Political Legitimacy and Women’s Human Rights

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1 Introduction

Women’s lack of political and social status in their communities and families hampers the realization of their human rights on a number of dimensions. At the same time, women’s subordination is often closely identified with deeply entrenched cultural practices and traditions. According to Allison Jaggar, for example: “women are frequently taken as emblems of cultural integrity, so that defending beleaguered cultures becomes equated with preserving traditional forms of femininity, especially as these are manifest in traditional female dress and practices of marriage and sexuality” [Jaggar, 1998, p. 7]. Women’s rights thus raise profound questions about how to mediate the universality and abstraction of human rights with the particular local conditions in which women live.

In this paper, I focus on two philosophical arguments that critique women’s human rights doctrine and practice. The first is Charles Beitz’s argument that certain aspects of women’s human rights doctrine “overreach” in claiming rights to equality for women, given existing norms in many cultures. The second is Onora O’Neill’s argument that human rights are an inappropriate framework for addressing women’s subordination, since they merely give the illusion of doing something about women’s subordination without actually mitigating it.

I argue that such concerns can be addressed by integrating our philosophy of human rights with thinking about how human rights might be realized in legitimate institutions at all levels of governance and human rights practice. First, I argue that an adequate response to these critiques begins with understanding human rights as requiring equal moral standing among persons within social and political communities. Second, I argue that both Beitz and
O’Neill, in virtue of overlooking the status egalitarian component of human rights, also do not notice that the best understanding of how women’s human rights should be implemented is an institutional one (in Thomas Pogge’s sense), with state-level institutions being the primary focus of analysis, and that Rawls’s conception of liberal legitimacy provides a link between normative political legitimacy and the status egalitarian element of human rights. Third, based on this understanding of human rights and political legitimacy, I endorse Helen Stacy’s proposal that regional courts should be the primary interpreters of women’s human rights. Finally, I argue (in response to worries that women’s human rights doctrine is likely to remain ineffective at changing women’s subordination) that evidence from the public health and human rights movement suggests that more can be done to change the culture of women’s subordination than Beitz realizes, and that human rights can play a more important role in bringing about such change than O’Neill allows.

2 Equality and women’s human rights

Women’s human rights emphasize women’s equality of standing with men in their social and political communities. As the United Nations Economic and Social Council argues, “[t]he equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognized under international law and enshrined in the main international human rights instruments.” For example, the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) defines “discrimination against women” as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Importantly, in its General Comment on the equal rights of men and women, the Economic and Social Council argues that women are entitled to both formal equality with men, in the sense that laws and policies should not discriminate unfairly against women, and to substantive equality, in the sense that laws and policies must work to alleviate “the inherent disadvantage” of
women.

Charles Beitz has argued that this demand for women’s equality is radical enough, relative to “gendered norms found in the moral outlooks and patterns of social life that prevail in some existing societies” [Beitz, 2009, p. 190], to call into question the claim that women really do have human rights to equal standing with men in their social and political communities. Beitz thinks this follows from his “practical conception of human rights,” according to which the case that a particular human right exists requires that some kind of international response is both morally permissible and feasible in the event that a state’s fails to adequately protect the right within its borders. Beitz’s argument for why women’s human rights doctrine in particular is a hard case hinges on the feasibility of international action on behalf of women’s human rights doctrine, given what he calls “the radicalism of its aspirations considered in relation to social norms as these actually existed and continue to exist in much of the world” [Beitz, 2009, p. 190]. In particular, Beitz thinks that Article 5(a) of the Convention to End Discrimination Against Women (CEDAW) may “overreach” in claiming that:

States Parties shall take all appropriate measures [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Taking this doctrine seriously, Beitz notes, “is to contemplate not only large-scale changes in policy and social practice but also in prevailing social norms in some of the world’s societies,” such that implementing women’s human rights will likely run into “conflict between the requirements of human rights doctrine and gendered norms found in the moral outlooks and patterns of social life that prevail in some existing societies” [Beitz, 2009, p. 190]. Ultimately, for Beitz, the main concern for women’s rights is a practical problem, hinging on the observation that, in the effort to implement women’s human rights, “changes in law and administration are unlikely to be successful in securing their objectives without corresponding changes in background beliefs and social practices” [Beitz, 2009, 194]. This point raises the larger question “whether there are any feasible steps open to the international community or its agents that would induce states to adopt policies reasonably likely to accomplish the transformations of cultural belief and practice necessary to
secure women’s human rights” [Beitz, 2009, p. 191]. Beitz thinks that the answer may be no:

Change in patterns of belief that are well established in a culture, or for that matter in culturally sanctioned habits of legal and administrative practice, is a slow, complex process. It is not well understood, and the epistemic barriers facing outside agents seeking to influence it is substantial. Moreover, the means of influence available may seem crude and not well suited to the task. [Beitz, 2009, p. 194].

