

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Bénédicte Dembour and Richard A. Wilson

Excerpt

[More information](#)

1 Introduction

*Jane K. Cowan, Marie-Bénédicte Dembour and
Richard A. Wilson*

Rights and culture as emergent global discourses

In the past few decades there has been a dramatic increase in negotiations between social groups of various kinds and political institutions, whether at the local, national or supra-national level, phrased in a language of ‘rights’. Processes of globalization have led to rights discourses being adopted widely throughout the world, far from their original sites in the French and American revolutions. Just as importantly, they have framed new domains of political struggle, such as reproductive rights, animal rights and ecological rights. Constituting one historically specific way of conceptualizing the relations of entitlement and obligation, the model of rights is today hegemonic, and imbued with an emancipatory aura. Yet this model has had complex and contradictory implications for individuals and groups whose claims must be articulated within its terms.

The ubiquity and the diversity of both rights discourses and rights practices on the one hand, and their enormous implications for justice and peace on the other, make it more compelling than ever to widen the debate and make it more interdisciplinary. This volume adds an anthropological perspective to the debate: we argue for the need of a forum in which theoretical explorations of rights, citizenship and related concepts can engage with empirical, contextual studies of rights processes. This is important because local concerns continue to shape how universal categories of rights are implemented, resisted and transformed. However, despite the global spread of rights-based political values, the specificities of any particular struggle cannot be grasped empirically through a methodological focus on the local community alone. For in the process of seeking access to social goods (ranging from land, work and education to freedom of belief and recognition of a distinctive group identity) through a language of rights, claimants are increasingly becoming involved in legal and political processes that transcend nation-state boundaries. Our desire to explore the tensions between local and global

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)2 *Introduction*

formulations of rights leads us to consider in more detail the interplay between the languages and institutions at a multiple of levels, from the local through to the transnational.

A striking feature within the contemporary efflorescence of rights discourse is the increasing deployment of a rhetoric of 'culture'. We are particularly concerned with the implications of introducing 'culture' into rights talk. Although 'rights' and 'culture' have emerged as key-words of the late twentieth century, their relationship to each other, both historically and in the present, has been conceived in quite variable ways. Nancy Fraser (1997: 2) has identified the 'shift in the grammar of political claims-making' from claims of social equality to claims of group difference to be a defining feature of 'a post-socialist condition'. Yet this condition clearly draws on forms of activism and critique developed within civil society in the past four decades, particularly in North America and Europe. These are worth summarizing briefly.

The 1960s were characterized by struggles in both North America and Europe to achieve political and economic equality for groups facing disadvantage on the basis of race and class and, with respect to Southeast Asia, Latin America and elsewhere, by struggles against neo-colonial exploitation. The failure of these movements to achieve fundamental reforms led, for some, to disillusionment with the legislative and judicial practices of liberal democracies and their models of neutral justice and formal equality. In the absence of economic enfranchisement and greater involvement in political decision-making, attempts to change societal discrimination became focused on 'culture' at the level of discourse and representation. Some activists sought to transform the fundamental values of their society, for instance by creating a global environmental movement, while others worked to renegotiate an existing group's position and status within the larger polity, as happened with the Black Power movement in the US. The latter process involved revalorizing ethnic or racial markers of a despised distinctiveness, and in some cases, creating new markers where had none previously existed.

The emphasis on 'culture' – ideas, beliefs, meanings, values – emerged in the context of the social movements of the 1960s and 1970s as part of a radical questioning of what was derisively dubbed 'the System'. To take the US, where such developments were most prominent, the ensuing ethnic and Native American movements followed the lead of Black activists in criticizing the melting-pot ideal and celebrating their differences from the Anglo-Saxon majority. In the identity politics which have ensued, culture holds a central place. Discourses of identity have appropriated the old anthropological sense of this term as the shared customs and worldview of a *particular* group or kind of people.

