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**Ex Aequo Et Bono /In Justice and Fairness/ En équité:  
Gender, International Human Rights, & Canadian Public Policy in the Third Phase**

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**A Thesis**

**in**

**The Department**

**of**

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## **ABSTRACT**

**Ex Aequo Et Bono /In Justice and Fairness/ En équité:  
Gender, International Human Rights, & Canadian Public Policy in the Third Phase**

**Lynda Ann Lyness**

The main objective of this research is to examine feminist critiques of international human rights law particularly in light of the December 2001 report by the Standing Senate Committee on Human Rights entitled “Promises to Keep: Implementing Canada’s Human Rights Obligations.” This report acknowledges the discrepancy between Canada’s international human rights commitments and the actual implementation of measures to ensure observance of these obligations and sets the stage for the ‘third phase’ of human rights. At issue in this ‘third phase’ is how to actually implement international human rights law in a comprehensive and systematic way that ensures a ‘human rights’ perspective in public policies, programs and legislation. At issue in international human rights law is the use of ‘gender neutral’ language and values and assumptions that reinforce gender inequalities. This in effect means that the gendered character of economic, social and political relations from which public policy emerges, is for the most part, not a consideration. In addition, most public servants, policy experts and many parliamentarians, still believe that public policy is ‘gender neutral’. This thesis challenges the concept of ‘gender-neutrality’ and reminds parliamentarians and policy-makers that *human rights that do not include women are not human* and this should not be forgotten or left unsaid in any future recommendations and actions aimed at effectively

implementing both Canada's commitments to international human rights law and the Federal Plan for Gender Equality.

## DEDICATION

This thesis is dedicated

To the memory of my mother, Laura Mae McKinnon Lyness, a remarkable woman, who is the inspiration for all that I do.

And

To all those who live in an equitable world that is free of injustice and to those who struggle to find this place.

Thank you, Professor Maillé

And

Thank you, Professor Salée and Professor Reeta Chowdhari Tremblay.

And a special thank you to Dr. J. Stewart Polson, Marion Polson, Leta Polson, and my sister, Sharon Lyness.

L.A.L.

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While Europe's eye is fix'd on mighty things,  
 The fate of Empires and the fall of Kings;  
 While quacks of State must each produce his plan,  
 And even children lisp the Rights of Man;  
 Amid this mighty fuss just let me mention,  
 The Rights of Women merit some attention.  
 –Robbie Burns<sup>1</sup>

## INTRODUCTION

More than two hundred years after the French Revolution, the words of Robert Burns still resonate in both international and domestic debates on integrating women's human rights and mainstreaming a gender perspective in *all* legislation, policies, and programs. Today, questions regarding the *rights of Woman* and the *rights of Man* have been replaced, in the former case by women's human rights and in the latter case by men's human rights framed as the 'general,' 'gender-neutral,' and/or 'universal' standard of human rights. At issue on the conceptual level, therefore, is the use of so-called gender-neutral language, values, and assumptions that perpetuate gender inequalities in both international and Canadian public policies, programs, and legislation. This in effect indicates that the gendered character of economic, social and political relations from which public policies, programs, and legislation emerges, is for the most part, not a consideration. Beyond this ideational issue are questions of how to actually implement international human rights norms and values in a comprehensive and systematic way that ensures a gender inclusive human rights perspective in *all* public policies, programs and legislation.

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<sup>1</sup> Scottish poet Robert Burns (1759-1796), on the eve of the French Revolution wrote a poem entitled "The Rights of Women" for an address by Louisa Fontanelle. While ostensibly a tribute to women of the time, the first passage and its reference to the "Rights of Women" harkens to the "Rights of Man" by Thomas Paine, see Robert Burns.

This thesis challenges the concept of ‘gender-neutrality’ and reminds parliamentarians and policy-makers that “human rights that do not include women are not human”<sup>2</sup> and public policies, programs and legislation that do not include both women and men are not public. Moreover, this should not be forgotten or left unsaid in any future recommendations and actions aimed at effectively implementing both Canada’s commitments to international human rights law and the “Federal Plan for Gender Equality,” which includes as its first objective a commitment to applying a “gender-based analysis throughout federal departments and agencies.”

The first chapter will outline the contentious political history of human rights by posing the questions, “what are the origins of human rights,” and “who possesses human rights” from a comparative gender-based perspective. The purpose of this chapter is to begin the process of identifying how and why international human rights in the twenty-first century are highly gender-specific in character, yet for all intents and purposes utilize the notions of ‘universality,’ ‘gender-neutrality,’ and ‘equality’ to obscure the presence of gender. This will be accomplished by first, briefly outlining the origins and significance of human rights; second, by highlighting crucial debates between those advocating the *rights of Woman* and/ or the *rights of Man*; and finally, by examining the legacies of the political victors and the political dissenters.

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<sup>2</sup> Shulamith Koenig of the Peoples Decade for Human Rights Education prefers to quote Latin American Women’s approach to women’s human rights, which for many women’s human rights advocates now represents the next step after the acknowledgement that “Women’s Rights are Human Rights” (*Embracing Women*).

The second chapter then examines how the *rights of Man* doctrine was gradually established as the contemporary international standard of human rights, while the *rights of Woman* evolved with first the confirmation of “equal rights of men and women” in the Charter of the United Nations and in the non-discrimination and non-distinction approaches models of ‘general’ human rights. The intent of the second chapter is to examine the internationalization of the *right of Woman* and the *rights of Man* debates as well as how and why the outcomes of this historic political dispute influenced the process and conceptualization of ‘universal’ international human rights principles. This chapter will therefore demonstrate how and why the concepts of ‘universality,’ ‘gender-neutrality,’ and ‘equality’ actually refer to an international political consensus that fully recognizes and accepts men’s human rights and partially acknowledges women’s human rights through a critical commitment to the equal rights of women and men; a concept that, as this chapter argues, has yet to be substantively realized. This will be accomplished by first, outlining the outcomes of the *rights of Woman* and the *rights of Man* in the context of international human rights; second by exploring the debates regarding the language of the ‘Universal’ Declaration of ‘Human Rights’; and finally by re-examining the problematic outcomes and ongoing issues relating to the language and interpretation of international ‘human rights’ standards.

By outlining the critical debates surrounding the *rights of Man* and the *rights of Woman* and examining the legislative outcomes of the efforts of men’s rights advocates and women’s rights defenders in the previous chapters, it is clear that the language and culture of 20<sup>th</sup> century international human rights law is first, based on the successful

incorporation of male-gender exclusive *rights of Man* principles; and second, operates to reinforce the idea that men are universally, that is, both domestically and internationally, equal to one another and are collectively the subjects and beneficiaries of 'general' and/or 'gender-neutral' human rights law. Women on the other hand, in theory, through hard-won legal, social, and political victories, gained 'equal' status with men in the latest incarnation of this philosophy; yet in practice, when considered, are viewed as a 'special interests' or 'special cases,' as opposed to being recognized and accepted in a fully gender inclusive (taking both women and men into account) general standard.

Accordingly, the third chapter will first, assess some of the changes and challenges since the adoption of the 'Universal' Declaration of 'Human Rights' and examine the idea of gender mainstreaming; second it will present an outline of gender disparities in the Canadian context through an exploration of gender development indexes and measurements commissioned by the United Nations; and finally, it will draw attention to the Louise Gosselin and Kimberley Rogers cases, which raise several questions about international human rights and whether economic, social, and cultural rights are justiciable under the Canadian Charter of Rights and Freedoms (1982). The purpose of this exercise is to identify, as noted above, the consequences of 'gender-neutral' approaches to human rights and Canadian public policy; and in the process examine the role of international 'human rights' and the ways in which international commitments to gender mainstreaming influence the Canadian polity.

The last chapter will briefly address the Canadian Senate Standing Committee on Human Rights Report entitled “Promises to Keep: Implementing Canada’s Human Rights Obligations” and will conclude with a summary of the main findings of this work.

There are more ideas on earth than intellectuals imagine. And these ideas are more active, stronger, more resistant, more passionate than “politicians” think. We have to be there at the birth of ideas, the bursting outward of their force: not in books expressing them, but in events manifesting this force, in struggles carried on around ideas, for or against them. Ideas do not rule the world. But it is because the world has ideas . . . that it is not passively ruled by those who are its leaders or those who would like to teach it, once and for all, what it must think. –Michel Foucault<sup>3</sup>

## **L. POLITICAL HISTORY I: ORIGINS TO THE EARLY 20<sup>th</sup> CENTURY (THE POLITICS & GENDER OF HUMAN RIGHTS)**

The primary objective of this chapter is to outline the contentious political history of human rights by posing the questions, “what are the origins of human rights,” and “who possesses human rights” from a comparative gender-based perspective. The purpose of this exercise is to begin to identify the process of how and why international human rights in the twenty-first century are highly gender-specific in character, yet for all intents and purposes utilize the notions of ‘universality,’ ‘gender-neutrality,’ and ‘equality’ to obscure the presence of gender. This will be accomplished by first, briefly outlining the origins and significance of human rights; second, by highlighting crucial debates between those advocating the *rights of Woman* and/ or the *rights of Man*; and finally, by examining the legacies of the political victors and the political dissenters.

### **i) Contrasting the Philosophical and Political Origins of the Debate**

#### ***Tracing ‘Human Rights’, Locating Men’s Human Rights***

Theoretically, ‘human rights’<sup>4</sup> represent the basic rights and freedoms held to belong to ‘all’<sup>5</sup> human beings by virtue of their humanity. These values are rooted in the spiritual

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<sup>3</sup> See Michel Foucault, “Les Reportage d’Idées,” in *Corriere Della Sera* (Milan, 12 Nov. 1978; repr. in Didier Eribon, *Michel Foucault*, 1989); and “Michel Foucault,” *The Columbia Dictionary of Quotations*, CD-ROM (New York: Columbia University Press, 1995).

<sup>4</sup> The term ‘human rights’ is relatively new, coming into use after World War II with the establishment of the United Nations. According to Henry J. Steiner and Philip Alston, the term human rights replaced

teachings of almost every culture, including the Hindu Vedas, the Bible, the Quran (Koran), the Analects of Confucius and the Iroquois Constitution.<sup>6</sup> Conceptually derived from the theory of natural law, that is, the theory that certain laws are basic to human nature and are therefore knowable through human judgment; ‘human rights,’ some argue, originated in Greco-Roman ideas about the ‘common good’ found in the works of philosophers such as Plato<sup>7</sup> (427/428 B.C.E - 348/347 B.C.E.), Aristotle (384 B.C.E. - 322 B.C.E), and particularly in Marcus Tullius Cicero’s *De Legibus* (The Laws, 52 B.C.E.) (Hayden 3-42; Ishay xvi-xvii). Cicero (106 B.C.E. - 43 B.C.E.) was a ‘statesman,’ lawyer, and scholar, who believed that ‘individuals’ are bound together by the idea that “right living is what makes men<sup>8</sup> better” (Hayden 34). His *De Legibus* provided the foundation for what is understood today as ‘human rights,’ which is a term that replaced both ‘natural rights’ and the *rights of Man*, as noted previously (Steiner and Alston 324; Ishay xvi-xvii). Both terms became controversial over time, yet sustainable,

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‘natural rights’ and the *rights of Man*, since both became controversial for a variety of reasons (324). In this regard, the subject of women’s human rights and the drafting of the Universal Declaration of Human Rights (1948) are of particular interest to this work and will be elaborated in the next chapter. In any case, this thesis will consider ‘natural rights,’ the *rights of Man* and the *rights of Woman* as issues of ‘human rights’; however, the gender distinctions will be clearly specified throughout.

<sup>5</sup> All, in this essay, refers to women, men, girls, boys in an inclusive manner that takes account of categories that socially differentiate, and for all intents and purposes, hierarchically arrange, human beings: categories that include sex, gender, ‘race,’ colour, ethnicity, class / social condition / socio-economic status, age, sexual orientation, and/ or other status that distinguishes one from the “normative pre-eminence of the male.” For comprehensive discussions on the issue, see Danielle Juteau S95-S107; and Craig Calhoun 1-36.

<sup>6</sup> The Iroquois Constitution outlines the rights and duties of the members of the ‘Six Nations,’ who are made up of the Haudenosaunee (People building a Long House). The Iroquois Constitution, according to some, was a great influence for the United States Constitution, see The University of Oklahoma Law Center, *The Iroquois Constitution*, 9 February 2002 <<http://www.law.ou.edu/hist/iroquois.html>>.

<sup>7</sup> Although Plato ‘remarkably’ defended the idea of ‘equal rights for women,’ this idea manifested in the context of a notion that “justice can be achieved only when individuals fulfill the tasks to which each is suited, in harmony with the common good,” see Ishay xvi. The question becomes what is the role and who defines this role. In this regard, according to Jane English, Plato allowed for the presence of “some individual women [who] are wise, brave, and strong” and therefore, eligible to be *Guardians* (13). Again, the question of how these characteristics are defined and by whom becomes the question. These questions, in the context of Ancient Greece are beyond the scope of this work, however.

