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## Imagining a New Gender Contract for Cultural Rights

**Published in:**

A New Gender Equality Contract for Europe

**Publication status and date:**

Published: 01/01/2025

**DOI (link to publisher):**

[10.1007/978-3-031-59993-4\\_6](https://doi.org/10.1007/978-3-031-59993-4_6)

**Document Version**

Publisher's PDF, also known as Version of record

**Document License/Available under:**

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**Citation for the published version (APA):**

Damaso, M. (2025). Imagining a New Gender Contract for Cultural Rights. In *A New Gender Equality Contract for Europe: Feminism and Progressive Politics* (pp. 105-129). Palgrave Macmillan. [https://doi.org/10.1007/978-3-031-59993-4\\_6](https://doi.org/10.1007/978-3-031-59993-4_6)

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# Imagining a New Gender Contract for Cultural Rights

*Mafalda Dâmaso*

## 1 INTRODUCTION

Woke. This is one of the words most often directed at cultural and creative workers today. It is how conservatives referred to the adaptation of *The Little Mermaid* into a film led by a young Black woman, how they name brands that express their support for LGBTQIA + rights, and how they described the anti-patriarchal narrative of the film *Barbie*. The story of how small reactionary groups from the USA were able to transform a term that originally reflected alertness to racial prejudice and discrimination into something derogatory, and how this approach was copied by European political and lobbying groups, is an important one. However, its analysis remains outside of the scope of this chapter. Rather, for the purposes of this edited volume, it is important to stress that the rhetorical success of the term “wokeism” in the media and in public discourse also

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reflects the absence of a convincing response to the conflation between, on the one hand, support for cultural diversity and, on the other hand, what some, using reactionary language, see as the supposedly limitless and, thus, harmful support for equality and human rights, which would fail to protect white people, cis individuals and/or men. In this and other contexts, how can tensions between cultural and human rights be navigated? And how can cultural diversity be supported without legitimising the rhetorical weaponisation of difference in favour of abuses of power?

If an articulate response to these questions and to the aforementioned superficial and erroneous attacks is not developed, cultural rights advocates risk losing the support of important groups for whom cultural diversity is not a slogan but a matter of representation—such as women, young people, racialised minorities and LGBTQIA + individuals. In a sense, wokeism as a political accusation is the rhetorical opposite of the celebration of cultural rights. This is not a theoretical statement. As is mentioned in a recent report by Sara Whyatt for the Council of Europe on the freedom of artistic expression, the increase in traditionalism and conservatism across Europe

“had a negative impact on the ability to create art on issues around LGBTI, women’s rights, religion and other works challenging traditional norms. This trend is illustrated through several cases of the banning of LGBTI-themed performances, festivals and books, and legislation against expressions seen to be ‘promoting homosexuality’. Attempts to ban and suppress LGBTI expression are typically led by conservative and orthodox religious leaders, often openly supported by heads of state.” (Whyatt, 2023, 30)

This quote highlights why engaging with the issue of cultural rights is fundamental to the crafting of a robust gender contract. If the latter focuses exclusively on gender or on issues related to the protection of individual sexual preferences and identities, it will fail to consider the interrelation between gender rights and inequities, on the one hand, and other dimensions of inequality and oppression on the other hand. That is, if the gender contract that is proposed with this book aims to establish a multidimensional framework to confront discrimination and build more equitable societies, this contract must be built on an extensive approach to rights—namely, cultural. This statement reflects accumulated knowledge and data linking gendered expectations and limited access of women to

cultural work and leadership positions in the sector. For example, a recent overview of gender equality in the cultural and creative industries for UNESCO (Villarroya, 2022) argues that, despite significant progress in the mainstreaming of policies and measures promoting gender equality by the parties to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), such initiatives perceive women “more as consumers than as creators and changemakers in the field of culture [...]. Their recognition as professionals is likely to be hindered by stereotypes about women’s role in society, thereby limiting their capacity to reach their full creative potential” (Villarroya, 2022, 245).

That being said, contrary to a common but mistaken understanding, impressive museums and art history books, theatres and art galleries are not the only or even the main sites of culture; rather, it is everywhere and with everyone. As summarised in an old definition that is often quoted by UNESCO, culture is a “complex whole which includes knowledge, beliefs, arts, morals, laws, customs, and any other capabilities and habits acquired by [a human] as a member of society” (Tylor, 1871). A more recent definition proposed by the Porto Santo Charter, which provides principles and recommendations to implement cultural democracy in Europe, defines it as “a set of symbolic systems in which people live and which help give meaning to the personal and collective experience, and apply a human form to the world, determining the horizon of possibilities in which we move” (Porto Santo Conference 2021), establishing an implicit link between the cultural and the political realms. The production and reproduction of culture is a central feature of human experience. Therefore, the right (namely, by women) to experience, produce, co-create, question and modify a wide range of cultural practices—understood as modes of individual and community expression—be it as cultural workers or simply as individuals inhabiting particular cultural contexts, must be recognised and protected.

