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FEMINIST PROBLEMATIZATION OF RIGHTS LANGUAGE AND UNIVERSAL CONCEPTUALIZATIONS OF HUMAN RIGHTS

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INTRODUCTION

Since the late 1980s, feminists have brought to bear twentieth-century 'post-foundational' analytical tools of post-structuralism, genealogy, psychoanalysis, and neo-Marxism in their critical assessments of universal rights for feminist projects. The conclusions from these discussions have ranged from the wholesale rejection of universal claims to recent more nuanced reconsiderations of what exactly the relationship between 'universality' and its particulars could and should comprise. These feminist critiques of universal rights have taken place alongside feminist concerns regarding the neo-colonial trappings of rights discourse and practice. Reading both of these critiques in tandem is essential for assessing feminist engagements with human rights.

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I. BETWEEN UNIVERSALITY AND PARTICULARITY

1. Marker of a Patriarchal Norm

Feminist resistance to women's claims for universal rights stems from a concern that universality necessarily bears the markers of a parochial Western, patriarchal norm, masquerading as neutral (Scott 1999: 215). From the earliest modern political and theoretical instantiations of human rights, women, slaves, and non-propertied men have been historically excluded from the purportedly universal reach of rights. These exclusions have occurred in concrete terms specific to historical contexts, and so it would seem that these exclusions could be redressed through political reforms over the course of

historical progress. For example, though many groups were denied the right to vote at the constitutional founding of most modern liberal states, the franchise has been rendered more inclusive over time. Feminists caution, however, that faith in political reform and historical progress is doomed to offer nothing better than new forms of exclusion.

2. Relationship between the Both

Indeed, so the critique goes, feminist efforts to render human rights *truly* universal will falter due to the fact that exclusion of the feminine is discursively written into universality. From a feminist perspective, sexual difference is grafted into this exception—the discourse of universal rights, with its assertion of the autonomous, sovereign rights-endowed subject reflects a distinctively masculine experience (Pateman 1988). Reading this insight through a poststructuralist and Lacanian lens, Renata Slalecl argues that for universality to have any meaning in the first place, it must stand in relation to its 'exception'. Therefore, she explains, 'there has to be someone who does not have rights for the universal notion of rights to exist' (1994: 133).

While such feminist critiques have left many wary of universal human rights claims on behalf of particular identity-based categories, such as women, 'post-foundationalist' scholars are increasingly elaborating the significance of the relationship *between* the universal and the particular (Brown 2000; Butler 1999, 2000; Cornell 1998; Scott 1999; Slalecl 1994; Zerilli 1998). Wendy Brown, for example, has developed a trenchant critique of the claim to women's human rights while considering what conditions must be in place to create alternative conceptualizations of universal rights and particular grievances that do not fall into the same traps. Building on Foucault and Marx, Brown captures the essence of many of the post-foundationalist feminist critiques of women laying claim to universal rights. Brown usefully elucidates the potential pitfalls of women's rights claims, citing specific historical conditions that shape identity-based politics in the post-industrial liberal constitutional state.

3. Legal or Political

Brown is concerned that in liberal constitutional regimes women's claims to human rights have taken the form of legal claims rather than political demands, and so have been delimited by the norms of law. And, she argues, this particular deployment of claims to universal rights is rife with shortcomings. Drawing on Marx's critique of civil rights, Brown cites that any claim to purportedly neutral rights (the right to free speech, the right to bear arms, and even the rights to sexual freedom and abortion) is vexed due to the fact that one person's right is exercised at the expense of another's (2000: 232). However, the abstract formalism of rights obscures the fact that the exercise of rights requires this unequal dispensation of rights in practice. In other words, the formalism of abstract rights glosses over concrete relations of domination.