<sup>8</sup> For clarity, when the term ‘men’ is used, it should be understood as sex and gender specific, as opposed to its prescriptive application as ‘sex indefinite,’ which for the most part, is understood as sex specific or minimally, as ‘sex-biased’ (Schweikart 1-9). This point will be addressed in more detail in the next chapter.

as this thesis will argue, through notions such as ‘universality,’ ‘gender-neutrality,’ and ‘equality,’ which essentially obscure the foundation of ‘human rights’ law today; that is, men’s human rights.<sup>9</sup>

### ***Seeking Women’s Human Rights, Finding ‘Men’s Human Rights’***

According to Arvonne Fraser, to begin to trace how the idea of women’s human rights evolved, at least during the aforementioned times, is quite difficult (853-860). This is due, in part, to how women’s history, that is, a record of events, and the explanations and analysis relating to those events; has been and for the most part continues to be obscured,<sup>10</sup> in comparison to the history of ‘manly spirits’<sup>11</sup>/ ‘great women’ and the history of ‘great men’ over the centuries.<sup>12</sup> Nevertheless, the most recent historical

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<sup>9</sup> The term men’s human rights refer to the use of the male comparator when assessing, for example whether or not a violation of ‘human rights’ has occurred. This point is also reinforced by the Supreme Court of Canada’s ‘test of disadvantage,’ which acknowledges the necessity of a comprehensive analysis when evaluating women’s human rights. This essentially means asking the question, whether a case of women’s human rights violations merits “identical treatment with men,” or whether it requires the use of a gender-based analysis, because the ‘male comparator’ is irrelevant. According to Kathleen Mahoney, the Court’s ‘test of disadvantage’ is forward thinking in that it moves beyond the idea that “women should be treated the same as men” and towards the idea of taking gender into account (816-817).

<sup>10</sup> In conducting the research for this thesis, it was difficult to understand how and why documents such as The Declaration of the Rights of Woman and Citizen and the Vindication of the Rights of Woman for example are not or are rarely listed with their parallel documents relating to men, that is, The French Declaration of the Rights of Man and Citizen and the Thomas Paine’s Rights of Man. What is interesting about this finding is that when one thinks about, for example, the legal jurisprudence rendered by the Supreme Court of Canada, dissenting opinions are usually written and available with the majority decision. At this point in time, this is not necessarily the case with ‘human rights’ documents. Examples of this finding include some ‘human rights’ textbooks (for example, Steiner and Alston, list the French Declaration of the Rights of Man and Citizen only; in Symonides, the Rights of Man and French Declaration of the Rights of Man and Citizen are mentioned; and Ishay, lists both the Declaration of the Rights of Woman and Citizen and its companion and the Vindication of the Rights of Woman is also listed with the Thomas Paine’s Rights of Man, although Wollstonecraft’s A Vindication of the Rights of Men is not included) and this applies to academic websites that attempt to compile comprehensive lists of historical ‘human rights’ documents such as the *Avalon Project at Yale Law School*, 9 Jan. 2002 <<http://www.yale.edu/lawweb/avalon/18th.htm>>.

<sup>11</sup> ‘Manly spirits’ refer to ‘exceptional women,’ who display ‘male attributes’ such as ‘keen intelligence’ and ‘remarkable fortitude,’ see Boccaccio, qtd. in Fraser 858.

<sup>12</sup> Fraser contends that women’s history has been ignored to keep women in a subordinate position. Fraser also agrees with historian Gerda Lerner, that when women do not know that women have “made intellectual contributions to knowledge and creative thought,” women such as Christine de Pizan, Olympe



research on the evolution of ideas about women's human rights can be traced back to the fifteenth century, with the publication of Christine de Pizan's<sup>13</sup> *Le livre de la cité* in 1405 (Fraser 855). De Pizan's book launched one of the first known *querelle des femmes*<sup>14</sup> (debates about women), which included discussions about the rights of women to obtain an education, to be employed and to participate in public life (Kelly 66-79; Fraser 855-859). De Pizan's book was written partially in response to Giovanni Boccaccio's book *Concerning Famous Women* and various other writers, who shared his opinions. In Boccaccio's book, he asserts that 'exceptional women,' who displayed, what he described as 'male attributes' such as 'keen intelligence' and 'remarkable fortitude' deserved to be recorded in history. De Pizan, however, understood that while Boccaccio recognized 'manly' spirited women, she also realized that the daily struggles of the vast majority of women were in effect being diminished and ignored by this exclusionary approach to history. De Pizan, herself a widow, raising a family on her own, and earning an income by writing, challenged Boccaccio by presenting her own list of important women and concluded by calling on all women to rebel against the social, economic, and political limitations placed on them by men (Fraser 85).

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de Gouge, and Mary Wollstonecraft, 'it makes it all the more overwhelming and difficult to imagine oneself making such a contribution,' see Lerner, qtd. in Fraser 855.

<sup>13</sup> For a more detailed exploration of this particular historical period and the life and writings of Christine de Pizan, see Joan Kelly (65-109).

<sup>14</sup> According to Joan Kelly, the themes of the *querelle* addressed by de Pizan extended beyond issues of women's place in history and included philosophical gender debates on women's "equality, superiority, and [or] inferiority to men" as well as the challenge of misogyny (71).

ii) ***The Rights of Woman*<sup>15</sup> and *The Rights of Man*:<sup>16</sup> A Story of Debate, Dissent, Power and Privilege**

***The Rights of Woman and the Rights of Man First Encounters***

This *querelle des femmes* continued unabatedly through the 16<sup>th</sup> and 17<sup>th</sup> centuries with discussions focusing on issues of education and women's independence as more and more women began to publish their ideas "using their own experiences and skills to expose the folly of women's position in society and to dramatize male condemnation of any deviation from that norm" (Fraser 860-861). This trend continued through the late 18th century, and culminated with the revolutionary political debates in France and England on both the *rights of Man* and the *rights of Woman*.<sup>17</sup> However, the *rights of Man* dominated the discourse of the day, which focused on the political power struggle for the right of 'men' to be equal to 'men' of privilege. In other words, the battle for the liberation of 'men' was contingent upon changing the political power structure that

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<sup>15</sup> The *rights of Woman*, throughout this thesis, refers to Olympe de Gouge's Declaration of the Rights of Woman and Citizen (1790), Mary Wollstonecraft's Vindication of the Rights of Woman (1792), and the contentious political debates surrounding the human rights of women prior to the founding of the United Nations and its Charter, which specifically refers to the "equal rights of men and women" in the Preamble. Ishay 140-157; Fraser 853-866; and Hayden 101-108.

<sup>16</sup> The *rights of Man*, throughout this thesis, refers to the French Declaration of the Rights of Man and Citizen (1789), the Rights of Man written by Thomas Paine (1791-1792), and the recognized, accepted, and established rights of 'men' prior to the founding of the United Nations and its Charter, which, as noted above, specifically refers to the "equal rights of men and women" in its Preamble, see Ishay 138-139; Hayden 95-100; Buergenthal 3-30; Shestack 31-66.

<sup>17</sup> This chapter will focus mainly on the 'rights' debates in both France and England, since political philosophers and radicals from both countries contributed to the body of thought, which today serves as the foundation for much of what has become international human rights law. Specifically, the Universal Declaration of Human Rights (1948), the first comprehensive international affirmation of the basic rights of the 'all' human beings, is based on the United States Declaration of Independence (1776) and influenced by the English philosophers, John Locke and Thomas Paine; the French Declaration of the Rights of Man and Citizen (1789) written "in the spirit of" the United States Declaration of Independence with influences from the French philosophers, Jean Jacques Rousseau and F. M. Arouet de Voltaire; and on the Magna Carta (1215) the most well-known constitutional document in British history. The document was issued by King John to appease the feudal barons, who demanded that the king respect feudal rights and baronial privileges. In addition, the Magna Carta also implicitly outlined laws to protect the "rights of subjects and communities" from infringements by the King, see "Universal Declaration of Human Rights," *The People's Chronology*, CD-ROM (New York: Henry Holt and Company, 1995; and "Declaration of the Rights of Man and Citizen," *The Concise Columbia Encyclopedia*, CD-ROM (New York: Columbia UP, 1995).

socially, politically, and economically differentiated and subordinated 'men' based on their lower social status at birth (class). In the case, of the struggle for the liberation of women; first, in the same vein as their male counterparts, emancipation was contingent upon changing the political power structure that socially, politically, and economically excluded and subordinated women based on their lower social status at birth; and second, depended on transforming ideas that reinforced unequal access to power and resources based on an ideology that labelled women "passive citizens," who were both "socially and economically dependent on the male sex" (Ishay xxiii), which in turn, prevented them from, according to Christine de Pizan, being the "masters of their own fate."<sup>18</sup>

Nevertheless, the common thread that runs through both women's and men's demands for human rights during this period is reflected by the ongoing political deliberations between political theorists and revolutionary leaders of both genders.<sup>19</sup> On one the hand, Emmanuel Sieyès (1748-1836), a politician, and Thomas Paine (1737-1809), a writer and revolutionary leader, argued for the 'natural rights' of all 'men' to be equal to one another. On the other hand, while their female compatriots, Olympe de Gouge (1748-1793), a playwright, pamphleteer, and revolutionary advocate of the rights of women and

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<sup>18</sup> See, Christine de Pizan, *The Book of the City of Ladies*, trans. Earl Jeffrey Richards, in Marina Warner's "Foreword," New York: Persea Books, 1982, qtd. in Fraser 858.

<sup>19</sup> Gender, according to the *Status of Women Canada*, refers to a "culturally defined sets of characteristics" identifying stereotypical understandings of "the social behaviour of women and men and the relationship between them" (*Gender* 3), whereas the *American Heritage Dictionary of the English Language* defines gender as "sexual identity, especially in relation to society and culture." Another definition that is useful is given by the *Canadian Women's Health Network*, which describes gender as "the differential roles, responsibilities and activities of females and males." Sex, on the other hand is specifically denotes "biological differences women and men," see *Status of Women Canada, Gender-Based Analysis: A Guide for policy-making*, Ottawa: Minister of Supplies and Services Canada, 1998.

Mary Wollstonecraft (1759-1797), a writer and political revolutionary,<sup>20</sup> agreed with the idea of the rights of 'men'; they also argued that these 'rights' are inherent and should apply equally and unconditionally to both women and men (Ishay xxiii-xxiv; Bauer 21-26). The actions and reactions to these similar, yet different struggles had various outcomes and consequences related to the gender of the political luminary. The critical point at this juncture in time, therefore, is to demonstrate how the first struggle for and formal achievement of 'human rights,' in fact, was a struggle for 'men's' rights, which is quite apparent when contrasting Emmanuel Sieyès', French Declaration of the Rights of Man and Citizen, considered "a significant milestone in the Enlightenment's crusade for human rights" (Ishay, xxiii) with Olympe de Gouge's Declaration of the Rights of Woman and the Female Citizen; and similarly when examining Mary Wollstonecraft's reasons for writing *A Vindication of the Rights of Women*, two years after she had written *A Vindication of the Rights of Man*, which according to most, was overshadowed by Thomas Paine's *Rights of Man*.<sup>21</sup>

### ***First: Sieyès and de Gouge***

In 1789, Emmanuel Sieyès, drafted the French Declaration of the Rights of Man and Citizen,<sup>22</sup> at a time of great political upheaval and even greater political potential known as the French Revolution. The Declaration of the Rights of Man and Citizen affirmed the "natural, inalienable, and sacred rights of man" and in its first point, stipulated that "men are born and remain free and in equal rights; social distinctions should only be based

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<sup>20</sup> See, Unitarian Universalist Association, "Mary Wollstonecraft," 10 Jan. 2002 <<http://www.uua.org/uuhs/duub/articles/marywollstonecraft.html>>.

<sup>21</sup> Ibid.

<sup>22</sup> For the text of the Declaration of the Rights of Man and Citizen, see Ishay 138-39.

upon general usefulness” (Ishay 138). Olympe de Gouge, in a similar manner to Christine de Pizan’s response to Giovanni Boccaccio three centuries earlier, responded to the highly gendered language and assumptions in the Declaration of the Rights of Man and Citizen with an equally gendered document entitled Declaration of the Rights of Woman and the Female Citizen,<sup>23</sup> in 1790. De Gouge “did not merely add woman before or after each reference to man” or insert non-discriminatory clauses that would prescriptively preclude discrimination based on ‘sex’ (Bauer 21). Instead, she recognized the limitations of the discourse of the *rights of Man* with respect to the concerns and *rights of Woman* and re-conceptualized the document to substantively take account of the lives of women; that is, made women’s lives, experiences, and issues the focus of the *rights of Woman*. Each article and reference represented a standard that was equivalent to the demands of ‘men,’ yet informed by the needs of women. In this way, the Declaration of the Rights of Woman and the Female Citizen provided a means to balance the otherwise exclusionary, gender specific character of the French Declaration of the Rights of Man and Citizen. For example, de Gouges wrote that “women are born free and remain equal in rights to man,”<sup>24</sup> whereas Sieyès claimed that only “men are born and remain free and equal.” The idea, again, represents the political struggle waged by ‘men’ for the purpose of asserting the notion that ‘men’ form a single group, as opposed to one that discriminates against one another based on social status at birth. This equation in itself, describes the boundaries of the struggle at the time, despite the fact that women themselves demanded equality, drafted declarations, and voiced their concerns in the public forum. In other

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<sup>23</sup> For the text of the Declaration of the Rights of Woman, see Ishay 140-147. Note: Ishay shortens the title of both de Gouge and Wollstonecraft’s works on the *rights of Woman*.

