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(DIS)EMBEDDED WOMEN

Rhoda E. Howard-Hassmann*

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WOMEN'S RIGHTS ARE INDIVIDUAL RIGHTS

The central question we were asked to address in the *Michigan Journal of International Law's* Symposium, "Dueling Fates," was, "Which international legal approach more effectively protects women's rights, the collective or the individual?" I am a political sociologist, without legal training, although I have been publishing in the field of international human rights (including women's rights) since 1980. This Article will focus on some underlying assumptions about the nature of society, and women's roles in it, that are pertinent to this central question.

The position argued in this Article is that women's rights are individual rights. To explain this position, the Article will progress along the following arguments:

- 1) The dichotomy between Western individualism and non-Western collectivism is false.
- 2) Much of the debate regarding the role of women and women's rights confuses interest and identity.
- 3) Women do not necessarily constitute a social group.
- 4) "Women's" rights are actually universal human rights: they pertain mostly to women, but also to men.

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Professor Howard-Hassmann is most grateful to her research assistant, Mr. Anthony Lombardo, for drawing the diagrams for this Article.

- 5) The debate about whether women are a social group is rooted in part in differing conceptions of women's embeddedness in society.
- 6) The debate is also rooted in part in differing conceptions of women's embeddedness in their own religious group.
- 7) Even though women's rights are not collective rights, they will only be attained in situations in which women (and some men) act collectively.

A. "Western Individualism"¹

The organizers of the Symposium included in their outline for the session on "The Significance of Uniqueness" (in which this Article was presented)² the question whether "the unique [women's] rights can be more successfully protected in a western, individual rights-based paradigm or a collective rights-based paradigm." This is an incorrect way to frame this question. The tension between individualism and collectivism is not a tension between the West and elsewhere. Nor is the issue dichotomous. There is a continuum of social practices and social philosophies that stretches from extreme individualism to very tight collectivism. This continuum is evident both in Western and in non-Western societies.

A common perception, reflected in the question the organizers posed, is that the "West" is individualist, while other parts of the world are collectivist. But it is wrong to say there are no collectivist strains in the "West." Such strains were evident in the past in political systems such as fascism and communism, and are still evident in conservative and communitarian social movements in North America. It is also wrong to assume that the United States is the paradigmatic Western State. Canada is somewhat more collectivist than the United States, and some Northern European countries are considerably more collectivist. The collectivist strains in Canada and Western Europe are exemplified in the existence of social democratic political parties, as well as in the continued relevance of Christian communitarian thought.

Nor is it correct to assert that there are no individualist tendencies in the non-Western world. For example, according to some scholars there are strong individualist tendencies within Islam, which focuses on the

1. Much of this Section draws on RHODA E. HOWARD, *HUMAN RIGHTS AND THE SEARCH FOR COMMUNITY* (1995), as well as on other of my earlier publications.

2. See Symposium, *Dueling Fates: Should the International Legal Regime Accept a Collective or Individual Paradigm to Protect Women's Rights?*, 24 MICH. J. INT'L L. 347 (2002) (transcript).

individual's relationship to Allah and the individual's consequent obligation to behave morally.³ Many African religions and moral systems also stress (some) individual rights and obligations, as do many Asian.⁴ Furthermore, social changes in the non-Western world over the last fifty years repeat the pattern of social changes that occurred in the West since the beginning of the Industrial Revolution. Urbanization, industrialization, and secularization create a new kind of man, and woman, who acts on his or her individual desires, hopes, and ambitions.⁵ For example, African women now leave their villages in order to engage in trade, escape witchcraft accusations, or merely to enjoy the good times and bright lights of the city.⁶

There are schools of thought that promote "Asian," "African," "Muslim," and "indigenous" concepts of human rights. These concepts, though allegedly reflective of different parts of the world and different types of societies, bear marked resemblance to one another. Assuming that there is no political interest behind promotion of these regional/religious concepts of human rights, they reflect a nostalgia for a mythical society that is receding in the non-Western world, just as it was lost in the West by perhaps the end of World War I. This is a world of large families embedded in their village communities, all practicing the same religion, in an overall atmosphere of social homogeneity and consensus on social values and social roles.

