5 Universal human rights for women

UN engagement with traditional abuses, 1948–1965

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Introduction

Across the 1950s and early 1960s, while the UN became progressively more riven by contests on the right to self-determination, racial discrimination, and the relationship between development and political rights, there was another battle on the proper character and bounds of universality—the personal status and bodily integrity rights of women within marriage. In December 1954, shortly after the sixth anniversary of the Universal Declaration of Human Rights (UDHR), the General Assembly proclaimed a sweeping programme against "ancient customs" which prevented the realization of the UDHR for women. Resolution 843 affirmed the supremacy of the UDHR over any custom, and demanded "elimination of such customs, ancient laws and practices," notably in marriage and family law, which were "inconsistent" with the precepts set down in 1948.[1] By 1961, the animating spirit of Resolution 843 was set into a draft treaty, adopted a year later as the Convention on Consent, Minimum Age, and Registration for Marriage.[2] The Marriage Convention was one of the first binding treaties on human rights protection passed by the UN, preceding its more celebrated siblings, the International Convention on the Elimination of All-Forms of Racial Discrimination (1965), and the two International Covenants (1966), by several years.

These campaigns have received little scholarly attention, despite the abundance of academic interest on the history of human rights and the impressive array of work on feminist internationalism.[3] Although the influence of women in the United Nations, and more widely across international institutions, has been widely recognized, the centre of gravity for most prior research has been on the 1940s, and the developments of the 1970s and beyond. By comparison, the intervening period has been less thoroughly surveyed.[4] In her superb examination of UN attention to corporeal abuses of African women, primarily in the 1950s, Giusi Russo has demonstrated the importance of the 1950s and 1960s in appreciating the configuration of rights, women, and colonialism.[5] Yet across the cumulative scholarship, the two flagship UN initiatives on traditional abuses in the 1950s and 1960s remain marginal. Resolution 843 is barely cited at all, beyond its gazetting in UN periodicals, and the Convention on Consent to Marriage is mostly consigned to passing reference.[6] Given the salience of this earlier effort on "traditional abuses" to many of the priorities which emerged as definitive

DOI: 10.4324/9781003036708-5

of the debates around the 1979 Convention on the Elimination of All-Forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of the Child (CRC), and the 1993 World Conference on Human Rights in Vienna, their absence is a striking ellipsis in the interlaced narrative of human and women's rights.[7]

This chapter examines the first two decades of UN human rights endeavours around traditional, social, and cultural practices, principally those which prevented the realization of the UDHR for women. It argues that the animating impulse was a profoundly hopeful vision of universality, advanced by a small but effective cohort of women, many from the newly independent states. The Marriage Convention, its precursors, and their associated sentiments represented an effort to translate the grand abstractions of 1948 into lived reality. Their campaign was not conceived of as any kind of special status renovation to universality—but a pragmatic endeavour to translate global norms to rural nuptials, and to extend the bold, abstract statement of human equality to some kind of daily symmetry in interpersonal and intimate relationships. While focussed on abuses which were experienced by women, the optic was not understood as any kind of sectional advocacy. It was instead a reflexive attempt to advance the enjoyment of human rights worldwide, to make universality a real, experientially meaningful, truth.

Unlike many other forums of the UN, the human rights and humanitarian arena was a place where women found sustained presence, and substantial influence. In part, this was a configuration that stemmed from highly gendered assumptions about the nature of rights, welfare, and humanitarian questions, all which had been established as the acceptable political space for women well before 1945. Across the Commonwealth, and the United States, arguments in the terms of strategic maternalism had been something of an over-success. Early suffragists had claimed authority in democratic politics that rested, in part, on an essentialized facility for caring.[8] Transnational organization between women had a still more established lineage.[9] Human rights and humanitarianism were, therefore, a sphere where there was some prospect for seizing opportunities, particularly given the limited interest most foreign services had in these forums.[10]

While still grossly unequal, the role and impact of women in the UN's human rights enterprise was much greater than in the notionally masculinist forums of the Security Council, and the economic components of the new international organization. The bespoke forum for women's rights, the Commission on the Status of Women (CSW), which shared personnel, and agenda items, with the larger human rights apparatus, was well-regarded for its commitment. John Humphrey, Director of the Human Rights Division, flatly declared in his memoir that "there was no more independent body in the United Nations."[11] The women of the General Assembly, often working across the CSW, the Commission on Human Rights, and the Committee on Social, Cultural, and Humanitarian Affairs, were amongst the first to migrate from grandiose ideals to the micro-scale practice and conditions of daily life outside Geneva and New York. Amongst the earliest of the UN's travelling advisory seminars on human rights, held across the late 1950s and early 1960s, were devoted to the pragmatic questions of women's freedoms

and welfare. They convened well outside the conventional circuit of international organization, assembling, for example, in Bangkok, Bogotá Addis Ababa, and Lomé.[12]

Although on balance a mixture of liberal feminists, with the Western countries represented by a range of Christian and Social Democratic, Labor, and various reformist Conservative voices, there was also strong participation from Soviet aligned women. As Kirsten Ghodsee has shown in her excellent analyses, their perspective was distinct, drawn from state-managed women's organizations and the academy.[13] As with the majority of Soviet representation, they typically avoided concession on their own national deficiencies. Nevertheless, the alignment between Soviet international positioning as a champion of women's advancement, and their own experiences, did tend to place the Soviet bloc in a less obstructionist mode in women's human rights questions, especially when the rights involved demanded a strong, activist role for the state. Their own experiences were a demonstration of what had been possible for at least some women in the Soviet system. Zoya V. Mironova (USSR), a proponent of women's rights initiatives at the UN in the early 1960s, had been a champion ice skater—and went on to become a pioneering surgeon in some of the most intricate reconstructive procedures in elite Soviet athletes. Zofia Dembinksa (Poland) had worked for childhood education and welfare in the 1930s as a left-wing academic, and pursued the same priorities under Władysław Gomułka's Soviet-backed dictatorship. They were far from liberal reformers, but they provided another reliable constituency for some measures to improve women's status, unlike the general case obstructionism and diversion that characterized so much of Soviet activity on other human rights questions.