Feminist efforts to counter the abstraction of rights through adjudicating injuries specific to women are similarly troubled. To claim rights on behalf of women, such as the right to abortion or the right to adjudicate sexual harassment, feminists must render the category of woman legible to liberal legal norms. And yet to do so is to subject the identity of woman to regulatory norms. In a Foucauldian vein, Brown is critical of the exclusions attendant with women's rights claims *qua* women. Not only does this identity inscribe a particular injured designation, but it 'enables our further regulation through that designation'—a regulation which proceeds through the various civil and political institutions of the modern state and society (ibid.: 232). Moreover, claiming rights on behalf of 'women' inscribes as the norm the experience of particular women. Thus women's rights claims reproduce a racialized,

heteronormative narrative which obscure the complexities of individual women's experiences of subordination.

4. Politics of Paradox

Based on these post-foundationalist critiques of universal rights claims, it would seem that feminists are stuck between the proverbial rock and hard place. To accept the terms of abstract universal rights and simply demand inclusion is to perpetuate the a-historicity of formal universalism as articulated within Western liberalism. Relatedly, to iterate and demand protection of rights specific to women is to reify a normative category of woman and to falsely universalize the particular experience of some women. Moreover, invoking rights claims on behalf of women can articulate a particular injury; however, this cannot address the concrete conditions which produce inequality—for that regulatory institutions of state and society are necessary. However, to forego efforts at making any broad rights claims for fear of reproducing false universalisms and invoking regulatory mechanisms is itself a self-defeating political strategy which leaves relations of systematic subordination intact. Brown sums up the paradox of rights defining them as 'simultaneously politically essential and politically regressive' (ibid.: 239).

In assessing this condition of the 'politics of paradox' Brown clarifies the political limitations of human rights. Brown notes that what appears to be a 'self-cancelling' (ibid.: 239) political condition of tenacious paradoxes such as the universal and the particular, the global and the local, the abstract and the concrete, and so on, may in fact only appear mutually exclusive in light of norms of linear historical progress. Indeed, it seems that it is the oddly secular norms of progressive history which render the universal and the particular to appear perpetually at odds, and which in turn demand nothing less than achieving some transformative resolution once and for all. Brown suggests that removing rights discourse from the context of 'progressive historiography' may well result in strategies of 'displacement, confoundment, and disruption' rather than strategies of 'transformation' (ibid.: 240). These latter strategies remain blinded by a faith that a *true* universal realization of rights is possible—'true' to the degree that *this* universal will have been purified of all the exclusionary logics of universality that we have seen to date. As Linda Zerilli notes, a recent turn aimed at resolution on the side of universality includes an academic 'homecoming narrative' for the 'new universal' which will be truly inclusive this time around (1998: 3). However, the blinded desire for the transformative global realization of universal human rights risks trafficking a cultural norm specific to Western liberalism—in other words, an insistence on giving form to who or what should be endowed with rights, no matter how inclusive, invokes a colonialist narrative of secular salvation (Barker 2002).

II. HOW UNDERMINING UNIVERSALITY?

The philosophical debate regarding the universal and the particular takes on political salience in the context of neo-colonial geopolitics. The latest turn towards the 'new universal' includes efforts on the part of feminists to achieve a 'nonconflictual pluralism' in international organizing. Transnational feminist scholar Inderpal Grewal claims that such frameworks may unwittingly reproduce the universal rather than complicate or undermine it, in so far as they reproduce ideologies of liberal subjecthood while effacing structural inequalities. Arguing for greater attention to the paradox of rights within global relations, Grewal notes that the 'objects of rescue' created by human rights discourses serve to rearticulate geopolitical structural and representational inequalities on a global scale (1998: 50).