In discussing strategic choices for women's rights; namely, whether women ought to strive for individual or group rights, we should not be influenced by myth or nostalgia. We should be influenced by a realistic picture of women's lives today, in actual communities, subject to control by familial, religious, and State authorities. We need to be aware that men act in their own interests, and often their interests are in the continuation of patriarchy, which can provide them with material as well as symbolic satisfaction. Further, we need to be aware that religious as well as political authorities can adhere to patriarchal ideologies, can have patriarchal interests, can be corrupt, and can be extremely abusive of all individuals' rights.

3. Zehra F. Arat, *Women's Rights in Islam: Revisiting Quranic Rights*, in HUMAN RIGHTS: NEW PERSPECTIVES, NEW REALITIES 85–88 (Adamantia Pollis & Peter Schwab eds., 2000).

4. See, e.g., Kwasi F. Wiredu, CULTURAL UNIVERSALS AND PARTICULARS: AN AFRICAN PERSPECTIVE (1996); Amartya Sen, *East and West: The Reach of Reason*, N.Y. REV. BKS., July 20, 2000, at 33.

5. See, e.g., HOWARD, *supra* note 1, at 58–63, 86–104.

6. See Rhoda E. Howard, *Women's Rights and the Right to Development*, in HUMAN RIGHTS AND GOVERNANCE IN AFRICA 111 (Ronald Cohen et al. eds., 1993).

B. Identity and Interest

Given the real world in which they live, rather than the mythical world drawn upon by some advocates of collective rights, it could be argued that women share a common identity. Since they share a common identity, they are all part of one collectivity. Therefore, they need collective, not individual, rights.

One argument for common identity is rooted in biology. Many aspects of women's lives are a consequence of their shared biology, no matter where they live. Women are subject to the rigors of child bearing, are in danger of being raped, and frequently must endure physical abuse by whatever male has authority over them. Nevertheless, identity is a social, not a biological matter. Common biology is not enough to distinguish common interest, even in human rights. Even regarding rights to security of person, there are severe disagreements among women as to what is their interest. Some women will disagree that the right to security of person includes the right to abortion. Some, such as some Catholic or some Jewish women, will disagree that the right to security of person includes the right to birth control. Some, for example some very conservative Christian women, will even disagree that the right to security of person includes the right to be protected from spousal violence, thinking that it is the husband's right to chastise his wife.

Another argument that posits that identity and interest are synonymous draws on theories of patriarchy. The theory assumes that all women share the identity of persons oppressed by patriarchal political, economic, cultural, and theological systems. This argument assumes that women's shared interests in overcoming patriarchy are sufficient to indicate a shared identity.

Women do frequently get together in large numbers to promote their own interests, including their interest in modifying or eliminating patriarchy. That large numbers of women act in concert, however, does not mean that they identify themselves primarily as women, or that their principal reference group is other women. For example, a woman might take part in the feminist movement precisely because she does not identify herself primarily as a woman. Rather, she wants to be identified as an individual. Further, her principal reference group might not be other women. It might be her family, her ethnic group, her religious community, fellow professionals, or a host of other reference groups possible in worlds characterized by increasing degrees of individual choice.

Thus, that individuals share biology does not mean that they are part of a distinct social group. Moreover, that they act in concert with other

individuals also does not necessarily mean that all those individuals, taken together, are members of a distinct social group.

C. Are Women a Group?

Women do not constitute a social group. A statistical aggregate is not a group, for purposes of either social or legal analysis.⁷ One would not, for example, argue that all individuals who own summer houses are members of a social group, nor would one argue that all individuals who enjoy playing ping-pong are members of a social group.

A statistically aggregated group, moreover, is not necessarily a collectivity. A collectivity is a group of people that shares a particular culture, language, religion, and lifestyle, usually connected to its occupation of a particular territory and to an historical memory of being a group.⁸ Its culture is "indivisible"; that is, if others in the collectivity do not enjoy the culture, the individual cannot enjoy it. She cannot express her identity without membership in the collectivity, nor can she enjoy the full range of her human rights without such membership. For example, one could argue in Canada that Aboriginal people need collective rights. No individual Aboriginal person can enjoy her right to speak her own language, practice her own (indigenous) religion, or arguably even live as a cultural Aboriginal unless other Aboriginals also enjoy those same rights and are able to live and interact as a community living on their own territory, passing down their languages, religions, and cultures to their children. Other women in Canada, however, already enjoy these rights in so far as they all enjoy rights as individuals to speak their own languages, practice their religions, or live collectively.⁹