Thus, Beitz concludes that...

...there may be little that any external agent can do to change the conduct of a government that resists adopting measures aimed at inducing comprehensive changes in conventional beliefs. For this reason, human rights doctrine may overreach in embracing an open-ended entitlement to social and cultural change. [Beitz, 2009, 196]

On Beitz’s reading of human rights, then, women’s human rights to equality may be undermined by cultural commitments to women’s subordination. However, counterbalancing Beitz’s analysis of human rights, several theorists recently have argued that the best understanding of human rights more generally recognizes their foundational concern for equal moral standing among members of social and political communities. For example, Allen Buchanan argues that international human rights practice embodies an idea of equal status for all human beings [Buchanan, 2010]. In particular, according to Buchanan, the history of the practice as it emerged out of the global movement to end the slave trade, anticolonialism, and in the aftermath of the Holocaust, reveals a consistent concern with equal status as an animating drive of the international human rights movement itself. Rainer Forst also argues that the earlier history of the concept of human rights reveals a foundational concern with equality, arguing that “the original meaning of human rights was a republican rather than a classic liberal one,” in which the Levellers claimed rights to “property, liberty, and freedom” as “the means that would make them independent social and political agents, free from feudal domination or tyrannical rule” [Forst, 2010, p. 717].

In addition to an historical concern for equality, both Buchanan and Forst find (different) substantive ways in which human rights practice embodies a commitment to the moral equality of persons. For example, Buchanan notes
that human rights practice ascribes human rights and equality before the law to all citizens (not, for example, just to whites, or to men, or to those wealthy enough to secure their rights for themselves). Moreover, international human rights practice articulates strong claims on behalf of all individuals to rights of political participation, social and economic rights sufficient for a decent life (and to enable one to participate in political life), and explicit rights against discrimination on the basis of race or gender. Finally, both the right to work and rights to adequate standard of living are understood in human rights practice in what Buchanan calls a “social-comparative way”: that is, as both recognizing the equal moral status of all individuals and protecting this status against the risks of being regarded as a non-contributor (if one does not work) or of being humiliated by one’s poor standard of living. Most philosophical theories of human rights accept a requirement of reasonable fidelity between the list of rights endorsed by philosophical theory and the lists of rights found in international human rights practice. It is this requirement that Buchanan has in mind when he writes: “My point is not that the protection of equal status is the sole value that grounds modern human rights, only that it is sufficiently prominent that a critical reconstruction of IHR [international human rights] ought to take it into account” [Buchanan, 2010, p. 690].

Forst, taking the same line of argument further, argues that moral equality of persons is, in fact, the sole grounding value of human rights:

The moral basis for human rights, as I reconstruct it, is the respect for the human person as an autonomous agent who possesses a right to justification, that is, a right to be recognized as an agent who can demand acceptable reasons for any action that claims to be morally justified and for any social or political structure of law that claims to be binding upon him or her. Human rights secure the equal standing of persons in the political and social world, based on a fundamental moral demand of respect. [Forst, 2010, p. 719]

According to either of these accounts, then, the equal standing of all persons is a foundational element of the philosophy of human rights. If this is correct, then the equality of women declared by women’s human rights is simply an implication of the status-egalitarian element of human rights as applied to women in particular. One consequence of this is that Beitz’s skepticism about women’s human rights threatens to mushroom into skepticism regarding all human rights, unless he can show that cultural objections
to women’s equality are in some way distinctive among culturally-rooted objections to human rights more generally. Importantly, moreover, official declarations of women’s human rights to equality serve to establish women’s standing as equal citizens within their social and political communities. If human rights at least in part constitute one’s equal standing relative to one’s fellow citizens, then Beitz’s argument that women’s inequality is so culturally entrenched that women cannot really have a right to equality is to get things exactly backwards.