Beyond the opportunities seized by women from the political West and the Soviet bloc, the small but growing set of Asian, Arab, and African women played a prominent role in leading debate.[14] This was a cohort which generally had strong nationalist credentials, and had fought against colonialism, traditional social patterns of discrimination, and the repressive affinities between each system.[15] India's Hansa Mehta and Lakshmi Menon traversed the spectrum of activism, from organization at the village, as part of the All-Indian Women's Conference (AIWC), through to election to the Indian parliament, all the way to the General Assembly.[16] Ra'ana Liaquat Ali Khan founded the All-Women's Association of Pakistan (AWPA), the first major feminist assembly, and a major force in driving family law reform in the newly established state.[17] Badia Afnan represented the technocratic modernization of pre-Baathist Iraq, which had adopted sweeping family and personal status law liberalization, one of the few durable reform measures of its troubled 1950s polity.[18] Lebanon's Angela Jurdak, serving on the Commission on the Status of Women, had been an avowed advocate for women's education, and family law reform, measures which required more than the high political transformation of suffrage rights.[19] Their most conspicuous early triumph was in precipitating the most obvious shift in the 1948 Universal Declaration's language of rights compared to its Atlantic ancestors. Over the reservations of Eleanor Roosevelt, who initially viewed the measure as redundant, they ensured the new human rights of the post-war era spoke of "all," rather than "all

men."[20] This early cohort of women also ensured there was an expressly stated affirmation of equal rights in marriage.[21]

In the 1960s, African women joined the other newly independent representatives. From the Francophone Togo, there was able representation from Marie Madoe Sivomey. Prior to independence, Sivomey had been engaged in Togolese social work for women and girls, and work in the civil service. As co-founder of Togo's first feminist organization, the Union of Togolese Women (UFEMTO), she would bring her experience to New York, before being elected Mayor of Lomé in 1972.[22] Alongside her counterpart Jeanne Martin Cissé, a senior party official from the radically anti-imperialist Guinea, serving the former trade union leader, and incipient dictator, Sekou Touré, Sivomey would be a leading advocate of equal marriage rights in the UN.[23] With an appreciation of the experience of women in rural settings, often desperately poor, and with highly constrained capacity for exercising rights, these delegates approached the soaring words of the UDHR with an insistence on pragmatism. Their perspective was less juridical and infused a practicality to often ethereal and evasive claims from Western powers on "levels of civilization" and the apparent infeasibility of advancing social and attitudinal change through international action. In their proximity to the community, the local, this Third World cohort were somewhat closer to the balance of interests that would become more characteristic of the 1970s and early 1980s, across the various International Women's Year Conferences, and their NGO Tribunes, in Mexico City,[24] Copenhagen, and Nairobi.[25]

Manufacturing monolithic cultures: Colonial cynicism on human rights for women

From 1949, as soon as work began to step beyond the exhortatory project of the UDHR, equal treatment for women and questions of family became a pivot for arguments about the extent and intensity of universality. Arguments which countries would not openly countenance on, for instance, signature abuses of state power, such as extrajudicial killing and torture, were strategically advanced by emphasizing those rights which entailed wider social and attitudinal reform, foremost marriage practices. The intricacy, for instance, of reconfiguring family law and personal status code to bring into compliance with a universal human rights standard were an endlessly useful diversionary question. Supposed deference to local customs was a superficially plausible, and somewhat respectable, defensive claim against universal application of various draft human rights measures. These claims were encapsulated in a proposed colonial application clause, which allowed metropolitan power to exempt their colonies from treaties. Insistence on the inclusion of a colonial application clause in the draft human rights covenant was amongst the highest priorities for the European powers, bolstered by Australia, Canada, and the US, who had their own federal state provisions which they sought to inscribe on the various texts.[26]

Across 1949 and into the 1950s, defences of the colonial exemption in the covenant produced some of the most spectacular contests on the bounds of universality.[27] France and Britain delivered studiously well-composed ventriloquism

on the interests and cultural practices of colonial peoples, and a pretended respect for tradition. Cassin, combining roles of defensive advocate for imperial France, and a sincerely engaged jurist on human rights, was the most eloquent example. In commending the colonial clause on the draft covenant in June 1949, he warned that while there was a seductive logic to universal application to colonies, it risked "a general alignment at the level of the most backward people." [28] He identified equality as the signature example of why a colonial exception should be permitted. "It was certain," he argued, "that the principle of the equality of the sexes could not be applied immediately in all such territories in so far as family law was concerned."[29] Cassin claimed that "it was not possible to impose upon them progressive steps" for women, given these were "not understood by the people on account of their attachment to their own traditions."[30] France itself seemed attached to its traditions, given that women's suffrage had only been secured after the Liberation in 1944, against a considerable reactionary campaign opposing the reform.

Nevertheless, there were easy assertions that decades under imperial custodianship were the path to enlightenment. This colonial rationale against universality might have been credible—were it not for the presence of actual women from the regions that were being so comfortably and confidently essentialized. When raised again in 1950, Cassin met strong opposition from Lakshmi Menon, and, more forcefully, Badia Afnan. In a sharp riposte, Afnan stated her disappointment that Cassin "had used the backwardness of the peoples of equatorial Africa as an argument for the inclusion of the colonial clause in the covenant."[31] She explained, "differences of culture and tradition" should not foreclose "universal application."[32] Despite repeated efforts to revive it, there would be no colonial clause in the two human rights covenants that were eventually adopted in 1966. While the inclusion of a colonial clause in the covenant was defeated, the instrumental deployment of custom would continue across the 1950s, commencing with the December 1952 Convention on the Political Rights of Women (CPW).[33]

Striking for its clear, parsimonious statement of electoral equality, the CPW was amongst the most anodyne texts to emerge from the UN. It presented no normative novelty, and no extension of the precepts set down in the UDHR, instead serving as an international legal sequel to the suffrage won nationally in much of the world since the 1890s. With the second tranche of suffrage triumphs in the 1940s, the equal right for women to elect and to be elected had become amongst the less fraught human rights propositions. Amongst the few independent Asian and African states, universal suffrage was embraced as part of the national emancipation project. Nevertheless, women from outside the political West were again the terrain for testing what, precisely, was meant by universality. Against a coalition that included major Western powers, who cited apparently insuperable attitudes in their colonies, and the men representing Syria, Egypt, and Iran, it was the women from Pakistan and Iraq who insisted that suffrage was essential. Begum Rana Liaquat Ali Khan, who had faced such tests at home, spoke persuasively of the support for equality lent by the late Mohammed Ali Jinnah, father of Pakistani independence.[34] Iraq's Afnan spoke of the nationalist modernization effort underway across Asia, Africa, and her own Arab region, and the affirmation of equality it presented.[35] For all the verbiage about the need to hasten cautiously, the CPW

was, like the UDHR, adopted without a single opposing vote. When kept within the austere frame of formal political institutions, translating philosophical vision to legal verité for women was contentious, but not catastrophically so.