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)

The popular conception that a group is defined by a distinctive culture and that cultures are discrete, clearly bounded and internally homogenous, with relatively fixed meanings and values – what we call an *essentialist* view of ‘culture’ – echoes what was until recently a dominant, if contested (see Brightman 1995), understanding of ‘culture’ within the discipline of anthropology. Significantly, this view reflects *both* Romantic nationalism, which conceives of diversity as a problem to be solved, and what Terence Turner (1993) has labelled ‘difference multiculturalism’, which conceives of diversity as a richness to be celebrated (although only as a mosaic of *separate and distinct* cultural units).¹ Intriguingly, in the 1980s, at the very moment in which anthropologists were engaged in an intense and wide-ranging critique especially of the more essentialist interpretations of the concept, to the point of querying its usefulness at all,² they found themselves witnessing, often during fieldwork, the increasing prevalence of ‘culture’ as a rhetorical object – often in a highly essentialized form – in contemporary political talk.³

Inspired in part by the surprise of this collision of two quite different manifestations of the concept in anthropological research, this volume examines ‘culture’ as an object of rights discourses, as well as examining the local and global conditions which compel and constrain such claims and the contexts in which they are articulated. But it seeks, also, to explore the extent to which the concept of ‘culture’ – *revised*, to be sure, in the light of the thoroughgoing critique – could be useful as an *analytical* tool to make sense of claims-making in the global context. Might it not help us, for example, to identify and think more productively about the *specificities of*, and *differences and relations between*, (a) local or group-specific, (b) nation-state and (c) supra-national concepts, institutions and processes concerning rights? In shifting attention from a formulation which *opposes* culture and human rights to one in which the pursuit of human rights is approached as itself *a cultural process* which impinges on human subjects and subjectivities in multiple and contradictory ways – might it not also help us transcend certain impasses and raise new kinds of questions?

Culture/rights: diverse conjunctions

In the traditional terms of political philosophy, a focus on culture expresses a Romantic political vision, while a focus on rights is characteristic of liberalism. In political struggles over the past two centuries, culture and rights have been portrayed, sometimes as natural allies, at other times as strange bedfellows. These varying positions on the compatibility of rights and culture have characterized contemporary

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)4 *Introduction*

political and academic debates as well. We see three major ways in which culture and rights have been conjoined in recent debates. The first two conjunctions – rights *versus* culture, and rights *to* culture – have preoccupied legal and political theorists, philosophers, anthropologists, lawyers, bureaucrats, non-governmental organizations (NGOs) and lay people, and compelled them to engage in conversations about the legal and political status which ‘a culture’ does or should have. These conversations occur more often in national and international institutions than in academia. The third conjunction – rights *as* culture – indicates a perspective that anthropologists have brought to the study of rights and legal processes generally, to delineate their structuring qualities and their connections to other aspects of social life. It is a perspective that can illuminate many aspects of rights processes. From this tradition we derive a fourth conjunction, of culture as a heuristic analytical abstraction through which to think about rights. We suggest that culture, rather than being solely an *object* of analysis, can be employed as a *means* of analysing and better understanding the particular ways that rights processes operate as situated social action.

(a) *Rights versus culture*

Not surprisingly, perhaps, the initial formulation of the link between rights and culture was one of opposition: rights *versus* culture. Recognizing rights was seen to entail a denial, rejection or overriding of culture; conversely, recognizing culture was seen to prohibit, at least potentially and in some cases, the pursuit of universal individual rights. The figuring of culture and rights in a relationship of binary opposition is rooted in a prior politico-philosophical antagonism – that of the ‘blood and soil’ response of nineteenth century German Romanticism to the universalism of the French Enlightenment. This binary opposition has been a core element of most post-eighteenth-century European thinking about society and political constitutions. It has also shown a remarkable ability to transpose itself to other historical moments and places.

One of its obvious contemporary expressions is to be found in the discourse of human rights. This discourse is animated by a fundamental tension between, on the one hand, the desire to establish universal rights and, on the other, the awareness of cultural differences, which seems to negate the possibility of finding common ground on which to base such rights. Hence, the most serious and still ongoing debate about human rights invites us to *choose between* universalism and cultural relativism.⁴

The competing claims of universalism versus cultural relativism have

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)

been exhaustively debated and it is generally agreed that the debate has reached an impasse. It is not that cultural difference as such has disappeared. Different understandings of personhood, agency and bodily integrity, for example – part of what is meant by cultural difference – persist, even in a world replete with global connections, as Marie-Bénédicte Dembour's chapter on female circumcision in this volume reveals. Yet it is undoubtedly misleading to represent conflicts over such an issue as concerning *only* the competing claims of culture and human rights. It is doubtful that cultural practices of circumcision enjoy total consensual support even within the community in which they occur. This is almost certainly the case for African migrants to European urban centres, whose daughters grow up in and are influenced by a milieu generally horrified by such cutting practices, but probably also obtains in their homeland, where African feminist organizations have noisily protested them. Rather than seeing a singular culture with a set of fixed meanings that are incompatible with those of human rights, it is more illuminating to think of culture as a field of creative interchange and contestation, often around certain shared symbols, propositions or practices, and continuous transformation.

