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Culture and Rights after *Culture and Rights*

ABSTRACT Building on a critical, theoretical approach outlined in *Culture and Rights: Anthropological Perspectives* (Cowan et al. 2001a), I posit rights processes as complex and contradictory: Both enabling and constraining, they produce new subjectivities and social relations and entail unintended consequences. To encourage interdisciplinary engagement on these themes, I explore selected texts that consider the relationship between culture and rights, addressing two literatures: (1) debates on culture, rights, and recognition in the context of multiculturalism among political philosophers and (2) an emerging literature by anthropologists, feminists, critical legal scholars, and engaged practitioners analyzing empirical cases. Although political philosophers elucidate ethical implications and clarify political projects, an outmoded arsenal of theoretical concepts of “culture,” “society,” and “the individual” has hampered their debates. When accounts are both theoretically informed and empirically grounded, contradictions, ambiguities, and impasses of culture and rights are more fully explored and the liberal model of rights and multiculturalism is more open to interrogation. [Keywords: culture, rights, multiculturalism, political philosophy]

In *Culture and Rights: Anthropological Perspectives* (Cowan et al. 2001a), my coeditors and I attempted to address the dramatic increase in recent decades in negotiations among various kinds of social groups, at various levels, phrased in a language of “rights.” As elaborated in the book’s introductory argument, we proposed that anthropologists should help to develop a forum in which theoretical debates about rights, justice, citizenship, and similar concepts could engage with empirical, contextualized studies of rights-claiming processes. With one eye on the theoretical and the other eye on the empirical, we insisted on the need to explore how universal concepts were being taken up in local struggles: how they were mobilized, vernacularized, resisted, reinterpreted, and transformed. We saw the model of rights—one historically specific way of conceptualizing entitlement and obligation—as hegemonic in our times and imbued with an emancipatory aura. Yet, as we stressed, that rights model “has had complex and contradictory implications for individuals and groups whose claims must be articulated within its terms” (Cowan et al. 2001b:1).

Within the efflorescence of rights discourse, we were particularly struck by the increasing deployment of talk about “culture,” including culture as an object of rights. This was productively jarring in two senses. First, since the early 1980s, anthropologists had subjected anthropological understandings of culture to a thorough critique. Many anthropologists had railed against tendencies to treat the “culture” concept as fixed, bounded, and static, with some even

wondering if the concept should be totally abandoned. No sooner had anthropology emerged from this critique than anthropologists found their informants taking up with renewed gusto just such essentialized notions of “culture” in their own political talk. This then raised a whole range of questions of why and how this was happening and what its effects might be. The second shock was the very juxtaposition of “culture” alongside “rights,” given that the two concepts had historically been seen as opposed. Previously, one had been required to declare oneself as either for rights or for culture; now it was possible to be in favor of both.

In light of these two surprises, the first task for my coeditors and I was to map out the terrain of discourse, by identifying how the concepts of “rights” and “culture” had been juxtaposed, both historically and in the present. We identified four distinctive conjunctions between “rights” and “culture”: (1) rights versus culture, (2) the right to culture, (3) rights as culture, and (4) culture as “analytic” to rights. Starting with the first, the predominant tendency to characterize the relationship as one of rights versus culture (a typical stance in the universalism–cultural relativism debates) articulated long-term tensions—moral, ethical, ontological, epistemological, philosophical, and political—between two antithetical currents of thought. Enlightenment universalism and liberal individualism—not least because of their association with French civilizational hegemony—had provoked their nemesis: a politically oppositional romantic particularism. As formulated by the German

philosopher Johann Gottfried von Herder, that political response emphasized the holistic integrity of each distinct people, privileging the communal forms—language, traditions, and culture—through which its spirit was expressed.

A second conjunction, the right to culture, was not altogether contemporary, having long been central to the political demands of romantic nationalism; nonetheless, it reemerged with novel connotations in the late 20th century. Building on Nancy Fraser's (1997) insights on the historical shift from demands for redistribution to demands of recognition in the postsocialist moment, we identified this as, in fact, a more pervasive global phenomenon with implications for the ways that rights were conceptualized. And although many took the emancipatory character of claims to culture as given, we were more skeptical. The political implications of claims clearly could not be generalized: Culturalist claims might be used just as easily for reactionary as for progressive political projects. As we insisted, that very same notion of a "right to culture" that helped indigenous peoples to claim autonomy within nation-states was also being deployed by Ulster Protestant Orangemen marching through Catholic neighborhoods in Northern Ireland, and by repressive nation-states like Malaysia who argued that "Asian values" privileging the collective good justified censorship and restrictions of civil liberties.

The third conjunction was rights as culture. We suggested that just as anthropologists had come to look on law as culture, thereby making law an object of analysis, anthropologists could examine, and, indeed, were already examining, rights as culture. This involved seeing rights not simply as informed by certain philosophical assumptions—an orientation to individuals, a privileging of rights over needs—but as themselves defining a social and ideational space, one that entailed certain ideas of "self" and "sociality," specific modes of agency, and particular rules of the game. This conjunction encapsulated the wider claims of those like Richard Rorty (1993) and Norberto Bobbio (1996), who suggest that we can now properly speak of a "human rights culture" in the sense of an increasingly pervasive structuring discourse in the late 20th and 21st centuries that shapes how the world is apprehended. It also signaled a Foucauldian alertness to the power and knowledge relations associated with this expanding legal and political apparatus.

The fourth conjunction, culture as analytic to rights, now seems to me, in retrospect, imprecisely phrased, but it was intended to distinguish between object and method. The argument was not that rights constitute a culture, as in the third conjunction, but, rather, that rights could be grasped through methods of and orientations to cultural analysis. Thus, one can approach rights practices armed with an anthropologist's commitment to teasing out patterns and identifying relationships of meaning and practice between different domains of social life without necessarily taking on rights as a total ideological-practical apparatus, or assuming that they constitute anything so coherent as a culture. In fact, using anthropological methods of analysis almost inevitably entails treating culture as a different kind of

entity: not as an object in itself but as an abstraction whose exploration offers a window for seeing and understanding other relations and domains to which it is connected. This distinguishes anthropologists' more analytic use of culture from the more objectifying approach of many practitioners of other disciplines.

Since the publication of *Culture and Rights*, the terms *culture* and *rights* continue to be deployed. In this article, I explore that deployment not so much in the rhetorics of claimants but, rather, as conceptual terms within recent analytical work. I do not undertake here a review of responses to the book (although I do include, and engage with, a few). Instead, I reflect on several selected works concerned with the political accommodation of culture, diversity, or difference authored by scholars in anthropology, political philosophy, and critical legal theory as well as interventions by practitioners in the UN system in both scholarly and policy documents. I am concerned, first, with how analysts understand the term *culture*. More urgently, I am keen to explore how culture and rights are used in relation to each other. My objective in scrutinizing how various authors deploy the terms *culture* and *rights* is to draw out the implicit assumptions about the social world—about persons and collectivities, agency and structure—informing those usages; I intend to identify the social theory that underpins and animates their analyses and their policy recommendations. Social struggles around culture and difference—and the social, political, and institutional responses to them—touch deeply on issues of justice, equality, peace, and well-being, and challenge us to find ways to reconcile apparently competing claims for recognition and redistribution (Fraser 1997; Fraser and Honneth 2003). We need to develop theorizations of these processes that are both analytically acute and sensitive to the complexities of the real world.

In *Culture and Rights*, my coeditors and I presented, albeit schematically, a critical approach both to rights, conceived as framed within larger relations of power and knowledge, and to culture, understood as contested or contestable, which also acknowledged agency and indeterminacy. Through this theorization, we drew attention to the ways that (1) rights are both enabling and constraining, (2) rights are productive (of subjectivities, of social relations, and even of the very identities and cultures they claim merely to recognize), and (3) their pursuit and achievement entails unintended consequences. We insisted further that investigations into rights processes and theorization of them must pay attention to their ambiguous, contradictory, contingent, and unpredictable dimensions.