However, when the UN began to engage in social and customary restrictions of women's human rights, the difficulties were markedly greater. In late 1954, as the first dedicated effort to contend with customs which impeded the realization of the UDHR was taken up, the clash over "tradition" became acute. Led by the imperial powers, and amplified by some of the Third World states, the initiative, which sought action on "customs, ancient laws and practices," was the arena for a wide-ranging contest on how real the UDHR should be for women.[36] Its origins were in an initiative which had emerged from the CSW, across March and April 1954.[37] Compelled by their observation "that certain practices, ancient laws and customs," notably marriage conditions, were "impediments to the attainment by women of their basic rights," the CSW urged "all necessary measures to ensure the abolition of such customs, ancient laws and practices."[38]

In the General Assembly debate of the CSW proposal, women from Asia, Latin America, and the Arab region served as the most effective advocates. Aziza Hussein, the first woman representative from Egypt, contested essentialized ideas on tradition and religious custom. In her debut intervention on 15 December 1954, Hussein related a catalogue of errors in Western presumptions about Islam, and the confusion between religion and an abuse that resided in social pathologies. She pointed to the first feminist success for Egyptian women at the turn of the century, and a national project to "recapture the original liberal spirit of Islam" as part of "the gradual intellectual and social regeneration of Egyptian society." Hussein described recent developments across education, welfare, and women's organizational work, of "forty years of struggle," and reforms in family law.[39] Her passionate advocacy of the resolution, and the nuanced manner in which she recounted Egypt's course, cast the problem in terms of the abuses of tradition.

Artati Marzuki, a future Indonesian minister for education under Sukarno, prepared a similarly complex account, with particular attention to the ways in which Dutch colonialism had sought to codify what had been a dynamic and evolving customary law. Her account was not triumphalist. There were obvious injustices in the practice of bride price. Child marriage persisted. Yet her diagnosis was not of immutable custom, but one that was being contested by Indonesian women, with substantial success. Marzuki gestured to the momentum that was emerging in the Indonesian Republic, citing a long dormant effort to reform marriage law had recently "been unanimously accepted by the women's organizations."[40] Carmela Aguilar, the legendary Peruvian feminist, and the first woman to accede to Ambassadorial rank in her country, was still less merciful in dispensing with claims of tradition. Fluent in Quechua, she embraced both her Incan heritage and a blunt human rights universalism.[41] With a career devoted to advancing equality through multiple domains—national, the regional system of the Inter-American Commission, and the international forums of the UN—Aguilar promptly dispensed with the excuses, and exalted the supremacy of the UDHR. "Women," she declared, "should not be deprived of fundamental rights merely because of prejudice and tradition."[42] Accordingly, while "sociologists often said that

customary law was very difficult to change," and others had prophesized "that the fabric of society would disintegrate if women left their homes," these were hardly sufficient given the fundamental quality of the issue.[43] For Aguilar, "the Universal Declaration of Human Rights unequivocally proclaimed the principle of equal rights."[44] It was straightforward, or in her phrase, "unexceptionable," that "practices prejudicial to the human dignity of women should therefore be eradicated."[45] The proposal, which was limited to encouragement and promotion, was adopted—the first text which explicitly identified the need to align family law and marriage to the principles of the UDHR.

"Awaiting release from the yoke imposed on them by custom:" Navigating custom in the convention on marriage

Over the course of the 1950s, the CSW and various other arms of the UN wandered into marriage and family, and the perilous question of how rapidly, and by what mechanism, the architecture of human rights could be infused into customary practices. Exhortatory enterprises, such as the 1954 resolution, allowed a degree of evasion on how far and how fast social and attitudinal change could be achieved. A binding treaty would demand specificity, a difference which had already left the UDHR's sequel, the human rights covenant, foundering. Yet proposals for a Convention on Marriage emerged, and advanced, even as the covenant was first split into two instruments, and then trapped in endless, seemingly hopeless, debates across the later 1950s. Positioned in between the new post-war concept of universal human rights, and older traditions of protectionist humanitarianism, the marriage convention had antecedents in the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and more directly, in the 1956 Supplemental Convention on Slavery.[46]

Deliberations on the 1956 text had explicitly drawn out the parallels between chattel slavery and slavery-like practices associated with marriage and indicated the need for a dedicated instrument.[47] The CSW promptly responded, preparing a proposed text across 1958 through 1960, which found a place on the General Assembly agenda for 1961. The essence of the task was encapsulated in the CSW's summative report, which observed the core problem—attitudinal and social systems which defeated the experience of equality. "Even in countries where the law recognized equality of rights for women," the CSW recorded, "traditions and customs based on the idea that the husband was the head of the family were still deep-rooted, with the result that in practice women did not exercise the rights accorded them by the law."[48] Equality and agency in marriage were perhaps the prime expression of the dynamic—and remedy, the CSW proposed, was in a formal treaty. Exhortatory Declarations were well, but insufficient. Supporters of an ambitious rights effort, "felt that only the adoption of an international instrument such as a convention was likely to set up a genuine current of public opinion."[49] Only international law might "stimulate Governments to take steps to bring their national legislation into harmony with the principles enunciated in the Universal Declaration of Human Rights."[50] The proposal was agreed without opposition.[51]