This requires acknowledging a new family of rights in European policy frameworks: cultural rights. The latter overlap partly but not fully with other rights, such as women’s rights, freedom of expression, and artistic freedom. To recognise these new rights, it is important to begin by reflecting on how international frameworks and discussions currently understand cultural rights and what avenues exist for the EU to support their protection. The argument developed in this chapter has several steps: firstly, we summarise existing international definitions of the term cultural

rights and recent reports by the holders of the United Nations Special Rapporteur in the field of cultural rights. Secondly, engaging with decolonial and feminist thinkers, we argue that the use of the term cultural relativism by such Rapporteurs occasionally fails to highlight diversity as a political positive that should be celebrated and strengthened by international organisations. Thirdly, we propose that the work of theorist Nancy Fraser provides in its approach to pluralisation a rationale that clarifies how cultural rights and diversity can be managed in a feminist and systematic manner. Fourthly, and finally, we conclude with a number of recommendations.

## 2 UNDERSTANDING CULTURAL RIGHTS AS A NEW FAMILY OF RIGHTS

The question of how to support cultural rights requires engaging with the first question that guides this chapter: How can the correct balance be found between respect for cultural diversity and support for human rights? That is, should a group be given the right to express its cultural practices if the latter are detrimental to the human rights of individuals? In the case of the rights of women, female genital mutilation—“a deeply rooted cultural practice mainly undertaken in Africa, the Middle East and Asian countries” (Ali et al., 2020)—is an extreme example of this debate. There is unanimity amongst feminists against this violent and incapacitating practice; however, the broader tension between individual and community rights is not always as straightforward to navigate as in this case.

To philosophers or political theorists, this is a classic debate. Authors positioned within the spectrum of liberal thinking and communitarianism, such as Alasdair MacIntyre (1988), John Rawls (1971) and Michael Walzer (1994), and the influential work on multiculturalism developed by Will Kymlicka (1995), Seyla Benhabib (2002) and others, positioned the negotiation between universalism and particularism at the centre of political theory. While liberal thinkers foreground individual liberty and argue that any political authority limiting the former must be justified, communitarians highlight precisely the opposite, that is, the importance of social relations, communities and culture to shape identities, normative frameworks, and policies. In a sense, multiculturalism theorists can be read as trying to find a middle ground between the recognition of the cultural, social and historical relevance of the multiple communities

that make up cities and countries, on the one hand, and the value of freedom—namely, from the constraint to be affiliated with one cultural group over another—on the other hand. And yet, whereas the work of these scholars reveals the existence of generalised agreement regarding a fundamental set of human rights (such as prohibitions against slavery and genocide), it also foregrounds the lack of extension of such agreement to women’s rights, social and economic rights, the rights of indigenous communities, and cultural rights. That is, despite growing interest in the overlap between women’s rights and cultural rights (evidenced by empirical analyses, such as Ariany (2013), Leiber (2017), Msuya (2019) and Nyangweso (2022), and discussions of the relationships between economic, social and cultural rights, such as Venter (1995), Eide et al. (2001) and Yamin (2005), not to mention Veazey’s discussion of “gendered cultural rights” (2015), a systematic approach that could guide decisions regarding competing claims made in this regard has not yet emerged. The closest to such an approach can be found in work by Alexandra Xanthaki (whose name will be mentioned again in this chapter), such as a journal article titled *When universalism becomes a bully: Revisiting the interplay between cultural rights and women’s rights* (2019). In it, the author considers potential conflicts between cultural rights and women’s rights applied to minority and indigenous women, arguing that the principle of subsidiary can address them—“subsidiarity applied, the decision will not be made by the international community, state, nor the group as a whole, but by the actual women who are affected by the practice in question” (Xanthaki, 2019, 719). However, this solution does not provide an answer to conflicts taking place at the same policy level, that is, when the subsidiarity principle does not allow one to distinguish between opposing claimants.