Women, as such, do not need membership in an all-women collectivity to have an identity or to enjoy their human rights. They may achieve their identity through membership in many other social groups, such as religious, ethnic, or national groups. They share membership in these groups with men. They also achieve their identity through their diverse roles in public life, in their professions or occupations, or in their friendship networks. Connections with other women may or may not be important to them in these roles. Finally, women achieve their identity through their roles in family life. Again, their families may or may not

7. Thus, I disagree with William F. Felice, who seems to think that any statistical aggregate, such as women or gays and lesbians, constitutes a social group. See WILLIAM F. FELICE, *TAKING SUFFERING SERIOUSLY: THE IMPORTANCE OF COLLECTIVE HUMAN RIGHTS* 40-50 (1996).

8. See Rodolfo Stavenhagen, *Ethnic Conflicts and Their Impact on International Law*, 127 INT'L SOC. SCI. J. 117, 118-19, 123-27 (1991).

9. This, of course, begs the question of what rights should be provided under the Canadian legal principle of multiculturalism, but that is the topic of another paper.

include other women; even if they do include other women, relationships among the women may be antagonistic rather than based on solidarity.

D. *Women's Rights or Human Rights?*¹⁰

If women are not a group—or at least, not necessarily a group—then are women's rights group rights? I hesitate to comment directly on the legal meaning of individual or group rights. But I cannot think of any *human* right that women enjoy—or ought to enjoy—(under international law as presently constituted) that men do not also need. Many fewer men than women are victims of certain types of rights abuses, but there are always some male victims.

Much attention is paid in feminist discussion to reproductive rights.¹¹ Without the right to control their own body, many feminists agree, most other rights are difficult for women to attain. Men, however, also need reproductive rights. There are countries that abuse men's rights to reproduce. During the period of the Emergency in India in the 1970s, men were forcibly sterilized: Muslim men were particularly hard hit by this policy. Forcible sterilization of men as well as women has taken place in China via the one-child policy.

Another area of concern to feminists has been maternity leave. In keeping with article 25(2) of the Universal Declaration of Human Rights,¹² and article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women,¹³ mothers need paid leave from their jobs in order to care for infants. In Canada, maternity leave is now called parental leave, and the mother and father of a child may split this leave if they see fit. Men also need the right to care for their children. In some cases, men are the only parent their child has. In Canada in 1996, 12.1 percent of all families were lone-parent with the mother only. However, another 2.5 percent of these families were lone-parent with the father only.¹⁴ Thus, men as well as women need

10. This Section draws on Rhoda E. Howard, *Women's Rights, Group Rights, and the Erosion of Liberalism*, in *MISTAKEN IDENTITIES: THE SECOND WAVE OF CONTROVERSY OVER "POLITICAL CORRECTNESS"* 130 (Cyril Levitt et al. eds., 1999).

11. See, e.g., Lori L. Heise, *Freedom Close to Home: The Impact of Violence Against Women on Reproductive Rights*, in *WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 238 (Julie Peters & Andrea Wolper eds., 1995); Rebecca J. Cook, *International Human Rights and Women's Reproductive Health*, in *WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES*, *supra*, at 256.

12. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., Supp. No. 13, at 71, U.N. Doc A/810 (1948).

13. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

14. Statistics Canada, *Census Families in Private Households by Family Structure*, <http://www.statcan.ca/english/census96/june9/econ.htm> (last modified Nov. 5, 2002).

protections for parents and children, even though the Universal Declaration of Human Rights, reflecting the standard social arrangements of the time, referred only to mothers and children.

Feminist activists also insist that women and girls need protection from sexual assault. Women and girls are much more likely to suffer sexual assault than men and boys. Nevertheless, men and boys also need this right. In Canada in 1995, 15 percent of victims of sexual assault were male.¹⁵ Internationally, men can suffer from rape and sexual torture in warfare and during genocides; the fact that men are usually the perpetrators of these crimes does not negate the suffering of their male, as well as their female, victims.