As many anthropologists will recognize, our approach represents a forging of theoretical insights developed within anthropology over the past four decades—particularly in the broadly defined "practice anthropology" (Ortner 1984), which has flourished in conversation with wider debates in social theory, critical theory, feminism, and history. Anthropologically grounded, this approach to culture and rights is thus animated by an interdisciplinarity integral to emerging work on culture and power and on transnational

formations, among other themes. At the same time, the approach relies on deep engagement with and reflection on our experiences in the field. It entails an understanding of description and interpretation that requires a continuously oscillating movement of mutual interrogation between theory and the empirical, and a constant critical reflection on method and on conceptual terms and frameworks. I wish to argue that with respect to the matters at issue in the debate around culture, difference, and rights, the political stakes are simply too high to permit the luxury of ignoring the insights of critical social theory; this is the case equally for those working outside the social sciences. It is therefore incumbent on both anthropologists and scholars in other fields to engage much more assiduously with these conceptual issues to develop adequate theorizations of social struggles around culture and rights and of their solutions. I submit that the approach to culture and rights I have outlined here offers a sound, flexible, and theoretically subtle starting point for the issues to hand. Thus, my key aim in this article is to consider the degree to which the recent work that I examine begins from these kinds of theoretical premises and addresses the concerns and dimensions toward which I have pointed, as well as how some of that work can take us even further in our understandings of culture and rights.

ACCOMMODATING CULTURE: POSITIONS AND CRITIQUES FROM WITHIN LIBERAL POLITICAL PHILOSOPHY AND THEORY

How should the internal multiplicity of contemporary societies be understood, addressed, and, indeed, politically organized? Questions of culture, rights to culture, and multiculturalism—along with debates about identity and difference—have generated not only a massive corpus of publications but also a good deal of soul-searching among political philosophers, no less than other scholars.¹ What Seyla Benhabib phrases as “the claims of culture” (2002) also have profound implications for political philosophy, inasmuch as the meanings of *culture* and the nature, validity, and urgency of its claims are all matters for theoretical scrutiny. More fundamentally, these claims call into question liberalism’s core premises. Political theory’s “community” had always referred, although implicitly, to the national community, the republic legitimated by the popular sovereignty expressed in this national entity. Demands for recognition (and more) by groups united by some different kind of identity or commonality have compelled many political theorists to reconsider the limits and boundaries of the community that political theory assumes, and the nature of what is or is not shared within.

I turn my attention first to work in liberal political philosophy, partly because it is predominantly writers in this discipline who have defined the contours of the wider public debate on culture and multiculturalism.² Our common concerns on these compelling public issues justify efforts toward interdisciplinary dialogue between anthropologists

and political philosophers, yet knowing how to proceed with the conversation is not straightforward; a brief parenthesis on epistemology is in order. As an avid reader of certain debates within certain strands of political theory, I have long puzzled over how to engage with these debates as an anthropologist and incorporate them into my specifically anthropological endeavors. I have also wondered to what extent it is our divergent intellectual projects that sometimes impede this potentially fruitful conversation.

Let me map, crudely, the divergences as I see them. Anthropologists, even more than other social scientists, are concerned with “what is.” Our foremost task is descriptive: We address the empirical, although this cannot be grasped except through the terms of a prior social theory. There is, thus, necessarily a dynamic back-and-forth movement between theory and data, requiring incessant critical reflection on our conceptual tools. With respect to present issues, anthropologists investigate how rights and cultural claims actually operate in the real world, not how they should operate, in order to refine theorization in respect to particular questions about them. Political philosophy, in contrast, is concerned primarily with “what ought to be.” Framed by a project of imagining the good society (or, in other versions, the just, decent, or well-ordered society, or the realistic utopia), political philosophy aims to identify principles, norms, and procedures that would facilitate justice, equality, freedom, or happiness—depending on what was prioritized in a given philosophical tradition—and that would guide the ways judgments could be made when persons or projects came into conflict. Yet these systematic explorations of potential political frameworks are not unaffected by the real world. Indeed, the most instructive debates are those rooted in current political controversies: Charles Taylor’s (1993) and Will Kymlicka’s (1998) interventions on Quebecois culture, language, and autonomy is one notable example. In the contemporary moment, political philosophers explicitly grapple with what is politically desirable and how to secure it in a context of increasing plurality and differentiation.³

This representation of divergence may be overdrawn: Our positions with respect to the empirical differ, yet in neither is the empirical unimportant. Such a representation of divergence also perhaps underplays the convergence between anthropologists’ pronounced ethical streak—our collective self-image as advocates of the less powerful, our egalitarian commitments, and the political vision implicit in any critical analytical approach—and political philosophy’s explicit normative agenda. Likewise, as mentioned above, political theorists and philosophers frame their problems in response to what they perceive as key political questions of the day. While the consequences of these epistemological divergences for our conversation should not therefore be overestimated, ultimately a more serious source of anthropologists’ and political philosophers’ habitual talking past each other may be incongruous assumptions about the social world—at least, between some anthropological approaches and some types of political

theorizing and philosophizing. I am speaking of the assumptions, both theoretical and ontological, that provide the point of departure, and also the degree to which scholars are willing to open those assumptions to questioning.

Rights, Culture, and Choice

Coexisting in a certain tension with other influential models of how complexity should be conceptualized and politically addressed—notably versions of cosmopolitanism and of hybridity such as those developed by Homi Bhabha (1994) and Paul Gilroy (1995, 2000)—multiculturalism has become the primary rubric under which contemporary claims about culture are both produced and evaluated. Defining this term has proved notoriously difficult; at the very least, one has to distinguish between *multicultural* as a mere (although never self-evident) adjective, describing an objective condition of plurality, and *multiculturalism* as a political project. That project, admittedly, comes in different versions: Terence Turner (1993) has usefully differentiated the more typical essentializing and celebratory versions from a “critical multiculturalism” that incorporates fluidity, creativity, and contestation. These important distinctions notwithstanding, the indisputably dominant way of envisaging cultural plurality, as much among social movements as among theorists and policy makers across the whole political spectrum, is in terms of a “mosaic multiculturalism.”

As description and as political project, multiculturalism has reopened and provoked rearticulations of long-standing debates concerning the relations between individual and society—in particular, the competing claims of individuals and collectivities. Interestingly, multiculturalism has come to be associated with a communitarian philosophical position. In one characteristic formulation, for instance, Christian Joppke and Steven Lukes define *multiculturalism* as

a critique of Western universalism and liberalism, with affinities to post-structuralism and communitarianism. Ontologically, it posits the group over the individual. Not any group, but “social groups” defined by “cultural forms, practices or ways of life,” which are not the result of choice but of some existential “thrownness” (Young 1990:42–48). Society is composed not of individuals, or systemic spheres, but of groups, each constituted by a particular way of life, or “culture.” [1999:5]

Given the concept’s association with communitarianism, it is ironic that arguably the best-known and most influential proponent of multiculturalism—in its mosaic version—speaks from a liberal position of moral individualism. Never consciously swerving from this philosophical commitment, in a series of publications over the past 15 years, the political philosopher Will Kymlicka has been developing an elaborate and systematic argument for “liberal multiculturalism” (most recently rephrased as “liberal culturalism” [2001]) and “multicultural citizenship” (1995b). His accessible style, clear arguments, and commitment to finding pragmatic yet principled solutions to multicultural problems, as well as the sheer volume of his publications, have

established Kymlicka as a primary reference point in these debates.

Distinguishing between majorities, national minorities, and ethnic groups, while conceding that some groups fall outside this model (e.g., refugees, guestworkers, and descendants of slaves), Kymlicka argues for the increased recognition of the rights of minority cultures (1995b), cultural rights (1995a), and group-differentiated citizens’ rights (1996). He sees this as a means of managing ethnocultural diversity within liberal democratic, often welfare, states. Depending on the state, the group concerned, and the group’s particular needs and history, such rights can include the following: (1) language rights (state support of minority or indigenous languages through funding language courses, monolingual or bilingual education, minority language broadcasting, and the provision of minority language speakers or translators in courts or state welfare agencies)⁴; (2) rights to support for cultural activities; (3) rights to exemption on the basis of religious or cultural custom from certain state laws (e.g., the exemption of British turban-wearing Sikh males from the requirement to wear motorcycle helmets); and, more controversially, (4) varying degrees of group autonomy over territory (in the case of indigenous peoples) and community control of certain domains of internal affairs (such as courtship, marriage, and divorce practices; religious or customary practices; and property and inheritance). Kymlicka’s overarching position is that multiculturalism not only can, but must, be undertaken—and, indeed, is best undertaken—from within a liberal political framework, one that guarantees individual freedom and autonomy. Paradoxically, Kymlicka relies on culture to ground the argument for multiculturalism no less than do communitarian proponents. In ways that partly overlap and partly diverge from those proponents’ usages, however, culture is made to do very contradictory kinds of work within his model.⁵

Kymlicka’s use of culture is frequently criticized, and it is not hard to see why. On the one hand, culture is that meaningful common life based on shared heritage that defines and establishes boundaries for a group—a group that always already exists, awaiting the state’s recognition—and that minority rights and multicultural policies must protect. On the other hand, culture is a vague, contentless context for choice that makes few demands on, much less shapes, the individual. This contradiction can be partly unraveled when we notice that Kymlicka talks about culture differently depending on which social group he is discussing. When describing the “societal culture”—the modern public space of shared language and common institutions of a territorially based community; the majority or national culture in its *gesellschaft* dimension—culture is what makes possible that pick-n-mix that characterizes the daily practice of the middle-class citizen choosing between Vietnamese and Italian food before setting out in a Japanese car to see the latest Iranian film. Although Kymlicka does talk about the societal culture of a national minority like the Canadian Quebecois in much the same terms, what is stressed for

indigenous groups (also classified as “national minorities”) is shared language, identity, and practices as well as a common history and long-term ties to a territory. Kymlicka, in fact, does not deny internal heterogeneity, yet this is not stressed in the case of indigenous peoples, whose culture is represented—or at least, defended—in more static and preservationist terms (Benhabib 2002:67).

