by them in a positive light. For the Aboriginal women to regain the rights that are being denied them, their former religious status is of utmost priority. Its restoration represents both the personal and communal integrity that many of them believe they are now being denied. It is a rather unique set of circumstances where human rights and religious rights are not at variance but, in fact, coincide. The dynamics of this appeal and the differing responses of the Aboriginal peoples themselves remain part of an

ongoing internal debate that is part of the claim of the Aboriginal peoples to a form of self-government. Such a debate is also continuing at federal and provincial government levels, where certain treaties are still being renegotiated as the different peoples that comprise Canada's First Nations seek just restitution and just solutions to long-standing neglect of their rights.

THE CASE OF SHARI'A IN ONTARIO, CANADA

On 17 January 2005, former Ontario Attorney General Marion Boyd, who had been appointed by the provincial government to evaluate the situation, caused something of a stir in the Canadian community by recommending that Islamic tribunals be allowed to use *Sharī'a* law to settle family disputes in that province. Was this an example of multiculturalism, within in a liberal democracy, going too far in its deference? For many women in Canada, including moderate Muslims, this seemed to be the situation. The decision, however, was not without precedent. Since Ontario's *Arbitration Act* was passed in 1991, Orthodox Jews, among others, have used such tribunals to arbitrate family problems and marriage disputes. This arrangement was viewed as a way of alleviating heavy case-loads in the civil courts. Boyd's recommendation was not binding, however, and both it and the act itself were then submitted to review.

The main supporter of the proposal to introduce *Sharī'a* tribunals into the province of Ontario was Syed Mumtaz Ali, a member of the Islamic Institute for Civil Justice, a retired lawyer, who was born in India. Mr. Ali has affirmed that he believed his proposal was in keeping with the multicultural policies of his friend, the late Pierre Elliott Trudeau – Prime Minister of Canada when the *Charter of Rights and Freedoms* was instituted in 1982. Islamic proponents of the tribunals stated that this was an acceptable method of arbitration, as no decision could be made in such courts that would violate the *Canadian Charter of Rights and Freedoms* (1982). There was the added proviso that, if a person was dissatisfied with a decision, he/she could appeal to the civil court system.

In opposition were a number of women's groups, including those of Muslim women, who did not appreciate *Sharī'a* as conforming with the rights of women to equality under the *Canadian Charter*. Other principal concerns of Muslim women who disagreed with the implementation of

Sharīʿa were about gender bias, and especially of the intimidation that could be exerted on recent immigrant women who may not be informed of their rights. There was concern that such women could also be pressured by family into such arbitration under threat of rejection. Another basic worry was that, though the arbitration itself was not compulsory, many women would be led to believe that they were bound by the ruling and would not be told that they could appeal to civil courts if they were unhappy with the judgment. A further major concern was that there would not be enough trained personnel to review the implementation on the tribunals, which was also one of Boyd's recommendations.

After more consultations, however, in a decision, dated 11 December 2005, Dalton McGuinty, the premier of Ontario, rescinded the act that had allowed family court proceedings to be judged by any religiously affiliated tribunal. This was then an instance of a case where freedom of expression trumped freedom of religion. What is more intriguing than the decision itself, however, are the reflections of certain feminist thinkers on the issue. A Canadian professor of law, Natasha Bakht, commented on the situation. She was worried that the move to traditional legal arbitration reflects an attitude on the part of the government to wash its hands of dealing adequately with the status of women in religions – particularly in a time when fundamentalism is increasing. The state seems to be reluctant to take responsibility for matters that are considered private, especially decisions on matters of religion. Bakht fears that such non-regulation by government amounts to maintenance of the status quo, i.e., "support of pre-existing power relations and distributions of goods within the 'private' sphere."[32] She arrives at this conclusion because, in Canadian law, the burden of proof for a breach of the *Charter of Rights and Freedoms* is on the person who is making a charge of such a breach. Such an onus places women in a difficult and demanding position.