There is only one right that women need that men do not need—at least in the eyes of some women and some men—and that is the right to abortion. This is not a *human* right under international law, which avoids the issue. In some countries there is a *legal* right to abortion that women enjoy, and that (obviously) men do not need. One could discuss whether this legal right ought to be a human right. It would then be a right which women as a group enjoy, and that men do not enjoy because they do not need it. This would be the only candidate for a right specific to women as a group.

If all the other rights that feminists claim on behalf of women are rights that men also need, then it is difficult to claim that they are specifically a group right, pertaining only to that group called women. They are universal rights. The only “group” to which they pertain is the human race. Since all human rights are held by the group “human race,” to call them group rights would be absurd.

E. Social Embeddedness

Why, then, is there a discussion of whether women’s rights are group rights? One reason is because of differing ideas about women’s embeddedness in their communities; that is, in their religious, ethnic, linguistic, and ancestral societies. If women are more strictly embedded in their communities than men, and if their identities and roles are more circumscribed than those of men, then perhaps they constitute a cohesive social unit, which may be referred to as a group or even a collectivity. Also, if women are more deeply embedded in community, culture, or religion than men, then perhaps their group interests undermine more drastically than men’s these crucial aspects of social life.

Accompanying this text are presented three diagrams of women’s relationship to family and society. Two of these diagrams represent ideal

15. Figure calculated from Statistics Canada, *Canadian Crime Statistics 1995*, Cat.85-205XPE, at 57–59.

types, not reflective of social reality anywhere.¹⁶ The third represents the actual status of women in any society.

DIAGRAM I: WOMEN AS EMBEDDED IN THE COMMUNITY

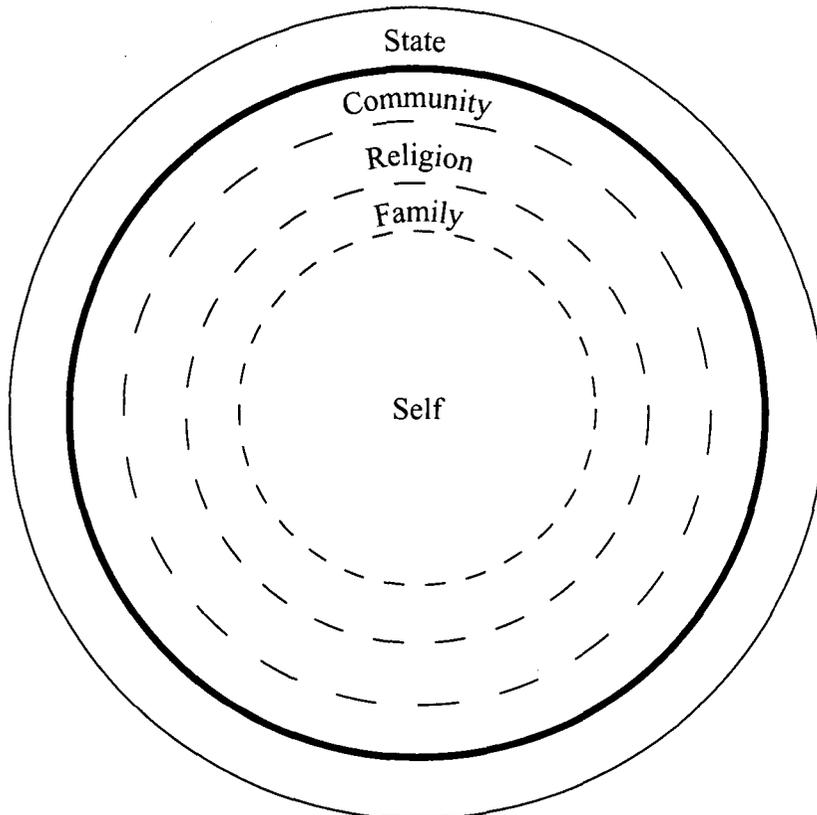


Diagram I presents the individual woman as possessing very loose identity boundaries, symbolized by the dotted line. Outside her are several circles, representing her embedded memberships. Most important is the family. Then comes religion, and the community. Family, religion, and community are all separated by dotted rather than solid lines, to indicate how intertwined they are. Finally, the woman is embedded in her country. The line between country and community is the most solid, as countries or nations are politico-legal entities, often run by rights-abusive civilian or

16. The term "ideal type" was coined by the late-nineteenth/early-twentieth century German sociologist, Max Weber. It refers to subjective pictures of the social world, not objective reality. See MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 89 *passim* (Am. Henderson & Talcott Parsons trans., 1947).

military elites, which while claiming to represent local communities often engage in practices that undermine them.