Although there isn’t a single official definition of cultural rights, Articles 22 and 27 of the Universal Declaration of Human Rights highlight the right to take part to the “realisation of the [...] cultural rights indispensable for his (sic) dignity and the free development of his (sic) personality” and to participate in “the cultural life of the community”, respectively (UN General Assembly, 1948). The interconnection is echoed by the Fribourg Declaration on Cultural Rights, which begins by declaring in Article 1 that cultural rights “are essential to human dignity. For this reason, they form an integral part of human rights and must be interpreted according to the principles of universality, indivisibility and interdependence” (University of Fribourg, 2007). As for the scope of

the term cultural rights, the declaration sees it as combining rights across several issues: identity and cultural heritage, reference to cultural communities, access to and participation in cultural life, education and training, information and communication, and cultural cooperation. The first two issues are particularly important, considering the focus of this chapter. Regarding identity and cultural heritage, Article 3 states that “everyone, alone or in community with others, has the right: a. To choose and to have one’s cultural identity respected, in the variety of its different means of expression. This right is exercised in interconnection with, in particular, the freedoms of thought, conscience, religion, opinion and expression”, whereas Article 4, in reference to cultural communities, begins by stating that “everyone is free to choose to identify or not to identify with one or several cultural communities, regardless of frontiers, and to modify such a choice” (University of Fribourg, 2007). These documents position the enjoyment and expression of cultural preferences and frameworks—as well as their potential rejection—as central to individual development and dignity.

As for the term women’s cultural rights, it is important to mention a key set of references. Article 3 of the International Covenant on Economic, Social and Cultural Rights affirms the need to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights” (UN General Assembly, 1966b), whereas Article I of the Convention on the Elimination of All Forms of Discrimination against Women extends the notion of “discrimination against women” to cultural freedoms. Specifically, the article states that

the term ‘discrimination against women’ shall mean 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. (UN General Assembly, 1979)

Furthermore, echoing the aforementioned Covenant, Article 3 of the Convention states that “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and

advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men” (UN General Assembly, 1979). Later, the Beijing Declaration and Platform for Action identified culture as one of the factors that limited “equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement” (UN Women, 1995)—one of many references within this document to the term. Notably, the declaration defines poverty as a condition “characterized by lack of participation in decision-making and in civil, social and cultural life”, associates “full participation and respect for [...] cultural diversity” as central in policies “to promote and strengthen policies and programmes for indigenous women”, and identifies “sustainable development as [...] possible only through improving the economic, social, political, legal and cultural status of women” (UN Women, 1995). All in all, these documents recognise the fundamental links between women’s exclusion and cultural exclusion and, conversely, women’s rights and cultural rights.<sup>1</sup>

Additionally, provisions and instruments focused on minorities, such as the International Covenant on Civil and Political Rights (UN General Assembly, 1966a) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and Indigenous Peoples (UN General Assembly, 1992), also refer to cultural rights. In the case of the former, Article 1 states that “all peoples have the right of self-determination”, which includes the right to “freely pursue their economic, social and cultural development”, and Article 27 establishes that persons belonging to minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture” (UN General Assembly, 1966a). Similarly, the 1992 Declaration protects, in Article 1, “the existence and the national or ethnic, cultural, religious and linguistic identity of minorities” and, in Article 2, the right of persons belonging to minorities “the right to enjoy their own culture [...] freely and without interference or any form of discrimination” and “to participate effectively in cultural [...] life”. Finally, Article 4(1) states that “states shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics

<sup>1</sup> For a more extensive summary of the main international and regional instruments on gender equality—an issue that is outside the scope of this chapter—see pp. 7–8 and the Annex of Conor’s report for UNESCO (2021a, 2021b).



and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards” (UN General Assembly, 1992). Moreover, according to Article 2 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, “cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression as well as the ability of individuals to choose cultural expressions, are guaranteed” (UNESCO, 2005). That is, these international documents establish cultural rights as being intimately connected both to individual development and to participation in the life of a community. Therefore, they should be supported—except if such cultural practices oppose national law and international standards. This provides an initial answer to the first question that guides this chapter—even though, as we will see, invocations of the term “cultural relativism” can complicate matters.

Recent reports by holders of the post of United Nations Special Rapporteur in the field of cultural rights make this point explicitly. The role of this independent expert in the field of cultural rights was established in 2009 by the Human Rights Council under Resolution 10/23 (OHCHR, 2009). Special Rapporteurs (henceforth known as the Rapporteur) hold the mandate for three years, although it can be extended by human rights resolutions. The Rapporteur reports both to the Human Rights Council and to the General Assembly. Since October 2021, the UN Special Rapporteur in the field of cultural rights has been Alexandra Xanthaki, Professor of Laws at Brunel University, London, and the author of the aforementioned article on women’s rights and cultural rights.