In determining the apportionment of time for the General Assembly's 1961 session, Togo's Marie Sivomey "stressed the very great importance attached by her delegation" to the draft Convention.[52] She found powerful supporters. Both Gladys Tillett, the US representative, and Poland's Zofia Dembinksa, a surrogate for the wider Soviet bloc, endorsed Sivomey's position. Nigeria's Jaiyeola Aduke Moore, who had worked for women's advancement at home, and practiced as a barrister, expressed her support for the Convention.[53] While aided by bipartisan Cold War agreement, the most emphatic proponents of the draft Convention were the two African women representatives, Togo's Sivomey, and Guinea's Jeanne Martin Cissé. Both spoke for states which were still in the optimistic early moments of independence. Both women urged the Convention's adoption in powerful, personalistic terms—an advocacy that stemmed from the immediacy and proximity of child marriage and bride price, which their new states were committed to eradicate.[54] Where Soviet and Western delegates pondered candidly ideological sub-amendments and juridical nicety, Sivomey gestured primarily to the UDHR, and what the text would mean for African women and girls. Her positioning in the discussion went well beyond Togolese delegate, and instead a kind of collective proxy for the young women across the African region.

As General Assembly deliberations opened on 4 October 1961, Sivomey "thanked the Committee for having agreed to give priority to the draft Convention on marriage, on behalf of the millions of African women who were awaiting release from the yoke imposed on them by custom."[55] Cissé spoke poignantly on what "custom" could mean for the rights of African women. She openly professed her faith that international resolve on marriage "would help to improve the lot of African women who still, only too often, were regarded as a chattel which the parents could dispose of without the girl concerned having to give her consent."[56] In a hopeful vision of what a formal treaty could deliver, Cissé argued the UN would be furnishing, however poorly and partially, some kind of defensive shield for women across her country. "African girls," she proclaimed, would be armed with a new confidence. Inspirited by the knowledge "they were protected by an international instrument," those far distant from New York and Geneva "would not hesitate to refuse their consent to anyone who attempted to exert pressure on them."[57]

Across the first afternoon devoted to the draft Convention, numerous delegates spoke in favour of the text from an ecumenical spread of Cold War alignments. The contest between anti-colonial Third World and the Western delegations was comparatively subdued, a tranquillity that had become rare by the early 1960s. Soviet bloc representatives took the opportunity to boast of their progressive ideological credentials on women's rights. Israel's Shulamit Nardi, building on the record established by her predecessor, Zena Harman, argued for the Convention as part of building the nation state. Nardi emphasized her experience within developing a protective family law across customs. Nardi, a Labor Zionist and academic, argued that the Convention "ought not to present insuperable difficulties."[58] With large inflows of co-religionists into her new country, many "from regions where the very customs and practices which the Convention was intended to abolish prevailed," Israel had found protections for women in marriage were

an integral part of stitching together some shared vision, and facilitated a "new generation's adjustment to a different way of life."[59] Despite most recognizing the need for cautious drafting, the fundamental validity of setting a constellation of social attitudes and practices as the proper subject for human rights law appeared—at first—to mark a rare point of consensus.

The promise, however, was punctured in the final substantive intervention of the afternoon meeting—from Nigeria's most senior representative, Prince Jaja Wachuku, who rescinded the support originally extended by Jaiyeola Aduke Moore. Educated at Trinity College, Dublin, Wachuku was emerging as a major figure in the Nigerian government, and a rising star in the UN. After a decade of advancing the cause of independence, Wachuku had been appointed as Foreign Minister by Nigeria's anti-colonial icon, Nnamdi Azikiwe. Wachuku, whose own background comprised a distinguished Igbo royal descent line, the Student Christian movement in Britain, and a childhood playing the stereotypical Commonwealth sports of cricket and rugby, rehearsed objections to the draft Convention on the basis of an essentialized African tradition. He authored his own authoritative variant of African interests, one sharply at odds with the principles advanced by Sivomey and Cissé. Wachuku chided the proponents of consent to marriage, and stated "that the Western conception of marriage was not the only valid one," with the implied pejoration that Sivomey and Cissé were insufficiently authentic as African representatives.[60]

Despite spending his formative years abroad, and recent years ensconced in the Federal Parliament and Ministry of Foreign Affairs, Wachuku nevertheless assigned himself arbiter of what was definitively African. Paying no deference to the arguments of his Togolese and Guinean colleagues, he flatly stated that "whereas in the West the consent of the two intending spouses only was required, that was not the case in Africa."[61] He defended bride price, and extolled polygamy, stating what he perceived was a self-evident virtue, it "permitted a man whose wife was sterile to beget an heir."[62] An expert practitioner in international law, admitted to the King's Inn, Wachuku still seemed sceptical of its application to African women. Even as he professed his support for the two human rights covenants, he was almost contemptuous of the draft Convention on marriage, which he dismissed as "completely pointless."[63] A universalist when it came to fighting for Nigerian independence, when it came to local social and cultural institutions, he recited the sort of language more typically associated with Lord Frederick Lugard's vision of indirect imperial rule, and the determinative role of "the physical, economic, cultural and traditional factors in each country."[64] His speech closed with a demand the draft Convention be deferred, and the promise Nigeria would vote against it were it to proceed.

As the meeting drew it to its close, Sivomey and Cissé were deeply disappointed to encounter precisely the attitudes they were fighting at home were so readily transported to the General Assembly. Cissé responded that she was "very concerned" to encounter such claims. "To hear the statement of the Nigerian representative" was a real source of dismay, "since the women of Africa looked for encouragement in their efforts to improve the status of women."[65] She sidestepped the canard on polygamy, which was not expressly prohibited in the draft text, but

added perfectly pitched barb which appeared to gesture to the Nigerian Prince's aristocratic heritage. Cissé opined "it was easy for a rich man who could afford ten wives to sing the praises of that system," and reiterated that their endeavours were designed "solely towards guaranteeing for women, and for African women in particular, a decent and happy existence."[66] Sivomey sought the intervention of another legation, "in view of the emotion which the Nigerian proposal caused her."[67] Rapid intercession from Iraq's Afnan, who promptly noted the hour, and the merits of adjourning, ensured the debate would continue across the remainder of the 1961 session. The Nigerian effort to terminate consideration of the Convention before it began failed, but the contest which followed did tend to reveal the extent of unease over the balance between the diversity of customs and circumstances, and draft text's effort to apply the plain meaning of the UDHR's articles to marriage.