Another criticism relating to this putative opposition focuses not on the internal tensions within a cultural field and its dynamic nature, but rather on the ways that these fields – slightly more autonomous in the past, perhaps – have by now been penetrated decisively by external meanings and power relations, while the presents and futures of previously 'separate' societies have become ever more entangled through the vast and expanding regimes of global institutions. It is no use imagining a 'primitive' tribe which has not yet heard of human rights. In the present era, it is precisely some of the smaller, marginalized 'Fourth World Nation' groups that are using international fora to press their claims (Tennant 1994). In so doing, what it means to be 'indigenous' is itself transformed through interaction with human rights discourses and institutions such as the UN Working Party.⁵

Such observations are borne out and expanded in the chapters by Rachel Sieder and Jessica Witchell and David Gellner with reference to Guatemala and Nepal. Yet Colin Samson's chapter about another 'Fourth World' nation, the Innu of northeast Canada, insists that we should not assume thereby that cultural difference has been eradicated. Indeed, he emphasizes the devastating consequences for the Innu of the Canadian state's historical refusal to acknowledge difference, and its insistence on making 'cultural sameness' the price for gaining rights.

There is yet another reason why we argue that the stark either/or terms of the debate are wrongly conceived. The perceived dichotomy is

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)6 *Introduction*

not just about incompatible values, attitudes and practices – what we might call, in their entirety, worldviews – but relates to a fundamental aspect of rights as a legal process. It is located in the inherent tension between the desire to formulate general principles and the need to apply these principles within particular circumstances and contexts. The tension goes beyond the human rights discourse to pervade legal discourse in many of its conceptions, particularly Western positive law and Islamic law.⁶ This is because a universal status is claimed for legal rules by legal officials. As it is usually grounded in a positivist⁷ view of truth, law essentializes social categories and identities. However, it never completely eradicates the complexity of social facts, which present themselves in the courtroom, in the legislative arena and in political struggles. Legal principles are constantly being readjusted to the demands of the present, the unpredictable and the local. This explains the contradictions that exist – without necessarily being acknowledged – in case-law, the constant need for legislative reforms, and the evolution of the legal system.

This way of understanding the tension between a universal rule and a particular manifestation – reminiscent of a Saussurian system/event, or *langue/parole*, distinction – subtly alters the traditional formulation of the problem. Rather than seeing universalism and cultural relativism as alternatives which one must choose, once and for all, one should see the tension between the positions as part of the continuous process of negotiating ever-changing and interrelated global and local norms. It is inescapable as long as flux and change exist in the world. The tension is inevitably magnified in our era when there is a drive to set and to implement global standards for humanity.

Granted, such philosophical nuances are seldom noted in the cut-and-thrust of the politics of culture in international arenas, in which arguments opposing universalism to cultural relativism have been used instrumentally in the light of which ‘culture’ (as an abstract entity) is either criticized or championed. Yet even here, the question must be posed: is it always *really* ‘culture’ that is at issue?

Consider the following case. In an early and notorious manifestation of the universalism *versus* cultural relativism debate in the international forum, a few Asian states argued that it was justifiable for them to resist western-cum-universal human rights in order to preserve their own cultural values. Ironically, the elites in states most vocal in defence of ‘Asian values’ – Indonesia and Singapore – are highly westernized. In the economic sphere, elites have welcomed industrialization and its consequences, at least until the market crash of 1998 sent their economies spiralling downwards. This inconsistent attitude towards western-

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)

ization makes their rejection of the human rights discourse in the name of 'Asian values' highly suspicious. The rejection may be more accurately read as a political tactic used to bolster state sovereignty and resist international denunciations of internal repression of political dissent.⁸

In this case, then, the rhetoric of cultural relativism appears to have been motivated by a political opportunism which has little to do with a concern for cultural values. Yet its rhetorical invocation has forced challengers of those governments' views themselves to adopt the language of culture. Dissidents and critics of state policy now frequently argue that 'traditional Asian values' are by no means incompatible with human rights. To the contrary, the core values in Western human rights discourse are easily found, they argue, in Buddhism and in the moral lessons of Indian epics (Cowan n.d.).