Finally, it is not at all clear that the possibility of international action is the defining feature of legitimate human rights norms that Beitz takes it to be. Rather, there is a deep and consistent emphasis in human rights practice of state-level remedy and restructuring to implement human rights norms. As Beth Simmons argues, for example,

> International human rights treaties have a singularly unusual property: They are negotiated internationally but create stakeholders almost exclusively domestically. In the human rights area, intergovernmental agreements are designed to give individuals rights largely to be guaranteed and respected by their governments. [Simmons, 2009, p. 126]

If this is right, then it is difficult to explain why Beitz finds the element of international action so definitive of human rights. On the status egalitarian reading of human rights doctrine more broadly, exactly the opposite emphasis is suggested: the priority of analysis is on egalitarian relations within one’s social and political communities.

### 3 Political institutions and women’s human rights

In a series of articles, Onora O’Neill has consistently argued for skepticism regarding the project of human rights in general, including women’s human rights. Her skepticism is grounded in the concern that, while human rights impose obligations on others, “the rhetoric of rights...obscures what is really at stake by focusing on the rights rather than the obligations” [O’Neill, 2000, p. 99]. As O’Neill argues, traditional liberty rights (against assault, for example) are associated with well-defined, universal, and determinate obligations, even in the absence of institutions, while “[r]ights to goods and services” (or welfare rights), by contrast, are not:
Rights to goods and services can be thought of only in the hazy way which the rhetoric of rights favours and allows until they are at least partly institutionalized. It may be possible to state what ought to be provided or delivered, but it will be impossible to state who ought to do the providing or delivering, and who can be called to account when deliveries are botched, or nothing is delivered, unless there are established institutions and well-defined special relationships. [O’Neill, 2000, p. 105]

This matters for women in particular, she argues, since “as long as women still carry more of the real work of caring for true dependants (children, those who are ill, the elderly) and as long as they have fewer resources with which to do so, they will need rights to financial support and to relevant social services more often” [O’Neill, 2000, p. 106]. In O’Neill’s view, reliance on the framework of women’s human rights threatens to shortchange women by distracting us from the real issue at stake regarding social policy, namely, ascertaining who ought to do what for whom—and in particular, who ought to do what for women—and then (to the extent possible) ensuring that these obligations are met.

While assigning measurable obligations to specific actors is an important component of implementing human rights, focusing on this by itself neglects what Thomas Pogge calls the institutional aspect of human rights, according to which human rights are understood “primarily as claims on coercive social institutions and secondarily as claims against those who uphold such institutions” [Pogge, 2002, pp. 44-5]. As an illustration, Pogge argues that having one’s car stolen by a thief is not obviously, by itself, a human rights violation, even if “the car may be its owner’s most important asset,” while

[a]n arbitrary confiscation of her car by the government, on the other hand, does strike us as a human-rights violation, even if she has several other cars left. This suggests that human-rights violations, to count as such, must be in some sense official, and that human rights thus protect persons only against violations from certain sources [Pogge, 2002, p. 57].

Beyond implicating official conduct in some way, an institutional account of human rights holds that asserting a human right to X implies “that any society or other social system, insofar as this is reasonably possible, ought to be so (re)organized that all its members have secure access to X, with “security” always understood as especially sensitive to persons’ risk of being
denied X or deprived of X officially: by the government or its agents or officials" [Pogge, 2002, p. 64]. Assessing whether this standard is met requires an examination of the structure of social and political institutions in a particular society:

On the interactional understanding of human rights, governments and individuals have a responsibility not to violate human rights. On my institutional understanding, by contrast, their responsibility is to work for an institutional order and public culture that ensure that all members of society have secure access to the objects of their human rights. [Pogge, 2002, p. 71]

If my argument in the previous section is correct, then women’s rights in particular as well as human rights in general are at least in part grounded in the moral value of equal standing among those who share social and political communities. By contrast, O’Neill treats human rights as if they were discrete claims, which can be measured in interactionist terms by assessing who has to do what for whom. This analysis of the moral force of human rights – seeing moral human rights as serving the function of assigning specific obligations to specific actors – entirely overlooks the status egalitarian element of human rights. Moreover, like Beitz, O’Neill ignores the role of human rights declarations of establishing women’s status as equal rights-holders with men in their social and political communities, instead seeing the practical functions of human rights as limited to specifying and enforcing specific obligations for specific agents.

4 Equality and Political Legitimacy

There is an important connection between the institutional assessment of women’s right to equal standing with men in their social and political communities, on one hand, and an influential conception of political legitimacy, on the other.