Bakht also makes an intervention, however, on behalf of Muslim women who may want to accept arbitration by *Sharīʿa*. She states that one cannot automatically presume that such women are either ignorant or oppressed in making such a choice. To do so would be to "infantilize" Muslim women in discriminatory ways. She further declares: "In fact, making an overly generalized argument regarding women's capacities or experiences homogenizes women and potentially eliminates important differences based on intersecting grounds of oppression."[33] In support of

her stance, she quotes Fareeda Shaheed of the network Women Living Under Muslim Law (WLUML), who were opposed to the implementation of *Sharī'a* law: "WLUML recognizes that living in different circumstances and situations women will have different strategies and priorities. We believe that each woman knowing her own situation is best placed to decide what is the right strategy and choice for her."[34]

Another feminist scholar, Sherene Razack, who is a Professor of Sociology and Equity Studies in Education at the Ontario Institute for Studies in Education of the University of Toronto, and whose principal areas of scholarship concern race and gender issues in the law, warns against a strategy that she believes was all too prominent in the debate. Though she concedes that something positive may have resulted from this exercise, in that the "plans of a small conservative religious faction may have been upset," she believes that there has certainly been a narrowing of focus and attitudes that she understands as damaging for all concerned. This is because the harmful dualisms have been reinforced. These dualisms are: "Women's rights versus multiculturalism; West versus Muslims; enlightened Western feminists versus imperilled Islamic women."[35] From her perspective, such divisions have rather pernicious consequences, especially as they concern feminism. "I argue that in their concern to curtail the conservative and patriarchal forces within the Muslim community, Canadian feminists (both Muslim and non-Muslim) utilized frameworks that installed a secular/religious divide that functions as a colour line, marking the difference between the white, modern, enlightened West, and people of colour, and in particular, Muslims."[36] In a post 9/11 climate, such a facile distinction serves to both "keep in line Muslim communities at the same time that it defuses more radical feminist and anti-racist critique of conservative religious forces."[37]

Both of these reactions by Bakht and Razack express the disquiet that much current debate on rights and religion, particularly in relation to women, is presented in ways that simply reinforce a situation where a secular society is positioned in opposition to religion. On the one hand, this leaves no space available for public dialogue between concerned moderates of different religions. At the same time, however, this debate, with its seeming extremist depiction of all Muslims, forecloses any productive debate of the problems posed by all forms of fundamentalism for women.[38] In this way, it only serves to reinforce the division between public and

private, which has been responsible for the fact that religious practices that are harmful to women have largely remained impervious to prosecution. A number of radical feminists, as well as contemporary atheist commentators, e.g., Richard Dawkins, seem to be of the opinion that no one in their right mind would have anything to do with religion, and they recoil at any attempt at accommodation within a secular society. This, I believe, excludes any constructive attempt at a public discussion that could be informed by a comparative study of the topic that takes into account the various positions of different religions and does not only focus on fundamentalism. It is in this connection that I believe scholars in Religious Studies do have something to offer by way of mediation in the face of this fundamentalist reading of all religion.

THE FUNDAMENTALIST CHALLENGE

Before embarking on an investigation of certain problems posed by fundamentalisms and their dictates,[39] I would quickly like to survey one approach that has had some success in breaking down the binaries involved in the opposition of the secular and religion. This approach can be expressed, though not in a glib way, by the feminist catchphrase: "The personal is the political." In an early article in 1983, Carole Pateman neatly summarized the issues involved as feminism strove to avoid either a denial of all things private in favour of integration with the public sphere, or any false idealization of the private. She observes: "Feminism looks toward a differentiated social order within which the various dimensions are distinct but not separate or opposed, and which rests on a social conception of individuality, which includes both women and men as biologically differentiated but not unequal creatures."[40] She is nonetheless realistic in admitting that, at that time, "A full analysis of the various expressions of the dichotomy between the public and private has yet to be provided."[41] Some progress has since been made, especially in attempting to move beyond Pateman's emphasis on individuality.

One of the areas where the separation of public and private has been addressed with a degree of success is that of violence against women. While she bemoans the fact that insufficient progress is being made, and that non-prosecution is still prevalent in many parts of the world in cases of violence against women, Hilary Charlesworth describes the strategy

that needs to be adopted on this matter. Recognizing that "the traditional construction of civil and political rights … obscures the most consistent harms done to women,"[42] i.e., that they mostly occur in the private sphere, Charlesworth advocates the adoption of another stance: "[I]f violence against women is understood not just as aberrant 'private' behaviour, but as part of the structure of the universal subordination of women, it can never be considered a purely 'private' issue: the distinction between 'public' and 'private' action in the context of violence against women is not a useful or meaningful one."[43] This issue has been addressed by the UN in 1994 in its Declaration of the Elimination of Violence against Women (DEVW). In the same year, it appointed a special *rapporteur* on violence against women. Then, in 1995, the Platform for Action from the Beijing Fourth World Conference on Women declared: "Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and Society."[44]

As Sally Engle Merry notes, both the Vatican and certain Islamic countries were opposed to the final statements in the conference Platform.[45] Unfortunately, as Engle Merry also reports, "Many states have opposed this conception of human rights on cultural or religious grounds and have refused to ratify women's rights treaties such as DEVW, or have done so only with reservations."[46] Courtney Howland views these actions as actually in contravention of the UN.[47] Such activity by religious groups is extremely worrisome. It would seem that they are making a concerted effort to counteract all the gains that women had been making in connection with rights, particularly at the UN, during past half-century.