What, precisely, constituted consent, who could provide it, and the official inscription of a specified age animated many of the speakers. Consent was the most profound question of the Convention process—in its most elemental sense, this entailed a serious reflection on what freedom and agency actually meant. Badia Afnan made the insightful observation that there were potentially serious structural defects which limited the meaning of consent in some countries. Though she had no immediate remedy at hand, Afnan's diagnosis of the problem of "consent without choice" was depressingly acute.[68] In the absence of wider social and economic opportunities, or any real protections from the state, the space for exercising a choice in a meaningful way was seriously constrained. Marriage consent was a crucial question—but it necessarily was stitched into the more sweeping poverty of rights enjoyed by women. The Marriage Convention could mandate consent with admirable clarity, but it inevitably left this massive wider context, which spoke to the structural lack of choice and freedoms, unresolved.

A definitive minimum age was perhaps the most severe test for the equilibrium between a maximalist universality, and one which held some nuance.[69] There was fairly sparing support for a binding specific age—which seemed too prescriptive, and not necessarily an absolute requirement for achieving the fundamental purpose of health, well-being, and the capacity to exercise some real agency. Most cited their own minima, often with evident pride; but conceded that there might be local conditions and circumstances in which other ages were reasonable. The eventual compromise was no mandated universal minimum—merely that a state determine and implement one. It was a concession to what seemed an impossible calibration, but kept the principle alive, in the hope of future augmentation.

Although not successful in the final Convention, there was almost immediately a supplemental campaign, which introduced the kind of hybrid human rights treaty that would become a mainstay for future UN projects. A proposed Recommendation, which was a kind of annexe to Convention, operated to enhance the original text, by stipulating 15 years old as the global minimum.[70] In so doing, it gestured to where the norm should be, while preserving the original wide consensus. The concept of a graded kind of state obligation, from modest to substantial, was a valuable mechanism for charting a line between pessimism and utopianism. As

a strategy, the Recommendation furnished an approach which rapidly became a default solution to seemingly intractable differences in commitment and outlook; enacted in the Optional Article to the 1965 International Convention Against All-Forms of Racial Discrimination, and first Optional Protocol to the 1966 human rights covenants.

Although advanced most vigorously by African women, the addressed by the Marriage Convention was universal, even if manifestations differed. Daw Mya Sein, who led Burma's Women's Council, observed during the debate that discriminatory patterns were "a phenomenon unconnected with the level of civilization."[71] Privately, Australia, where suffragists had won the franchise early, and a substantial women's activism had emerged on peace, education, and welfare, there remained government resistance to adopting the Convention. The centre-right government of Robert Menzies and Attorney General Garfield Barwick were generally sympathetic, but blanched when they assessed its single colony, Papua New Guinea, which remained a decade from independence. Despite pressure from Australian women, and the opposition Labor party, the Convention was not recommended for adoption by the Commonwealth. Given that Australia had recently adopted structural reforms of its marriage and family law, and had once prided itself on progressive social legislation, it was a less than encouraging position. The abuses in the fabric of the "domestic" were still perceived as "overseas" problems—though as the 1974 Royal Commission on Human Relationships would reveal, violations in the "private" realm were also part of the "traditions" of Port Melbourne and Port Macquarie, and not a distant "custom" issue in Port Moresby.[72] What was recognized as proper human rights terrain by African women in the 1960s was the ground on which new struggles would be fought by Second Wave feminism in the 1970s.

Conclusions: Traditional abuses or abuses of tradition?

From the foundational years of the world organization, women working in the UN presented the challenge of universality of human rights in a different key, informed by experiential knowledge. Translation of the UDHR required national legislation, international cooperation, and education; the generic, often platitudinous, verbiage of UN debate. Yet it also necessitated attention to the least governmental, and most intimate; of the human-scale power relations, not merely the grand structures of constitutions, courts, and treasuries. The fledgling efforts on "custom" and "ancient law," specifically marriage, prefigured the sorts of arguments which became central, first to the 1967 Declaration on the Elimination of All-forms of Discrimination Against Women, and later to the drafting, and implementation, and monitoring of both CEDAW and the CRC.[73] To some extent, these early efforts were aided by the residual optimism of the post-war moment, and the hopeful, reformist spirit of the first post-independence governments, which embraced women as integral to national regeneration.

By contrast, the incorporation of a more "horizontal" view of human rights violations in CEDAW and the CRC did sit uncomfortably with the tenor of human rights in the 1980s and 1990s. Abuses that were diffusely perpetrated were

increasingly the preserve of humanitarian dispensation, specialist technical assistance, and international development. In the austere reframing of human rights that emerged in the 1970s, this species of violations was positioned as worthy of effort, but not necessarily comparable to the central HR NGO priority of active state malignancy, foremost torture and extrajudicial killing. By the late 1990s, at least some post-colonial governments argued along grooves originally set down by imperial administrators, citing the apparent "backwardness" of their own citizens, and the inability of the government to do much with respect to custom or attitudes.[74] The necessary complexity of the task, and the shrunken vernacular of human rights, provided an ecosystem where such arguments could hope for a sympathetic hearing—a failure of ability, or, more credibly, ability and will, was a somewhat less provocative target for the large HR NGOs.

While a major and sustained social mobilization against socially and culturally mediated, and the attitudes which licensed them, would become a focal point of the UN programme on human and women's rights from the 1970s, historical study of the 1950s and 1960s suggests there were meaningful antecedents. The depth and sophistication with which "traditional" abuses were identified as priorities for remediation, in highly ambitious terms, from the earliest moments of the UN human rights programme is revealing. It demonstrated that the UDHR, particularly for women delegates from the Third World, was understood as integral to their own national projects to advance the rights of women in spaces which were not high political, or part of the formal institutional apparatus. For figures like Sivomey, Mehta, Aguilar, and Marzuki, it was axiomatic that human rights were women's rights—decades before the phrase was encapsulated by their contemporary heirs in the campaigns at Vienna and Beijing.