Xanthaki followed two other holders of the post: Farida Shaheed (2009–2015), a Pakistani sociologist and Executive Director of Shirkat Gah-Women’s Resource Centre in Pakistan, who originally took up the role as an independent expert in the field of cultural rights in 2009 and continued as a Special Rapporteur from 2012, and Karima Bennoune (2015–2021), Professor of Law and Martin Luther King, Jr., Hall Research Scholar at the University of California-Davis School of Law. Among its responsibilities, the post holder must “identify best practices of promoting and protecting cultural rights at local, national, regional and international levels”, “identify obstacles to the promotion and protection of cultural rights”, and “integrate a gender and a disability perspective into this work” (OHCHR, n.d.). For the sake of clarity, this chapter refers to the Rapporteur as the position rather than a specific holder thereof.

In practical terms, this work is reflected in reports that are made publicly available on the United Nations website. A brief summary of how some of these documents engage with the issue of the management of cultural diversity is warranted. For example, a report focused on the principles linking development and human rights states:

cultural rights protect the right of each person individually, in community with others and collectively, to develop and express their humanity, their world views and the meanings they give to their existence and their development, including through, *inter alia*, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. Cultural rights also protect the cultural heritage of the individual and groups and the resources that enable such identification and development processes. (OHCHR, 2010, 5)

This definition combines liberal and communitarian aspects, echoing the tension that is present in the scholarship mentioned earlier. However, and crucially, this and other reports suggest that individual rights and community heritage and linkages are not in opposition but, rather, in a flexible relationship between ever-changing concepts, practices and identities. Foregrounding “the rights to mix, borrow, traverse and fuse cultures and to engage in syncretic cultural practice”, which “are among the foundations of cultural rights” (OHCHR, 2021, 6), the Rapporteur reiterates in another report the complexity of cultural frameworks as “overlapping and disorderly formed circles around the individual” (OHCHR, 2022, 5) that must be balanced with other rights (OHCHR, 2022, 9).

### 3 HUMAN RIGHTS, WOMEN’S RIGHTS AND CULTURAL RELATIVISM

On this topic, several of these reports highlight the need to balance collective cultural rights and women’s rights, establishing a direct link between cultural rights, women’s rights and gender equality (OHCHR, 2021). That is, these reports position cultural and women’s rights at the junction of several normative concerns, opposing a reductionist understanding of multiculturalism (OHCHR, 2021). However, this framework is not accompanied by guidelines as to how this complexity is to be navigated.

Moreover, a set of statements can be perceived as contradictory to the idea of cultural diversity management as an iterative process: specifically,

those that focus on cultural relativism. The latter is defined by the Rapporteur in two ways. Firstly, in one of the reports, the Rapporteur states that “cultural rights are not [...] tantamount to cultural relativism” (OHCHR, 2018, 6). Whereas culture is perceived to be constantly evolving, cultural relativism is associated with views “with regard to the rights of others, deemed to have lesser or different rights claims because of the collective to which they are assumed to belong” (OHCHR, 2018, 15). In making this statement, the Rapporteur is suggesting that cultural relativism is a practice of marginalisation by powerful groups using culture as a tool to achieve this goal—a practice that “seek(s) to place individuals and groups from marginalized communities outside the protection of international and national human rights protection mechanisms” (OHCHR, 2018, 41). In other words, in this understanding of the term, cultural relativism refers to the invocation of cultural diversity to justify violations of human rights.

Secondly, cultural relativism is presented in another report as a Western-centric, if not neocolonial, approach to cultural difference. As the Rapporteur writes, “the debate on cultural relativism is often framed as if to suggest that only some, usually non- ‘Western’, people have culture [...] and as something that is invariably in opposition to what are claimed to be ‘Western human rights norms’” (OHCHR, 2018, 17). In this understanding of the term, cultural relativism is used by privileged groups in the Global North to explain (thus legitimising and reinforcing, even if unwittingly) the existence of cultural practices that are counter to human rights. In common, both interpretations see cultural relativism as a strategy that is used by different groups to delink or justify the delinking of cultural practices and universal human rights.