A second case, developed in more detail in this volume by Heather Montgomery, concerns child prostitution in Thailand. Montgomery questions whether the right of children to be free from prostitution should be implemented, considering that the children directly concerned do not want this right. At first sight this seems a classic illustration of the debate between universalism and cultural relativism. On the one hand, we have the right of the child to be protected from all forms of sexual exploitation, as inscribed in Article 34 of the UN Convention on the Rights of the Child. On the other hand, we have the right of Thai children to act as they see fit, in accordance with the demands of their cultural environment. The children with whom Montgomery has worked appear willingly to subscribe to a 'way of life', and in particular to a 'cultural value' of filial duty towards their mothers, which enjoins them to support the economic survival of the family through prostitution. However, it is possible to read the situation in a different way. Despite the long history of prostitution in Thailand, it is clear that the children only prostitute themselves because of the lack of other viable economic opportunities. If they could, they would avoid prostitution. But they have reasoned that begging and rummaging through garbage constitute poor and less lucrative alternatives. In this case, we are confronted less with a problem of culture than with one of poverty.

The tensions between the dictates of universalism and those of respect for cultural difference, and thus between 'rights' and 'culture', are in important ways real and persistent. They cannot be made to vanish through an analytical sleight of hand which appeals to the eradication of local forms of difference through global processes and to the increasing hybridity of identities and cultures, because these phenomena occur at an uneven pace. Moreover the responses generated mix local and global elements into ever new and more potent cocktails. Even

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)8 *Introduction*

so, we believe that the debate has tended to exaggerate the irreconcilability of the terms ‘rights’ and ‘culture’. This is in part a consequence of essentializing them and of ignoring their close historical interdependencies, as Sally Engle Merry’s chapter reminds us. The debate has also exaggerated the incommensurability of different worlds at the very moment when a new global ‘culture of human rights’ (see Rabossi 1990) is becoming entrenched and, as Dembour’s and Montgomery’s analyses emphasize, when this very fact makes possible – and imperative – the development of *conversations* between local worlds of meaning and global ones. Merry goes even further, showing through the example of Hawaiian women organizing around the problem of male violence against women, that local appropriations of both ‘culture’ and ‘rights’ have led to the transformation of both terms. Finally, we think that shifting our approach to this opposition, from a focus on supposedly irreconcilable worldviews to that of the inherent tensions between an abstract ideal and its implementation in the real world, between principle and practice, helps to clear a new path.

A right to culture

A second conjoining of the two terms reverses their relationship, asserting a universal right *to* culture. The human rights discourse has stretched to allow culture to become an object of rights claims. The rights of an individual to ‘belong to’ and ‘enjoy’ a culture are enshrined in several international instruments: notably, Article 2.1 of the United Nations Declaration on the Rights of Persons Belonging to Ethnic or National, Linguistic and Religious Minorities, and Article 27 of the International Covenant on Civil and Political Rights. A third example, the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Persons in Independent Countries, signed in 1989, aims at ‘promoting the full realization of the . . . cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions’ (Article 2 (2) b of the Convention). In this formulation, cultural features are seen as intrinsically valuable and worthy of recognition and legal protection. As in the rights *versus* culture phrasing, culture here is understood as a unified arrangement of practices and meanings. It is yet another ‘thing’ that an already formed actor is entitled to ‘have’ and ‘enjoy’. Acknowledgement of its ontological aspect, its role in constituting persons, is muted.

In a certain sense, a right to culture is not a new idea. Most cogently expressed by Herder, the right to follow one’s culture is one of the central tenets of European Romantic nationalism (Berlin 2000). Yet inter-

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)

national treaties from the late nineteenth century until the mid-twentieth century dealt in an ambivalent fashion with sub-national and transnational minorities. In the (rather enlightened, in many respects) Minorities Treaties agreed at the Paris Peace Conference after the First World War and 'guaranteed' by the League of Nations in the 1920s and 1930s, for example, the rights of members of 'racial, religious and linguistic minorities' (as it was then phrased) to pursue their distinctive ways of life were recognized and protected by law. Yet League reluctance both to challenge state sovereignty and to upset the fragile European peace constrained its efforts to enforce compliance by states. In 1948, with the establishment of the United Nations and the Declaration of Human Rights, the recognition of cultural diversity was placed on a different footing, grounded in the human rights of each individual. Protection of the 'rights of minorities', a prerogative sullied by its exploitation by the Nazis in the 1930s, was discontinued. Given the individualist philosophical assumptions of the new regime, moreover, rights could not be extended to groups.