“Horses for courses,” as the British expression goes; like any astute advocate, Kymlicka adapts his interventions to the contours of the debate at hand. Yet this involves, I think, an unacknowledged strategic essentialism smuggled into political theory, one that strategically overemphasizes a group’s stable and cohesive character, in the service of a progressive, if liberal, political agenda. If “culture” is little more than consumption choices, does it really merit the protection of rights? Hemmed in by his overall advocacy of multiculturalism, Kymlicka defends the rights of indigenous peoples (as “national minorities”) in the cultural terms of multiculturalism rather than the territorial terms of traditional sovereignty, even though it is as much their forcible incorporation into modern states that, for him, legitimizes whatever autonomy might be claimed.

As behoves Kymlicka the political philosopher, as well as Kymlicka the advocate, the analytical focus of his work is on the state, and the state–minority relationship; his work shows much more conceptual development around how states could accommodate “minority cultures” than around what happens within (not to mention between) those putative groups. His commitment to a focus on the state–minority relationship; to a liberal ontology, which hampers a dynamic and mutually constitutive conception of the individual, groups, society, and culture that would be theoretically adequate to his task; and to the analytical terms of liberal political philosophy all work to limit his grasp of the wider implications of claiming and receiving rights to culture for those involved “on the ground.” This is evident in Kymlicka’s engagement, in a thoughtful and not unappreciative review, with the issues my fellow contributors and I raised in *Culture and Rights*. Consider this excerpt of the review’s final section where he lays out his major criticisms:

The central claim of the volume—namely, that the “logic” of cultural rights is inherently essentialist—is never clearly defended. There is no sustained discussion of the concept of “rights” and how it differs from other legal concepts, such as “duties.” In several places, the authors seem to equate the *right* to practice one’s culture or to express one’s identity with the *duty* to do so. For example, Cowan implies that granting Macedonians the right to use their mother-tongue would involve imposing a duty on them to use it, even if some or most members would prefer not to. Similarly, Gellner implies that the modern idea of cultural rights has the same logic as the traditional Hindu idea of cultural duties. Yet a right differs from a duty precisely in that people can choose whether or not to exercise their rights: rights are voluntarist and choice-enhancing in a way that duties are not. Nor is this just a conceptual point. All the recent international declarations on cultural rights include safeguards to protect this element of choice, including principles of voluntary

self-identification and democratic accountability. The authors rarely discuss these safeguards, but they are fundamental to the “logic” of cultural rights, and I believe they have often successfully solved the problems that the authors raise, at least in countries with democracy and the rule of law. [Kymlicka 2002:1097]

In characterizing as the volume’s “central claim” that the logic of cultural rights is inherently essentialist, Kymlicka squeezes our concern with the implications of culturalist claims on the broad tableaux of people’s lives into the narrow confines of legally recognized cultural rights. For Kymlicka, cultural rights offer choices, but the state cannot demand that an individual exercise them; in providing safeguards to protect choice, via principles of voluntary self-identification and democratic accountability, recent international declarations on cultural rights meet his acid test against state compulsion. At this formal legal level, we would agree, although such a choice-based approach to culture and identity can be decidedly dangerous for citizens in societies lacking democracy and the rule of law or—given that most civil conflict is constructed in ethnic terms—simply vulnerable to instability: Nepal, Guatemala, and Macedonia at the moment of Yugoslavia’s dissolution were precisely our examples.

Kymlicka’s analytical focus at the level of state–minority relations, as mediated by legal and political systems, allows him to comment sensibly on the formal legal situation of a rights holder. However, as soon as one moves into the wider social world with an interest in how rights struggles are lived and experienced in the everyday, the legal language of rights and duties becomes profoundly inadequate. Referring to my chapter (Cowan 2001) on Macedonian human rights activism in northern Greece, Kymlicka criticizes the implied argument that, in his words, “granting Macedonians the right to use their mother-tongue would involve imposing a duty on them to use it, even if some members would prefer not to” (2002:1097). This puts my contentions a little too bluntly; I would nonetheless respond that, in politicized moments, such an individual would, indeed, come under pressure—not necessarily from the state but from nationalists on both sides—to speak or not to speak her minority language. It is by no means unusual for nationalists to admonish in a language of “duty.”

This said, if one wishes to register, in an anthropologically perceptive way, the nature of individual agency in minority rights struggles—indeed, in all social action—one needs a more sophisticated analytical vocabulary than simply that of rights, duties, and choices. I contend, moreover, that this vocabulary needs to be grounded in a theory of individual agency conceived as deeply shaped by and within social relations. Kymlicka is reluctant to concede the determining dimension of the social, and this gravely limits his understanding of how identity politics are mediated by—even while they challenge and alter—social relations. Whereas Janet Halley (1999) has criticized Kymlicka’s “sunny story of culture” for underplaying constraint, an

even more intriguing operation of the social on the individual concerns the compulsory: not in the strictly legal sense, but in the context of social forms and moral norms. As I have argued in my work on dance and sociability (1990:3–27 and *passim*), inspired in part by Georg Simmel (1971), engagement in social life entails being caught by, as much as caught up in, its reciprocities, such that opting out is often not an option. Speaking and not speaking, as well as taking up or not taking up particular identities, are acts framed by the imperatives of sociability. Kymlicka's methodologically individualist understanding of both rights and culture simply cannot grasp the complex, countervailing pressures, evolving situationally and historically, on individuals caught in the dynamic of minority politics or, indeed, in other social movements in which rights are on the agenda. These subtle, yet powerful, and at times destructive social pressures, leading to both constraint and compulsion, would be unlikely to register as "violations" of an individual's free choice by Kymlicka's criteria; they operate beneath his radar, as it were. Kymlicka's epistemological commitment to the liberal subject, and his analytical focus on formal rights, lead to a reading of what my coeditors and I in *Culture and Rights* preferred to call "culturalist claims" that illuminates a mere fraction of people's lived experience of political battles around culture and identity, leaving the greater part uninvestigated and thus obscured.

Kymlicka's optimism that recognizing cultural rights primarily offers options for greater choice and diversity is echoed in the influential UN Development Programme (UNDP) Human Development Report 2004, devoted to the theme "Cultural Liberty in Today's Diverse World." Although the moral philosopher Amartya Sen provided the overarching conceptual framework for this report, Kymlicka's contribution as a principle consultant was also significant; his cultural instrumentalism is grounded in the same position of moral individualism as that of Sen.⁶ Strongly informed by Sen's and Kymlicka's theorizations of self and society, the collectively authored report attempts to debunk myths that recognizing diversity weakens and fragments states and undermines development, insisting to the contrary that such recognition is a necessary condition and concomitant for development.

Because scholars outside the field of development policy and practice too often read such documents naively, as merely flawed examples of familiar modes of academic writing, I must stress that this report is best understood as a strategic intervention within a very particular discursive field. The report's admirably simple and direct language indicates the authors' striving for accessibility to a diverse audience of government bureaucrats, policy makers, nongovernmental organizations (NGOs), and international institutions, while the vigor with which it counters Samuel Huntington-style stereotypes about cultures and civilizations (Huntington 1996; Huntington and Harrison 2000) indexes the perceived prevalence of such thinking within these institutions. The report's authors are clearly aware of, and frequently deploy, the recent anthropological critique

of culture; they explicitly argue against "the assumption that culture is largely fixed and unchanging," pointing (as others have) to the irony that "just as anthropologists have discarded the concept of culture as a bounded and fixed social phenomenon, mainstream political interest in finding core values and traits of 'a people and their culture' is growing" (UNDP 2004:5). They insist further that "neither cultural freedom nor respect for diversity should be confused with the defence of tradition; cultural liberty is the capability of people to live and be what they choose, with adequate opportunity to consider other options" (UNDP 2004:4).