<sup>24</sup> See, Article I, the Declaration of the Rights of Woman, Ishay, 142.

words, the *rights of Man*, was a quest for the right of men to be equal to other men only.<sup>25</sup> This being said, the Declaration of the Rights of Man and Citizen became the Preamble to the French Constitution in 1791 without alteration, that is, without taking de Gouge's pleadings contained in the Declaration of the Rights of Woman and the Female Citizen into account. Then, in addition to being excluded from any considerations in the drafting of the French Constitution, two years later, de Gouges, who argued for the *right of women* to openly resist oppression,<sup>26</sup> was sentenced to death by guillotine for exercising the very freedom that she sought for all women (Ishay 140-147; Bauer 21-26).<sup>27</sup>

### ***Wollstonecraft, Paine, and Burke: On the 'Rights of Men' and Women?***

Across the channel, in the same year that Olympe de Gouge wrote the Declaration of the Rights of Woman and Female Citizen,<sup>28</sup> Mary Wollstonecraft published *A Vindication of the Rights of Men*, in response to Edmund Burke's *Reflections of the Revolution in France* (1790). Burke, a conservative philosopher and politician, denounced the idea of liberty and 'universal rights'<sup>29</sup> voiced by the revolutionaries in France, arguing that "real rights" should be subordinated to preserve "social order and stable government" (Hayden 88). In contrast, Wollstonecraft maintained that "equality of opportunity, in which talent—not the wrongful privileges of gentility" is the prerequisite for a successful social order

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<sup>25</sup> If we fast forward to the future with this idea and think about the how women are socially differentiated from one and other by 'race,' class, ethnicity, sexual orientation, and/or other status: and the voices of protest against the privilege of 'white-heterosexual-European/ descent' women, the struggle for the right of men to be equal to other men becomes clear. This, however, will not be further elaborated due to the limits of this work.

<sup>26</sup> See, Article IV, the Declaration of the Rights of Woman, Ishay, 142.

<sup>27</sup> For this information on the Internet see, "Olympe de Gouges: Declaration of the Rights of Women and the Female Citizen," *Modern History Sourcebook*, 27 January 2001 <<http://www.fordham.edu/halsall/mod/1791degouge1.html>>.

<sup>28</sup> For the text of the Rights of Woman, see Ishay 140-147.

<sup>29</sup> 'Universal rights' in this case, undoubtedly refers to an broadening of rights across class lines in France as opposed to across gender lines or the contemporary notion of universal rights (which will be addressed in the following chapter).

and stable government.<sup>30</sup> Wollstonecraft's response to Burke's work, however, was overshadowed by her friend Thomas Paine's 'celebrated' 'masterpiece,'<sup>31</sup> the *Rights of Man*, which he had written a few months after Wollstonecraft's *A Vindication of the Rights of Men*. Paine's response focused on asserting the *rights of Man* as "natural rights...that belong to man prior to civil society" and as the foundation of democratic government, peace, and justice (Ishay xxiii). Whereas Wollstonecraft's work concentrated on the conceptualization of rights, that is the meaning of rights and who those rights belong to; Paine, defined the applications of 'natural rights' and the benefits of such rights to the effective operation of government.<sup>32</sup> In any case, both "Paine and Wollstonecraft were accused by the press of seeking to poison and inflame the minds of the lower class of his Majesty's subjects to violate their subordination."<sup>33</sup> At that time, it is not clear whether or not Wollstonecraft or Paine for that matter,<sup>34</sup> believed that the *rights of Man* included the *rights of Woman*, since the term man could have been construed as being an inclusive term.

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<sup>30</sup> See, Unitarian Universalist Association, "Mary Wollstonecraft," 10 Jan. 2002 <<http://www.uua.org/uuhs/duub/articles/marywollstonecraft.html>>.

<sup>31</sup> These adjectives are located in Ishay's recounting of the major philosophical works that influenced the ideas that form the foundation of what it is today commonly referred to as 'human rights' (xxiii).

<sup>32</sup> A similar argument would be made on behalf of women in 1808, by Charles Fournier of France, "who some have called the inventor of feminism," (feminism is defined simply as "women's equality," that is its original meaning according to Fraser). Fournier linked social progress to the "progress of women toward liberty" and believed that problems with social order occur in direct proportion to the level of women's freedom from social, political and economic constraints, see De Caritat Condorcet, qtd. in Fraser 865.

<sup>33</sup> See, Unitarian Universalist Association, "Mary Wollstonecraft," 10 Jan. 2002 <<http://www.uua.org/uuhs/duub/articles/marywollstonecraft.html>>.

<sup>34</sup> In 1775, Thomas Paine is quoted in his *Pennsylvania Magazine*, as saying "stop discrimination against women," see "Thomas Paine," *The People's Chronology*, CD-ROM (New York: Henry Holt and Company, 1995). This statement, according to some followed his pleas for the emancipation of slaves, for the end of cruelty to animals, and for women's rights. See: "Great Theosophists: Thomas Paine," *THEOSOPHY* 27 (1938) : 51-57. 10 Jan. 2002 <<http://www.wisdomworld.org/setting/thomaspainetwo.html>>. However, some argue that Paine displayed a very limited interest in the rights of women, if any at all, see Adam Svendsen, Rev. of *Germaine Greer on Thomas Paine's Rights of Man*, Speech by Germaine Greer Thursday 15 November as part of the Literature Festival and in association with The Thomas Paine Society. *TSW* 16 November 2001. 10 Jan. 2002 <<http://tsw.org.uk/engine/story.scm/100244>>.

### ***Wollstonecraft and the Rights of Man: A Matter of Language?***

A year before de Gouge's death by guillotine (1793), Wollstonecraft expressed the same concerns as de Gouges in her publication entitled *A Vindication of the Rights of Woman*.<sup>35</sup> This treatise infuriated male public opinion in England<sup>36</sup> just as de Gouge's Declaration of the Rights of Woman and the Female Citizen did in France, with its suggestion that the *rights of Man*, which she had championed, be applied "equally and unconditionally to women."<sup>37</sup> The idea that the *rights of Man* encompassed the *rights of Woman* somehow did not enter the formulation of public opinion as prescribed by the rules of English grammar, established in 1746 by J. Kirby. Kirby, an English grammarian, formulated his *88 Grammatical Rules* that included Rule 21, the declaration that "the male gender was more comprehensive" and therefore more representative of both "males and females" (Bauer 18). Considering that this "subjective and personal view of language and society was readily adopted by Kirby's colleagues," it seems possible that this formalizing of the male gender as the universal category,<sup>38</sup> might have influenced radical political thinkers, such as Mary Wollstonecraft, to entertain the idea that the prescriptive use of 'man' as sex indefinite could be interpreted as such or

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<sup>35</sup> "A Vindication of the Rights of Women" was the "first full-scale book favouring women's liberation and was widely read." Wollstonecraft, for her part, "was dismissed by the male conservative press as a *strumpet*." "Simply... A History of Feminism," *New Internationalist* 227 (1992) 10 January 2002 <<http://www.newint.org/issue227/simply.htm>>.

<sup>36</sup> "Mary Wollstonecraft: Infuriates Male Public Opinion," *Chronicle Encyclopedia of History*, CD-ROM (New York: DK Multimedia, 1997).

<sup>37</sup> See, Unitarian Universalist Association, "Mary Wollstonecraft," 10 Jan. 2002 <<http://www.uua.org/uuhs/duub/articles/marywollstonecraft.html>>.

<sup>38</sup> Both Bauer and Schweikart argue that this is still the case over two hundred years later, despite the difficulties of prescriptive pseudo-generic language. The term pseudo-generic refers to a phenomenon, which occurs when the prescriptive application of a supposed sex indefinite noun or pronoun is understood to be male, for example using the pronoun 'he' that is supposed to be 'generic' is understood as sex specific. This interpretation, in turn contributes a gender bias. 'He' therefore, is described as pseudo-generic. Examples of pseudo-generics include 'mankind' and 'brotherhood,' while supposedly inclusive, in actual fact do not accurately include everyone because they for the most part are interpreted as excluding women, see Schweikart 1-9; Bauer 18-30.



minimally provided the possibility of such an interpretation. Recall her first treatise on the subject of rights, referred to the *rights of Man*, then two years later, her second treatise on rights shifted to focus specifically on the *rights of woman*.

***On Popular Ideas and Discontents: De Gouges, Wollstonecraft, and de Pizan***

Like de Gouges before her, Wollstonecraft challenged the exclusionary, gender specific, interpretation of the *rights of Man*. Wollstonecraft, in *A Vindication of the Rights of Woman*, vigorously argued that just as ‘men’ have the right to be equal to other ‘men’, so too, should women be equal to men. Wollstonecraft, envisioned a society in which women could be educated and employed alongside men as “co-equals in all pursuits,” which also included ‘equal citizenship’ and “a direct share in deliberations of government;” in other words a place in which the *rights of Man* and the *rights of Woman* are “one and the same thing.”<sup>39</sup> Wollstonecraft applied the same rationale used in the ‘natural rights’ discourse to justify her position, which asserted, “one human being could not be deemed superior to another for any reason.”<sup>40</sup> This idea also in part responded to Jean Jacques Rousseau who, in *Emile* (1762) recommended that girls be given a different education than boys, an education that trains girls to be submissive to men.<sup>41</sup> In certain regards, this debate of ideas resembles the deliberations of Christine de Pizan and Giovanni Boccaccio, in the fifteenth century. Both de Pizan and Wollstonecraft questioned the espoused views of those who sought to impute value into a

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<sup>39</sup> See, Unitarian Universalist Association, “Mary Wollstonecraft,” 10 Jan. 2002 <<http://www.uua.org/uuhs/duub/articles/marywollstonecraft.html>>; and The National Archives: Learning Curve, “Mary Wollstonecraft,” 10 Jan. 2002 <<http://www.spartacus.schoolnet.co.uk/Wwollstonecraft.htm>>.

<sup>40</sup> Ibid.

<sup>41</sup> For this discussion see Jean Jacques Rousseau and “Mary Wollstonecraft,” *Chronicle Encyclopedia of History*, CD-ROM (New York: DK Multimedia, 1997).

conceptualization of 'women' that conflicted with their own ideas, aspirations, and experiences, as women. Whether this meant that certain women were recognized as 'exceptional' based on their resemblance to men, as in the case of the de Pizan and Boccaccio debate; or that women were inferior to men and therefore less deserving of a full education and employment opportunities, as in the case of the Wollstonecraft and Rousseau argument; each attempt at devaluation and restriction of women resulted in vigorous *querelle de femmes*, which continues to be obscured by tacit acceptance of the assumption that 'human rights' are compromised of the *rights of Man* and the *rights of Woman* and therefore can be unproblematically applied in a 'universal,' 'gender-neutral,' and 'equal' manner.

### iii) Parting Ways: Established Standards and *Works in Progress*

According to Noreen Burrows, a lecturer in European law at the University of Glasgow, "The history of the struggle for human rights from the eighteenth century on has been the history of men struggling to assert their dignity and common humanity against an overbearing state apparatus" (qtd. in Mahoney 819). Burrows analysis of the history of the struggle for human rights beginning in the eighteenth century perceptively identifies the struggle of 'men' seeking to underscore and formalize (in law) the "dignity and common humanity" of 'men' regardless of class. The statement, while accurately pinpointing most renowned and influential participants, nevertheless, omits the initial and enduring effects of the recognition and acceptance of the *rights of Man* doctrine, which effectively established the standard, that is men's rights, for what would become the 'general' standard of 'human rights' for the twentieth century. Recall, the point of contention in the *rights of Man* discourse derives from the hierarchical social order

imposed by a class system that divided 'men'.<sup>42</sup> With the establishment of a constitutional monarchy<sup>43</sup> in Britain in 1689 and the creation of the Republic between 1789 and 1792 in France, class divisions among 'men' began to dissipate as social and economic opportunities began to expand. In France for example, one of the explanations given for the Revolution was the excessively oppressive social and economic structure of the *ancien regime*, which was characterized by an unjust and inefficient taxation system that supplemented the privileged nobility and clergy.<sup>44</sup> With the changes in the system of governance, the possibility of changing oppressive rules and regulations was at first, extended to male property owners, who benefited from the privileges of political representation and the equality espoused under the doctrine of the French Declaration of the Rights of Man and Citizen, for example. Later, the vote would be extended on a case by case basis as the social, political, and economic hierarchy; however re-organized after the initial expansion (that is, the broadening of the classes of 'men,' who were empowered), continued to confront challenges from groups whose exclusion stretched the beyond the boundaries of 'class' (defined as, the struggle of 'men' to be equal to 'men' of privilege or the struggle of 'men' to be or have access to being privileged); for example,

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<sup>42</sup> The status of men being equal to women was not a question. Although, this for some, might be an obvious point; it nevertheless, for the purposes of this thesis, can be described, as the necessity of stating the obvious, which in this case, is the dominance of 'men' in the struggle for their right to be equal to one another.

<sup>43</sup> The monarchies in France and England in the 16<sup>th</sup> and 17<sup>th</sup> centuries increasingly became absolutist, by claiming a "divine right to rule," which in effect meant that they were not responsible to they governed, but only to God. The Glorious Revolution (1688) in England and the French Revolution considerably weakened the power of European monarchies [or ended power in the case of France] to the status of "symbols of national unity," while effective power gradually became vested in constitutional assemblies, see "French Revolution," The Concise Columbia Encyclopedia, CD-ROM (New York: Columbia UP, 1995).