Several authors have proposed a more positive and productive understanding of the term both in academic and in policy terms—namely, anthropologist Margaret Mead. Inspired by her doctoral supervisor, Franz Boas (who had stated that cultures cannot be assessed as right or wrong, and thus, organised in a supposed hierarchy, introducing cultural relativism as an anthropological method), and as a result of extensive fieldwork, Mead proposed to view culture as an integrated whole that was maintained through “the internalization of structures of authority” (Mandler, 2009, 152) and cultural difference as the reflection of the development of different structures thereof. For example, Mead’s interviews and psychological tests with adolescents in Samoa (Mead, 1923) suggested that if adolescence is a difficult period in the USA this is due to

the latter's cultural patterns. Then, in New Guinea and Bali, Mead investigated gender roles (1935) and concluded that they did not reflect innate differences. Later, in a manuscript for an unpublished book, she wrote that the "world was made up of many cultures, 'each [...] valid in its own right'" (Mandler, 2009, 155, citing Mead, 1945) and that "we 'might try to find out what is the special contribution and special gift of each of these cultures', [...] leaving no one out—and by left out I mean not only not given a seat at the peace table, but not allowed to participate in all the planning, policy making, implementation and reconstruction at every step'" (Mandler, 2009, 155, citing Mead, 1945). That is, Mead's work highlights the links between social expectations, gender, the inequality of access by specific groups to decision-making fora, and the ways how these constructions underpin structures of authority and privilege—which are to be critically examined, questioned and disassembled.

#### 4 NAVIGATING CULTURAL AND HUMAN RIGHTS: THE DECOLONIAL ANGLE

At this point in the analysis, it is helpful to foreground, yet again, the questions with which this chapter is concerned. Firstly, how can tensions between cultural and human rights be navigated? Secondly, how can cultural diversity be supported without legitimising the rhetorical weaponisation of difference in favour of abuses of power? Several affirmations by the Rapporteur provide insights as to how the second question can (and should) be answered. However, they are scattered across reports, thus failing to provide an explicit and structured rationale to manage disagreement regarding cultural rights. What is at stake is a broader paradigm shift proposed by the Rapporteur—a change "from viewing culture as an obstacle to women's rights to emphasising the need to ensure women's equal enjoyment of cultural rights. It is important to ensure the right of all women to [...] contribute to all aspects of cultural life, including in [...] deciding which cultural traditions [...] are to be kept intact, modified or discarded altogether" (OHCHR, 2016, 8). What is at stake is how to support cultural freedom and with it women's freedom.

As the work of decolonial and feminist thinkers, such as those that are mentioned throughout this chapter, makes clear, a principled approach to the management of cultural rights is indeed possible. To articulate it, it is important to begin by addressing the elephant in the room that often

emerges in and ends debates about cultural diversity: epistemological difference. Rather than automatically creating a deadlock for policymakers in the Global North—as it is often perceived—engaging with this idea can contribute to opening up new avenues for policy action. Although the depth of difference that can underpin cultural diversity hasn't always been recognised by Western feminism, exemplifying what has been named as epistemic violence by Gayatri Spivak—"the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other" (1988, 280)—the work of decolonial thinkers suggests that this difference is not to be conflated with a form of absolute cultural relativism that would be disconnected from ethical principles, and that it can, therefore, be managed.

Claudia Brunner (2021), a scholar of political theory, peace studies, and gender, expands on Spivak's definition and positions epistemic violence alongside the idea of the colonisation of knowledge and its implications for international relations (IR) scholarship. This leads Brunner to engage with the work of Quijano (1993, 2010), according to whom IR is built upon a paradigmatic opposition: modernity versus coloniality. This analysis is helpful to understand how cultural relativism is presented by the Special Rapporteur, according to whose reports the former opposes the rationality and ethics of universal human rights. However, when read in context, the statements that are made by the Rapporteur about this issue emerge as echoing a critical stance regarding a rhetorical strategy of epistemic violence, rather than as an example thereof. The reports oppose the idea that violence is something that "occurs somewhere else (i.e., not in the Global North—and if so, it is understood to be the exception rather than the rule); second, as something that is perpetrated by somebody else (i.e., not by a rational political subject—and if so, it is done for the right reasons)" (Brunner, 2021).

It's important to note that, after spending decades positioned as a theoretical framework used by unorthodox academic departments and scholars, following the Black Lives Matter movement and, arguably, reinforced by discussions around climate change and calls for Global North to Global South reparations, decolonisation has begun to be acknowledged by major progressive parties. This is evident, for example, in calls by the French Socialist Party to "decolonise the global economic system" (Parti Socialiste, 2022) and by Black Labour MPs, including frontbenchers, for the British government to reform the curriculum and include more Black British history in it (Kersley, 2020). Although these examples remain the

exception rather than the norm, they point to the closing of the gap between decolonial theory and mainstream progressive thought. Within apolitical cultural circles and institutions, calls for decolonisation have also gradually taken centre stage. Namely, the British Council Anti-Racism Action Plan explores the relationship between decoloniality and British Council funding (British Council, n.d.), whereas the UNESCO website mentions decolonisation in relation to education (UNESCO, 2021a), open science practices (UNESCO, 2021b) and history (Iye, 2009).