Why the conceptual focus on "cultural liberty"? The report's authors are anxious to applaud the emphasis on culture as choice as against the communitarian claim—that this being, according to Michael Sandel (1998), a concomitant of its "constitutive conception" of community—that individuals discover, rather than choose, the attachments that bind them. Influenced by feminist and critical multiculturalist analysts of difference, they are also concerned with shifting the overriding preoccupation with the ethnocultural, stressing instead the significance of other affiliations. To neglect the role of choice and reasoning in each individual's decisions about the relative importance of membership in any particular group, or any specific identity, is, in the authors' view, "ethical delinquency and political dereliction of responsibility" (UNDP 2004:17). They also wish to warn against what Anthony Appiah (1996:84) has characterized as the "new tyrannies" of exclusive or putatively overarching identities.

Although the argument for greater state tolerance and even the championing of its internal diversity would be seen as commendable, in many respects, by most anthropologists and human rights advocates, its phrasing in terms of cultural liberty seems to me theoretically incoherent, not to say impractical. Culture is presented as a "take it or leave it" proposition, trivializing its significance while at the same time exaggerating its rigidity: The happenstance of being born into a particular cultural milieu, the report insists, "becomes aligned to cultural liberty only if the person chooses to continue to live within the terms of that culture, and does so having had the opportunity of considering other alternatives" (UNDP 2004:16–17). Not only does assuming the ready availability of alternatives seem poignantly wishful thinking in respect to citizens of developing countries; more seriously, it rests on a notion of "culture" as something wholly extricable from social relations. How easy is it for, say, a poor Hindu village woman to contest the dowry system, or to decide to marry a Muslim? These are neither unimaginable nor impossible acts, but they carry heavy social costs: ridicule, loss of social support, exposure to psychological or physical pressure, and very likely, exclusion or worse.

This emphasis, moreover, throws out at least one baby with the communitarian bathwater. Sen's and Kymlicka's unremittingly individualist approaches and the emphasis on cultural liberty that stems from them can neither conceive of nor look toward facilitating or protecting what

Charles Taylor has called “irreducibly social goods”: objects of value that, by definition, individuals cannot possess and which “cannot be reduced to a set of acts, choices or, indeed, other predicates of individuals” (Taylor 1990:54–55), but which are “intrinsically valuable in the constitution of the goodness or badness of states of affairs” (Gore 1997:243). Finally, the exhortation that states pursue “multicultural policies that recognize differences, champion diversity and promote cultural freedoms, so that all people can choose to speak their language, practice their religion, and participate in shaping their culture—so that all people can choose to be who they are” (UNDP 2004, see front cover), apart from its circularity, expresses perfectly Kymlicka’s static conception of culture as simply preexisting the political structures charged with recognizing or denying them.

I want to conclude this interrogation of the choice model of culture and rights by referring briefly to the extended debate within political philosophy on what John Rawls called “nonliberal” (and others have subsequently called “illiberal”) peoples (Rawls 1993, 1999). Kymlicka sees this debate as somewhat exaggerated and outdated given that, in his view, most conflicts between ethnocultural groups nowadays are not over the legitimacy of liberal principles (Kymlicka 2001:60); rather, they are best seen as “debates amongst liberals about the meaning of liberalism” (Kymlicka 2001:20). For many other analysts, however, including the many feminist scholars and activists who have strenuously debated the gender implications of individual and collective rights, the issues are far from resolved.⁷ Certain political philosophers have recognized that cultures (by which they mean minority groups) may hold to values and practices at odds with liberal equality and that this may impinge disproportionately on certain members—most notably, women.⁸ How, they ask, can the right to culture of an illiberal society—one that restricts the actions and opportunities of certain of its members—be honored without sacrificing liberal commitments to equality? One of the primary solutions proposed for this dilemma has been the right to exit. Positing the individual as ontologically preexisting any association, and defining culture, pace Kymlicka, as a context of choice, liberals in this debate frequently see justice to inhere in the guarantee that the individual may leave her culture if it does not fulfill her desires and needs (e.g., Galston 1995; Kukathas 1997). They have therefore been preoccupied with the practical impediments to exit, such as lack of economic resources or knowledge of the world outside.

Major critiques of the right-to-exit solution have come from communitarian positions, whose proponents argue that the individual is not ontologically prior to but, rather, constituted by her society, community, or culture; consequently, the right to exit is deemed either ontologically destabilizing, socially devastating, or cognitively unimaginable. Indeed, according to Andrew Fagan (n.d.), if one takes seriously the communitarian argument of culture’s constitutive quality, one must conclude that such an individual will not be able to question the tenets of her own cul-

ture, even when they oppress and limit her. Unfortunately, for some time the debate has foundered on the conceptually problematic premises of both sides, oscillating fruitlessly between the Scylla of liberal underdetermination and the Charybdis of communitarian overdetermination of the individual.⁹ Part of the analytical problem is the assumption that an individual is inside only one culture at any one time, part of it is the conflation of consciousness with social relations, and part of it is a more generally inadequate theorization of subjectivity. Beyond this, though, the debate has revealed that “the right of exit” concept is not only impractical as a primary solution but also politically unimaginative and conservative as well as theoretically flawed, grounded as it is in a presumption of cultures as unchanging.

Rights, Culture, and Communication

The conundrums surrounding the “right-to-exit” concept and the unsatisfactory nature of the alternatives signal, in my view, deeper troubles in certain strands of political philosophizing. Listening closely to the key voices in this and other multiculturalism debates, I have found not infrequently that the ways problems are set up and analyzed, as well the manner of solutions proposed, reveal a remarkable innocence of the last few decades’ debates in social theory, with respect (among other issues) to the following: the theorization of subjectivity; conceptions of person, society, power, and agency; the relative significance of interest, emotion, and morality in human action; and the degree to which contingency, as well as structure, should be acknowledged. Not surprisingly, I find the problems most extreme in the work of those writing from a liberal position; I am particularly critical of such work on social theoretical grounds of the atomistic individual at its center. Of course, precisely because this particular conception of the individual expresses a political and moral ontology, one that provides the very foundation of liberalism, rather than something as (in principle) revisable as a theory, the commitment of liberal political philosophers to it tends to be intransigent.

If social theory in the round—as a broader set of interlocking concepts—has yet to be addressed within mainstream political philosophy, internal critique on particular key themes is nonetheless emerging. The political philosopher Seyla Benhabib (2002) recently published a penetrating examination of the “culture” concept as deployed “within and beyond the academy,” with particular attention to the challenges these deployments pose to the theory and practice of liberal democracies. In contemporary debates, Benhabib insists, cultural preservationist arguments are being voiced by those positioned across the entire political—and presumably theoretical—spectrum. In a manifesto that could have been written by an anthropologist—and that, indeed, draws on some anthropologists’ work—Benhabib takes issue with the prevailing wisdom:

Whether conservative or progressive, such attempts [to preserve culture] share faulty epistemic premises: 1) that

cultures are clearly delineable wholes; 2) that cultures are congruent with population groups and that a non-controversial description of the culture of a human group is possible; and 3) that even if cultures and groups do not stand in one-to-one correspondence, even if there is more than one culture within a human group and more than one group that may possess the same cultural traits, this poses no important problems for politics or policy. These assumptions form what I will call the “reductionist sociology of culture.” In the words of Terence Turner, such a view “risks essentializing the idea of culture as the property of an ethnic group or race; it risks reifying cultures as separate entities by overemphasizing their boundedness and distinctness; it risks overemphasizing the internal homogeneity of cultures in terms that potentially legitimise repressive demands for communal conformity; and by treating cultures as badges of group identity, it tends to fetishize them in ways that put them beyond the reach of critical analysis” (1993:412). A central thesis of this book is that much contemporary debate in political and legal philosophy is dominated by this faulty epistemology, which has grave normative political consequences for how we think injustices among groups should be redressed and how we think human diversity and pluralism should be furthered. [2002:4–5]

In place of the “reductionist sociology of culture,” Benhabib offers “social constructivism.” This social theory begins, Bourdieu-like, by distinguishing the social observer, who attempts to represent culture from the outside, imposing unity and coherence on it, from the social agent, who along with fellow “participants in the culture experience traditions, stories, rituals and symbols, tools and material living conditions through shared, albeit contested and contested, narrative accounts” (Benhabib 2002:5). Such a narrative approach to culture dovetails nicely with the communicative ethics framework established by the philosopher Jürgen Habermas (1990) that has long grounded Benhabib’s work; her analyses in this text focus on processes of narrative, dialogue, and interlocution. Influenced, as well, by the political philosopher Hannah Arendt (1973), Benhabib also emphasizes the ethical dimensions of culture: She defines *culture* not only as a “web of narratives” but as “the horizon formed by evaluative stances” on those narratives and doings, whereby events in “space-time are demarcated into ‘good’ and ‘bad,’ ‘holy’ and ‘profane,’ ‘pure’ and ‘impure’ ” (Benhabib 2002:7).