<sup>44</sup> For further details on this reference, see "French Revolution," The Concise Columbia Encyclopedia, CD-ROM (New York: Columbia UP, 1995).

women and racialized minorities.<sup>45</sup> In any case, these radical changes represent the outcomes of the pursuit of ‘men’ to enjoy the privileges of what once belonged only to a select few.<sup>46</sup>

The history of women’s human rights, on the other hand, has been a struggle to assert “their dignity and common humanity against an overbearing state apparatus” (qtd. in Mahoney 819) as well as those men, who were engaged in their own battles for equality among one another. In other words, the commonalities between the two struggles included seeking the right to be equal, while differences emerged in questions relating to, who was equal to whom and for what purposes. In this regard, for women in the 18<sup>th</sup> century, the campaign for human rights began in conjunction with their male compatriots and ended with the understanding that their battle had multiple fronts. Although, the initial front was a shared front, that is, with the State and its system of privilege; it shifted when political thinkers, such as Olympe de Gouge and Mary Wollstonecraft, appealed for the equal and ‘natural rights’ of women. De Gouge and Wollstonecraft began by questioning the status of women in the *rights of Man* discourse; for de Gouge, it was obvious that women were excluded and their concerns were ignored, while for Wollstonecraft, it became apparent to her at some point after she had written *A Vindication of the Rights of Men* and resulted in her writing *A Vindication of the Rights of Women*. Second, while perhaps indirectly, each challenged the notion of grammarians, whether English or from the Académie française, that the category ‘man’ for example,

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<sup>45</sup> The history of the right to vote, like the history of ‘human rights’ is a story of exclusion and evolution based on the persistence of those, who endure the consequences of exclusion, that is, poverty, inequality, and injustice.

<sup>46</sup> Previously, privilege and status derived from the bloodlines of nobility or for those who managed to become members of the clergy.

encompassed the category ‘woman’ (and could and would be interpreted in such a manner), and third, both problematized the *privilege of men* to be designated as the sole bearers of such rights.<sup>47</sup>

From this, the issues that separated de Gouge and Wollstonecraft from their male counterparts and male public opinion, was the idea of recognizing women as the “co-equals of men in all pursuits,”<sup>48</sup> including the rights of citizenship, and equal consideration and value of the opinions of both women and men; as the only true expression of the general will of the people. For example, in the case of France, this expression of the “will of the people” became its Constitution, which excluded the Declaration of the Rights of Woman and Citizen and included the French Declaration of the Rights of Man and Citizen in its preamble. Nevertheless, de Gouge’s Declaration of the Rights of Woman and the Female Citizen along with Mary Wollstonecraft’s *A Vindication of the Rights of Woman* stand as historical testaments to (contemporary reminders of) and timely insights into what is deemed as a *work in progress*, that is, the ongoing quest for the full recognition and acceptance of the *rights of Woman*. On the other hand, the legacy of the *rights of Man* discourse, implicitly for some, and explicitly for others, established men’s rights<sup>49</sup> as the standard in historic constitutional documents

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<sup>47</sup> Regarding this last point, the encompassing character of the category ‘man’ seems more of a ‘convenience,’ particularly in contemporary society, as opposed to being a clear, concise, and accurate way of expressing the presence of all genders. This subject will be further elaborated in the next chapter.

<sup>48</sup> This idea of “co-equals in every pursuit” is attributed to Mary Wollstonecraft, see Unitarian Universalist Association, “Mary Wollstonecraft,” 10 Jan. 2002  
<<http://www.uua.org/uubs/duub/articles/marywollstonecraft.html>>.

<sup>49</sup> After more than fifty years of international human rights law and almost six centuries of debate, the questions “whose human rights” and “are women human” are posed by numerous contemporary human rights scholars. These questions indicate a profound questioning of the concept of ‘human rights’ in its present form, which is based on, for the most part, the ‘non-discrimination’ model and the assumption that ‘gender-neutrality,’ ‘universality,’ and ‘equality’ can be accomplished within this model. This subject will

(Ishay xx), such as the French Declaration of the Rights of Man and Citizen and the United States Declaration of Independence as well as internationally 'recognized' and 'accepted' 'human rights' instruments, such as the Universal Declaration of Human Rights (UDHR),<sup>50</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).<sup>51</sup>

### ***Setting the Stage: The Effects of a 'Men's Rights' Only Standard***

While the debates on the *rights of Man* culminated with the establishment of men's rights in a number of constitutional documents and later, international 'human rights' instruments, as noted above; the debates on the *rights of Woman* persisted, as women, such as Lucretia Mott and Elizabeth Cady Stanton invoked the social theories of Mary Wollstonecraft in their demands for the equality with men (Fraser 872). Stanton also wrote *The Declaration of Sentiments*,<sup>52</sup> for the historic 1848 Seneca Falls meeting,<sup>53</sup>

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be considered in the next chapter, see Bauer 18-30; Bequaert Holmes 250-264; Bunch *Re-vision* 486-498; Bunch *Transforming* 11-48; Charlesworth *Men's Rights* 103-113; MacKinnon 171-172; Peterson and Parisi 132-160; and Rendel 42-44.

<sup>50</sup> The historical and philosophical foundations of the Universal Declaration of Human Rights, as noted previously can be traced to 'recognized' *rights of Man* milestones such as the French Declaration of the Rights of Man and Citizen and the American Declaration of Independence among others. The emphasis on 'recognized' and 'rights of man' are part of the analysis of this paper. In Thomas Buergenthal's text, he refers to the Universal Declaration of Human Rights and its influences in non-gender specific terms and declares them to be "great milestones," which they are; but the question is for whom and in what ways can they be considered less than such "great milestones" (3-30).

<sup>51</sup> Together, the UDHR, the ICESCR, and the ICCPR form the basis of the International Bill of Human Rights, which sanctions United Nations activities "to promote, protect and monitor human rights and fundamental freedoms," see United Nations *International Instruments* 85-100; United Nations *Fact Sheet No. 16*; Brownlie; and Levin.

<sup>52</sup> Stanton based the Declaration for the Seneca Falls Convention, on the United States Declaration of Independence (1776). While the US Declaration of Independence served as inspiration for the Universal Declaration of Human Rights (1948), Stanton's Declaration, which forthrightly demanded that the rights of women be recognized and respected by society, was signed by 68 women and 32 men, see *The Close Up Foundation*, "The Declaration of Sentiments, Seneca Falls, New York (1848)," 9 February 2002 <<http://www.closeup.org/sentimnt.htm>>.

<sup>53</sup> Seneca Falls is a village of located on the Seneca River in the state of New York. This was the site where Elizabeth Cady Stanton and Lucretia Mott held the first-ever American convention (1848) on the *rights of Woman*, launching what would become the women's rights movement. See: *The World Almanac and Book*

which echoed the observations and demands expressed by Olympe de Gouge, over a half-century earlier (Ishay xxiii). These demands included recognition of women as citizens, putting an end to women's legal subordination in marriage (in laws, such as the Allgemeines Landrecht of 1794 and the Napoleonic legal code of 1804) and culminated in the 20<sup>th</sup> century with specific debates oriented towards securing particular rights for women, such as the right to own property, the right to make contracts, the right to retain control of their earnings, the right to vote, and the right to run for political office (Fraser 865-885; Dyck 233-246; Prentice et al. 84-110). By the time the United Nations<sup>54</sup> Charter affirmed the belief in the "dignity and worth of human persons" and "the equal rights of men and women,"<sup>55</sup> a pattern of conceding the *rights of Woman* on a right-by-right, or case-by-case basis had evolved. Thus, instead a revolutionary overhauling of a system of privilege, as in the case of the struggle for the *rights of Man*, the *rights of Woman* for many, became an evolutionary quest to reform an established system of men's rights sustained by the idea of 'one man being equal to another' and a steadfast dedication to incrementalism.<sup>56</sup> In other words, a pattern of gradually conceding the *rights of Woman*,

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of Facts, CD-ROM (New York: Funk and Wagnalls Corporation, 1995). Similarly, in the late 19<sup>th</sup> century in Canada, with the advent of the Industrial Revolution, social and economic adversity and the development of a working class prompted the organization of a women's movement aimed at the promotion of women's rights, equality for women in the workplace and demands for the right to influence the world outside the home. At the time, several associations of women worked to improve the conditions of women's lives including the Young Women's Christian Association, the Women's Christian Temperance Union, the Girls' Friendly Society, and the National Council of Women (1893), see: Prentice et al 190-204.

<sup>54</sup> The United Nations (U.N.) was founded immediately after World War II in 1945. The U.N. replaced the League of Nations, which similarly was established after World War I. The mandate of the League was to "promote international peace and security"; however, it was essentially powerless to stop World War II. With the founding of the United Nations, the goal of the international community was to create an effective organization that would promote and maintain international peace and security through cooperative measures aimed at "solving international economic, social, cultural, and humanitarian problems," see The Concise Columbia Encyclopedia, CD-ROM (New York: Columbia UP, 1995).

<sup>55</sup> For this reference, see the Preamble of the United Nations Charter, which is available in its entirety on the Internet. 10 Jan. 2002 <<http://www.un.org/Overview/Charter/contents.html>>.

<sup>56</sup> Incrementalism in terms of policy-making refers to the belief in or the policy of advancing toward a goal by gradual, often slow stages. In 1959, Charles E. Lindblom, Associate Professor of Economics at Yale University, wrote "The Science of Muddling Through." In the article, Lindblom describes the

that is women's human rights, in public law and policy emerged out of necessity or legal obligation due to litigation: for example in Canada, women, over 21 years of age, who were Canadian citizens (with the exception of Aboriginal women, who won this right in 1960), gained the right to vote federally in 1917/ 1918 due in part to the First World War and the absence of men in the armed services (Dyck 233-237). This right to vote included the right to become a Member of Parliament (except for New Brunswick where this right was 'delayed until 1934') and in 1921, Agnes McPhail became the first woman elected to the House of Commons (Dyck 234). Nevertheless, Canadian women would soon discover that under the law, women were not considered 'persons' and therefore had not and could not be appointed to the Senate. This issue was resolved in a court battle championed by Emily Murphy, Nellie McClung, Henrietta Muir Edwards, Louise McKinney and Irene Parlby – who challenged the judgment of the Supreme Court of Canada; and prevailed in 1929 when the Judicial Committee of the Privy Council declared women to be "qualified persons" (Prentice et al. 323-324; Dyck 236). Cairine Wilson then became the first woman appointed to the Canadian Senate in 1930; and today, the five women, who fought for the right of Canadian women to be considered 'persons,' are known as the *Famous Five*.

Thus, while the idea of 'human rights' at first glance may appear to be a relatively simple concept, the political history of human rights consists of the stories of actual people

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incrementalist approach as an method that relies on past experience and "small policy steps to predict the consequences of similar steps extended into the future;" thus expecting partial attainment of the goals with the expectation of repeating this process as conditions and aspirations change (79).



advocating for and/ or arguing against the rights of women and the rights of men.<sup>57</sup>

'Human rights,' as such, are also about human beings protesting against domination and their visions of emancipation from arbitrary, hierarchical social distinctions, which in effect limit access to economic, social, and political power and resources. In sum, 'human rights,' till this point in time, have been about the stories of those who struggled to gain rights, recognition, and acceptance with the objective of overcoming underprivileged social, political, and economic conditions for themselves and future generations. Thus, while the contemporary idea of international 'human rights' at first glance may appear to be a relatively simple 'universal' and 'gender-neutral' concept based on political consensus and uncontested domestic 'human rights' instruments, this chapter demonstrates the controversial politics of 'human rights' by exposing the clearly gendered historical foundations and outcomes of the debate. The next chapter will therefore examine the internationalization of these ideas, issues, and assumptions surrounding 'human rights' and will set the stage for questions regarding the domestic application of international 'human rights' law and the 'mainstreaming' of gender in both the international and Canadian domestic contexts.

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<sup>57</sup> For the purposes of this thesis, the historical origins of 'human rights' will be limited to a gender-based discussion, although the struggle for 'human rights' extends beyond this organizing principle to matters of 'race,' 'sexual orientation,' and ability for example.

The introduction of a gender perspective to international law requires asking all the fundamental question all over again: looking carefully at language, making connections, not making assumptions, and taking great care to see clearly what is said or written.  
–Marilyn Waring<sup>58</sup>

## **II. POLITICAL HISTORY II: FROM THE MID-TO-LATE 20<sup>th</sup> CENTURY (THE POLITICS & GENDER OF HUMAN RIGHTS LANGUAGE & PROMISES)**

As noted in the previous chapter, the *rights of Man* were gradually established in a succession of influential legal documents including the contemporary international standard of human rights, the ‘Universal’ Declaration of ‘Human Rights’; while the doctrine that underpinned justifications for the gender exclusive character of the *rights of Man*, that is, the belief that “the proper relationship between men and women” consists of the former taking “precedence over the latter”<sup>59</sup> seemingly gave way to an affirmation by the United Nations (1945)<sup>60</sup> of the “equal rights of men and women”; and a confirmation of the ‘human rights’ of ‘all’ “without distinction’ as to race, sex, language, or religion.”<sup>61</sup> This shift occurred as a result of a pattern of conceding ‘rights’ on a case-by-case basis through the efforts of, by that time, numerous well-organized local, national, and international women’s organizations (Fraser 875-881). Thus, while the contemporary

<sup>58</sup> Marilyn Waring describes a world in which on the one hand, women are for all intents and purposes excluded from international human rights guarantees; and on the other hand, a world in which men, not only benefit from international human rights guarantees, but are recognized for their contributions to the societies in which they live; and rewarded through parliamentary processes that are set up to ‘neutrally’ take their needs, wants, and desires into account. In this world, according to Waring, ‘truths masquerade as lies’ and ‘lies masquerade as truths.’