This is the ideal type that is often envisaged by those who say that a woman cannot be viewed separate from her community.

DIAGRAM II: THE WOMAN AS INDIVIDUAL ENTITY

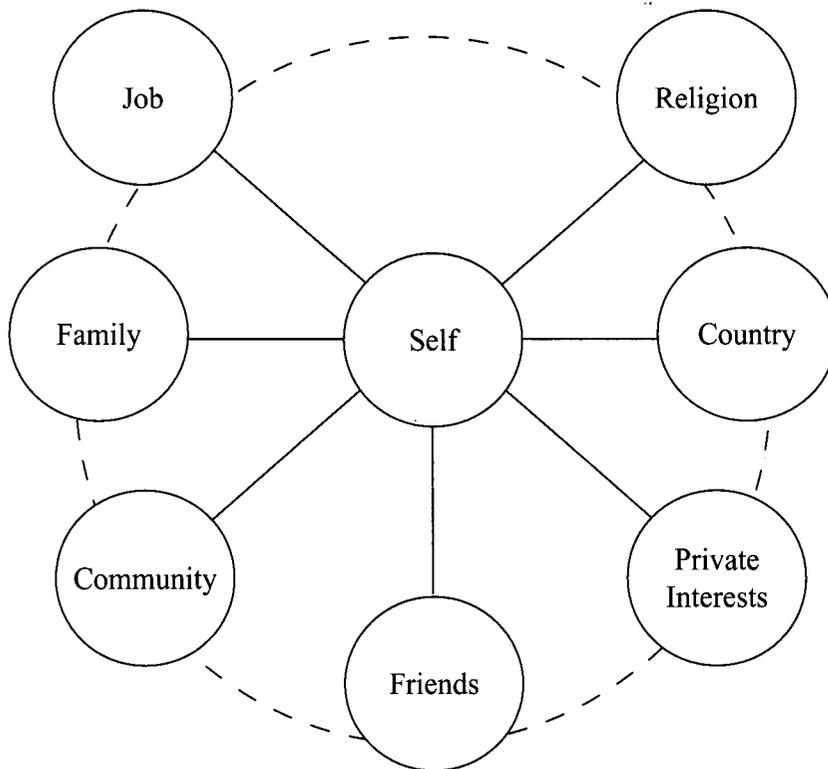


Diagram II presents the individual woman as very tightly bounded within her own identity. She is the center of a circle, and the boundaries of that circle are solid. She is an entity, therefore, separate from all of her social relationships. All of her social relationships are symbolized by choice: she may, or may not, have these different types of relationships. Further, some of her relationships have nothing to do with family, religion, or community: thus, she may derive her primary source of identity from her job, her private interests (e.g., mountain climbing, painting classes) or her friends. There are very loose if no connections among the various relationships she has: for example, she may work with a set of people who have no connection to her religious community. Hence, the lines among these relationships are very loose and light.

This is the ideal type that is often envisaged by those who say that a woman is a completely autonomous individual, whose identity and loyalties are all a result of free choice.