Adopting a critical and analytically more powerful concept of “culture” leads Benhabib to recommend quite different strategies from those Kymlicka suggests in face of the dilemmas of multicultural coexistence. For instance, taking up the question baldly formulated by Susan Moller Okin as “Is multiculturalism bad for women?” (Okin 1999), Benhabib criticizes U.S. criminal courts for accepting “my culture made me do it” (Honig 1999) kinds of arguments from men who raped fiancées and murdered adulterous wives. Benhabib points out that this erroneously accepts a view of culture as authoritative and uncontested, allowing individual men to abdicate responsibility for their choices and actions. With respect to the vexed headscarf affair in France of recent years, Benhabib draws attention to the worrying

lack of interest, from both defenders of republican principles of *laïcité* and of the rights of religious Muslims, in the girls’ own reasons for donning the headscarf. She shows how the conflict is analytically and ethically reconfigured when the multiple resignifications of the scarf are taken into account: for example, when it is acknowledged that wearing the headscarf may be a gesture of religious or cultural identification, a noncoerced expression of individual piety, an act of resistance to a hegemonic state, or even a strategy to legitimize young Muslim women’s appropriation of greater autonomy and mobility.¹⁰

At the same time, recognizing that certain groups do restrict women, Benhabib sees the solution neither in ignoring or condoning restrictive or otherwise abhorrent practices in the name of respect for cultural autonomy nor in imposing liberal freedoms but, rather, in supporting democratic deliberation internally. Thus, she argues that nonmembers can support minority women and other nonelites in their demands to participate fully and equally in intra-group dialogue, their contestations of illiberal practices, and their arguments for alternative interpretations. Nonmembers are justified to do so on the basis of the Rawlsian argument that within liberal society, all groups, including minority groups, need to offer “public reasons”—that is, they need to explain and defend internal practices in terms understandable and acceptable to the society at large. Drawing especially on Ayelet Shachar (2000), Benhabib also explores the solution of interlocking legal jurisdictions, an area of legal theorization that builds on ongoing work on legal pluralism, much of it by anthropologists (e.g., Merry 1997).

Benhabib’s approach, like that of her frequent interlocutors Nancy Fraser (1989, 1997) and Iris Marion Young (1990), is informed by a theoretical and personal feminist engagement, building on that tradition’s history of involvement in material-political struggles to criticize gender-oblivious theory and think through political philosophy’s gender implications. In attempting to devise more sensitive normative solutions, she reflects on empirical cases, and her much more powerful analytical concept of “culture” shifts very considerably how new normative solutions can be imagined. There is a theoretical, as well as practical, openness to this conception of “deliberative democracy.” Vigorous public debate within a cultural group among all kinds of persons affected by a policy—in multiple forums of public and, indeed, private space—does have the potential to transform the terms of culture—at least, its explicit terms—quite fundamentally. Such an approach is not only vastly superior analytically and theoretically but also politically more enabling than the liberal choice: to either live “according to the culture’s terms” or leave.

Although Benhabib effectively challenges the dominant assumption in political philosophy that one can identify a true, authentic, and consensual version of a culture, anthropologists—who tend to work closer to events on the ground—might argue that she underestimates impediments to internal contestation. I do not mean merely the efforts, on the part of those whose interests or privileges are

challenged, to block and undermine. Benhabib's is a highly rationalist, not to mention logocentric, rendering of culture that, while capturing its dialogical and disputatious character, misses other dimensions: habit, the "taken for granted," and the embodied domination and deference built into ordinary everyday forms of social exchange and reciprocity (Bourdieu 1977; Cowan 1990; Willis 1977). Culture is more than intertwining, enduring, and contesting narratives; it also includes the very significant domain of the tacit and unspoken. Although crucial, her normative project to develop principles for more inclusive forms and forums of democratic debate—which would encourage critical and reflexive discussion of culture and difference among members of culturally defined subgroups as well as in multiple sites in the broader public sphere—will not by itself fully address the ways social symbolizations are embedded in practice, in which hierarchies and exclusions are quietly and often unreflectively reproduced. Neither can it interrogate how these symbolizations are inscribed in the structures of fantasy of the individual unconscious (Rose 1996; Žižek 1995).

RETHINKING CULTURE AND RIGHTS: EMPIRICALLY GROUNDED ACCOUNTS

Political philosophers, I have argued, are addressing the issues raised by cultural plurality, yet they typically do so at some remove from real-world struggles for rights to, or in the name of, culture. Moreover, in some cases (including influential ones), they are confronting the issues armed with theoretical and analytical concepts that are inadequate to the task. I turn now to three works that, although not authored exclusively by anthropologists, are grounded in an empirical engagement with rights processes, each of a quite different character and scope. I contend that theoretically informed exploration of actual contexts and situations pertaining to culture and rights can enable us to refine or reformulate theory about culture and rights. Moreover, this engagement with the empirical allows for deep investigation of the contradictions, ambiguities, and impasses arising from struggles for and responses to culture and rights, which themselves pose theoretical challenges.

Rights, Culture, and Cunning

In one of the most fascinating ethnographies of recent years—*The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*—Elizabeth Povinelli (2002) considers Australia's response to Aboriginal land claims within the context of an official state policy of multiculturalism. Povinelli does not examine Australian multiculturalism cynically, instead she acknowledges its best intentions. Building on insights of Slavoj Žižek, Gayatri Spivak, and Jacqueline Rose, Povinelli understands that "the critique of liberalism does not begin with where it fails or where subjects know or do not know this failure, but rather where it seems to be succeeding" (Povinelli 2002:155). Her objective is to interrogate the profoundly ambivalent stance of European Australians to "Aboriginal culture," in rela-

tion to which Aboriginal claims must—in a multiculturalist framework—be justified. As Tom Boellstorff has remarked, Povinelli reveals that "the multiculturalist trope that asks for recognition of difference meets its limit when it encounters forms of incommensurability that refuse the sameness on which that difference depends" (Boellstorff 2005:37).

Within the turbulent reformulation of Australian national identity since the 1980s, the concept of "Aboriginal culture" figures as a contradictory symbol for sincere, well-meaning supporters of multiculturalism. Valued for its sacred and mystical qualities, it has been enthusiastically appropriated as the nation's ("our") heritage, available to all Australians. Yet, in the context of a long history of sensationalized and orientalized popular representations of certain "bizarre" Aboriginal sexual rites, which have come to be seen as emblematic, "Aboriginal culture" is for many white Australians simply beyond the pale: repugnant and irredeemable. Povinelli insightfully explores the role of feeling in confronting "the unspeakable": the strongly visceral response that founds Aboriginal abjection.

Despite such ambivalence, Australia has undertaken constitutional reform that establishes a framework for recognizing Aboriginal claims, predominantly to land. Australia's multicultural regime grounds the recognition of Aboriginal rights—in a way that other regimes, for instance, in the United States in relation to Native Americans or in Brazil in relation to indigenous peoples, do not—in "the performance of cultural continuity" (Povinelli 2002:156). The consequence, arguably unintended, of this ostensibly enlightened policy is that Aboriginal subjects are, in multiple ways, trapped by the demands of an impossible authenticity, one that is, furthermore, irremediably tainted through its association with primitivity and violence. Aboriginal legal power with respect to land claims is wholly contingent on Aboriginal claimants being judged by Australian courts as culturally authentic, yet in ways that do not offend majority sensibilities, exhibiting neither too much nor too little cultural difference.