There have recently been a number of books and articles that chart this emergence of women into the public realm at the UN during the past century.[48] Radhika Coomaraswamy, who was the first *rapporteur* to be appointed by the United Nations specifically on the issue of Violence Against Women in 1994, spoke in 1996 on this development in relation to human rights: "A revolution has taken place in the last decade. Women's rights have been catapulted onto the human rights agenda with a speed and determination that has rarely been matched in international law. There are two aspects to this process: first, the attempt to make mainstream human

rights responsive to women's concerns; and second, the conceptualization of certain gender-specific violations as human rights violations."[49]

At the same time, however, Amrita Basu adds a sobering qualification: "Parallel to the evolution of transnational women's movements, and equally important, has been the phenomenal growth of transnational networks of the religious right. We saw this in the 1994 Cairo conference on population and development, and again in the Beijing [women's] conference of 1995. In both these contexts one found a thoroughly transnational alliance of groups on the religious right, not only official organizations but also members of non-state organizations, including religious bodies like the Catholic Church."[50]

Judith Butler describes her own reaction to one of their offensives. She was alarmed when she learned of the manoeuvrings of the Vatican in the lead-up to the Beijing conference on the status of women in 1995: "The Vatican not only denounced the term 'gender' as a code for homosexuality, but insisted that the platform language [of the conference] return to the notion of sex, in an apparent effort to secure a link between femininity and maternity as a naturally and divinely ordained necessity."[51] Joan Wallach Scott, an American critical theorist, describes another such interference that occurred in the United States around the same time, when a sub-committee of the U.S. House of Representatives reviewed submissions that cautioned morality and family values were under attack from so-called "gender feminists."[52] As Scott describes it, it appeared that the opponents of "gender" insisted that "gender feminists" regarded manhood and womanhood, motherhood and fatherhood, heterosexuality, marriage and family as "culturally created, and originated by men to oppress women."[53] No doubt they had been informed of Butler's variations on the theme of gender, which she had explored in her book *Gender Trouble*.[54] The authorities were troubled that women were beginning to take decision-making into their own hands, specifically concerning basic reproductive issues, and saw "gender" as a sufficiently dubious term with which to attack this development.[55]

Since this initial intervention by the Vatican on the subject of "gender feminism," it has attempted to influence members of the Catholic communities from a number of countries (especially in Central and South America[56]), as well as organize coalitions with Islamic countries, to support its own position.[57] Part of its tactic is to argue that human rights for

women, especially in the context of gender, is a "western," i.e., colonialist, imposition. This alignment by the Vatican with the colonized and underprivileged of this world, as well as with non-exploitative interests, is patently disingenuous. It is simply another example of the manner in which it has orchestrated, often with the help of ruling regional elites, the appropriation and deployment of idealized "feminine" norms. These traditional formulas are designed to keep women in their proper maternal place, as the unsullied guardians of a nation's morality.

From this perspective, women's increasing demands for self-determination are decried as nothing less than selfish self-fulfillment. As mentioned previously, the struggles against expanding women's rights since the Beijing conference in various UN committees, ostensibly on the grounds of protecting religious traditions, are evidence of this reactionary agenda. In this way, as is blatantly obvious in the contemporary United States, but also in other religions and countries of the world, the battle lines are being drawn by fundamentalists and neo-conservatives. By means of these activities, they are perpetuating traditional dichotomies. Some scholars are wondering if it is even worth continuing the struggle for women's rights at the UN, so effectively organized has the opposition become.[58]

Judith Butler's own response to this outcome is intriguing. While she is reluctant to approve of the notion of human rights in the abstract, as it involves the implementation of a universal category without due consideration of particular circumstances, she has become perturbed by the advances that fundamentalism and neo-conservative interests have made. As a result, she is willing to concede that: "Although many feminists have come to the conclusion that the universal is always a cover for a certain epistemological imperialism, insensitive to cultural texture and difference, the rhetorical power of claiming universality for say, rights of sexual autonomy and related rights of sexual orientation within the international human right domain appears indisputable."[59] This concession demonstrates that there is a willingness, even amongst those who are opposed to universals as they often tend towards prescription, to allow strategic use of a universal statement as a tactic of resistance.