DIAGRAM III: WOMEN'S COMPLEX REALITY

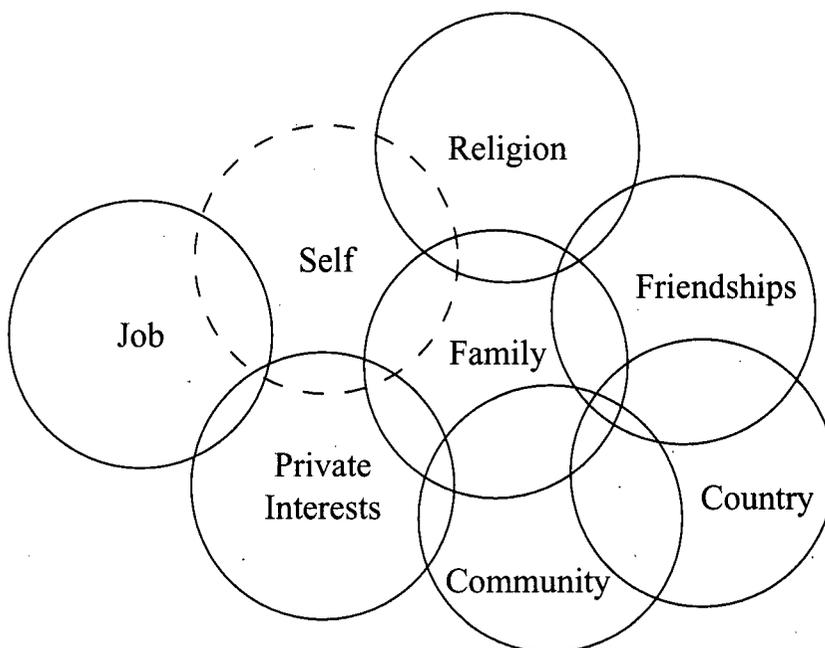


Diagram III presents the complex reality that characterizes the lives of most women in the West, and that is increasingly characteristic of the lives of women in the non-Western world. The picture is of the way that an individual woman might view her relationships, roles, and sense of self. This woman does have her own identity, but it is neither tightly bounded nor so permeable by her various group memberships that she has no core sense of self. Her memberships and commitments are overlapping. Usually, she has a strong sense of commitment to her family, however defined (this includes, at least in the Western world, a variety of "blended" families and lesbian families). She will have a stronger or weaker commitment to her religious group, into which she may have been born but which she may also have chosen, either through intermarriage or through an autonomous decision that she would prefer to join a new religious group. In some cases, she will have no religious commitment. Her friendship network may reflect her extended family ties or her religious membership, but it may equally reflect her profession or occupation, her private interests, or her commitment to

community or country. Likewise, her community may consist primarily of relatives or religious co-believers, or it may consist of friends and co-workers, or it may consist of networks that she has developed in the place where she lives.

For each individual woman, the relative weight of the various aspects of her sense of self, her group memberships, her interests, and her commitments will vary. This is not an ideal type description. Rather, it is a description of how real women actually live their lives. Except in countries where women have no rights whatsoever and in which family roles and religious and community membership are strictly enforced by the State and its coercive agents, women's identities are a combination of memberships in family, religious groups and communities into which they are born or marry, and social relationships which they choose over the course of their lifetime.

Women, then, are characterized by various degrees of embeddedness in their families and communities. Yet, to many who oppose women's rights, it is important that women be kept tightly embedded in religio-ethnic communities. If women act as individuals or in groups to remove themselves from such embeddedness, ethnic and religious groups may feel threatened. They may wish to force women back into their prescribed positions and social roles, to keep them as the carriers of culture in their own communities.¹⁷ To counter this form of coerced embeddedness, some theorists think women would be better off seeking collective, rather than individual, rights.

F. *Women and Religious Commitment*

A sub-theme of this Symposium is the relationship of women to their religious communities. In some societies and among some communities, it is thought that to promote women's rights will undermine the religious group. This fear reflects reality. By virtue of their already being protected by *individual, human* rights, women may well undermine tight collective membership in their religious groups. They may do so if they exercise their right freely to choose or to leave their religion. The right to apostasy, and the right to be an atheist, may remove a woman entirely not only from the legal (where there are State religions) but also from the normative or moral control of her religious

17. See Radhika Coomaraswamy, *The Principle of Universality and Cultural Identity*, in CLAIMING OUR PLACE: WORKING THE HUMAN RIGHTS SYSTEM TO WOMEN'S ADVANTAGE 19–25 (Margaret A. Schuler ed., 1993); Hanna Papanek, *The Ideal Woman and the Ideal Society: Control and Autonomy in the Construction of Identity*, in IDENTITY POLITICS AND WOMEN: CULTURAL REASSERTIONS AND FEMINISMS IN INTERNATIONAL PERSPECTIVE 42, 47–48 (Valentine M. Moghadam ed., 1994).

group. Women may also undermine this tight collective membership if they exercise the right freely to choose whom they will marry. Thus, Ahmad Farraq in 1990 opposed article 16(1) of the Universal Declaration of Human Rights, which prescribes the right to marry "without any limitation due to race, nationality or religion," because he believed a Muslim woman should not marry a man who is not a Muslim.¹⁸ Where religion and community are closely linked if not identical, marriage outside the religious group also removes women from the control of the social community.