One of Povinelli's most significant theoretical moves concerns the relation between institutions and rights-claiming persons or groups and its productive implications for the contours of culture and rights. Now, recall the ways this was conceptualized in the political philosophical works I examined earlier: Kymlicka's understanding of cultures as preexisting the structures called on to recognize them can be contrasted to Benhabib's more sophisticated grasp of the mutually constitutive dynamic between cultural-social forms and political processes in the context of claims for recognition and redistribution (Benhabib 2002:71–81). Through her richly described ethnography, Povinelli provides an extended demonstration of the Foucauldian-inspired contention—which I have also explored in the context of Macedonian rights claiming (Cowan 2001:153; see also Cowan 2003)—that the recent revision of political and legal structures to recognize "culture" and "multiculturalism" has its own transformative effects, shaping and at times creating that which it purports

merely to recognize. Going beyond a simple problem of incommensurability, a call to take the relativist or the universalist side, Povinelli shows “Aboriginal culture” to be produced in the interaction between state agents, white Australian citizens, and Aboriginal citizens, all of whom are contesting memories of Australians’ past and struggling to imagine and define its political future. Neither the perception of alterity nor the kind of culture founded on that perception are “interior to the forms themselves”; rather, in Georg Simmel’s phrasing, they are emergent in the “sites of contact” between them (Povinelli 2002:137–138).

“Aboriginal culture” is forged through structures of white European Australian domination. As Povinelli emphasizes, “law is one of the primary sites through which liberal forms of recognition develop their disciplinary sides as they work with the hopes, pride, optimisms and shame of indigenous and other minority subjects” (2002:184). Dominant subjects, meanwhile, are protected from real alterity—from the discourses, desires, or practices of indigenous peoples—and from their possible challenge to the nation as well as to its core institutions of democracy. Citing Wendy Brown’s notion of “wounded attachments” (1995), Povinelli caustically observes that “the invitation to absorption” within the multicultural project is, paradoxically, combined with the injunction on indigenous subjects

to stage for the nation this sublime scene—not too much and not too little alterity. In this liberal imaginary, the now recognized subaltern subjects would slough off their traumatic histories, ambivalences, incoherencies, and angst like so much outgrown skin, rather than remain for themselves or for others a wounded testament to the nation’s past bad faith. [Povinelli 2002:184]

Meanwhile, lamenting its own past villainy in mistreating Aboriginal peoples, the state transforms that self critique into a form of legitimation, placing itself in position to punish harmful difference, judge cultural authenticity, and decertify the rights and resource-bearing Aboriginal identity if the alterity on which it is founded is deemed either insufficient or excessive.

Through the many twists and turns of the ethnography, Povinelli highlights Aboriginal agency, emphasizing its risks and how it is constrained. But her larger point is the coerciveness of the game of recognition or, more to the point, its “cunning”: the ways it disciplines while seeming merely to grant recognition of difference and freedom of cultural expression. In this respect, Povinelli’s approach shares a theoretical orientation—informed by poststructuralist and Foucauldian premises but also insights from feminism and queer theory—with certain critical legal theorists. Characteristic of this work is a skepticism of liberal institutions, and a preoccupation with the complex and contradictory consequences of being granted rights on the basis of having a culture and a cultural identity. However, the work of critical legal theorists complements rather than replicates the kind of critique that Povinelli is developing in that it addresses the essentialism not of culture but of law. For instance, in their introduction to *Left Legalism/Left Critique*

(2002), Wendy Brown and Janet Halley, noting how the U.S. Left has in recent years put its energies for social justice into engagement with the law, argue that although the Left should engage strategically with law, it must track the effects of this engagement.

Inevitably, that engagement entails unintended consequences. While denigrated or excluded subjects yearn for recognition—a yearning that itself has been interrogated by Costas Douzinas (2002), another critical legal theorist—the concern of Brown and Halley, like that of their close collaborator the philosopher Judith Butler, is with the ways that the law makes identities “a site of regulation” and thus produces identities and subjects. In doing so, as they stress, it also forecloses other possibilities—of identity, of action, of imagining the political. It is not only poststructuralists who register such objections, of course. In an important recent assessment of the current state of play in gender and development in the South, feminist scholars and activists, many of them rooted in a socialist feminist tradition, lamented the depoliticizing quality of rights-based approaches (Cornwall et al. 2004).

Rights, Culture, and Context (Revisited)

In a recently published chapter, “Losing (out on) Intellectual Resources,” Marilyn Strathern (2004) makes a very different kind of theoretical move, which destabilizes and thus allows a potential reworking of the terms of culture and rights and the relationship between the two. Drawing on a variety of sources—court records, newspaper reports, the verbal and written accounts of several anthropologists, and her own extensive knowledge of Papua New Guinea (henceforth, PNG)—Strathern explores the case of a young PNG woman, Miriam, from the Western Highlands region. In 1996, Miriam was given—that is, in marriage—as part of a compensation payment to a clan that had lost one of its relatives through the fault of Miriam’s patriclan. A human rights NGO objected to the notion that a woman might be owned by a collective group and could be traded; they “sought a series of orders from the court to enforce Miriam’s constitutional rights” (Strathern 2004:204). The presiding judge of the Mount Hagen National Court, Judge Salamo Injia, “ordered the two ‘tribes’ to refrain from enforcing their custom” (Strathern 2004:204); in his final verdict, he described the custom as “repugnant to the general principles of humanity” (Strathern 2004:201). The case precipitated discussions in the national press, framed in a discourse of tradition and modernity, about “good” versus “bad” customs and about how countervailing imperatives of obligation and choice ought to be weighed in making such moral delineations.

Strathern elucidates the specifically PNG version of this “rights versus culture” conundrum by recourse, first, to her now-classic analysis of personhood, developed in *The Gender of the Gift* (1988). Strathern argues that in PNG, persons are understood to embody relations with multiple collectivities; they are most whole when they are seen as an

image of just one relationship, yet each body is embedded in, and therefore represents, multiple webs of kinship relationships. Strathern here distinguishes analytically between the “person” and the “agent”: The person is “construed from the vantage point of the relations that constitute him or her; she or he objectifies and is thus revealed in these relations” (1988:273). By contrast, “The agent is construed as the one who acts because of those relationships and is revealed in his or her actions” (Strathern 1988:273). Strathern asks us to take seriously Miriam’s agency in agreeing to be exchanged; acknowledging the pressure and distress this entailed, Strathern nonetheless insists that we acknowledge Miriam’s wish to fulfill her obligations to her kin (2004:225–232). The implications towards which Strathern leads are that all agents in this context are bound to diverse sets of kin, which generates obligations. No agents have unlimited free choice. By contrast, human rights as philosophy and ideology posits free and equal persons outside such relations; in PNG, such relations are the very thing that makes them persons.

Although the critique hinges on a contrast between PNG and Western forms of personhood, Strathern is not making an argument that falls within the familiar tracks of the cultural relativism versus universalism debate. This is evident from the way her analysis of the PNG compensation case regarding the ownership of Miriam proceeds in tandem with an exploration of parallels with principles being developed over the ownership of body parts (limbs, organs, tissue, sperm, and ova) in contemporary Western legal debates. The double-stranded argument confounds that simple opposition because—reading both cases through questions of law, objects, and ownership—she finds both convergences and distinctions. Contingent on this analysis, she refuses to reduce the upholding of Miriam as compensation payment to an instance of cultural imperative or the demands of tradition; according to Strathern, it is best seen as an expression of the commitment to kin relations.

This move very subtly, but unmistakably, shifts the work that culture does in the analysis. Strathern develops this point through critique of another influential anthropological position advocating analyses of rights in context: that of Richard Wilson in his groundbreaking volume, *Human Rights, Culture and Context: Anthropological Perspectives* (1997a). However, Strathern undertakes this critique in oddly circuitous fashion—by way of a review article by Nigel Rapport (1998). Rapport’s enthusiastic review of the edited volume repeatedly returns to Wilson’s reference to “the increasingly convincing judgement that we are moving into a ‘post-cultural’ world” (Wilson 1997b:10), one in which cultural relativism has little purchase. Rapport uses this reference to the postcultural to launch an exposition of Richard Rorty’s vision of “postmodern bourgeois liberalism,” which purports to provide a foundation for human rights without ethnocentrism by retaining a focus on the diversity of individuals as well as the diversity of cultures (Rapport 1998:386; Rorty 1986, 1992). Rapport describes the postcultural as a polity that “posits human beings as ontologically

prior to the cultural milieu they create” (1998:386); drawing on the ideas of Marc Augé (1995:111), Rapport further elaborates on the desired globalized liberal polity as one that “publicly respects the right of the individual citizen to his own civil freedoms *against* cultural prejudices, *against* social statuses, and *against* the language embodied in their self-expressions” (Rapport 1998:386).

These are Rapport’s words, not Wilson’s, and may, indeed, be paraphrases of Rorty and Augé, yet Strathern uses all of this in building her case against Wilson’s contextualism. There is irony here: Wilson’s article in the volume (1997c) insists on the anthropologist’s brief “to restore the richness of subjectivities and chart the complex fields of social relations, contradictory values and the emotional accompaniment to macro-structures that human rights accounts often exclude” (1997b:15). Strathern contends that this does not go far enough; social relations are interesting for Wilson, she maintains, not in their own right but primarily as phenomena that “trace local connection to macro-global processes” (Strathern 2004:231). In her view, Wilson takes concrete social relations as mere background rather than fundamentally constitutive of the person.