It is by analyzing these developments from within the purview of Religious Studies, with the help of insights garnered from feminist scholars in other fields, such as philosophy and anthropology, that women scholars in religion could provide assistance to further discussions of this

fraught topic. This is because they could help to break down the false, and even extreme dichotomy posed by the clash of values that both fundamentalists and militant secularists seem to want to maintain between religion and rights.

THE QUESTION OF CULTURAL ESSENTIALISM

One of the grounds that certain nations have claimed as a basis for their reservations against declarations at the UN is that of "culture," which is often associated with another term, "tradition." Both of these terms are regarded as alternative words for religion. A number of women scholars have been extremely vocal in their criticisms of the reified notion of culture that is appealed to in these situations. Firstly, the anthropologist Sally Engle Merry cautions that: "There is a critical need for conceptual clarification of culture in human rights practice. Insofar as human rights rely on an essentialized model of culture, it does not take advantage of the potential of local cultural practices for change.… A more dynamic understanding of culture foregrounds the importance of translators to the human rights process and the possibilities for change in local cultural practices."[60]

In Engle Merry's view, instead of being regarded as a stable or static concept, and as a non-negotiable item, culture needs to be appreciated in a more dynamic way. She describes the manner in which culture is understood in contemporary anthropology as "a far more fluid and changing set of values."[61] As a result, culture is now conceived of: "as unbounded, contested, and connected to relations of power, as the product of historical influences rather than evolutionary change."[62] In addition, for Engle Merry, cultural practices always need to be appreciated within their specific contexts and with an awareness that the meaning of culture and its effects will change with any alteration in a context.[63]

Another scholar who is similarly suspicious of essentialized definitions of culture, be they Eastern or Western, is Uma Narayan. In her book, *Dislocating Cultures*, she issues a warning: "We need to be wary about all ideals of 'cultural authenticity' that portray 'authenticity' as constituted by lack of criticism and lack of change. We need to insist that there are many ways to inhabit nations and cultures critically and creatively."[64] From this perspective, Narayan takes issue both with Western colonial

impositions of "feminine" ideals, particularly in India, where she was born and also with India's own attempts to invoke essentialist categories, especially as they have done with Hindu fundamentalism (or Hindutva).[65] While Narayan adroitly exposes the idealized projections of a "national and cultural identity" and their false association with Hinduism, she is particularly articulate about their exploitation of exalted depictions of women as central components of "cultural identity." She describes how, in consequence, women who stray from such models are labelled as "stooges of western imperialism" or worse. Narayan expands on this: "The social status and roles of women are often represented as of central import to the task of 'resisting westernization' and 'preserving national culture' [thus] reducing Third World feminist contestations of local norms and practices pertaining to women as 'betrayal of nations and culture.'"[66] Narayan also remarks on the rather selective process involved here. This involves apologetic attempts to allow for certain "borrowings" that are characterized as "modernist," e.g., those of an electronic nature and other contemporary conveniences, in contrast to those designated "Western" ones. In all such categorizations, human rights are inevitably Western. The reality behind all such rhetorical flourishes is that it is the women who bare the brunt of the responsibility for keeping faithful to religiously prescribed cultural roles.

What is especially striking is the false nostalgia involved in these claims, with their obvious religious associations. These have been criticized by other Indian women scholars, notably by Uma Chakravarti in "Whatever Happened to the Vedic *Dasi*,"[67] and by Kumkum Roy, in her ironically titled essay: "Where Women Are Worshipped, There the Gods Rejoice."[68] These essays have influenced and support Narayan's argument against any form of cultural essentialism. Such a manipulation of history, in order to promote a glorious past from which contemporary society has sadly fallen and which needs to be re-established, is a hallmark of many fundamentalist religious movements. It is both sad and extremely telling that, in many of these religions, the cause of a nation's fall from grace is blamed on women's waywardness, especially their purported sexual deviance. As a result, women thus need to be rescued from their fallen ways and returned to supervision and subservience. Gender, insofar as it enters into these calculations, features as a divinely ordained decree. Both men and women are directed, under pain of sin or a bad rebirth, to follow the

gendered scripts that provide the rigid backbone of a stable, god-fearing society.