<sup>59</sup> This quote specifically refers to a critique of the English language and 18<sup>th</sup> and 19<sup>th</sup> century grammarians, who ‘reasoned’ that the male gender is the most ‘comprehensive’ gender and that ‘men,’ according to ‘natural laws’ should take precedence over women (Cameron 83-90). This ‘reasoning’ also informs the doctrine of the *rights of Man*, otherwise the pleadings of Olympe de Gouge and Mary Wollstonecraft would have been incorporated into the historical legal documents that each had attempted to be a part of or influence.

<sup>60</sup> 59 States signed the Charter of the United Nations on the 26<sup>th</sup> of June 1945 and it entered into force on the 24<sup>th</sup> of October 1945, see “Charter of the United Nations: Introductory Note.” 20 February 2002 <<http://www.un.org/Overview/Charter/intro.html>>.

<sup>61</sup> The Charter of the United Nations is conveniently located on the Internet; for this reference, see Preamble and Chapter I, Article 1.3. 20 February 2002 <<http://www.un.org/Overview/Charter/contents.html>>.

idea of international 'human rights' at first glance, may appear to be based on the principles of 'universality,' 'gender-neutrality,' and 'equality,' which emanates from the hard-won recognition of the concept of "the equal rights of men and women"; the ideas, issues, and assumptions that underpinned over five centuries of gender discord, tension, and conflict remained; although somewhat altered by the persistence and successes of women's human rights advocates and the ensuing changes in social, economic, and political attitudes regarding women.

This chapter will therefore examine the internationalization of the *right of Woman* and the *rights of Man* debates; as well as how and why the outcomes of this historic political dispute influenced the process and conceptualization of 'universal' international human rights principles. A key element that has emerged in the context of this research is the question of language and gender-based political and linguistic ideologies that confuse, conceal, and maintain gender-based discrimination. The purpose of this chapter, therefore is to demonstrate how and why the concepts of 'universality,' 'gender-neutrality,' and 'equality' actually refer to an international political consensus that fully recognizes and accepts men's human rights and partially acknowledges women's human rights through a critical commitment to the equal rights of women and men, a concept that has yet to be substantively realized. This will be accomplished by first, outlining the outcomes of the *rights of Woman* and the *rights of Man* debates; second by exploring the discussions regarding the language of the 'Universal' Declaration of 'Human Rights'; and finally by re-examining the problematic outcomes and ongoing issues relating to the language and interpretation of international 'human rights' standards.

### ***A Note on the Gender-Based Interests of 'Human Rights'***

It must be stated from the outset however, that the concept of 'human rights' from this point of view, is clearly contested, based on the idea, as described in the previous chapter, that the *rights of Man* clearly did not include the *rights of Woman* from the outset, since this was not the objective of this movement. In addition, the declarations of 18<sup>th</sup> century grammarians, who asserted that the category woman could be subsumed in a 'universal' and 'comprehensive' male category, were not a consideration for the authors of the *rights of Man* (women were not grammatically included in this conceptualization of 'man'), particularly when considering the work of Olympe de Gouge and Mary Wollstonecraft (as discussed in the previous chapter). The 'human' in the language of international human rights law, therefore, is gender-specific; it is a reflection of the legacy of the first political victors in the struggle for human rights, the male gender. The rights of this group are recognized, accepted and constitute the standards by which 'human rights' are measured, understood, protected and promoted. This, in effect, over time has served the interests of 'men,' thus permitting 'men' to circumvent the fate of being labelled an interest group (Cameron 89), since the interests of the male gender itself; men's human rights are again, established, accepted, and legitimated both grammatically through the use of prescriptive 'generic' language and in the definition and interpretation fundamental characteristics of domestic and international 'human rights' law. On the other hand, this is not the case for the female gender and women's human rights, which to the contrary, is viewed through a 'special case' or 'special interest' lens; since women cannot "pass themselves off" as generic human beings (Black and Coward 100-118) or as 'universal' subjects (Irigaray 119-123).

i) **‘Drafting’ Dignity for *All* Human Beings: Why Gender Matters**

***The Charter of the United Nations***

This being said, after two ‘world wars,’<sup>62</sup> in which millions of soldiers and civilians perished, the elaboration of ‘human rights’ in the global context, according to some, initiated another revolution in the history of the *rights of Man* and the *rights of Woman* by “making compliance with human rights a legitimate concern of international law and international relations” (Eide 121). In other words, the *rights of Man*, while established in the constitutional documents of many Western countries were, in fact, limited by the boundaries of the particular state; and therefore, after horrific cross-border violations of these rights, the next level of recognition and acceptance of the *rights of Man* became associated with the need for both national and international peace and security; and a commitment by the entire human family to the “dignity of each human being,” as acknowledged by the United Nations Charter. This promise in turn, on the one hand, lay the foundation for an international legal framework for men’s human rights, which today continues to be the sole recognized ‘general’ standard of international ‘human rights’ law; and on the other hand, sowed the seeds of an international gender consciousness movement<sup>63</sup> for women’s human rights (Morsink 116-129).

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<sup>62</sup> ‘World Wars’ is in quotation marks representing the paper’s acknowledgement of this assertion as contested. When the term world is utilized, the implication is that each and every country is involved, which was clearly not the case, despite the fact that the many major and middle world powers (at that time) participated in these wars, see “World War I and World War II,” The Concise Columbia Encyclopedia, CD-ROM (New York: Columbia UP, 1995).

<sup>63</sup> For a detailed analysis of the global women’s human rights movement, see Bunch *Re-vision* 486-498; Fraser 884-906; Kaufman and Lindquist 114; and Koenig *Embracing*.

### ***Lobbying to Confirm the Equal Rights of Women and Men***

The Preamble of the United Nations Charter reaffirms a “faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women... [in order] to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.” This confirmation emerged as a result of the lobbying efforts of a network of well-established international women’s organizations,<sup>64</sup> including the International Council of Women; and several women delegates and advisors including Cora T. Casselman (Canada), Jessie Street (Australia), Amalia Caballero de Castillo Ledon (Mexico), and Isabel P. de Vidal (Uruguay). Eventually, Minerva Bernardino (Dominican Republic), Bertha Lutz (Brazil), Wu Yi-Fang (China), Virginia Gildersleeve (United States) and 154 male delegates would become signatories to the United Nations Charter as representatives of their respective governments (Pietila). The women involved in the process which led to the establishment of the Charter of the United Nations demanded that the Preamble of the UN Charter not only reaffirm the *faith in fundamental human rights* and the *dignity and worth of the human person*, but also include a long sought after affirmation of the *equal rights of men and women*; recall the efforts of Christine de Pizan, Olympe de Gouge and Mary Wollstonecraft. This affirmation would become the first step in what Minerva Bernardino the delegate from the Dominican Republic would later deem

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<sup>64</sup> By 1945, the women’s suffrage movement for example, “had been successful in thirty-one countries” around the world and several organizations, including the International Council of Women (1888), “had gained extensive experience in lobbying government officials” internationally, nationally with their national councils, and locally with their local councils, see Fraser 857. In Canada, the National Council of Women of Canada and several local councils including the Montreal Council of Women are affiliates of the International Council of Women. As noted previously, a pattern of attaining rights on a case-by-case, country-by-country basis had emerged with regard to the *rights of Woman*, that is, women’s human rights. According to Fraser, these accomplishments were possible, since “a critical mass of women had been educated, were employed outside of the home, and had obtained enough legal and social freedom to participate in public life, even at the international level” (857).

a conscious “revolution” on the part of women who fought for the inclusion of this idea (Pietila).

As a result, of this stipulation, member states acquired the power to propose resolutions to protect and promote women’s human rights (Pietila; Morsink 116-117). For example, at the inaugural session of the General Assembly, Denmark successfully sought the adoption of a resolution that asked member states to adopt “measures necessary to fulfill the purposes and aims of the Charter by granting women the same political rights as men” (Morsink 117). In addition, during this first session of the United Nations, Eleanor Roosevelt, the Chair of the United Nations Commission on Human Rights presented what would become the “first formal articulation of women’s voices” at the United Nations in the form of a document entitled “An Open Letter to the Women of the World.”<sup>65</sup> This letter was initiated by Ms. M. Lefauchaux of France and was co-written by a group of seventeen female delegates and advisors, who called upon women around the world to participate in “international politics and cooperation.”<sup>66</sup> The Charter of the United Nations, therefore, as noted by John P. Humphrey, “gave [women] slim, formal recognition, but the human rights provisions gave women constitutional-legal leverage to renew their quest for improvement of their status, achieve full citizenship with men, and enter the world’s political stage” (qtd. in Galey 44). On the whole, the Charter’s affirmation of the equal rights of women and men, first, formally established the link

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<sup>65</sup> This letter is conveniently located on the Internet see, Mrs. Eleanor Roosevelt et al., “An Open Letter to the Women of the World,” 12 Feb. 1946. 12 June 2002  
<<http://www.unsystem.org/ngls/documents/publications.en/develop.dossier/dd.06/a11annex1.htm>>.

<sup>66</sup> In terms of the reception of the letter by the General Assembly, it was not formally discussed or adopted; however, the President at that time stated that the issue of women’s participation in the international forum would be “taken into serious consideration,” see United Nations *Advancement of Women* 93-98.

between women's and men's rights and 'human rights'; second, legitimized the need for recognition of the rights of women as well as the rights of 'men'; third, created an international legal basis for the implementation of women's and men's human rights; and finally, provided a high profile international forum for the pursuit of women and men's human rights (Fraser 886; Pietila).

### ***The Preamble of the 'Universal' Declaration***

Despite this milestone, the challenge in the new arena of international politics had just begun. This was particularly evident between 1946 and 1948 during the drafting process of the 'Universal' Declaration of 'Human Rights,' which according to Minerva Bernardino, could have been the "Universal Declaration of the Rights of Men," if it had not been for the hard work of women's human rights activists, who were instrumental in making sure that the great efforts that went into the phrase, the "equal rights of men and women" in the United Nations Charter, would be integrated and become meaningful in the process of drafting and re-drafting a universal declaration of human rights.<sup>67</sup> This task was the first order of business for the CSW and delegates such as Minerva Bernardino, who successfully argued that the phrase "equal rights of men and women" be reaffirmed in the Preamble of what would become the 'Universal' Declaration of 'Human Rights'; instead of phrases such as 'the equal rights of 'everyone,' which Bernardino argued, "in certain countries... did not necessarily mean 'every' individual, regardless of sex" (Pietila). Hence, the idea that 'everyone' or 'persons' for that matter, did not necessarily

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<sup>67</sup> At the time of the interview with INSTRAW, Ms. Bernardino was 85 years old and stated that she believed that the women, who participated in the process of drafting the Declaration, understood that their fight to be included launched a revolution that has yet to end, see the United Nations, "INSTRAW: News," 1992, qtd. in Pietila.



include women, but necessarily included ‘men’ is reminiscent of 18<sup>th</sup> century during the *rights of Woman* and *rights of Man* debates. Recall, as noted in the previous chapter, the status of women being equal to the status of men was at issue, while the status of men, in terms of being equal to or ‘superior’ to women was not. Although a somewhat obvious point for some, this again, for the purposes of this thesis bears repeating, since stating the obvious, which in this case, is that the codification of the *rights of Man* was not a question, although the *rights of Woman* or by this time, the inclusion of women in the language and content of what would become the so-called ‘Bible’ or contemporary ‘philosophical manifesto’ of ‘human rights’ was and as this thesis will demonstrate, still is.

### ***The Politics of ‘Universality’ in the Declaration: History Matters***

Thus, as member states from around the world proceeded with the drafting process, which would eventually lead to the adoption the ‘Universal’ Declaration of Human Rights (Morsink 117); concern regarding the use of the *rights of Man* doctrine and specific references to ‘men’ only, as the basis for a universal commitment to human rights emerged, just as it did over one hundred and fifty years prior, in the debates on the *rights of Man* and the *rights of Woman*. Recall, the historical and philosophical foundations of the ‘Universal’ Declaration of ‘Human Rights’ can be traced to ‘recognized and accepted’ *rights of Man* (men’s rights) ‘milestones’ including the French Declaration of the Rights of Man and Citizen (Buergenthal 3-30). Bodil Begtrup (Denmark), the first Chair of the Commission on the Status of Women, remarked in a debate in the General Assembly of the United Nations, “that the Declaration of the Rights

of Man and of Citizen... which had so solemnly laid down... fundamental freedoms, made no mention of the rights of women and did not even imply them. The world [Begtrup said] had evolved since then” (Morsink 118). The question at that time was, to what degree had the world evolved regarding the *rights of Woman* (women’s human rights).