These calls have been met with criticism in public fora. According to some, supporters of decolonisation “infantilize the cultures they presume to defend” (Varadarajan, 2022), a position that has famously been developed by political philosopher Olúfemi Táíwò (2022). Others suggest that decolonisation is incompatible with the principles of the Enlightenment—particularly, the pursuit of freedom and progress through the exercise of reason. However, as the work of Nikita Dhawan articulates, even though the promises of the Enlightenment cannot be fully separated from colonialism and several past crimes against humanity, it is possible—and necessary—to reposition Enlightenment norms, such as human rights, within decolonisation or, in other words, to *Decolonise Enlightenment* (Dhawan, 2014). This chapter can be understood as contributing to these efforts.

#### *4.1 Beyond Epistemological Incommensurability: From Difference to Pluralism*

Indeed, most criticisms of decoloniality fail to recognise the movement of transformation that is inherent to it—one that is guided by the vision of plural forms of governance that reflect a plural body politic. As Catherine Walsh explains, decoloniality is “the process and project of building, shaping, and enabling coloniality’s otherwise, interculturality” (2018, 57), following the understanding of the term that is provided by indigenous movements from the Andean region. It is worth quoting Walsh at length:

The critical decolonizing view of interculturality [...] calls for radical change in the dominant order and in its foundational base of capitalism, Western modernity, and ongoing colonial power [...]. Its project (is) to transform, reconceptualize, and refound structures and institutions in ways that put in equitable (but still conflictive) relation diverse cultural logics,

practices, and ways of knowing, thinking, acting, being, and living. Interculturality [...] suggests a permanent and active process of negotiation and interrelation in which difference does not disappear. (2018, 57–59)

Decolonial thinking is, thus, not incompatible with human rights and their global governance; rather, it can be interpreted as suggesting the need for a bottom-up and pluralising understanding of the role of global (and other) institutions in managing cultural difference. In other words, based on the work of decolonial authors, such as those mentioned so far, one can affirm that it is possible to decolonise the Enlightenment, knowledge and institutions if one is open to, as Walsh states elsewhere, “pluralise their meaning” (Mignolo & Walsh, 2018, 65, citing Walsh, 2010). That being said, pluralisation is not a neutral approach. It does not necessarily reject global institutions, but it does question the hierarchies that would see such institutions as a supposed pinnacle of human civilisation, echoing the work of Boas and Mead.

To return to the work of the Rapporteur, even if the use of cultural relativism is understandable in context, we want to propose a different understanding of the term in these discussions. We want to argue that it is not enough to suggest that references to cultural relativism are used to justify a certain form of absolute relativism (that is, one rejecting the existence of a normative basis to support the rights of individuals) and that this reflects a rhetorical strategy used to reinforce power over minorities—namely, over women’s right to decide how to live their lives. At the same time, one must also reject the idea that cultural relativism is necessarily a negative principle—not doing so can unwittingly reinforce the same hierarchies that the Rapporteur is proposing to reject. Instead, one must foreground the positive dimension of difference. Doing so is consistent with the Rapporteur’s approach to cultural diversity, described as “both a necessary condition for and the result of the exercise of cultural rights by all. Access to the diversity of persons, knowledge, cultural heritage and creative expressions of others is necessary to develop capacities and expressions. In turn, the way each person participates in and contributes to cultural life adds to the cultural diversity of the environment” (OHCHR, 2018, 17–18).

The work of philosopher Bruno Latour is particularly helpful in this regard. In *We Have Never Been Modern* (1993 [1991]), a book that explores and questions the dualistic distinction between nature and society, Latour defines cultural relativism as the existence of multiple

cultural groups with a common background and interest—for example, nature—that is perceived and understood, however, according to social and individual determinants. A more productive use of the term would echo Latour’s understanding of cultural relativism as a social context of disagreement regarding the meaning of nature, which does not, however, question its existence. This would be aligned with broader statements made by the Rapporteur, such as when suggesting that cultural diversity is reflected in the existence of multiple understandings of sustainability: “there can be no single definition or perception of sustainability; rather, its internal diversity must be accepted. It is essential that people have the space and freedom to express and draw upon their cultural resources to define their vision for the future” (OHCHR, 2019, 9). Another report is even more explicit about the existence of multiple epistemologies if not ontologies: “universality is of great importance to indigenous peoples in their struggles to keep their cultures and traditions alive and resist assimilation [...]. For indigenous peoples, the right to self-determination and most other human rights cannot be fully realized without respect for their world views and cultural resources” (OHCHR, 2018, 18). Repositioning the term cultural relativism to highlight the productive dimension of difference opens up the possibility to develop a more systematic response to competing demands that use the language of cultural rights or diversity.