Narayan will have none of this. In drawing her own conclusions about these directives, she states that, just as there can be no one essential description of the female gender, so there is no authentic cultural identity. In expanding this position, Narayan finally rejects not only "the idea that there is anything that can solidly and uncontroversially be defined as 'Indian culture,' but also the idea of an 'African culture' or [for that matter] 'Western culture'"[69] Yet Narayan is not completely dismissive of religion, allowing that: "Many religious traditions are in fact more capacious than fundamentalist adherents allow. Insisting on humane and inclusive interpretations of religious traditions might, in many contexts, be crucial components in countering the deployment of religious discourses to problematic nationalist ends."[70] Narayan's critiques of both "gender" and "culture" and their faulty appropriation by religion can help to counteract the effects of their being invoked in idealized and inflexible formulas that prevent constructive exchange on any level.

Another contemporary educator and activist for women's rights is Mahnaz Afhkami, who was formerly a minister of state in pre-revolutionary Iran. She is the founding president of the Women's Learning Partnership and has written extensively on women, religion, and rights. Her sentiments on the inroads made by fundamentalism and its distortions are similar to those of Narayan. "The Islamist discourse seeks to establish a particular rendition of Muslim religion as the true image of Muslim societies as they 'actually' exist. This presumed image is then presented as the actual 'culture' of the Muslim people. All 'rights' then, including Muslim women's, naturally flow from this culture."[71]

In a later essay, again concurring with Narayan, she observes: "In Muslim societies, women are particularly targeted because there is no better proof of return to a golden past than pushing them back into their 'natural' place. Thus women's position becomes the yardstick, the measure for the success of the fundamentalist agenda."[72] She is also cognizant of the machinations of the Islamists who have worked in concert with the Vatican, and others opposed to women's rights, to impede the growth of rights by implying that it is solely a Western construct. "By suggesting that the West has invented the idea of universality of rights in order to impose its way of life on others, the Islamists attempt to disparage the

validity of the argument for rights in the eyes of their peoples, including women."[73]

Afhkami is particularly committed to breaking down many of the binaries that continue to restrict women's access to religious and political freedom. In addition to the public/private and secular/religious divisions, she would like to encourage a change so that the notion of human rights does not focus solely on the individual but understands the individual as always situated within a particular community: "We must move beyond the theory of women's human rights as a theory of equality before the law, of women's individual space, or a 'room of one's own,' to the theory of the architecture of the future society where the universality of rights and relativity of means merge to operationalize an optimally successful coexistence of community and individuality."[74]

It is worth noting that Afkhami's program does contain certain provisos deemed necessary for its success, and one of these is directed squarely at the enforced directives inflicted on women: "We must insist that no one, man or woman, may claim a right to a monopoly of interpretation of God to human beings or a right to force others to accept a particular ruling about any religion. The upshot of this position is that women ought not to be forced to choose between freedom and God. The same applies on the part of tradition."[75]

CONCLUSION

In these various analyses and testimonies by women from very different areas of interest, regions of the world, and religious backgrounds, there is a strong affirmation of the need to support human rights as women's rights. There is also a clear insight into the fact that religious and cultural claims can insist on false divisions that interfere with women's access to such rights. Fundamentalist religion is one of the worst culprits. As a result, one of the counter-strategies is that many women scholars and activists support forms of mediatory intervention in an attempt to moderate the stark binary oppositions that all too often characterize the conflict between religion and rights. Universal claims by both sides need to be put into a perspective that allows for types of global and local, community and individual interactions where very careful attention is paid to the specific context. None of these recommendations will be uncomplicated to

implement – and they do not necessarily all sit easily together – but they are suggestive of a start that holds promise.

As fellow participants in undertaking such an approach, I believe that women scholars in religion could provide both relevant information and appropriate methodological assistance. From both philosophical and hermeneutical standpoints they are familiar with both textual interpretation and historical particularity, and they can call attention to spurious claims. Their training also supplies them with the relevant tools to detect readings that are either distinctly literalist in their translations or highly selective in determining their applications. My hope is that this paper will stimulate interest for women scholars in religion to begin to undertake collaborative study and discussion of a comparative nature on this most important topic.

Notes

1 Some parts of this essay previously appeared in: "Gender and Religion: A Volatile Mixture," *Temenos* 42, no. 1 (2006): 7–30, and in "Women's Rights in the Context of Religion," *Svensk religionshistoriskarsskrift* [Swedish Yearbook of the History of Religions] (April 2008): 181–200. Reprinted with permission.

2 One person who was particularly active in this area was the late Lucinda Peach. See: "Human Rights Law, Religion, and Gender," *The Global Spiral*; http://www.metanexus.net/magazine/ArticleDetail/tabid/68/id/6004/Default.aspx and "Human Rights Law, Religion and Gendered Moral Order," in *Varieties of Ethical Reflection*, ed. Michael Barnhart (Lanham, MD: Lexington, 2002), 203–30.