Frequently in discussions of political legitimacy and human rights, legitimacy is understood as simply a lower standard than full justice, but sufficient for the justified exercise of political power. Rawls articulates this element of legitimacy in *Political Liberalism*: “A significant aspect of the idea of legitimacy is that it allows a certain leeway in how well sovereigns may rule and how far they may be tolerated” [Rawls, 1993, p. 427]. Moreover, in *The Law of Peoples*, Rawls distinguishes “decent” peoples, which respect
Rawls’s truncated list of human rights and maintain a nonaggressive foreign policy, from outlaw states, which do not. For Rawls, this distinction marks the boundary of toleration on the international stage: outlaw states have no right to be tolerated as members in good standing of the international community (though Rawls himself does not use the term “legitimacy” in this context).

However, this understanding of legitimacy as merely a lower standard than justice ignores the stronger conception of legitimacy in Rawls’s work. As Rawls states it, the “liberal principle of legitimacy” maintains that “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason” [Rawls, 1993, p. 137]. This conception of liberal legitimacy, Rawls argues, plays “a special role in democratic institutions,” which is “to authorize an appropriate procedure for making decisions when the conflicts and disagreements in political life make unanimity impossible or rarely to be expected” [Rawls, 1993, p. 427]. In this sense, “[a] legitimate procedure is one that all may reasonably accept as free and equal when collective decisions must be made and agreement is normally lacking” [ibid.]. This sense of legitimacy emphasizes the existence of persistent reasonable disagreement about matters of justice, and insists that political procedures manifestly respect the equal moral standing of all citizens, for only such procedures will generate laws and policies that citizens can accept as free and equal in spite of their disagreements. This fairly demanding understanding of legitimacy is, still, a “lower” standard than full justice—after all, the liberal principle of legitimacy may be satisfied even though the ideally just law or policy is not chosen by the political procedures. However, this conception of legitimacy incorporates fairly demanding procedural requirements for what it takes to ensure the moral freedom and equality of persons in their role as citizens of a state.

On this strong conception of democratic legitimacy, the duty of outsiders not to interfere with the outcomes of a legitimate state’s political procedures is grounded in the political community’s right to self-determination, given that legitimate political procedures embody certain important values. On several strands of liberal political theory, the value served by legitimate political institutions is nothing short of making justice possible—that is, political institutions create justice. According to Kant’s political philosophy, for example, only in what he calls “a civil condition” can we establish just
relations with one another. This is because in a state of nature not only is there no impartial judge, but more fundamentally, there are no settled, determinate laws. In order to avoid subordination in the choice among equally permissible sets of rules (for example, equally permissible but different sets of rules regarding property acquisition and transfer), a political mechanism is required in which all are situated as equals. For Kant, then, only under political institutions can we reliably maintain our equal moral freedom; the state of nature, by contrast, is “a state devoid of justice” [Kant, 1996, p. 90].

One does not have to be a Kantian to make this argument. For example, Thomas Christiano, as part of a theory of democracy based on the welfarist principle of equal consideration of interests, argues that democracy is required because “[t]he main purpose of the state is to establish justice among persons within a limited jurisdiction. . . . What the state does, if it is reasonably just, is settle what justice consists in by promulgating public rules for the guidance of individual behavior” [Christiano, 2004, p. 281]. Christiano argues that it is precisely the requirement of justice that all be respected as equals that makes a public system of rules morally necessary, which in turn makes the state morally necessary.

On this conception of political legitimacy, subjects of legitimate political institutions have a moral claim, proportional to the legitimacy of their institutions, that the outcomes of their political procedures not be undermined, given the distinctive moral values those institutions serve.

Notice that institutions can be more or less legitimate in this sense, as Rawls notes:

At some point, the injustice of the outcomes of a legitimate democratic procedure corrupts its legitimacy, and so will the injustice of the political constitution itself. But before this point is reached, the outcomes of a legitimate procedure are legitimate whatever they are. This gives us purely procedural demo-

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1I am indebted here to Jon Mandle’s account of Kant in “Distributive Justice at Home and Abroad” (in Thomas Christiano and John Christman, eds, Contemporary Debates in Political Philosophy (Wiley-Blackwell: West Sussex, 2009), pp. 408-22). Mandle cites Arthur Ripstein’s Force and Freedom as his source for this understanding of Kant. Moreover, if Mandle’s interpretation is correct, then Rawls’s political philosophy mirrors Kant’s in important respects, most saliently in the understanding of moral person’s and the importance of non-domination. See Jon Mandle, “Reconciling Freedom and Equality,” unpublished manuscript.
ocratic legitimacy and distinguishes it from justice, even granting that justice is not specified procedurally. Legitimacy allows an undetermined range of injustice that justice might not permit. [Rawls, 1993, p. 428].