With this question, one of the first responses came from John P. Humphrey, the Canadian, who wrote the first draft of the United Nations Universal Declaration of Human Rights (Johnson 24-25; Canada *DFAIT* 7). This draft was a four hundred-page document that meticulously reflected the influences of its *rights of Man* predecessors. As noted previously, to begin with, the Humphrey draft omitted a re-affirmation of the “equal rights of men and women” from the Charter of the United Nations, which became only the first of many points of contention related to gender, since the document contained several male gender specific terms including references to the “rights of man” and “brotherhood” as well as pronouns such as “he,” “his,” and “himself.” Noticeably absent, therefore, were similar references to the female gender. At that point in time, with the awareness that the drafting process could become a paragraph-by-paragraph confrontation to “prevent sexist references” (male gender recognition only), Begtrup had suggested that a phrase or note stating “when a word indicating the masculine sex is used... the provision is to be considered as applying without discrimination to women”; be added to the Declaration’s Preamble (Pietila). This idea was not voted upon or discussed any further (Morsink 117-118). From this lack of interest in clarifying or openly prescribing the generic use of masculine references, it is clear that ‘men’ refers to the male gender and that any other references to the male gender are in actual fact

specific references that should not be confused with ‘grammatical facts’ or ‘grammatical accidents’ that derive from 18<sup>th</sup> and 19<sup>th</sup> century grammarians such as Goold Brown, who believed that the male gender was the most ‘comprehensive’ gender (Schweikart 1-9). Recall that over 150 years prior to the drafting of the ‘Universal’ Declaration of ‘Human Rights,’ both Emmanuel Sièyes’ French Declaration of the Rights of Man and Citizen and the Thomas Paine’s Rights of Man when confronted with Olympe de Gouge’s Declaration of the Rights of Woman and Female Citizen and Mary Wollstonecraft’s A Vindication of the Rights of Women demonstrated clearly that the *rights of Man* referred literally to men’s rights and plainly did not include the *rights of Woman*, which could have been the case if the rules of early grammarians had been applied methodically and resolutely regardless of the social, political, or economic context. Hence, the idea that the historically and politically exclusive male gender category could possibly include the female gender; time and again, reveals how invalid such an assumption or proposition is in actuality.

***The Politics of Gender in the ‘Universal’ Declaration: Language Matters in Article 1***

Hence, the Commission on the Status of Women (CSW)<sup>68</sup> and female the delegates on the drafting committee were concerned that women would not be included in interpretations of this expanded and updated version of the *rights of Man* (Fraser 888; Morsink 118); and given the history of the struggles for the *rights of Woman* within the

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<sup>68</sup> According to Arvonne Fraser, the Commission on the Status of Women was established in 1946 at the suggestion of Minerva Bernardino, the delegate to the United Nations from the Dominican Republic (887). Fraser asserts that reports that credit Eleanor Roosevelt with initiating the CSW are historically inaccurate, since Roosevelt believed that the Commission on Human Rights could effectively address women’s issues. In any case, the purpose of the CWS is “to elevate the equal rights and human rights status of women, irrespective of nationality, race, language, or religion, in order to achieve equality with men in all fields of human enterprise and to eliminate all discrimination against women in statutory law, legal maxims or rules, or in interpretations of customary law,” see Galey, qtd. in Fraser 888.

context of the struggles for the *rights of Man*, this was indeed a legitimate concern. Thus, for the CSW and the delegates interested in ensuring the inclusivity of the ‘Universal’ Declaration of ‘Human Rights,’ the idea shifted from a note or phrase suggesting that references to the masculine sex apply to women as well; to the realization that each and every reference to the male gender represented a parallel struggle to specifically, in whatever way possible, include women (Pietila). This is clear from the First Session of discussion regarding the initial draft of the Declaration. Vladimir M. Koretsky, the delegate from the USSR identified Article I as problematic since it started with the phrase “all men,” which according to the Soviet delegation again reflected the “backwardness” of Western countries and further implied a re-assertion of “an historical... mastery of men over women” (Morsink 117-118). Koretsky stated that he “hoped that the phrase would be modified to make it clear that all human beings were included” (Morsink 118). This position however was not shared by all delegates including Eleanor Roosevelt, who stated, “it had become customary to say ‘mankind’ and mean both men and women without differentiation” (Morsink 118). The difficulty with this position, as noted above, is that it cannot be sustained when for instance, Bodil Begtrup asked for an explicit phrase that stated more or less exactly what Roosevelt assumed to be true. Nevertheless, Begtrup’s demand and Roosevelt’s assumption represented an idea that the majority of the drafters (member States and their respective delegations) chose not to clearly express, but nevertheless accepted that some members might assume that ‘men’ and ‘mankind’ could be interpreted to include women and womankind. In this regard, it was not necessary to state that ‘men’ referred only to the

male gender, since this proposition is abundantly clear, while the inclusion of women in this idea is at best, ambiguous.

***‘All Human Beings’: The Compromise Phrase?***

In addition to the issue of whether or not ‘men’ and ‘mankind’ included women and womankind; Begtrup and the female delegates were conscious of the fact that the recognition of ‘sex equality’ at that point in time was relatively recent. As a result, Begtrup argued that the notion of ‘sex equality’ should be explicitly emphasized in “certain articles” and later suggested that the term “human beings” be used instead of “men” (Fraser 888). In this regard, Hilikka Pietila in *Engendering the Global Agenda: The Story of Women and the United Nations* (2002) states that it was during the drafting of the Declaration that “women” recognized that the English word “man” (and arguably, the French word “homme”) only means ‘men.’ The reasoning for this conclusion, according to Pietila, derives from the argument/fact that the word “man” represents a gender, and does not refer to a species; and “therefore excludes women.” More than this, the rejection of Begtrup’s suggestion to clarify the masculine terminology as inclusive of women coupled with the *rights of Man* origins and influences of the Declaration certainly could have left no doubt in the minds of the participants, who could not assume that women were included in these references. With this knowledge and given the strength of the *rights of Man* doctrine (men’s rights) at that point in time, the solution to the issue of Article 1, which in several draft versions began with the statement “all men are born free and equal in dignity and rights...” was the addition of a footnote. The footnote would function as a clear indication that the word “men” refers to all human beings, including

women (Fraser 888; Morsink 119). The idea of this footnote again tested the supposed customary interpretation of 'mankind' and 'men' as referring to both men and women without differentiation, which as noted previously was contradicted whenever put to the test. Nevertheless, this footnote, in the end was not necessary, since it was agreed that Article 1 would state: "all human beings are born free and equal in dignity" (Fraser 888). According to Johannes Morsink however, the Commission on Human Rights, in the Third Session had agreed to the phrase "all people, men and women," although the Secretariat's draft used the phrase "all human beings," as suggested by Ronald Lebeau, the Belgian delegate (119). This 'error' nonetheless was never discussed again and Article 1 of the 'Universal' Declaration of 'Human Rights' contains the "compromise" phrase "all human beings" (Morsink 119).

### ***Seeking Gender 'Equality': Finding Unresolved Gender Conflicts***

Thus, while the Charter of the United Nations on one level established the de Gouge / Wollstonecraft demands for the recognition of the equal rights of women and men, the issue of gender and human rights remained highly contentious. Nevertheless, just as the French Declaration of the Rights of Man and Citizen, which no less inspired the 'Universal' Declaration of 'Human Rights,' excluded women, the members of the CSW recognized, just as de Gouge and Wollstonecraft before them, that the *rights of Man*, for all intents and purposes, solely recognized and accepted the idea of men's rights. The circumstances however, differed from de Gouge's and Wollstonecraft's in that the Charter of the United Nations had recognized, the 'equal' rights of women and men, whereas, in the case of de Gouge and Wollstonecraft, this was an objective, not a recently proclaimed international acknowledgement.

***Comparing Actions, Comparing Results: De Gouge and Wollstonecraft, Begtrup, Bernardino, Metha and the Women's Human Rights Drafters***

Be that as it may, de Gouge, Wollstonecraft, and those working on the draft of the UDHR were confronted by common yet unspoken dilemmas. First, the dilemma of attempting to participate or participating in process initiated by a specific group with identifiable objectives; second, the matter of questioning language and logic, which limits the potential field of beneficiaries to one specific gender, the male gender; and finally, the problem of introducing considerations that seemingly interfered with or complicated the primary objective. In other words, the French Declaration of the Rights of Man and Citizen set the standard for the *rights of Man* and the 'Universal' Declaration of 'Human Rights' is firmly rooted in its discourse. This discourse began in the 18<sup>th</sup> century and as discussed in the first chapter, firmly establishes 'men's' rights. There is no question as to whether or not women's rights were included in the *rights of Man*. De Gouge was put to death<sup>69</sup> and Wollstonecraft was publicly ridiculed for attempting to expand the *rights of Man* to include the *rights of Woman*. Nevertheless, while the 'Universal' Declaration of 'Human Rights' is powerfully connected to its *esteemed* predecessor, the Commission on the Status of Women (represented by Bodil Begtrup) and a group of women's human rights activists including Minerva Bernardino and Hansa Metha directly participated in the drafting process, unlike de Gouge and Wollstonecraft. However, when these delegates objected to the male gender-exclusive language of the working document and were only partially successful, a strong and unmistakable message was conveyed; which was, that

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<sup>69</sup> In addition, the "guaranteed" right to citizenship for active participation in the battle for liberation [read, men's liberation] during the French Revolution did not apply to women; in fact, citizenship in France from 1789 to 1944 was limited to 'men' only, see Jone Johnson Lewis, "Olympe de Gouges and the Rights of Woman," About.com: Women's History, 2001. 12 Feb. 2002  
<<http://womenshistory.about.com/library/weekly/aa071099.htm>>.

the ‘Universal’ Declaration of ‘Human Rights’ was primarily about setting an international “common standard of achievement for all peoples and all nations” (Robinson 253) and that “common standard of achievement” was the recognition and acceptance of the *rights of Man*, (men’s rights) first and foremost.

Finally, given that both the French Declaration of the Rights of Man and Citizen and the ‘Universal’ Declaration of ‘Human Rights’ sought to achieve respect for the idea of the *rights of Man*; in the first, case on a national level and in the second case, at the international level; the demands of women’s rights activists were either completely ignored, as in the first case or only partially considered, as in the latter case. In other words, the results of attempts to resolve male gender-exclusive objectives (men’s rights) and male gender-specific language (exclusive references to the male subject), while differing somewhat, nevertheless were similar in that the *rights of Woman* and later, women’s human rights, were not a part of the primary objective of the proposal; that was, to achieve respect for the idea of the *rights of Man*, men’s rights; and therefore, were little more than an aggravation that needed to be disposed of and disregarded in the first case, and in the latter case, an intricacy that the drafters and eventual signatories of the ‘Universal’ Declaration of ‘Human Rights’ were not prepared to engage in beyond the use of “everyone” and an insubstantial commitment ‘equality’ in the notion of “non-discrimination” in Article 2 (Johnson 61).

Nevertheless, after a century and a half of organizing, protesting, demanding, and achieving the *rights of Woman* on a case-by-case and right-by-right basis and with the positive establishment of the *rights of Man* in a number of Western constitutional



documents; the Universal Declaration of Human Rights, in contrast to the French Declaration of the Rights of Man and Citizen, yielded somewhat to the demands of the United Nations Commission on the Status of Women and Mrs. Mehta of India, who identified references such as “all men” and “brothers” as being “out of date” (in 1947) and readily interpreted as excluding women (Fraser 888). As a result, the ‘ungendered’ term “everyone” as noted previously, was used in the final text, which served to provide an appearance of universality. However, terms such as “mankind,” “man,” “brotherhood,” and the pronouns “his,” “him,” “himself,” and “he” remained and appear often enough to unequivocally affirm, the *rights of Man*, while the *rights of Woman*, on the other hand are prescribed, or negatively ‘unpacked’ (Morsink 115) in the non-discrimination<sup>70</sup> and ‘without distinction’<sup>71</sup> approaches.<sup>72</sup> As noted in the previous chapter, the quest for the *rights of Man* was a political power struggle for the rights of men to be equal to other men, while the pursuit of the *rights of Woman* became a continual *querelle de femmes*, as the drafting of the ‘Universal’ Declaration of ‘Human Rights’ clearly reveals.

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<sup>70</sup> The concept of nondiscrimination refers to a “practice or policy of refraining from” treatment or consideration based bias instead of merit, see “nondiscrimination,” The American Heritage Dictionary of the English Language: Third Edition, CD-ROM (New York: Houghton Mifflin Company, 1992).

<sup>71</sup> The concept of without distinction describes a process of treating human beings identically, or interchangeably regardless of social condition, sex, ‘race,’ class, etc, see “without distinction,” The Original Roger’s Thesaurus of English Words and Phrases, CD-ROM (London: Longman Group UK, 1994).

<sup>72</sup> Article 2 of the UDHR discusses the categories from which discrimination based on a persons “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth [and/] or other status” can, does, and will occur, see Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM), “Background on the Declaration of Human Rights from a Gender Perspective,” The People’s Decade of Human Rights Education, 1998. 10 Feb. 2002 <<http://www.pdhre.org/involved/cladinfo.html>>.

Thus, given the circumstances at that point in time, the question shifted to the idea that discrimination could be measured; and, assuming that it could be measured, the question becomes what was the standard or rather who, was the standard? To answer these questions, can be either a difficult task or one that is quite simple. The simple answer therefore is that the standard is an acknowledged measure of comparison and the only acknowledged standard of comparison is the *rights of Man*, as outlined in the French Declaration of the Rights of Man and Citizen, the American Declaration of Independence, and the Magna Carta, for example. Therefore, quite simply, the ‘Universal’ Declaration of ‘Human Rights’, despite its affirmation of the equal rights of women and men, and the debates and concessions that derived from the efforts of those seeking to ensure that this affirmation became meaningful in the context of international human rights law, is literally, as M. Glen Johnson wrote on the occasion of the fiftieth anniversary of the Declaration, “A Magna Carta for Mankind;” this as opposed to Womankind or Humankind for that matter. The difficult answer on the other hand, requires a belief in the legitimacy of linguistic ideologies that are founded upon the superiority of ‘men’ and the inferiority of women on the one hand, and if this seems distasteful and out of date, the belief in demonstrably false assumptions about the inclusiveness of the *rights of Man* (as noted above when contrasting the Roosevelt assumption and Begtrup proposition).