Notes

1 Status of Women in Private Law: Customs, Ancient Laws, and Practices Affecting the Human Dignity of Women, GA Resolution 843 (IX), 17 December 1954.
2 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, GA Resolution 1763 A (XVII), 7 November 1962; and its later elaborative comment, Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, GA resolution 2018 (XX), 1 November 1965.
3 Leila Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton: Princeton University Press, 1997); Nitza Berkovitch, *From Motherhood to Citizenship: Women's Rights and International Organizations* (Boston: JHU Press, 1999); Madeleine Herren, "Gender and international relations through the lens of the League of Nations (1919–1945)," in Glenda Sluga and Carolyn James (eds.), *Women, Diplomacy and International Politics since 1500* (London: Routledge, 2015), 182–201; Marie Sandell, "Regional versus International: Women's Activism and Organisational Spaces in the Inter-War Period," *The International History Review* 33: 4 (2011): 607–25; and Sluga, "'Add Women and Stir': Gender and the History of International Politics," *Humanities Australia* 5 (2014): 65–72. For excellent recent discussion on approaches to the field, see Karen Garner, *Women and Gender in International History: Theory and Practice* (London: Bloomsbury, 2018).
4 For wide survey coverage, see the comprehensive account from Anne Winslow (ed.), *Women, Politics, and the United Nations* (Westport: Greenwood Press, 1995); on the

general arc of the CSW, see *A Short History of the Commission on the Status of Women* (New York: United Nations Publication, 2019).

5 For compelling exception, see Giusi Russo, "Contested Practices, Human Rights, and Colonial Bodies in Pain: The UN's Gender Politics in Africa, 1940s–1960s," *Gender & History* 30: 1 (March 2018): 196–213. See also work on the earlier period, which specifically engages the colonial African dimension, Charlotte Walker-Said, "The Trafficking and Slavery of Women and Girls: The Criminalization of Marriage, Tradition, and Gender Norms in French Colonial Cameroon, 1914–1945," in Tiantian Zheng (ed.), *Sex Trafficking, Human Rights, and Social Justice* (New York: Routledge, 2010), 150–169.

6 For the most extensive study, see Egon Schwelb, "Marriage and Human Rights," *The American Journal of Comparative Law* 12: 3 (Summer 1963): 337–383; and more recently, Maja Kirilova Eriksson, *The right to marry and to found a family: a world-wide human right* (Uppsala: Iustus Förlag 1990); Ruth Gaffney-Rhys, "International law as an instrument to combat child marriage," *The International Journal of Human Rights* 15: 3 (2011): 359–373; and Annie Bunting, Benjamin Lawrance, and Richard Roberts (eds.), *Marriage by Force? Contestation over Consent and Coercion in Africa* (Columbus: Ohio University Press, 2016).

7 Charlotte Bunch, "Women' s Rights as Human Rights: Toward a Re-Vision of Human Rights," *Human Rights Quarterly* 12: 4 (1990): 486–98; Arvonne S. Fraser, 'Becoming Human: The Origins and Development of Women's Human Rights', *Human Rights Quarterly* 21: 4 (1999): 853–906.

8 Seth Koven and Sonya Michel, eds. *Mothers of a New World: Maternalist Politics and the Origins of Welfare States* (New York: Routledge, 1993); Molly Ladd-Taylor, *Mother-work: Women, Child Welfare, and the State, 1890–1930* (Urbana: University of Illinois, 1995).

9 Marie-Hélène Lefaucheux and International Council of Women, *Women in a Changing World* (London: Routledge, 1966).

10 Roland Burke, "'Real Thinking': American Human Rights Diplomacy and the Perils of Anti-Emotionalism," *Diplomacy & Statecraft* 31: 2 (June 2020): 306–325.

11 John Humphrey, *Human Rights & the United Nations: A Great Adventure* (Dobbs Ferry: Transnational Publishers, 1986), 30–31.

12 See, for instance, Report of UN Human Right Seminar, Participation of Asian Women in Public Life; Bangkok, 5 – 16 August 1957, ST/TAA/HR1; Seminar on Participation of Women in Public Life, Bogotá, 16 – 29 May 1959; ST/TAO/HR/5; Seminar on Participation of Women in Public Life, Addis Ababa, 12–23 December 1960, ST/TAO/HR9; Seminar on the Status of Women in Family Law, 18 – 31 August 1964, Lomé, ST/TAO/HR22.

13 Kristen Ghodsee, *Second World, Second Sex: Socialist Women's Activism and Global Solidarity* (Durham: Duke University Press, 2019); and, earlier, Ghodsee, "Revisiting the United Nations Decade for Women: Brief Reflections on Feminism, Capitalism and Cold War Politics in the Early Years of the International Women's Movement." *Women's Studies International Forum* 33: 1 (January 2010): 3–12.

14 Rebecca Adami provides an impressively nuanced account of the role of this cohort in the drafting of the UDHR, see Adami, *Women and the Universal Declaration of Human Rights* (London: Routledge, 2018), 63–73.

15 Kumari Jayawardena, *Feminism and Nationalism in the Third World* (New Dehli: Zed Books, 1986).

16 Aparna Basu and Bharati Ray, *Women's Struggle: A History of the All India Women's Conference, 1927–1990* (New Delhi: Manohar, 1990); and Aparna Basu, "Feminism and Nationalism in India, 1917–1947," *Journal of Women's History* 7: 4 (Winter 1995), 95–107; for precis of Mehta's biography, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 90.