One might suppose that any woman subject to normative or religious controls that deny her equality with men in her community will remove herself from that community so that she might enjoy her equal rights in the wider public sphere. But we know that this is not so.

Some women may independently and autonomously so value their religious membership that they will voluntarily subordinate themselves to its control, even in situations in which to do so contradicts the equal rights that as individuals they enjoy in the wider public sphere. For example, some Orthodox Jewish women voluntarily accept the principle that they may not divorce without a *Get*, a document signed by their husbands releasing them from their marriage.¹⁹ Some Catholic women vote for political parties that advocate restrictions on birth control and abortion, as in Poland since the end of communism.²⁰

Women may strive for greater equality within their religious groups, as do many Jewish or Catholic feminists. Nevertheless, because they value their religious membership so strongly, these women do not renounce Judaism or Catholicism, even as they continue to be subject to these religions' strictures of inequality between men and women. Even as they simultaneously and willingly partake in religious rituals that symbolize the subordination of women to men (such as the absence of women priests in Catholicism), they may prefer to stay within their religious community, moving it through internal debate toward greater equality. Many Muslim, Christian, and Jewish women press for equality within their religious communities by referring to more liberal interpretations of religious texts, rather than renouncing their

18. Ahmad Farraq, *Human Rights and Liberties in Islam*, in HUMAN RIGHTS IN A PLURALIST WORLD: INDIVIDUALS AND COLLECTIVITIES 133, 141 (Jan Berting et al. eds., 1990).

19. Esther Tager, *The Chained Wife*, 17 NETH. HUM. RTS. Q. 425 (1999).

20. Andrzej Kulczyki, *Abortion Policy in Postcommunist Europe: The Conflict in Poland*, 21 POPULATION & DEV. REV. 471 (1995).

membership or denouncing their religions for their discriminatory teachings or practices.²¹

Women who belong to religious groups that suffer discrimination, or that feel besieged because of their minority position in a certain country, are particularly unwilling to undermine their communities by making feminist demands. Thus, for many Jewish and Muslim women in North America, loyalty to their religio-ethnic communities supercedes their loyalty to the wider national group of women. Their primary interest is in keeping their community vibrant and close, not in asserting their feminist demands. They may be part of the statistical aggregate, women, but their sense of identity is not bound up with that aggregate. They are often more at home in the collectivity that is constituted by their religion, than in the physical group of women.

G. Women and Social Action

This Article has argued that women's rights are actually universal rights that were heretofore neglected. The international women's movement has brought the necessity for these rights to the attention of the human rights community. The international women's movement has also obliged the human rights community to pay attention to violations of rights in the private as well as in the public sphere.²² Although "women's" rights are in fact universal rights, it is women acting as a group who have struggled for them, with some assistance from men on some issues, in some parts of the world.

Women's rights (like all rights) must be struggled for from below and, in most cases, wrested from the State and other rights-violating institutions such as the family and private individuals. The most effective way therefore to obtain these rights is to *act* collectively,²³ but the necessity to act collectively does not mean that the rights thereby attained will be either group or collective rights. Moreover, the necessity to act collectively is not an obligation to so act: women embedded in their religious or other communities may prefer not to act at all, or to act only in concert with others within their communities, rather than with women who do not belong to those communities.

21. See, e.g., Riffat Hassan, *Rights of Women Within Islamic Communities*, in *RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES* 361, 380–86 (John Witte et al. eds., 1996).

22. See, for example, the very influential article by Charlotte Bunch, *Women's Rights as Human Rights: Towards a Re-Vision of Human Rights*, 12 *HUM. RTS. Q.* 486 (1990).

23. On the social movement for human rights, see MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998), especially chapter 5, "Transnational Networks on Violence Against Women."

A FINAL WORD: SOCIOLOGY AND LAW

To summarize, women are sociological individuals. Their identities are not solely a consequence of their embeddedness in their communities. They have roles and interests separate from their relationship to their families, ethnic communities, and religious groups. Moreover, they do not identify only as women, nor do they act in the public sphere only as women. They may be dis-embedded, not only from their communities but from their gender identities.

This sociological understanding of women may illuminate the legal debate regarding the nature of women's rights. Women are most likely to attain their rights if they do act in concert, in social movements for improved human rights. That they act in concert, however, does not mean that the goal they seek is a collective, rather than an individual good.