Even the lower standard of legitimacy as toleration on the international stage can be understood as grounded in the values served by (minimally) legitimate institutions. For example, in The Law of Peoples, decent states must meet what Mandle calls “a certain minimal threshold of legitimacy” necessary for toleration on the international stage, which Mandle argues obtains when “the constitution has widespread support, effectively protects basic human rights, and generates law according to a procedure that affords all citizens input in determining the common good” [Mandle, 2006, pp. 81, 85]. Such institutions, while falling short of realizing the robust equality required for full democratic legitimacy, serve important political values for their subjects, establishing basically just, if not fully just, relations among them.

5 Interpretive Legitimacy and Regional Courts

My argument so far has been that women’s human rights should be understood as grounded in a broader demand for women’s social and political equality with men, and that this is not a special requirement of women’s human rights, but rather continuous with the status egalitarian element of moral human rights in general. Moreover, women’s equality in turn requires that we interpret women’s human rights institutionally, that is, as calling in the first instance for reforms to state-level political institutions that realize women’s equal standing domestically. In this way, realizing human rights dovetails with the requirements of internal political legitimacy.

So far, my arguments suggest a philosophical framework within which women’s claims to human rights to equal standing can be defended. However, both Beitz’s and O’Neill’s critiques apply not only to the moral philosophy of women’s human rights, but also to the prospects for institutionalizing women’s human rights in such a way as to actually improve women’s status within their social and political communities. One obstacle to effectively institutionalizing women’s human rights, given the problems raised by Beitz and O’Neill, is that the direct clash of international demands for women’s equality with existing cultural norms within states may be so stark as to set hu-
man rights-based standards for women’s equality that are too far removed from local circumstances to inspire the elements of change that would actually benefit women. Worse, international declarations of universal human rights that seem inconsistent with local cultures can inspire “a backlash of gender conservatism against gender equality” [Stacy, 2004, p. 19]. This problem raises questions about how women’s human rights norms should be interpreted for implementation within states. For example, among the many reservations to CEDAW are many based on the incompatibility of CEDAW’s provisions with states’ existing domestic law; Switzerland’s reservation declaring “that its domestic laws on women in armed conflict, family names, and marriage, override CEDAW” is an example [Stacy, 2004, p. 7]. These reservations raise two kinds of questions. The first is about the correct interpretation of women’s human rights: are CEDAW’s substantive claims regarding women’s rights in marriage, for example, a better account of women’s human rights than Swiss laws on marriage? Answers to these kinds of questions require some positive account of women’s human rights. The second kind of question is procedural, though still normative: what institutions can claim legitimate authority to interpret women’s human rights for implementation within states?

An appropriately institutional conception of human rights, alongside an appropriately substantive conception of political legitimacy, provides some reason for thinking that states should be the authoritative interpreters of human rights as they apply within their own borders. Part of the point of human rights is to constitute citizens as equals within their political and social communities. This can only be done by development of state-level institutions in the direction of greater equality, including institutions to specify the form that social and political equality should take given the social and cultural circumstances and political realities within states.

However, this argument is strongly counterbalanced by the fact that few, if any, states actually realize the kind of robust equality among citizens, including gender equality, required by the strong (egalitarian) conception of political legitimacy. As Stacy notes, “[t]he under-representation of women in national political processes in many countries means that decisions about harmful cultural practices are made principally by men” [Stacy, 2004, p. 12]. Thus, while legitimate states would have a strong claim to have their interpretations of women’s human rights (or any human rights) respected by the international community, it is not clear that any states count as fully

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2See also [Jaggar, 1998, 2005].
legitimate in this regard.

In response to this problem, Helen Stacy argues that regional courts, located in the middle distance between states and international human rights bodies (in particular, the CEDAW Committee), can mediate the tension between the abstract universal norms of human rights and women’s local communities:

Regional human rights institutions could complement purely international and purely local remedies through their alignment to local conditions, while also keeping the goals of international standards in their sights. For CEDAW and other international women’s human rights standards, this will continue pressure on states to increase women’s political participation and to create legal and policy measures that accurately reflect women’s interests.