1. An Ironic Dilemma

Articulating similar concerns about representation, Sherene Razack cites cases from Trinidad and Tobago, where Afro-Trinidadian women are less likely to obtain asylum for gender and sexual orientation oppression purposes as opposed to Indo-Trinidadian women who are understood as inherently culturally more 'oppressed', demonstrating a reliance on narratives of victimization and assumptions of Indian culture which underpin the gender asylum process in Canada. Razack argues that such cases and others that fall within human rights legislation are most likely to succeed when women are able to present themselves as victims of dysfunctional, unusually patriarchal cultures and nations, and that such mechanisms are like 'fighting sexism with racism'. Further complicating the issue of representation with a comment about positionality and privilege, in her description of the 'hallmark of UN-style feminist universalism', Gayatri Spivak queries the inherent constitution of '"woman" as object-beneficiary of investigation and "feminist" as subject-participant of investigation' present at the Fourth World's Conference at Beijing in 1995 (1996: 262).

The dilemma is ironic: while often concepts such as 'culture' and religion are used to deny women's human rights—thus suggesting the need to advocate for universal rights (Bunch and Frost 1997)—the history of feminist attentiveness to 'difference' cannot simply be suspended. Given that human rights stem from a Western tradition of secularism—a tradition defined as one which supercedes and is in opposition to religion—this is a particularly interesting problematic (Barker 2002). Within transnational and globalizing circuits, the debates about universality and particularity become navigations between the supposed dichotomies of universalism and cultural relativism, imperialism and self-determination. Stating that feminism itself, particularly global feminism, is often seen to represent Western imperialism, Tracy Higgins notes that 'cultural relativists have accused feminist human rights activists of imposing Western standards on non-Western cultures in much the same way that feminists have criticized states for imposing male-defined norms on women'. She nonetheless argues that 'both the move to expand universal human rights to include those rights central to women's condition and the move toward a relativist view of human rights are consistent with and informed by feminist theory' (1996; see also Cook 1994). The question Grewal, Spivak, and other postcolonial feminists might then pose is, whose feminist theory is Higgins talking about?

Radhika Coomaraswamy, United Nations Special Rapporteur on Violence Against Women, recognizing that she serves 'in some sense as an active instrument of the Enlightenment', asks: 'How does one resolve this dilemma—to remain a critic of the negative aspects of the Enlightenment [namely colonialism] while being a fervent believer in human rights?' Unsurprisingly, Coomaraswamy ultimately argues for 'bottom-line standards', without which 'pluralism in many societies will be achieved at the expense of women and their bodies'. Florence Butegwa supports such a bottom line by adding:

> A look at the Convention on the Elimination of all Forms of Discrimination Against Women may provide a good case study. It is the human rights convention with the most reservations attached . . . What is insightful is that some of the states entered reservations on articles they purport to accept in the context of other human rights instruments. It is, therefore, pertinent to ask whether cultural and religious or other relativism in human rights theory and practice are in the interests of the protection of the human rights of women.

2. Respecting Cultural Diversity

However Grewal comments that by remaining within the hegemonic apparatus of the state and governing bodies such as the UN, institutions which are already historically representative of

Western interests, especially those of the United States, the project of advancing human rights within these systems is quite limited. Discussing the use of human rights instruments in Bangladesh, Shireen Huq echoes Wendy Brown's concern with the limitations of feminist dependence on law, calling for strategies that 'go beyond legal rights, beyond legal reforms, and beyond talking about the law as being responsive to violations of women's human rights' (1995).

Neither Grewal and Isabelle Gunning are willing to abandon rights altogether. Grewal calls for an integration of 'questions of power and self-critique' within human rights praxis (1998: 523), while Isabelle Gunning advocates for dialogue through which 'shared values can become universal and be safeguarded. The process by which these universal standards are created is important. A dialogue, with a tone that respects cultural diversity, is essential.' Gunning remarks that 'this is particularly true with a practice like female genital surgeries, where the governments involved may either refuse to be embarrassed or become angry at the attack on the culture; thus they reject the "interference"' (1991–2). However, other feminists have insisted on the review of the legality of certain Western practices in tandem with the efforts to halt female genital surgeries, from breast reductions and other types of plastic surgeries to braces. Still others have argued that the 'crusade' to save African women is racist and essentializes the practice itself (see Okin 1994).