3 See the work of John Stratton Hawley (ed.), *Fundamentalism and Gender* (Oxford: Oxford University Press, 1993).

4 See Ann Elizabeth Mayer, "Religious Reservations to the Convention on the Elimination of all Forms of Discriminations against Women: What Do They Really Mean?," in Courtney W. Howland, *Religious Fundamentalisms and the Human Rights of Women* (New York: St. Martin's Press,1999), 105–16.

5 See the collection of essays in Courtney W. Howland, *Religious Fundamentalisms and the Human Rights of Women* (New York: St. Martin's Press, 1999), and also in Jurate Motiejunaite (ed.), *Women's Rights: The Public/Private Dichotomy* (New York: Idebate Press, 2005).

6 See Amanda Whiting, and Carolyn Evans (eds.), *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (The Hague: Martinus Nijhoff, 2006), and also an essay by Lucinda Peach, "Buddhism and Human Rights in the Thai Sex Trade," in Courtney W. Howland, *Religious Fundamentalisms and the Human Rights of Women* (New York: St. Martin's Press, 1999), 215–26.

7 See Lori G. Beaman, *Defining Harm: Religious Freedom and the Limits of the Law* (Vancouver: UBC Press, 2008) and also Lucinda Peach, Legislating Morality; Pluralism and Religious Identity in Lawmaking (Oxford: Oxford University Press, 2002).

8 Martha Nussbaum, "Religion and Women's Human Rights," in Paul Weithman (ed.), *Religion and Contemporary Liberalism* (Notre Dame, IN: University of Notre Dame Press, 1997), 93–137.

9 Susan Moller Okin, "Is Multiculturalism Bad for Women?," *Boston Review*, October–November, 1997. Also published in: *Is Multiculturalism Bad for Women?* Joshua Cohen, M. Howard, and M.C. Nussbaum (eds.) (Princeton: Princeton University Press, 1999), 7–26.

10 Okin, "Is Multiculturalism Bad for Women?," 3.

11 Joshua Cohen, M. Howard, and M. Nussbaum (eds.), *Is Multiculturalism Bad for Women?* (Princeton, NJ: Princeton University Press, 1999).

12 Nussbaum, "A Plea for Difficulty," in *Is Multiculturalism Bad for Women?* Cohen et al. (eds.), 106–7.

13 Homi Bhabha, "Liberalism's Sacred Cow," in *Is Multiculturalism Bad for Women?* Cohenet al. (eds.), 79.

14 Ibid., 82.

15 Ibid., 81.

16 Nussbaum, "A Plea for Difficulty," 113.

17 Ibid., 111.

18 The *Indian Act* came into effect in1876. Aboriginal peoples of Canada who signed treaties with the Canadian government were termed "status" or "registered Indians". They thereby gained certain rights, but status could be lost by a woman marrying a man who was not a "status Indian." While this was amended in 1985 under Bill C-31, many bands still make the situation very difficult for such women.

19 See the report by Amnesty International: "'Stolen Sisters': A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada" at: http:www.amnesty.ca/stolensisters/am200034/pdf.

20 See the "Sisters in Spirit" webpage at http://www.sistersinspirit.ca. This page was set up by the Native Women's Association of Canada (NWAC). They launched the national Sisters in Spirit Campaign in March 2004 to raise public awareness of the alarmingly high rates of violence against Aboriginal women in Canada. NWAC believes there is an urgent state of affairs with regard to the safety of Aboriginal women in Canada.

21 Amnesty International, "Stolen Sisters," 2.

22 The word "Indian" is used in the *Constitution Act* of Canada. The Aboriginal people of Canada, Indians, Inuit, and Métis, are named in both the *Constitution Act* of 1867 and of 1982.Though today the term, "Indian," has fallen somewhat into disfavour, it is used still in legal discussions where the status of Indians under the *Act* is being discussed. The term, "First Nations" is the preferred term used by bands today who have status in terms of the *Indian Act*. Each of these terms has varying levels of acceptance among the indigenous peoples of Canada. In this paper, various terms, such as "indigenous," "native," "Aboriginal" are also used, usually in connection with a specific writer's preference. Bea Medicine uses the term, "Indian" to refer to herself.

23 Beatrice Medicine and Patricia Albers, *The Hidden Half: Studies of Plains Indian Women* (Washington: University of America Press, 1983), 191.