One salient feature of her proposal is that regional courts could provide a forum within which regional women’s NGOs have some influence on developing a “women’s jurisprudence” sensitive to women’s actual circumstances. As Stacy argues, some issues are more pressing in some regions rather than others, due to historical and social factors. For example, she argues that in Latin America, “the constraints upon sexual and reproductive freedom imposed by the dominance of Roman Catholicism means that a key concern of women’s organizations in that region is women’s reproductive rights and violence against women,” while “[t]he frightening plight of African women’s incidence of sexual disease and sexual violence virtually defines the work of African women’s NGOs” [Stacy, 2004, p. 29]. By taking such differences seriously within the framework of women’s human rights, the goal of Stacy’s proposal is to emphasize women’s equality in their political and social communities, while remaining sensitive to the claims to self-determination of those communities. It thus takes women’s human rights to equality seriously as a foundational commitment of the human rights project, without overlooking the difficulties presented by cultural commitments to women’s traditional social roles.

Stacy’s proposal to adjudicate women’s human rights at the regional level does not neatly solve the problems of normative political legitimacy and human rights. However, it does move in the direction of mitigating the tensions between the global and the local enough such that it seems feasible to be able to respect legitimate cultural differences without giving up on women’s human rights to equality.
5.1 Women’s rights and cultural change

Beitz and O’Neill might respond skeptically to Stacy’s proposal on grounds that, even with authoritative institutions in place to interpret women’s human rights law, by itself any supranational human rights practice is not likely to make a difference in women’s human rights fulfillment. Bietz is correct to say that changes in law and policy regarding women’s human rights are unlikely to be effective absent change in the underlying social and cultural beliefs about women’s status. It is also clear that such changes occur only slowly, and are not well understood. According to a recent literature survey, for example, “Microcredit/microfinancing schemes are frequently built on assumptions that they are empowering by allowing women to contribute to household income and family welfare by establishing small businesses.” However, the study continues,

... they are rarely based on careful analysis of the gender relations involved, the dynamics of local economies, or the barriers to women conducting business in male dominated structures, networks and communities. Careful analysis of the gender relations involved reveal that women trying to enter markets face many hazards and constraints including increased violence, limits on their physical mobility, increasing responsibilities to provide a steady flow of cash and food for the household without changes occurring to inequitable intra-household relations and difficulties with extracting repayment when selling on credit. [Keleher and Franklin, 2007, p. 10]

Another recent study, entitled “The impact on women of changes in personal status law in Tunisia,” reports that changes were made in 1956 to Tunisia’s Personal Status Code, “outlawing repudiation and polygamy, establishing a minimum age for the marriage of girls, and ensuring the right to equal wages for men and women.” The report continues: “This legislation has brought about a profound change in the norms associated with women’s position in society and within marriage, characterized as moving “from sexual submission to voluntary commitment.”” Clearly, however, a lot has happened, in Tunisia and elsewhere, since 1956, so attributing the greater empowerment of women in any direct way to the changes in legislation so long ago is clearly a tenuous business. This fact is underscored within the report itself, which notes:

Higher levels of education and employment are part of the overall
change and improvement in the status of women. In 2000, one quarter of urban women and 8% of rural women worked. These figures refer to formal employment, and reflect the expansion of urban manufacturing jobs, with official pro-poor policies fostering employment opportunities, especially in the textile industry. [Watts, 2007]

This section of the report highlights the interconnections between different factors — in this case, economic growth, social policy aimed at the poor, and specific legislation aimed at changing women’s status — that combine over time to foster women’s empowerment within a particular society. These interconnections in turn bolster Beitz’s assertion that the mechanisms for changing women’s status are complex and not well understood.

Nonetheless, it is important not to treat culturally embedded beliefs and practices regarding the status of women as pre-existing and independent causes of social policy and law. That is, it is a mistake to regard social policies regarding women (such as, to use one of Beitz’s examples, how rape cases are handled by the police) as determined by culturally embedded beliefs in a unidirectional fashion. Rather, social policies and institutions, such as how rape cases are handled by the police, actively construct women’s social status, either as human beings with a right to bodily security or otherwise, on a daily basis. An observation by UN Women, under the heading of their program on “Financing for Gender Equality,” makes the same point: “All national and international economic and development policies affect women in ways that advance or hinder gender equality.” Accordingly, we should not view women’s subordination as something “unreachable” by public policy because it of underlying social attitudes, as Beitz seems to do; rather, women’s subordination is something at least partly created by public policy, which in turn can have the effect of further solidifying entrenched social attitudes about women. It follows that, as the WHO’s Commission on Social Determinants of Health (CSDH) realizes: “Gender inequities are socially generated and therefore can be changed” [CSDH, 2008, p. 16].