3. The Agenda of Sexual Rights

Queer scholars have also queried the extent to which human rights discourses can advance the emerging agenda of 'sexual right', which generally refer to reproductive technologies, access to health care, and a woman's control over her body. Momin Rahman and Stevi Jackson argue that rights discourses are inherently heterosexist, particularly in the ways that 'campaigns for lesbian and gay rights frequently proceed as if gender and sexual orientation were categories fixed for all time' (1997: 118). This reliance on biological essentialism leave unexamined 'the place of institutionalized heterosexuality in maintaining patriarchal domination' and thus proceed as an endorsement of 'essentialism and individual rights as a defense against discrimination rather than attacking heterosexuality as a barrier to equality' (ibid.: 117–118). They conclude by stating that 'One possibility for deprivileging heterosexuality within a discourse of rights, is to defamiliarize rights' (ibid.: 177–229).

However, Nicole LaViolette and Sandra Whitworth argue that while 'it is unclear whether joining the very western notions that dominate human rights discourses to often equally western notions of "gay and lesbian" serves a progressive and transformative politics', such processes of adjudication should be seen as the beginning of political changes rather than an end result (see also Dorf and Perez 1995; Wilson 1996; Bunch and Hinojosa 2000). It is a process which tests and measures forms of coalition and community building across national lines, and should be used in conjunction with other strategies. They note, however, that men more so than women are able to prove 'persecution' within traditional legal discourse because their sexual activity is more likely to be criminalized, while the issues faced by lesbians are 'often concerned with invisibility, isolation, and resisting forced marriage'. The authors claim that gay and lesbian activists are most actively dealing with these contradictions, feeling that abandoning rights altogether 'ignore the extent to which rights *do* matter to people who are denied them' (1994: 563–88).

III. CONTINENTAL BINARIES

1. Western Pressure

In attempting to complicate critiques of human rights discourses that tend, if unintentionally, to reify First World/Third World binaries, scholars

note that some strands of relativism may tend to essentialize 'local' culture by conceptualizing them as discrete entities that are static, bounded, and internally monolithic (Higgins 1996; Fox). Commenting on the structural modalities that propel a notion of 'Asian human rights' Yash Ghai writes: 'What conveys an apparent picture of a uniform Asian perspective on human rights is that it is the perspective of a particular group, that of the ruling élites, which gets international attention.' It is this ruling élite that is not only seen as representative of national interests, but is also often in opposition to the interests of feminist and other 'grassroot' organizations (see Mindry 2001). Diana Fox further argues that the label of 'Western feminism' does injustice to the range of liberal, Marxist, socialist, and radical feminisms often subsumed under such a label.

Furthermore, multiple traditions have articulated some concept of human rights (Coomaraswamy 1997; Butwega 1997). Indeed, the rallying cry 'women's rights are human rights' was first coined by the Philippina group GABRIELA in 1989 (Bunch 1991: 13). On the other hand, 'Western' notions of human rights are also available for subversion, appropriation, and strategic essentialism. Bilhari Kausikan writes that as East Asian states become stronger actors in the world economy, they are less prone to be pressured into conceding to Western human rights doctrines. Citing the linkage between the Clinton administration's attempt to press for human rights in China in exchange for continued most-favoured-nation trading status, Kausikan nevertheless cautions:

> . . . Western pressure undeniably plays a role. But in themselves, self-interest and pressure are insufficient and condescendingly ethnocentric western explanations. They do less than justice to the states concerned, most of which have their own traditions in which the rulers have a duty to govern in a way consonant with the human dignity of their subjects, even if there is no clear concept of rights as has evolved in the West (Kausikan 1993)