17 Mehr Nigar Masroor, *Ra'ana Liaquat Ali Khan* (Karachi: All Pakistan Women's Association, 1980).
18 Amal al-Sharqi, "The Emancipation of Iraqi Women," in Tim Niblock (ed.) *Iraq, the Contemporary State* (New York: St. Martin's Press, 1982), 74–87; and Marion Farouk-Sluglett, "Liberation or Repression? Pan-Arab Nationalism and the Women's Liberation Movement in Iraq," in Derek Hopwood, Habib Ishow and Thomas Koszinowski (eds.), *Iraq: Power and Society* (Reading: St. Antony's College Oxford & Ithaca, 1993), 51–74.
19 Jurdak's Lebanon was an early expedition for the UN that took a major forum beyond the triumvirate of New York, Paris, and Geneva, with the CSW holding its third session in Beirut, see Report of the CSW, 21 March – 4 April 1949, 19 April 1949, E/CN.6/124.
20 Susan Eileen Waltz, "Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights," *Human Rights Quarterly* 23: 1 (2001), 63; see also, Summary Records of the CHR, 12 December 1947, E/CN.4/SR.34; see also Mehta's observations on any specific articulation of 'men' and 'women', which implied potential for some gender-derived exceptionalism, as opposed to the full generic phrase, 'everyone'. Summary Records of the CHR, 9 June 1948, E/CN.4/SR. 66.
21 Humphrey, *Edge of Greatness*, 50.
22 Ekoue Satchivi, "Farewell to Marie Madoé Sivomey," *UFC Togo*, 2 October 2008, available at http://www.ufctogo.com/L-adieu-a-Marie-Madoe-Sivomey-1961.html accessed 2 May 2019.
23 Jeanne Martin Cissé, *La fille du Milo* (Paris: Presence Africaine, 2009); and François Freland, "Guinea bereaved by the death of Jeanne Martin Cissé, figure of independence and women's rights," *Jeune Afrique*, 22 February 2017, available at at https://www.jeuneafrique.com/405868/politique/guinee-endeuillee-disparition-de-jeanne-martin-cisse-figure-de-lindependance-droits-femmes/ accessed 1 May 2019. accessed 1 May 2019. See, generally, Sylvia Serbin and Ravaomalala Rasoanaivo-Randriamamonjy (eds.), *African Women, Pan-Africanism and African Renaissance* (UNESCO: Paris, 2015).
24 For more context see Aoife and Rowe 'Feminism, Global Inequality and the 1975 Mexico City Conference', this volume, ch. 6.
25 See also Chesler 'Who Wrote the CEDAW?', this volume, ch. 7.
26 Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010), 40–41; 116–121.
27 Ibid, 116–121.
28 Summary Records of the CHR, 15 June 1949, E/CN.4/SR. 129.
29 Summary Records of the CHR, 15 June 1949, E/CN.4/SR. 129.
30 Summary Records of the CHR, 15 June 1949, E/CN.4/SR. 129.
31 GAOR, 27 October 1950, A/C. 3/SR. 296.
32 GAOR, 27 October 1950, A/C. 3/SR. 296.
33 Convention on the Political Rights of Women, GA Resolution 640 (VII), 20 December 1952.
34 GAOR, 15 December 1952, A/C.3/SR. 478.
35 GAOR, 15 December 1952, A/C. 3/SR. 477.
36 Action Taken Upon Decisions Reached by the Eighth Session of the CSW, 22 March -9 April 1954, 24 January 1955, E/CN.6/261, para 27.
37 A strong interest in private law, custom, and wider social and attitudinal structures were, however, evident from the earliest sessions of the CSW, see Report of the CSW, 25 February 1947, E/281. for instance, Press Release, Roundup of the Fifth Session of the CSW, 14 May 1951, SOC/1201; CSW, Draft Report on the Fifth Session, 30 April – 12 May 1951, E/CN.6/L.57;
38 Action Taken Upon Decisions Reached by the Eighth Session of the CSW, 22 March -9 April 1954, 24 January 1955, E/CN.6/261, para 27.
39 GAOR, 15 December 1954, A/C. 3/SR. 621.

40 GAOR, 15 December 1954, A/C.3/SR.621.
41 On Aguilar's background, see Liliana Torres-Muga, Funeral Oration for Carmela Ayanz Aguilar, 5 June 2012, available at http://www.lilianatorresmuga.net/actividades/discursos-como-directora-de-la-academia-diplomatica accessed 1 May 2019.
42 GAOR, 15 December 1954, A/C.3/SR.621.
43 GAOR, 15 December 1954, A/C.3/SR.621.
44 GAOR, 15 December 1954, A/C.3/SR.621.
45 GAOR, 15 December 1954, A/C.3/SR.621.
46 It had some oblique relationship to features of the Convention on the Nationality of Married Women, GA Resolution 1040 (XI), 20 February 1957.
47 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries convened by Economic and Social Council Resolution 608 (XXI), 30 April 1956. On the Supplemental Convention, see especially the analysis from Joyce A. C. Gutteridge, 'Supplementary Slavery Convention, 1956,' *International & Comparative Law Quarterly* 6: 3 (July 1957), 449–471. Gutteridge, an eminent international lawyer for the British Foreign Office, would play a substantial role in shaping the eventual Marriage Convention.
48 CSW Report of the 28th Session, New York, 9 – 27 March -1959, 6.
49 Ibid, 7.
50 Ibid, 7.
51 CSW, Resolution 3 (XIII), Age of Marriage, Free Consent, and Registration of Marriages, E/CN.6/L.261/Rev. 1.
52 GAOR, Summary Records of Committee III, 2 October 1961, A/C.3/SR.1060.
53 GAOR, Summary Records of Committee III, 2 October 1961, A/C.3/SR.1060.
54 Burke, *Decolonization,* 128–130.
55 GAOR, Summary Records of Committee III, 4 October 1961, A/C.3/SR.1063, para 10.
56 Ibid, para 42.
57 Ibid, para 42.
58 Ibid, para 19.
59 Ibid, para 19.
60 Ibid, para 46.
61 Ibid.
62 Ibid.
63 Ibid.
64 Ibid.
65 Ibid, para 48.
66 Ibid, para 48.
67 Ibid, para 49.
68 GAOR, Summary Records of Committee III, A/C.3/SR.1068, 10 October 1961, para 5.
69 On the balance between universal principle and particular national circumstance, see the summation of Canadian representative, Jean Casselman, GAOR, Summary Records of Committee III, A/C.3/SR.1067, 9 October 1961, para 5.
70 *Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* General Assembly Resolution 2018 (XX), 1 November 1965.
71 GAOR, Summary Records of Committee III, A/C.3/SR.1092, 2 November 1961, para 27.
72 Elizabeth Evatt et al., *Royal Commission on Human Relationships Final Report*, v. 1–5 (Canberra: Australian Government Printers, 1976).
73 On the 1967 Declaration, see discussion across GAOR, 5–13 October 1967, A/C. 3/SR. 1473–1483; and the final text as adopted, Declaration on the Elimination of Discrimination against Women, GA Resolution 2263 (XXII), 7 November 1967.