The literature on global public health and human rights provides a close analysis of how ideologies of women’s social subordination structure the material realities of women’s and girls’ day-to-day existence. Importantly, this literature connects the dots between culturally embedded traditions of women’s subordination, on one hand, and health outcomes, on the other. For example, the CSDH report notes that gender inequities worldwide “influence health through, among other routes, discriminatory feeding patterns,
violence against women, lack of decision-making power, and unfair divisions of work, leisure, and possibilities of improving one’s life” [CSDH, 2008, p. 16]. It is the recognition that these material realities often result in poor health, combined with the public health mandate to improve health outcomes, that provide the motivation within this movement to research how to change the complex social determinants of women’s status and health, instead of regarding existing practices and attitudes as immutable.

What has emerged thus far is that, while improving women’s status is a complex and multifaceted process, it is not entirely mysterious. Indeed, broad strategies have begun to emerge in the public health and human rights literature on how to bring it about. The CSDH report recommends six broad strategies “towards improving gender equity for health” [citation]. These are:

2. “Gender mainstreaming” — that is, including likely impacts on gender equity in the analysis of policies, legislation, and institutions.
3. Measuring and accounting for unpaid, informal work in the household or community.
4. Improving and investing in education for women and girls.
5. Instituting policies aimed at promoting women’s greater abilities to engage in paid work (including ensuring equal opportunity by law, pay equity legislation, and family-friendly legislation).
6. Realizing sexual and reproductive health rights for women.

More importantly, however, it is becoming clear that this program is not simply a list of distinct efforts that might work separately, but a coordinated platform for action that emphasizes gender equity at the highest levels of policy and law to provide the necessary context underwriting the effectiveness of any more targeted actions. Consider a background paper for the CSDH report, which assessed the literature in English on how to change gendered norms about women and girls at the household or community levels. The survey adopts a public health framework to classify interventions aimed at promoting gender equity: interventions are classified as “downstream” if they focus on influencing individual behavior, and “upstream” if they focus on populations as a whole. According to the literature review:

Downstream strategies including the provision of basic primary
health care are increasingly recognised as critical in addressing specific programs such as violence against women and general efforts to raise women’s social status. However, social change occurs when downstream and midstream programs are conducted in the context of broader systemic (upstream) efforts to increase gender equity. [Keleher and Franklin, 2007, pp. 14-5]

Within any particular society, then, moving toward a commitment to women’s legal and social equality with men is an essential step towards changing the material realities of women’s daily lives through any more targeted policies. Given this finding, Beitz’s conclusion that women’s human rights doctrine overreaches — based on the recognition that if we are to realize women’s human rights, this will require changes to deeply rooted cultural beliefs — not only constitutes a modus tollens, where the practice sees a modus ponens; in addition, Beitz’s work threatens to pull the rug out from under the practice itself, by eroding theoretical support for women’s human rights doctrine. As the report concludes:

Strategies for increasing the levels of education of girls or raising their access to health services will have little or no effect on lessening the gender gap between men and women, whether rich or poor, if they are not embedded in human rights frameworks that affirm, guide, and monitor violations of equal and universal rights [Keleher and Franklin, 2007, p. 15].

6 Conclusion

Thinking about legitimate institutions for implementing human rights can help point a way forward on difficult questions regarding women’s human rights. In particular, addressing women’s rights in terms of legitimate political institutions can help both to understand the nature of these problems and bring the resources of political philosophy to bear on identifying solutions. Moreover, careful thinking at all levels of abstraction and application are important for understanding the legitimacy and value of women’s human rights practice. Thinking about what legitimate institutions may do is a way forward, beyond theorizing what the ideal philosophical theory would say we must or may not do, and beyond merely predicting what is or is not possible in practice. However, this project is still normative: thinking about legitimacy requires careful normative analysis of how morally good or
just institutions must be in order to be justified in wielding whatever power they possess. Legitimate institutions are the potential agents of change that are ignored whenever the debate focuses too abstractly on questions of ideal normative theory or myopically on existing patterns in the realization of women’s human rights.

References