24 Medicine and Albers, *Hidden Half*, 154.

25 Emma LaRocque, "The Colonization of a Native Woman Scholar," in Christine Miller and Patricia Chuchryk (eds.), *Women of First Nations: Power, Wisdom and Strength* (Winnipeg: University of Manitoba Press, 1996), 14.

26 The *Canadian Charter of Rights and Freedoms* came into force on April 17, 1982. Section 15 of the *Charter* (equality rights) came into effect three years after the rest of the *Charter*, on April 17, 1985, to give governments time to bring their laws into line with section 15. The *Charter* is founded on the rule of law and entrenches in the constitution of Canada the rights and freedoms Canadians believe are necessary in a free and democratic society. It recognizes primary fundamental freedoms (e.g., freedom of expression and of association), democratic rights (e.g., the right to vote), mobility rights (e.g., the right to live anywhere in Canada), legal rights (e.g., the right to life, liberty and security of the person), and equality rights and recognizes the multicultural heritage of Canadians. It also protects official language and minority language education rights. In addition, the provisions of section 25 guarantee the rights of the Aboriginal peoples of Canada. http://www.pch.gc.ca/progs/pdp-hrp/canada/freedom_e.cfm.

27 Teressa Nahanee, "Dancing with a Gorilla: Aboriginal Women, Justice and the Charter," in *Aboriginal Peoples and the Justice System* (Ottawa: Royal Commission on Aboriginal Peoples, Minister of Supply and Services, 1993), 367.

28 Joyce Green, "Constitutionalising the Patriarchy: Aboriginal Women and Aboriginal Government." *Constitutional Forum* 4, no. 4 (1993): 114.

29 It needs to be noted that there is a disagreement among Indigenous women themselves on this. Some would prefer to take their in-house complaints to Native sentencing circles. See Jennifer Koshan, "Sounds of Silence: The Public/Private Dichotomy, Violence and Aboriginal Women," in Jurate Motiejunaite (ed.), *Women's Rights: The Public/Private Dichotomy* (New York: Idebate Press, 2005), 211–34.

30 Nahanee, "Dancing with a Gorilla," 370.

31 Ibid.

32 Natasha Bakht, "Family Arbitration Using Sharī'a Law: Examining Ontario's Arbitration Act and its Impact on Women," *Muslim World Journal of Human Rights* 1, no. 1 (2004): 23.

33 Ibid., 22.

34 Ibid.

35 Sherene Razack, "The Sharia Law Debate in Ontario," *Feminist Legal Studies* 15 (2007): 29.

36 Ibid., 6.

37 Ibid.

38 A comprehensive study of the forms of fundamentalism and their implications for women in the major religions can be found in Courtney Howland, "Women and Religious Fundamentalism," in *Women and International Human Rights Law*, Kelly D. Askin and Dorean M. Koenig (eds.) (New York: Transnational Publishers, 1999), 533–621.

39 With reference to the use of the term 'fundamentalisms,' I basically follow the work of Martin Marty and Scott Appleby in *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991), though I find a paucity of study on women in their various works. I do not wish to restrict my understanding, however, to that designated by a particular species of nineteenth-century American Protestantism. Ideally, there are different terms applicable to specific religions to account for this phenomenon, such as Islamist and Hindutva, that would need to be developed in a larger study. For the purposes of this paper, one of the main intentions of which is to demonstrate the collaboration of these movements to restrict women's further access to rights, I will simply use the term 'fundamentalisms.'

40 Carole Pateman, "Feminist Critiques of the Public/Private Dichotomy," in S. Benn and G. F. Gaus (eds.), *Public and Private in Public Life* (London: Croom Helm, 1983), 300.

41 Ibid.

42 Hilary Charlesworth, "Human Rights as Men's Rights," in Julie Peters and Andrea Wolper (eds.), *Women's Rights Human Rights: International Feminist Perspectives* (New York: Routledge, 1995), 107.

43 Ibid.

44 UN Report on the Fourth World Congress on Women, Annex II, Platform for Action, Chapter 4, Section D, par. 119; http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en.

45 Sally Engle Merry, "Women, Violence, Human Rights," in Marjorie Agosín, ed., *Women, Gender, and Human Rights* (New Brunswick, NJ: Rutgers University Press, 2001), 91.

46 Ibid.

47 Courtney Howland states with regard to these reservations: "These assertions of a religious fundamentalist position … in response to accusations of a treaty violation and reservations to treaties should not be viewed merely in the context of the particular

treaty in question.… A state's act of making a reservation is a public international act equivalent to the issuance of *opinio juris*.… The Charter specifically eschews religious law as the source for human rights, and, thus, any particular religious law may not determine the standards for the 'without distinction' language.… Thus, these declarative statements and reservations represent the state taking a public position which is contrary to the Charter. Public statements contrary to the Charter demonstrate bad faith and violate the state's two-fold duty to cooperate and not to undermine. Thus, these states, by making these assertions are in violation of their legal obligations under articles 55 and 56." Howland, "Women and Religious Fundamentalism," 618.