Despite the general understanding of the development of 'modern' international human rights through the UN and related institutions, Butegwa argues that the 'exact meaning' of human rights 'tends to be hazy, subjective and clouded by political self-interests of the states . . . Human rights is a dynamic concept and this fact has significant implications for women.' As an example, Butegwa argues that in Africa new methodologies for investigating, documenting and reporting human rights abuses of women have been developed to counter normative methods used by groups such as Amnesty International and other traditional human rights groups which tend not to be able to capture the complexity of abuse experience by women (1997). Following Butegwa's logic, it is perhaps precisely the abstract nature of human rights that may be useful for local feminist projects. Joan Scott reflects this thinking in her claim that perhaps, to date, rights have not been abstract enough (1999). By rendering rights more abstract, feminists invoke a tool that they can manipulate to suit particular feminist political purposes.

2. An Organizing Tool for Women

Bunch and Frost, among others (Coomaraswamy 1997), argue that despite all of these dilemmas, the human rights framework has been an essential organizing tool for women and has spawned a movement: 'Whether used in political lobbying, in legal cases, in grassroots mobilizations, or in broad-based educational efforts, the idea of women's human rights has been a rallying point for women across many boundaries and has facilitated the creation of collaborative strategies for promoting and protecting the human rights of women' (Bunch and Frost 1997). Butegwa similarly states that accessing the strategies of women's rights movements in other regions has enabled the adaptation of human rights frameworks in Africa (1997). Numerous examples suggest that these adaptations are not without difficult struggles around coalition building across

national boundaries, most notably articulated by a recent 'open letter' from the Revolutionary Association of Women in Afghanistan (RAWA) critiquing the Feminist Majority for its persistent erasure and appropriation of RAWA's work (20 April 2002).

The question then arises, do these manoeuvres destabilize or reinforce both the modernist and the neo-colonial framings of human rights discourses? Reading the post-foundationalist philosophical re-configuration of the universal and the particular alongside concerns regarding the colonizing effects of human rights strategies is helpful in assessing whether human rights as a *political* strategy serves to subvert neo-colonialist trappings.

CONCLUSION: AN OPEN-ENDED PROJECT

On the philosophical level, Judith Butler outlines a relationship between the universal and the particular which rests on an open-ended project of cultural translation, rather than insisting on pinning down the real universal once and for all—a strategy which remains hampered by neo-colonialist blinders. Butler's notion of cultural translation recalls Gunning's emphasis on dialogue, while it integrates Grewal's (and others') concerns regarding the neo-colonialist potential in feminist efforts at achieving 'nonconflictual pluralism'. Butler explains:

> There are universal claims intrinsic to these particular movements that need to be articulated in the context of a translative project, but the translation will have to be one in which the terms in question are not simply redescribed by a dominant discourse. For the translation to be in service of the struggle for hegemony, the dominant discourse will have to alter by virtue of admitting the 'foreign' vocabulary into its lexicon (Butler 2000: 168)

Butler remains attentive to the cunning ways of hegemony in the service of dominant ideology, and so insists that cultural translation must remain open-ended so as to remain attentive to preventing yet another set of dominant conventional norms from masquerading as neutral criteria in the service of purportedly universal norms. Towards this egalitarian end, she defines multi-culturalism 'as a politics of translation in the service of adjudicating and composing a movement of competing and overlapping universalisms' (ibid.: 169).

Articulating what Chandra Mohanty terms a 'non-colonized' approach to human rights is an inherently political project, and ultimately recalls Wendy Brown's call for new strategies of displacement, confoundment and disruption, as well as Grewal's interest in self-reflexive human rights praxis. A non-colonized feminist transnational practice will likely involve recognizing, and being open to, the fact that rights may—or may *not*—prove useful in advancing demands for more egalitarian social, economic and political conditions in particular regional, national or local sites. Feminism will best be served by remaining attentive to how best to achieve *this* goal, rather than by, in some missionary zeal, seeking to blanket the globe with a 'truly' universal standard of rights.