Although her argument is somewhat tortuous, Strathern has a point. Inasmuch as Wilson accepts the privileged and a priori theoretical category of the “individual” entailed in the liberal model of human rights, his framework for analyzing human rights practices cannot accommodate the possibility of a very different form of personhood nor fully take account of the constructed nature of social being. In the terms of such a framework, Miriam exists prior to social relations; recognizing and bestowing Miriam’s rights can occur outside her embeddedness in these relations. Strathern calls for an approach to human rights analysis that would take into account “the diverse ways in which persons visualize themselves as carried by other persons and, for better or worse, by their relations to others” (Strathern 2004:233); failure to do so leads to a deficit not merely in cultural understanding but, more fundamentally, in social analysis (Strathern 2004:232). This insistence on social relations as starting point resonates with that of many communitarian analysts who see society or community as constitutive of the individual. It also echoes the analytical concerns of sociologists like Adam Seligman (2000), who sees the model of the rights-bearing individual—grounded in a conception of the autonomous and unencumbered individual, motivated by self-interest and obligated to nothing and no one beyond his or her own conscience—as unable to take into account the persuasiveness, for increasing numbers of individuals in the contemporary moment, of the moral imperatives emanating from alternative sources of authority, such as religion.

In emphasizing the significance of indebtedness for personhood, Strathern underplays contestation; a sense of the richness and contradiction of Miriam’s—or anyone else’s—subjectivity is not the reader’s reward. Strathern, however, sacrifices thick description for a different theoretical move. She holds firmly to the importance of attention to

locality, in the sense of a conjunction of time (history) and space, insisting that “only the particularity of circumstances would define what an entitlement or right might mean in those specific conditions under which people live” (Strathern 2004:232). Yet, while arguing for acknowledgment of local conditions and conceptions, she displaces culture as the privileged object or index of the local, ceding this to social relations. At the same time, her provocative conclusion leads back toward anthropology’s comparative project. It does so through a disarming proposition. As she demonstrated in the case of Miriam, human rights are appealed to in order to challenge the objectification or “thingification” of the victim (even though human rights discourse itself also makes the victim “thinglike,” as Wilson [1997c] persuasively showed in respect to human rights reporting). Strathern does not repudiate that objectification; rather, her argument moves laterally. The Melanesian construct of “the reified person as a thing-image,” she avers, offers a different route to thinking about culture, rights, and the persons implicated: “one that dares us to begin specifying what it is as human beings we might own of each other” (Strathern 2004:233). Slipping tangentially across the well-worn tracks between opposed positions—universalism versus cultural relativism, victim versus perpetrator, and individual versus society—Strathern evades the impasse and reframes the problem to address a 21st-century dilemma that we have barely begun to conceptualize. Something like this is what I, at least, had in mind when suggesting that, in the hands of the skillful anthropologist, culture could be analytic to rights.

Rights, Culture, and Creative Interpretation

All of my three examples demonstrate what an “on the ground” engagement with actual rights practices—often, although not always, undertaken by anthropologists—can illuminate. The final example focuses on rights practices in a context that is still greatly underinvestigated ethnographically: the international institution. In large part a response to *Culture and Rights*, the article “Reflections on Culture and Cultural Rights” (Robbins and Stamatopoulou 2004) is coauthored by the literary and cultural theorist, Bruce Robbins, former editor of *Social Text*, and Elsa Stamatopoulou, who directs the Permanent Forum on Indigenous Issues at the United Nations Secretariat in New York and who speaks and writes on human rights issues (e.g., Danieli et al. 1999). With complementary professional expertises, the authors bring together critical insights from the debates about “culture” with wisdom drawn from a long-term familiarity with indigenous organizing within one particular international organization.

Robbins and Stamatopoulou emphasize the pragmatic uses of cultural rights claims. Their reminder that questions of rights and culture are not mere academic issues but have real material import is refreshing. Commenting on my article in *Culture and Rights*, Robbins and Stamatopoulou concur with my observation that anthropologists studying

struggles for rights to culture may find themselves torn between skepticism of their informants’ political project, on the one hand, and empathy with their suffering and desires for recognition, on the other hand. They also endorse my conclusion that “the only tenable position for the engaged scholar [is] a paradoxical one”: to support a minority’s demands for recognition yet, at the same time, to problematize, not celebrate, its project and to query its emancipatory aura (Cowan 2001:171). Such a position, they argue, is “right enough” in today’s context, in which, as they insist, “too much is at stake in minority and indigenous assertions of their cultural identity, at stake materially as well as spiritually, for the academic critic to begrudge due recognition on the grounds of some sort of theoretical incorrectness” (Robbins and Stamatopoulou 2004:422). According to them, analysts should remember the historical, as much as the political, contexts of the processes they are investigating: “Claims to cultural rights cannot be understood and defended . . . without nuanced and nimble attention both to internationally established human rights norms and the particularities of time and place” (Robbins and Stamatopoulou 2004:422). Once one specifies and considers the implications of the articulation of cultural claims within the present, historically particular, moment in the development of human rights discourse, “taking sides around these rights can perhaps come to seem less like facing a universal philosophical dilemma (as Cowan makes it seem) and more like making a reasoned, situated political choice” (Robbins and Stamatopoulou 2004:422).

The argument for more fully recognizing contingency and situated choices is extended by two additional general claims. Indigenous leaders and their constituencies, they argue, are more reflexive about their cultures than we may give them credit for, and they strategically employ essentialist views of culture. Robbins and Stamatopoulou’s argument concurs, interestingly, with Kymlicka’s. The latter further asserts that although many ethnic leaders do, indeed, use essentialist discourses about culture to demand a set of rights, these, in fact, and paradoxically, often “create legal spaces for choice and hybridity” (Kymlicka 2002:1097). Focusing on “the actual legal form that these rights take,” Kymlicka argues, might tell us “a different story about the theory and practice of cultural rights” (2002:1097).

In Robbins and Stamatopoulou’s analysis, the strategic engagement—essentialist or otherwise—on the part of activists is effective largely because it is matched by institutional flexibility at the United Nations. Minority activists may achieve considerable success in getting demands met if they avoid or repudiate the claim to self-determination that states find most threatening; the process involves a pragmatic willingness among all parties to work without agreed definitions for key terms like *minority* or *indigenous*. Indeed, working in an international legal environment of partial and not-yet-ratified agreements and declarations concerning indigenous peoples, the Human Rights Committee “has made creative and clever interpretation of the minority-related article 27 of the International Covenant on Civil and

Political Rights” (Robbins and Stamatopoulou 2004:429). For instance, according to the authors, the committee has taken the liberty of interpreting the article in an extended way to cover cultural rights of noncitizens, migrant workers, and visitors, and they have used it “to stop the granting of leases for oil and gas exploration and timber development on indigenous land in Canada and to defend Maori fishing rights in New Zealand, as well as Sami practicing reindeer husbandry in Finland, which were threatened by logging interests” (Robbins and Stamatopoulou 2004:429).

The authors stress the “suppleness of the law,” the scope for indigenous people’s agency, and the material payoffs for less powerful constituencies that cultural claims can bring. It is not insignificant that such an argument comes from analysts witnessing rights formulation and claims making on the ground (in this case, in the meeting rooms and corridors of an international institution) by actors strategizing and pursuing interests within a political field of human rights activism that, from an actor’s perspective, must seem like the only game in town. Robbins and Stamatopoulou’s optimism is reminiscent of Kymlicka’s and strongly contrasts with the gloomier prognosis of Povinelli, critical legal theorists, and many contemporary feminists, all of whom remain less sanguine about the emancipatory possibilities for less powerful or politically subordinated agents—primarily, ethnic minorities and indigenous peoples—encountering both national systems of multicultural recognition and the international legal apparatus of human rights.

Even though Kymlicka defines the spaces—and, thus, the possible stories—for cultural rights too narrowly (2002:1097), those legal forms that create legal spaces are certainly one aspect that anthropologists and others have yet to fully plumb. We need more empirical investigation of specific legal claims about culture, their careers within and movements (nationally and transnationally) across social and institutional sites, and their implications within legal spaces: in judicial decisions, policy making, and funding. Just how legal institutions might find ways of recognizing, protecting, and promoting an “essentially contested” phenomenon, a “moving object” (as John Bowen has described for Islam in France; see 2003:50), remain, however, unresolved questions.