48 See, especially, Leila J. Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton: Princeton University Press, 1998), and Jain Devaki, *Women, Development, and the UN: A Sixty-Year Quest for Equality and Justice* (Bloomington: Indiana University Press, 2005).

49 Radhika Coomaraswamy, "Reinventing Women's International Law: Women's Rights as Human Rights in the International Community," Edward A. Smith Lecture, 1996; http://www.law.harvard.edu/programs/HRP/Publications/radhika.html.

50 Amrita Basu, "Women's Movements and the Challenge of Transnationalism"; http://www.womencrossing.org/basu.html.

51 Judith Butler, "The End of Sexual Difference?" in Elisabeth Bronfen and Misha Kavka (eds.), *Feminist Consequences: Theory for the New Century* (New York: Columbia University Press, 2001), 423. The conference platform did not eliminate the word "gender."

52 Joan Wallach Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1999 [1988]), ix.

53 Ibid., ix.

54 Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990).

55 The word, "gender" has had a checkered history over the past two decades. See Morny Joy, "Gender and Religion: A Volatile Mixture," *Temenos* 42, no. 1 (2006): 7–30.

56 Laura Guzmán Stein, "The Politics of Implementing Women's Rights in Catholic countries of Latin America," in Jane H. Bayes and Nayereh Tohidi (eds.), *Globalization, Gender, and Religion: The Politics of Women's Rights in Catholic and Muslim Contexts* (New York: Palgrave, 2001), 127–55.

57 "In Beijing, the coalition of Catholic countries that joined the Vatican included Guatemala, Honduras, Ecuador, Peru, Bolivia, and the Philippines. These were joined by the Muslim countries of Iran, Sudan, Libya, Egypt, and Kuwait.… During the 1995–2000 period, other Catholic Muslim cooperative efforts occurred.… In 2000 at the Beijing Plus Five Conference in New York, the conservative religious alliance continued its opposition to the initiatives involving sexuality, abortion, and for some, even the issue of women's rights as human rights (arguing instead for

human dignity)" (Bayes and Tohidi, *Globalization, Gender, and Religion*, 3–4).

58 Posadskaya-Vanderbeck, Anastasia, "International and Post-socialist Women's Rights Advocacy: Points of Convergence and Tension," in Joanna Kerr, E. Sprenger, A. Symington (eds.), *The Future of Women's Rights: Global Visions and Strategies* (London: Zed Books, 2004), 196.

59 Judith Butler, "The End of Sexual Difference?", in Elizabeth Bronfen and Mischa Kavka (eds.), *Feminist Consequences: Theory for a New Century* (New York: Columbia University Press, 2001), 243.

60 Engle Merry, "Women, Violence, Human Rights," 11.

61 Ibid., 14.

62 Ibid., 15.

63 Ibid.

64 Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism* (New York: Routledge, 1997): 33.

65 Ibid.

66 Uma Narayan, "Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism," *Hypatia* 13, no. 2 (1998): 90.

67 Uma Chakravarti, "Whatever Happened to the Vedic *Dasi*? Orientalism, Nationalism and a Script from the Past," in Kumkum Sangari and Sudesh Vaid (eds.), *Recasting Women: Essays in Colonial History* (New Delhi: Kali for Women, 1989).

68 Kumkum Roy, "'Where Women Are Worshipped, There the Gods Rejoice': The Mirage of the Ancestress of the Hindu Woman," in Tanika Sarkar and Urvashi Butalia (eds.), *Women and Right-Wing Movements: Indian Experiences* (London: Zed Books, 1995), 10–28.

69 Narayan, "Essence of Culture," 102.

70 Narayan, *Dislocating Cultures*, 35.

71 Mahnaz Afkhami, "Gender Apartheid, Cultural Relativism, and Women's Human Rights in Muslim Societies," in Agosín, *Women, Gender, and Human Rights*, 236.

72 Mahnaz Afkhami, "Rights of Passage: Women Shaping the Twenty-First Century," in Joanna Kerr, Ellen Sprenger, and Alison Symington (eds.), *The Future of Women's Rights* (London: Zed, 2004), 60.

73 Ibid., 66.

74 Ibid., 66.

75 Ibid., 65.