However, attention to minority rights and more generally to cultural diversity has received a renewed impetus and reached an unprecedented scale in the last two decades. Under pressure from an ever proliferating range of supra-national institutions (now including not only UN agencies but also, for example, those of the Council of Europe, the Helsinki Convention, the Inter-American institutions and the OSCE) to accommodate with greater justice the 'others' in their midst, be they migrants, minorities or indigenous populations, nation-states have been increasingly challenged to encourage, rather than repress or even merely tolerate, diversity within their boundaries.⁹ Group rights has returned to the agenda, involving re-theorizations such as 'the rights of peoples', particularly as a response to concerns about, and mobilizations by, 'indigenous' peoples. Such developments signal a significant historical shift.

Consequently, 'culturalist' claims – claims which invoke notions of culture, tradition, language, religion, ethnicity, locality, tribe or race – have become a familiar rhetorical element in contemporary rights processes. More and more, though not without exception, they are likely to carry weight in contexts of adjudication. They may, additionally, be used to ground and justify other kinds of claims, for example, to land, environmental protection, education, employment and even political autonomy or independence.¹⁰ They may be invoked to argue for exemption from laws binding other citizens, such as the exemption for Sikh men from the requirement to wear motorcycle helmets granted by British law (Poulter 1997: 258), or for legal interpretations that take into account the claimants' particular cultural identities and beliefs. Opposi-

Cambridge University Press

0521793394 - Culture and Rights: Anthropological Perspectives

Edited by Jane K. Cowan, Marie-Benedicte Dembour and Richard A. Wilson

Excerpt

[More information](#)10 *Introduction*

tion to infrastructure and economic development projects is now conducted by pointing to the threat these projects represent for cultural survival (see Samson's contribution to this volume).

Invocations of culture have seemingly become inseparable from the language of resistance. However, the political implications of such claims cannot be generalized because culture may be called upon to legitimise reactionary projects as easily as progressive ones. In June 1997 a spokesman for the loyalist Protestant Orangemen in Northern Ireland invoked their 'cultural right' to parade through Catholic neighbourhoods during the 'drumming season' in triumphalist celebration of the historical memory of William of Orange's violent routing of Catholics from the region – a 'right' that had led to riots in the recent past. Conversely, indigenous groups in the Americas that have long been marginalized within formal state institutions are invoking the language of culture and rights in national and international tribunals to further claims to land and political autonomy – a process that Rachel Sieder and Jessica Witchell's paper on the Guatemalan case explores in some detail (see also Kymlicka 1989).

Jane Cowan's chapter on the Macedonian human rights movement reveals a situation of greater ambiguity; the impulse to label this movement as 'progressive' and those resisting it as 'anti-progressive' simply obscures a complex contestation within the community over its identity and the nature of claims it might generate, as well as over tactics and goals. Considering how such conundrums are faced (or avoided) at an international level, Thomas Eriksen's chapter examines the view of culture articulated in UNESCO's 1995 report *Our Creative Diversity*. He shows this product of an international committee to be an optimistic celebration of diversity, seen in fairly essentialist terms, and an affirmation of cultural rights, which skirts round the matter of the explosions that competing claims around culture can trigger. Whether negotiated locally or in meeting-rooms in Geneva and New York, the uses to which culture can be put in relation to rights are evidently multiple.

Culturalist claims may be only slightly more sophisticated versions of ethno-nationalism, or they may represent what has been called a 'strategic essentialism'. Activists from, or working on behalf of, communities making claims are often well aware that they are essentializing something which is, in fact, much more fluid and contradictory, but they do so in order that their claims be heard. Moreover, as David Gellner's chapter illustrates, the proclivity of legal systems to demand clearly defined, context-neutral categories (including categories of identity and membership) in order to be able to classify persons and deal with them on the basis of these categories – the *essentializing proclivities*