## **ii) Establishing Dignity for *All* Human Beings: Why Ideas Matter**

### ***The Internationalization of the Rights of Man***

Nevertheless, after much debate, the 185 members of the United Nations General Assembly unanimously adopted the ‘Universal’ Declaration of ‘Human Rights,’ a vision

of how the world should be, on December 10, 1948. This vision derives from the well-established *rights of Man* doctrines as well as a limited conceptualization of formal equality due to the lobbying efforts of women's human rights advocates and the United Nations Charter's recognition of the equal rights of women and men (Fraser 885-886; Morsink 117-119). As such, the 'Universal' Declaration of 'Human Rights' became the "keystone of the international community's" (Robinson 253) attempt to codify the basic rights of *all* human beings as well as the first international 'human rights' instrument to acknowledge economic, social and cultural rights as well as civil and political rights (Eide 121). In this way, the 'Universal' Declaration<sup>73</sup> set the stage for an international mechanism that implicitly reinforces the citizenship rights granted by many States; and in effect, with the introduction of the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>74</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>75</sup> and its two Optional Protocols in 1966, provided a means for citizens to hold

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<sup>73</sup> On one level, the UN Universal Declaration of Human Rights can be considered a political and philosophical manifesto. It is a non-binding document, however, with legal implications that some have described as, asking whether the Bible can be enforced legally. Theoretically, "a declaration affirms and recognizes principles and rights" and is not enforceable. Covenants and conventions are enforceable and are considered treaties that once adopted, must be implemented in the domestic laws of the signatory. Enforcement consists of States and interested parties (such as NGOs) submitting reports to a monitoring Committee (such as the ICESCR) every four years to gage the success of the State with regard to keeping its promise to implement the covenant or convention. "A protocol lets a State, a group or a person file a complaint" and provide a means for parties to pressure the State to live up to its international human rights commitments. Since the State must sign the protocol to be subject to its process, protocols are in actual fact optional; which is why it is usual to refer to Optional Protocols, for example, the recent Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (December 2002), see United Nations *International Instruments* xiii-xvii; and United Nations *Optional Protocol Enters*.

<sup>74</sup> The ICESCR is available on the Internet, see United Nations, Office of the High Commissioner of Human Rights, "International Covenant on Economic, Social, and Cultural Rights," 16 December 1966. 12 March 2002 <[http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm)>

<sup>75</sup> The ICCPR is available on the Internet, see United Nations, Office of the High Commissioner of Human Rights, "International Covenant on Civil and Political Rights," 16 December 1966. 12 March 2002 <[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)>.

their respective governments accountable for violations of their international 'human rights' obligations.<sup>76</sup>

Together, the UNDHR, the ICESCR, and the ICCPR form the basis of the International Bill of 'Human Rights,' which sanctions United Nations activities "to promote, protect and monitor human rights and fundamental freedoms."<sup>77</sup> This framework in theory recognizes and advocates the fundamental freedoms and inalienable rights of "all human beings" as the standard for "freedom, justice and peace in the world." This being said, these so-called 'general' instruments of international human rights law for the most part, literally refer only to 'men' thereby privileging the male gender<sup>78</sup> in "both a strict grammatical sense and in the definition and fundamental characteristics of rights, based on men's experiences" (Bauer 13). Recall, the basis for the 'human rights' cause today, began with the experiences of oppression suffered by 'men' (and women as well, although as discussed previously, this was not a factor in the *rights of Man* discourse) whose political power struggle was to gain the right to be equal to 'men' of privilege prior to and following the establishment of the English Bill of Rights in the 17<sup>th</sup> century and the French Declaration of the Rights of Man and Citizen in the 18<sup>th</sup> century. These battles would later become the struggle to avoid the catastrophic human, economic, and

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<sup>76</sup> The boundaries between 'rights'/'human rights' and citizenship rights are today, arguably more unclear than has been the case in the past, with States such as Canada asking questions about how to protect and promote the rights of its citizens and at the same time honour its international human rights obligations, see Canada, Senate Standing Committee on Human Rights, Promises to Keep: Implementing Canada's Human Rights Obligations, Dec. 2001. 4 January 2002 <<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm>>.

<sup>77</sup> For a comprehensive elaboration of the "key issues" and "work" of the Committee on Economic, Social, and Cultural Rights, see United Nations High Commissioner for Human Rights, Fact Sheet No. 16 (Rev.1), The Committee on Economic, Social and Cultural Rights, July 1991. 9 February 2000 <<http://www.unhchr.ch/html/menu6/2/fs16.htm>>.

<sup>78</sup> Several scholars share this point of view, see Bauer 18-30; Bequaert Holmes 250-264; Bunch *Re-vision* 486-498; Bunch *Transforming* 11-48; Charlesworth *Men's Rights* 103-113; MacKinnon 171-172; Peterson and Parisi 132-160; Truyol-Hernandez 29-31; and Rendel 42-44.

political costs of two ‘world wars.’ This unspoken yet powerful influence in effect, strengthens the original nationally based commitments to the *rights of Man* (men’s rights) and reaffirms this commitment in the international forum. From this, it is quite clear that the gender specific language and the underlying stimulus for the International Bill of ‘Human Rights’ does little to support the proposition of ‘universality,’ ‘gender neutrality,’<sup>79</sup> and ‘equality,’ despite a promise to “promote, protect, and monitor” the rights of “all human beings.”

### ***The International Bill of Whose Rights and Whose Requirements?***

Radhika Coomaraswamy, the United Nations Special Rapporteur on Violence Against Women, confirms that the privileged “human” of international human rights law is the “Enlightenment personality – a man, endowed with reason, unfettered and equal to other men” (Coomaraswamy). This is the subject of the *rights of Man* described by several prominent 17<sup>th</sup> and 18<sup>th</sup> century political and social philosophers, who argued for men’s rights and began to describe a variety of desirable rights and the means and methods to accomplish these goals. For instance, both John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778) “argued for...the right to property, political representation, and equality before the law,” while others such as Abbé Charles de Saint-Pierre and Maximilien de Robespierre (1758-1794) began defining the international aspects of

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<sup>79</sup> To attain a gender-neutral standard, the reference must be completely free of either implicit or explicit allusions to gender or sex, see “gender-neutral,” The American Heritage Dictionary of the English Language: Third Edition, CD-ROM (New York: Houghton Mifflin Company, 1992). In essence, for this standard to be obtained, one cannot in anyway refer to human beings, since the human species consists of at least two genders and sexes. For example, a reference to ‘men,’ that purports to be gender-neutral cannot be gender-neutral by the standard that is found in most dictionaries since ‘men’ refers to the male gender either explicitly or implicitly depending on one’s interpretation. It is the same for women, although the idea of using women as a gender-neutral standard is not a common occurrence; this in contrast to the persistence of the idea that ‘men’ as a group can be gender-neutral (when the category ‘men’ manifestly refers to a gender).

men's human rights (Ishay xx-xxiii; Hayden 71-87). Later, Emmanuel Sieyès (1748-1836) and Thomas Paine (1737-1809) argued successfully for the constitutionalization of the *rights of Man*, which as noted previously, was incorporated in the French Constitution of 1791 (Ishay xxiii). Thus, this Enlightenment "personality," which underpins the principle, or as described by Hilary Charlesworth,<sup>80</sup> the 'general',<sup>81</sup> instruments of international human rights law, has over time, become popularly referred to as being both 'gender-neutral' and 'universal.' This conceptual combination is then assumed to produce the conditions for the implementation of 'equality' (described as the equal rights of women and men); based on the plausibility of the 'non-discrimination' and 'without discrimination' models of 'equality.'

***'Universality' by 'Non-Distinction' and 'Non-Discrimination'?***

Sigrun Skogly, in an analysis of Article 2 of the 'Universal' Declaration of 'Human Rights,' which states:

Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

draws attention to how and why the drafting committees of the 'Universal' Declaration and later, the International Covenant on Civil and Political Rights, chose to use the words

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<sup>80</sup> Hilary Charlesworth's work, as noted previously, is a part of a vast amount of feminist research that clearly demonstrates that modernist references to the ostensibly non-gender-differentiated 'human' subject of international human rights law are for all intents and purposes are androcentric (103-113). In other words, 'human rights' are men's rights, since the norm embodied in 'human rights' language refers to, as argued in the previous chapter, the *rights of Man*, that is men's experiences, men's bodies, and men's "conventional, formulaic, and oversimplified" [read stereotypic] characteristics, see "stereotype," The American Heritage Dictionary of the English Language: Third Edition, CD-ROM (New York: Houghton Mifflin Company, 1992).

<sup>81</sup> Charlesworth observes that all of the so-called general instruments of international human rights law, with the exception of the Convention on the Rights of the Child, refer only to 'men' (58-84).

‘without distinction’, while the term ‘without discrimination’ was selected for the International Covenant on Economic, Social, and Cultural Rights (75-87). The committee’s use of the term ‘without distinction’ implies “no differentiation” of any sort, while the term ‘without discrimination’ introduces, according to the drafting committees, an additional layer of meaning that implies the need for some form of action.<sup>82</sup> Applying the idea of ‘without distinction’ illustrates the intent of formal equality, in that the measure of judgement is the rule itself as opposed to substantive equality, which assesses the outcomes. For example in the case of ‘sex,’ the measure of distinction is determined by asking whether women and men are evaluated on the same terms without barriers or privileges based on ‘sex.’ This form of analysis however, fails to take into account a legacy of social, political, and economic exclusion that negatively affects the choices and opportunities of many women particularly since women historically have been prohibited, either by law and/ or by gender role norms, from exercising the rights and privileges enjoyed by their male counterparts, by virtue of their ‘sex.’ Recall the case of Olympe de Gouge, who, in a report after her execution, was accused of wanting “to be a man of state” and forgetting the virtues of her ‘sex’ and this for writing the Declaration of the Rights of Woman and the Female Citizen, while Emmanuel Sieyès, who drafted the French Declaration of the Rights of Man and Citizen (Johnson Lewis) was acknowledged as a great statesman and political thinker, who contributed immensely to the cause of the *rights of Man*.<sup>83</sup> Hence, the idea that the committee believed that using the term ‘discrimination’ would imply a need for action is quite telling in that it reveals a certain

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<sup>82</sup> See W. A. McKean, Equality and Discrimination Under International Law, Oxford: Clarendon Press, 1983, qtd. in Skogly 80.

<sup>83</sup> Being denied the right to freedom of expression (Article 19 ICCPR) or the right to participate in public affairs (Article 25 ICCPR) today constitutes a clear and undeniable violation of human rights, United Nations *Civil and Political Rights*.

level of insincerity and bad faith within a process that endeavoured to encompass ‘all of the members of the human family.’

***Why Mid-Twentieth Century Standards Of ‘Universality’ And ‘Gender-Neutrality’ Do Not Produce The Necessary Conditions For Substantive Equality***

Therefore, if the purpose of recognizing and developing international human rights law is to attain a value for the inherent dignity and inalienable rights of ‘all human beings,’ how could the slightest implication of a need to take action cause the drafters to question using such a term; considering that the need to affirm the idea of ‘without discrimination’ and enumerate the grounds upon which ‘no discrimination’ is permitted confirms the presence discrimination and further implies a non-inclusive, in this case, male gender-specific standard, which is seemingly offset (balanced) by a promise of ‘gender-neutrality,’ ‘universality,’ and ‘equality’ as defined in the Preamble of the ‘Universal Declaration of Human Rights’<sup>84</sup> and Article 3 of the International Covenant on Economic, Social, and Cultural Rights<sup>85</sup> and International Covenant on Civil and Political Rights,<sup>86</sup> which reaffirms the equal rights of women and men in the former case and pledges to ensure the equal right of women and men to enjoy the rights set forth in each covenant. Thus, when considering centuries of both women and men<sup>87</sup> writing,

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<sup>84</sup> See United Nations, Universal Declaration of Human Rights (New York: United Nations Department of Public Information, 1998).

<sup>85</sup> Article 3 of the ICESCR states “the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant, see United Nations *International Instruments* 88-92.

<sup>86</sup> Article 3 of the ICCPR states “the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant,” see United Nations *International Instruments* 93-104.

<sup>87</sup> Men such as Charles Fournier, noted previously for linking the liberty of women with social progress in 1808; John Stuart Mill, an English parliamentarian, who wrote *The Subjection of Women*, (1857) which questioned why force had to be used to regulate women if their “natural vocation” is to be a wife and



protesting, suggesting, and demanding that women be taken into account, in substantive and meaningful ways, the idea that references to human beings can be “completely free of either implicit or explicit references to gender or sex”<sup>88</sup> in discourses on ‘human rights,’ from the French Declaration of the Rights of Man and Citizen to the Rights of Man to the International Bill of ‘Human Rights,’ thoroughly ignores the gendered character of the history and politics of the debates and outcomes of these encounters. Moreover, the idea of ‘gender-neutrality’ is demonstrably false and misleading in both the grammatical sense (the use of nouns and pronouns that clearly refer to men and supposedly imply women) and in the definition and fundamental characteristics of rights, which are for the most part based on the experiences of men, who themselves suffered the injustices that led to the development of legal instruments to promote and protect the men’s human rights. Given this, the idea of ‘gender-neutrality’ in the contemporary context operates purely to obscure a long history of hierarchically organized social, economic, and political relationships that justify the primacy of men’s human rights over women’s human rights, which in this framework have been disallowed, diminished, disregarded, and/or dealt with secondarily; a proposition that has been, at least for the past six centuries, contested.