#### 4.2 *Towards a Feminist Approach to the Management of Cultural Diversity*

The work of Nancy Fraser provides a potential framework to manage opposing demands regarding cultural rights that is aligned with such a pluralising approach. Indeed, as she writes in an early piece, “we *can* distinguish better from worse interpretations of people’s needs. To say that needs are culturally constructed and discursively interpreted is not to say that any need interpretation is as good as any other. On the contrary, it is to underline the importance of an account of interpretive justification” (Fraser, 1989, 311–212, emphasis in original). To build such an account, firstly, the philosopher differentiates between claims for economic redistribution and for cultural recognition (Fraser, 1995 and 2003). Secondly, she argues that conflicts regarding such claims should be decided based on the extent to which they contribute to increasing inclusiveness and parity of participation. The former principle of inclusiveness expands who participates in public discussion, while parity of participation focuses on



the quality of such participation and states that actors that preclude the expansion of redistribution or recognition are not to have their demands recognised (Fraser, 2003, 19).

To return to the initial example mentioned in this chapter, giving the role of the main character of a film such as *The Little Mermaid* to a young Black actress, and accompanying this decision with policies aimed at giving Black and other minority groups a seat at the table, in terms of advocacy and decision-making in the film industry, as well as a fair share of the wealth that is created in the industry, contributes to increasing inclusiveness and parity of participation as well as cultural recognition and economic redistribution. In vibrant liberal societies, wokeism and anti-wokeism are not simple opposites; actions associated with the former support the continued expansion of rights, whereas those that identify with the latter deny this movement. In other words, these ideas suggest that recognition isn't an absolute process; rather, it is relative and conditional on a claim's broader impact on all. A statement made in a report of the Rapporteur regarding vulnerable or marginalised groups can be read as echoing the principle that competing claims must be assessed based on their broader impact: "in balancing cultural rights with other rights or interests, the rights of vulnerable or marginalized sections of the population must take priority so that effective and real equality can be achieved" (OHCHR, 2022, 10).

Moreover, as Fraser writes in *Redistribution or Recognition* (Fraser & Honneth, 2003), the principle of parity of participation also depends on two conditions: objective and intersubjective. The former "precludes forms and levels of economic dependence that impede parity of participation"; the latter condition "precludes institutionalised norms that systematically depreciate some qualities of people and the qualities associated with them" (Fraser, 2003, 36). This means that claims for participation—for instance, as contributions to conversations in which decisions regarding economic and cultural (re)distribution are to be made—"must show that the socio-cultural institutional changes they seek will supply the needed intersubjective conditions [...] without unjustifiably creating or worsening other disparities" (Fraser, 2003, 39).

That is, Fraser's work reiterates several points made by the Rapporteur while also providing a clear principle that expands the tools available to cultural rights managers. In a feminist understanding of cultural rights and diversity, claims that preclude *both* increased inclusiveness *and* increased

parity of participation *for all* do not have the same weight as claims that support these principles.

Although some readers may find these statements obvious, the management of disagreement regarding cultural rights is far from always being guided by these ideas. As is highlighted in a report by Freemuse, an independent international human rights organisation, about women's right to artistic freedom, "sixty-four per cent of cases in which the right to artistic freedom was violated [...] were motivated by perceptions surrounding indecency. This includes the portrayal of the female body or parts of it, and artists or artworks that may not necessarily appear in contexts that are sexualised" (Plipat, 2018, 52). That is, even though international human rights frameworks suggest that restrictions on freedom of expression are only justifiable by a limited set of conditions (Plipat, 2018, 32) the reality is very different. Regarding a broader issue—that of artistic freedom—and according to a different report by Freemuse, there were 380 reported violations against it in 28 countries in Europe, 31 imprisoned artists, 50 detained awaiting trial and 21 on trial between January 2018 and October 2019 alone (2020). This included blasphemy and defamation cases brought by religious groups, as well as the use of anti-terror and national security laws to silence legitimate political commentary (Freemuse, 2020, 14).

For those who oppose women's rights, it is obvious that limitations to the latter go hand in hand with restrictions to artistic experimentation and to religious or political stances taken by members of minority or powerless groups. It is time that human rights advocates also recognise the linkages between different rights—women's rights, artistic freedom, freedom of expression, cultural rights—and see them as inseparable dimensions of an inclusive and emancipatory model of development. Recognising their articulation allows for the emergence of a broader and holistic understanding of what is at stake in the management of cultural diversity.