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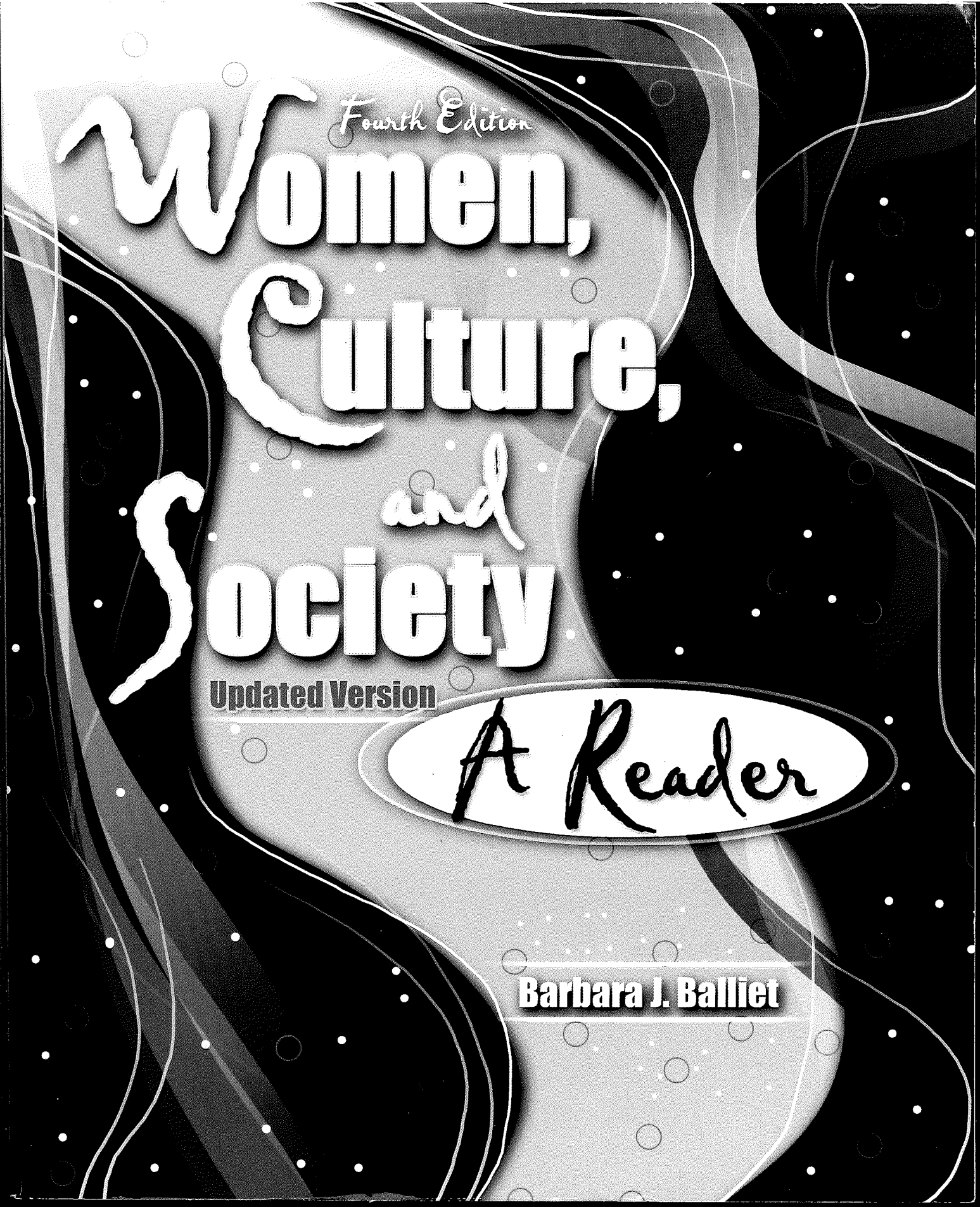
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