74 See the analysis presented in Sonia Harris-Short, "International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child," *Human Rights Quarterly* 25: 2 (2003): 130–81.

Bibliography

Adami, Rebecca. *Women and the Universal Declaration of Human Rights*. New York & London: Routledge, 2019.

Berkovitch, Nitza. *From Motherhood to Citizenship: Women's Rights and International Organizations*. Boston: Johns Hopkins University Press, 1999.

Bunch, Charlotte. "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights." *Human Rights Quarterly* 12, no. 4 (1990): 486–498.

Bunting, Annie, Benjamin Lawrence, and Richard Roberts, eds. *Marriage by Force? Contestation over Consent and Coercion in Africa*. Columbus: Ohio State University Press, 2016.

Burke, Roland. *Decolonization and the Evolution of International Human Rights*. Philadelphia: University of Pennsylvania Press, 2010.

Burke, Roland. "'Real Thinking': American Human Rights Diplomacy and the Perils of Anti-Emotionalism." *Diplomacy & Statecraft* 31, no. 2 (2020): 306–325.

Cissé, Jeanne Martin. *La Fille Du Milo*. Paris: Presence Africaine, 2009.

Eriksson, Maja. *The Right to Marry and to Found a Family: A World-Wide Human Right*. Uppsala: Iustus Förlag, 1990.

Evatt, Elizabeth. *Royal Commission on Human Relationships Final Report*. Canberra: Cambridge University Press, 1976.

Fraser, Arvonne S. "Becoming Human: The Origins and Development of Women's Human Rights." In *Women, Gender and Human Rights: A Global Perspective*, edited by Majorie Agosin, 15–64. USA: Rutgers University Press, 2001.

Gaffney-Rhys, Ruth. "International Law as an Instrument to Combat Child Marriage." *The International Journal of Human Rights* 15, no. 3 (2011): 359–373.

Garner, Karen. *Women and Gender in International History: Theory and Practice*. London: Bloomsbury, 2018.

Ghodsee, Kristen. "Revisiting the United Nations Decade for Women: Brief Reflections on Feminism, Capitalism and Cold War Politics in the Early Years of the International Women's Movement." *Women's Studies International Forum* 33, no. 1 (2010): 3–12.

Ghodsee, Kristen. *Second World, Second Sex: Socialist Women's Activism and Global Solidarity*. Durham: Duke University Press, 2019.

Hannan, Carolyn, Aina Liyambo, and Christine Brautigam. "*A Short History of the Commission on the Status of Women*." New York: United Nations Publications, 2019.

Harris-Short, Sonia. "'International Human Rights Law: Imperilist, Inept and Ineffective' Cultural Relativism and the UN Convention on the Rights of the Child." *Human Rights Quarterly* 25, no. 2 (2003): 130–181.

Herren, Madeleine. "Gender and International Relations through the Lens of the League of Nations (1919–1945)." In *Women, Diplomacy and International Politics since 1500*, edited by Glenda Sluga and Carolyn James. London: Routledge, 2015.

Humphrey, John Peters. *Human Rights & the United Nations: A Great Adventure*. New York: Transnational Publishers, 1986a.

Humphrey, John Peters. *On the Edge of Greatness: The Diaries of John HUmphrey, First Director of the United Nations Division of Human Rights, Vol 1 1948–1949*. edited by A.J. Hobbins. Montreal: Carleton University Press, 1986b.

Jayawardena, Kumari. *Feminism and Nationalism in the Third World*. New Delhi: Zed Books, 1986.

Koven, Seth, and Sonya Michel, eds. *Mothers of a New World: Maternalist Politics and the Origins of Welfare States*. New York: Routledge, 1993.

Ladd-Taylor, Molly. *Mother-Work: Women, Child Welfare, and the State, 1890-1930*. Urbana, Illionois: University of Illinois Press, 1995.

Lefaucheux, Marie-Helene, and International Council of Women. *Women in a Changing World*. London: Routledge, 1966.

Rupp, Leila J. *Worlds of Women: The Making of an International Women's Movement*. Princeton: Princeton University Press, 1997.

Russo, Giusi. "Contested Practices, Human Rights, and Colonial Bodies in Pain: The UN's Gender Politics in Africa, 1940s–1960s." *Gender & History* 30, no. 1 (2018): 196–213.

Sandell, Marie. "Regional versus International Women's Activism and Organisational Spaces in the Inter-War Period." *The International History Review* 33, no. 4 (2011): 607–625.

Schwelb, Egon. "Marriage and Human Rights." *The American Journal of Comparative Law* 12, no. 3 (1963): 337–383.

Serbin, Sylvia, Rasoanaivo-Randriamamonjy, Ravaomalala. "*African Women, Pan-Africanism and African Renaissance*." Paris: UNESCO, 2015.

Sluga, Glenda. "'Add Women and Stir': Gender and the History of International Politics." *Humanities Australia* 5 (2014): 65–72.

Walker-Said, Charlotte. "The Trafficking and Slavery of Women and Girls: The Criminalization of Marriage, Tradition, and Gender Norms in French Colonial Cameroon, 1914–1945." In *Sex Trafficking, Human Rights, and Social Justice*, edited by Tiantian Zheng, 150–169. New York: Routledge, 2010.

Waltz, Susan Eileen. "Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights." *Human Rights Quarterly* 23, no. 1 (2001): 44–72.

Winslow, Anne, ed. *Women, Politics, and the United Nations*. Westport: Greenwood Press, 1995.