## 5 ACTIONS AND RECOMMENDATIONS

The previous sections highlight the potential of, and need for, further research and policy work connecting women's rights, cultural rights, and cultural diversity. That being said, they also suggest three fundamental principles inspired by decolonial and feminist thinking that can guide the development of the field of cultural diversity management in a more holistic manner: (1) cultural difference has positive value and should not

be conflated with absolute cultural relativism: (2) the management of such difference requires a pluralising understanding of the role of institutions that represent or assemble multiple cultural groups, which are to be placed in equitable relation and active negotiation in such fora; and (3) the recognition of cultural rights claims should be conditional on a claim's broader impact on all and on its relative contribution to increasing inclusiveness and parity of participation.

Inspired by these ideas, there are several potential actions and recommendations that can already be made. For the sake of clarity, they are organised into policies focused on different priorities and levels of action. Future policies to better connect gender equality and cultural rights within the EU could be concerned with, for example, the inclusion of cultural diversity experts in gender equality policy discussions and vice versa, and invitations to a wider range of cultural spokespeople in fora dedicated to diversity and social inclusion. This would question or at least avoid reinforcing cultural silos and a static understanding of cultural diversity; it would also contribute to operationalising the Porto Santo Charter recommendation to “reinforce the necessary conditions to create long-term action plans for all people to be able to exercise their cultural rights and duties: valuing cultural diversity [...]; empowering them and giving them voice and power of decision” (The Porto Santo Conference, 2021). Crucially, this recommendation applies both to EU policymaking and to policymaking at the national, regional and local levels. Indeed, the need for joint action at the last two levels is highlighted by Farida Shaheed in a report for United Cities and Local Governments, which calls for the establishment of “coordination mechanisms between the gender equality unit, cultural critical decision-making apparatus and other departments” in gender equality/women's empowerment units in municipal structures and recommends preparing “a comprehensive transversal gender equality strategy” in consultation with “women's organisations, women's/gender studies departments and rights oriented cultural groups” (2021).

Additionally, European action in the sphere of cultural rights across international fora should include an explicit commitment to supporting a wider range of forms of cultural expression and to considering the global impact of its regulatory efforts, particularly across intellectual property frameworks—namely, those of indigenous groups, a topic that was recently discussed at the World Intellectual Property Organization (Wendland, 2023). In practical terms, such concerns should not be forgotten by the EU in the renegotiation of copyright agreements and

frameworks, which is made increasingly urgent by the development of artificial intelligence. This echoes one of the calls to action of UNESCO's MONDIACULT 2022 Declaration: "to foster an enabling environment conducive to the respect of all human rights, in particular cultural rights [...], including in the digital environment, in order to build a more just and equitable world, and reduce inequalities, including for women [and] indigenous people" (UNESCO, 2022). Similarly, the EU could call for the protection of cultural rights in the post-Sustainable Development Goals (for more on this topic, see Baltà Portolés and Dragičević Šešić, 2017).

Finally, despite the richness of the scholarly traditions that frame these discussions and the urgency of linking academic and policy debates on this topic, existing opportunities for interdisciplinary, research-based and policy-focused discussions remain limited. The EU could address this gap by creating a European Commission Expert Group on cultural diversity, which would foster discussion among academics, stakeholder representatives and Commission officials, and commission joint reports and recommendations. This could be combined with an online platform summarising the state of cultural rights across EU member states, containing examples of best practices (namely, by collating relevant projects and cultural rights plans or legal frameworks at the local, regional and national levels in the EU), and identifying relevant organisations and experts across the EU. Due to the complexity of cultural rights as a relative rather than an absolute right, their advancement cannot be monitored with simple indicators. However, progress across the Union could nonetheless be assessed with regular reports on how member states support cultural rights in relation to several other rights (e.g., women's rights, artistic freedom and religious rights) from independent experts. This effort could be combined with other relevant data-gathering processes, such as the Cultural Democracy Index proposed in the Porto Santo Charter as a way to monitor "the governance, processes and practices that institutions promote to ensure multicultural diversity, broad social participation and cultural empowerment of all people" (The Porto Santo Conference, 2021), and with the encouragement of more detailed data gathering on women in the cultural and media sectors—whose absence, as mentioned in the aforementioned piece by Villarroya for UNESCO, "remains a major obstacle in the way of progress on gender equality in creative professions" (Villarroya, 2022, 259). The analysis of this data should, whenever possible, follow an intersectional approach

(Crenshaw 1989). The development of such a platform, the initial collection of best practices, and the design of the data-gathering collection process could be the focus of a Preparatory Action on Women's Rights and Cultural Rights in the EU.

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