CONCLUSION

This article represents an engagement with selected writers making public and published interventions in various forums and from various disciplines, all of whom are addressing questions of culture and rights. I have proceeded by examining the uses of culture and rights (particularly the relationship between the two), both of which operate as analytical concepts and, for some writers, as desired objectives in themselves. I have also attempted to tease out the broader social theory or social ontology that underpins these uses. My critique aims toward a more adequate theoretical grasp of the contingency and complexity of social struggles involving culture and rights and of the con-

sequences, often unanticipated and sometimes surprising, when demands are recognized or accommodated. The need will be obvious in respect to anthropologists; but I am arguing that other scholars engaged in questions of culture in the context of rights, law, and politics similarly need to address what Benhabib, in her important critique from within political theory and philosophy, has characterized as “reductionist sociology,” which informs and limits much political philosophizing and theorizing around culture.

My critique has acknowledged that the empirical figures importantly, yet differently, for anthropology and political philosophy as intellectual projects as well as within our distinctive epistemologies. Similarly, although I have identified a kind of division of labor between anthropology’s descriptive project and political philosophy’s normative one, these are neither absolute nor mutually exclusive. Scholars on both sides of the disciplinary divide have acknowledged considerable common ground in our aims and concerns around questions of living with diversity; my call for rigorous interrogation of the concepts and methods we use to investigate those questions is motivated by the hope that we can build on this common ground. An interdisciplinary dialogue seems to me essential in the struggle for more just and creative ways of living together. In the context of this dialogue and our—at least partially—shared project, I have argued forcefully for the especial value of empirically grounded studies of rights and culture—when undertaken in a theoretically informed, reflexive, and critical way. This is precisely because such studies confront us with—and force us to grapple with—the messiness, contradiction, ambiguity, impasses, and the unintended consequences that neither neat and tidy theory nor the best-laid plans for political reform can ever fully anticipate.

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NOTES

Acknowledgments. To the following friends and colleagues, I am grateful for serious and lively engagement with the ideas in this article and many helpful suggestions: Chris Beyers, Gurinder Bhambra, Elizabeth Craig, Marie-Bénédicte Dembour, Anne Marie Goetz, Mark Goodale, Charles Gore, Ralph Grillo, Heiko Henkel, Christos Karagiannidis, Yael Navaro-Yashin, Antigoni Papanikolaou, Julian Reid, Neil Stammers, Marilyn Strathern, Richard Wilson, the AA editors, and six peer reviewers for AA, most of whom chose to remain anonymous with the exceptions of John Bodley and Kay Warren. Thanks, also, to the participants of the “Rights, Justice, Violence, War” interdisciplinary seminar at University of Sussex where I presented an embryonic version of the article in mid-March 2005.

1. An important early trigger for this work came from feminism, some of it under the influence of Derridean theory, on the basis of a critique of “man” or the liberal subject. Feminist critics argued that this subject was not neutral and universal but, in its qualities of autonomy, agency, independence, and self-maximization, was instead modeled on (as the now-hackneyed litany goes) the relatively unencumbered, able-bodied, adult, European, heterosexual, middle-class, white male. The critical project was to expose the specificity masked by the norm, its normativity being both the reflection and source of its privilege. Later tendencies of identity movements notwithstanding, the initial insight concerned the relational nature of being, meaning, and identity.

2. In the contemporary academy, the study of politics is classed under different names—political science, political theory, political philosophy, and politics—all of which may variously reflect theoretical divisions, substantive emphases, and national traditions. Most of the writers I deal with in this article call themselves “political philosophers,” although U.S.-based scholars would probably define work in this vein as *political theory*. A British colleague who holds an academic post in politics while teaching on a postgraduate program called “Social and Political Thought” (Neil Stammers, personal communication, July 15, 2005) has urged me to specify the tradition with which I am engaging as “liberal political philosophy,” the strand that does, indeed, dominate—often to the extent that other forms of political philosophy are excluded from this rubric and labeled as something else (history, the study of social movements, etc.). For ease of expression, I will use primarily the term *political philosophy* to refer to that inquiry into the principles of politics, although this may include an empirical element.

3. Arguably, what we have seen in recent years, at least in the United States, is a diminution of actual cultural differences among ethnic and racial communities at the same time that claims to difference are voiced ever more vociferously and tokens of difference have become increasingly significant politically. See Appiah 1997.

4. Complex issues surrounding claims to language rights were explored in an AA “In Focus” debate on “Language Ideologies, Rights, and Choices: Dilemmas and Paradoxes of Loss, Retention, and Revitalization” (*American Anthropologist* 105(4):710–781).

5. Readers may wish to consult our critique of some leading political philosophers’ use of the “culture” concept in *Culture and Rights* (Cowan et al. 2001b:15–20), in which we briefly addressed, among others, the work of Ronald Dworkin, the work of Will Kymlicka, and the communitarian position outlined by Charles Taylor in his seminal essay, *Multiculturalism and “The Politics of Recognition”* (1992). Although criticism concerning the role of culture in political philosophy has tended to be targeted toward communitarians, we observed that proponents of both liberal and communitarian positions may be equally guilty of reifying culture or seeing it as singular, bounded, ahistorical, overly coherent, or overly determining. In the 2001 text, we looked hopefully toward Kymlicka for a more theoretically adequate approach; my analysis here is less sanguine about Kymlicka’s use of the “culture” concept and concurs with Benhabib (2002), whose critique is explored in the next section and who suggests that outmoded conceptualizations pervade a great deal of political theorizing and philosophizing.

6. The authors were guided by an external advisory panel of eminent experts as well as by principal consultants who provided background papers. Experts and consultants included a number of academic luminaries, among them Arjun Appadurai, Lourdes Arizpe, Seyla Benhabib, Nicholas Dirks, Will Kymlicka, Mahmood Mamdani, Rodolfo Stavenhagen, and Aristide Zolberg (with Amartya Sen providing the core conceptual framing).

7. Because my objective here is to outline Kymlicka’s position, its concomitant implications, and the dominant responses to these, I am unable to engage at length with the fascinating, important, and creative feminist debates on the vexed relations between women’s rights and cultural rights or multiculturalism, which is worthy of a long discussion in its own right. This interdisciplinary (both scholarly and activist) debate addresses issues of social, cultural, and religious restrictions for women; domestic violence; abductions and forced marriages; problems of “who defines *culture*” (typically, male elders); case studies of how women fare in countries with systems of personal law for religious communities (e.g., the well-known Shah Bano case in India) or where indigenous customary law is legally recognized; and more. See Merry 2001; Mullally 2004; and contributors to Okin 1999; Phillips 2001; Shachar 2000; Sieder and Witchell 2001; Southall Black Sisters 2003; and Zechenter 1997. Precisely because feminist work is concerned with both theory and practice and committed to emancipatory change, yet sensitive to the difficulties and unintended consequences of policies aimed toward both gender equality and cultural respect, I expect that this area of inquiry will continue to provide some of the most fruitful interventions on issues of culture and rights. Indeed, I consider that a feminist awareness and an attention to gender dimensions are essential to an adequate grasp of the issues. Readers will notice that most of the key scholars with whom I have engaged in this article

(Benhabib, Povinelli, and Strathern) bring a strong gender-oriented or feminist perspective to their analyses.

8. The tendency of political philosophers in this debate to use the word *culture* to refer to a minority group is infuriating to anthropologists, most of whom insist on the importance of distinguishing the “culture” concept as an ideational realm—or, at least, a realm in which ideas and practices are coherently linked—instead of seeing “culture” as synonymous with “society” or “social groups” (including minority groups). It certainly creates conceptual confusion in cross-disciplinary readings. Ironically, some of the apparent reification of culture and attribution of agency to it is more comprehensible if we acknowledge this particular usage, in which *culture* is meant to refer to a collectivity of persons.

9. Interventions by feminist political philosophers, frequently nuanced and more than usually sensitive to the complexity of the issues, have mostly avoided this trap and, indeed, lay the groundwork for moving beyond the impasse. See, for example, Nussbaum 1999; Phillips 2001; and Tamir 1993.

10. Benhabib draws exclusively on references to the French debate, but I want to emphasize that feminist anthropologists have contributed major insights on precisely this issue of contestations around and resignifications of the veil or headscarf in a number of sociohistorical contexts, both inside and outside Europe. A few examples from an extensive literature include Abu-Lughod 1986, 2002; Brenner 1996; Loss, Dembour 1995, 1996; MacLeod 1991; Mahmood 2001; and Mandel 1989.

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