### **iii) Elucidating Dignity for *All* Human Beings: Why Language Matters**

#### ***Prescriptive Language: More Than Just ‘Nouns and Pronouns’***

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mother, and the 32 men, who signed Elizabeth Cady Stanton’s “Declaration of Sentiments” in 1842, see Fraser 865.

<sup>88</sup> This, as noted previously, is the basis of the definition of gender-neutrality, today, see “gender-neutral,” The American Heritage Dictionary of the English Language: Third Edition, CD-ROM (New York: Houghton Mifflin Company, 1992).

Thus, another aspect of the problematic within the context of international 'human rights' instruments derives from the prescriptive elements of the articles, which attempt to outline how to promote and protect the equal rights of women and men, using so-called generic references. While the advocates of women's human rights that participated in the drafting of the 'Universal' Declaration of 'Human Rights' managed to attain the concession of using 'everyone' instead of 'man' in many areas; its use of the 18<sup>th</sup> century prescriptions about the generic use of the masculine gender, in the form of 'he,' 'him,' 'his,' 'man,' and 'mankind' reinforced established historical precedents (legal standards) based on substantive recognition of the characteristics and circumstances of men's lives (men's rights). This, for all intents and purposes, undermined the principle of the equal rights of women and men, by failing to integrate a comparable companion legal standard based on substantive recognition of the characteristics and circumstances of women's lives. In other words, instead of taking both women's and men's lives into account, that is, making the women's and men's lives, experiences, and issues central to the 'Universal' Declaration of 'Human Rights,' for the most part, each article and reference, represent the struggle for men's rights and a growing awareness by women's rights advocates that men's human rights, in a similar manner to the reasoning used by 18<sup>th</sup> century English grammarians, take precedence and women's human rights on the other hand, can be encompassed by a 'comprehensive' standard, a 'universal' standard, that is the male gender. As result, the 'Universal' Declaration of 'Human Rights' and its subsequent conventions and protocols (ICESCR and ICCPR), in effect, tacitly maintain an institutional codification of gender asymmetry (that is, the use of a male standard only; and define women's human rights as 'special interests' or 'special cases'), based the

specific choices and gender ideologies of 17<sup>th</sup> century French and 18<sup>th</sup> and 19<sup>th</sup> century English grammarians.<sup>89</sup>

***Recalling the Origins of the 'Gender-Neutrality' and 'Universality':  
The Ideology of the 'Precedence' of the Male Gender***

In the mid-nineteenth century, Goold Brown, an English grammarian, expounded on his predecessor J. Kirkby's assertion that the masculine (male gender) is the general category and therefore includes both the male and female (Schweikart 2). Brown declared that the "masculine (male) gender is the most worthy," since "the Supreme Being (God,...) is, in all languages, masculine (male); in as much as the masculine (male) sex is the superior and more excellent; and as He is the Creator of all, the Father of gods and men."<sup>90</sup> Thus, the *reasons* grammarians first gave for enforcing prescriptions about the generic use of the male gender included, first the idea of the 'masculine' person as being more comprehensive than the 'feminine' person (Kirkby); second, the belief in the 'masculine' person as being 'most worthy' or 'superior and more excellent' (Brown); and finally the opinion that men should take precedence over women, that is, be considered first, since "language should express the natural law of male superiority."<sup>91</sup> In other words, the original 'logic' for using 'man,' 'mankind,' 'brotherhood,' and the pronouns 'his,' 'him,' 'himself,' and 'he' as 'indefinite' sex referents, has absolutely nothing to do with being a

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<sup>89</sup> The French language is a "gender grammatical" language, which essentially means that nouns are either categorized as feminine or masculine (male gender). The question with the French language is how are the "formal rules" decided and for what reasons. Luce Irigaray contends that whatever is valorized is associated with the masculine (male gender), while whatever is linked to the feminine tends to be de-valorized and gender distinctions are not based on a man and woman dichotomy, but rather, on a man and not-man distinction (120). Some of the issues with the English language on the other hand, derive from the usage of the masculine (male gender) as 'generic,' despite recognition that it is most often understood as referring to men/ boys. In addition, pairs of nouns and pronouns tend to conventionally, give precedence to the masculine (male gender) over the feminine, for example 'he and she,' 'husband and wife,' 'boys and girls,' and 'men and women,' see Irigaray 119-123; Schweikart 1-9; Spender, Corbett; and Maggio.

<sup>90</sup> Goold Brown stated this belief in his "Grammar of English: Grammar 6" (1851), see Stanley, qtd. in Schweikart 2.

<sup>91</sup> Cameron 83-86; Spender 148-149; Bauer 18-19; and Schweikart 1-9.

“fact... about grammar, etymology, or any other primarily linguistic phenomenon”; rather it derives from the belief that women “should be” and are, in an inferior position in the “real world” (Cameron 85).

***‘Shortening the Language’ of the ‘Human Rights’ of Whom?***

This ideology however, transformed somewhat, in 1850, when Britain adopted the British Parliament Act of Parliament (Schweikart 2-3). The politicians and legal profession at that time accepted both the logic and linguistic principles of the early English grammarians and contributed to the institutionalization of the male gender as the ‘universal’ and ‘comprehensive’ human subject. The Act, however attempts to modify the original ideological position of the grammarians (that being the superiority of ‘men’) by suggesting that the exclusive use of male gender is simply about “shortening the language” (and depth of thought and consideration for gender specificity) used in acts of Parliament. However, this so-called “shortening the language,” although seemingly less ideologically driven, clearly maintains the position of the grammarians, since it reinforces the belief that the male gender should be the only gender reference (as opposed to including ‘both’ genders or only the female gender). This in turn implicitly reinforces the belief that the male gender is first, ‘comprehensive’; second, ‘most worthy,’ and finally, ‘superior’ according to ‘natural law.’ Therefore, what is “shortening the language,” supposed to stand for? In essence, according to the parliamentarians and legal profession, “shortening the language” refers to a basic principle of legal interpretation that assumes the male gender includes ‘all’ genders; in other words, it is supposedly about a grammatical and linguistic expediency. According to Deborah Schweikart however, this linguistic expediency, ultimately betrays itself when it inadvertently violates its own

principles of comprehensiveness by stipulating that where no gender is mentioned, it should be interpreted as referring to 'men' only (2). Simply put, when a reference to men occurs, this should theoretically include both genders and when no reference to men is made, then the assumption should be that the reference is to 'men' only (gender neutrality?); however, if one thinks about 'men' only, this should include women as well, according to the rule that stipulates references to men should be interpreted to include women. Accordingly, "shortening the language" ipso facto (by the fact itself) and ipso jure (by the law itself), works to the advantage of 'men,' since 'men' are the de facto (in reality or in fact) standard.

### ***Problematic Interpretations and Assumptions***

This beings said, in addition to the problem of how prescriptive grammar and models, for that matter, attempt to establish norms or rules for interpretation and application, respectively; is the idea of grammar and models that are simple, accurate, and fair in a descriptive capacity (Maggio). Prescriptive language requires interpretation and imagination to arrive at the "intended" inclusiveness of a term or concept that in reality is clearly thought of in most instances as an exclusive reference, particularly when there is a common or normal use for the term (Spender 150-162). According to Grenville G. Corbett, "the normal use of 'he' denotes a male human being and this carries over into the less common generic usage" (221). Consequently, the so-called 'generic' use of 'he' is not easily interpreted to include females; and as a result, fails to accomplish its prescriptive assignment, since 'man,' 'men' and 'mankind' are inextricably linked to the male gender, just as woman, women, and womankind are equally linked to the female

gender. In addition, the pseudo-generic use of the masculine gender as one might expect promotes male imagery which, in and of itself, is not an issue: however, when considering the 'rules' of prescriptive grammar, it becomes an issue, since this imagery occurs at the expense of female representation; given that it is difficult, if not confusing to think about a woman being referred to as *he* or *man* (Spender 160-162). This in turn reinforces the idea that the male gender is both 'normal' and 'standard'; which it is, although the female gender is also 'normal' and 'standard,' but has not yet been recognized and accepted as such in both the language of international and domestic 'human rights' law, for example.

### ***Some Consequences of Problematic Assumptions and Interpretations***

As a result, the use of the 'generic' male referent contributes to and encourages a male bias in the thinking and realities of society (Spender 151-162; Schweikart 1-9). Hence, if one begins with a principle of equal rights of women and men; to sustain such a concept necessitates an inclusive, accurate, and fair elaboration, that is an gender-based elaboration that specifically describes who, women and men; and under what circumstances, why and how.<sup>92</sup> Article 1 of the UDHR states, "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of brotherhood." Clearly, this Article deviates from the standard set forth in the Preamble and moreover, it violates the principle of "equal rights of men and women" by referring - to a male standard only (Waring 102-

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<sup>92</sup> See, The Canadian Women's Health Network, "Gender-based Analysis: Will it Make Things Better for Women?" *Network* 2 (1999). 27 February 2002 <<http://www.cwhn.ca/network-reseau/2-4/genderlens.html>>; and Status of Women Canada *Gender-Based Analysis*.

163). In regard to this example, Marilyn Waring points out that it is a physical impossibility for women to act in the spirit of 'brotherhood,' and in terms of mental imagery the idea can be compared to asking men to act towards one another in the spirit of sisterhood. Therefore, the practice of referring only to 'men', on the one hand, at best supports and reinforces men's human rights and on the other hand, at worst, obscures women's human rights and reveals the theoretical underpinnings of the grammarian's gender-based ideology; which, as previously noted, states that the men by virtue of 'natural law,' a politically and historically controversial term,<sup>93</sup> take precedence over women.

### ***What It Meant in Theory: Debate, Dissent, and Results***

This practice of referring only to men permeates the entire 'Universal' Declaration of 'Human Rights,' the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and all other international 'human rights' instruments that establish men's rights. As a result, the international system of 'human rights,' just as many national legal systems, set up a similar pattern, which occurred after the establishment of the *rights of Man*, men's human rights; that essentially is a pattern of conceding the *rights of Woman*, women's human rights, on a right-by-right, or case-by-case basis. Thus, the establishment of the international system of 'human rights' overall served to strengthen and extend national systems of *the rights of Man* to an international system of men's human rights. The *rights of Woman*, that is women's human rights, on the other hand, continued to evolve on an instrument-by-instrument basis within the internationally established system of men's human rights,

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<sup>93</sup> As discussed previously, see Steiner and Alston (324).

which is now sustained by the idea of one man being equal to another around the world. The process that established this system itself resembles the de Gouge / Sièyes and Wollstonecraft / Paine exchanges; although this time, the drafters of the 'Universal' Declaration of 'Human Rights' formally included the United Nations Commission on the Status of Women and the female delegates. Nevertheless, the pattern of conceding women's human rights on a right-by-right or case-by-case basis expanded to include the possibility of an instrument-by-instrument basis at the international level; as demonstrated by the development of more than twenty international human rights conventions and declarations<sup>94</sup> that are defined outside of the 'general' standard of 'human rights,' men's human rights.

Thus, contrary to the promise of the Universal Declaration of Human Rights, instead of being a model of 'universality,' 'gender-neutrality,' and 'equality,' the framework masks social, political, and economic inequalities based upon a centuries old norm that reinforces the *Rights of Man*, as the conceptual definition a 'human being' thereby excluding and/ or restricting women and various other groups<sup>95</sup> as being too specific to be seen as a "generic human being" or "universal human subject" (Black and Coward 100-118; Irigaray 119-123; MacKinnon 171-172). The male gender itself has not been

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<sup>94</sup> There are to date over twenty international legal instruments that address women's 'equality' including the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951), Convention on the Political Rights of Women (1952), Convention Concerning Maternity Protection (1952), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Convention on the Nationality of Married Women (1957), Convention Concerning Discrimination in Respect of Employment and Occupation (1960), Declaration on the Elimination of Discrimination Against Women (1967), Convention on the Elimination of all forms of Discrimination Against Women (1979), and the Declaration on the Elimination of Violence against Women (1993) see Langley; Hevener Kaufman; Charlesworth 103-113.

<sup>95</sup> See Declaration of Human Rights from a Gender Perspective: Contribution to the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, Document No. E/CN.4/1998/NGO/3, Commission on Human Rights of the United Nations, Geneva, 1998. <<http://www.pdhre.org/involved/declar.html>>.



recognized as a gender (Black and Coward 100-118) and instead has been obscured in the 'general' or 'universal' categories as well as in the standards measurement for the 'non-discrimination' and 'without distinction' models. To date these models of 'human rights,' that is, men's rights have been tacitly accepted as inclusive of 'all' genders, yet for all intents and purposes includes only the members of the male gender, since this category of human being represented the only "common conception of human rights that [could] command acceptance despite huge differences in culture, political systems, geographic location and economic circumstance" (Johnson 39). Some reasons for this consensus around the male gender as the standard of 'human rights' other than the influences of its *rights of Man* predecessors, is the belief of some countries that to enumerate women's human rights in a comparable manner to that of men's human rights would infringe on the sovereignty of individual countries that were unwilling to extend 'human rights' to their female counterparts, including countries such as Saudi Arabia, Bangladesh, India, Morocco, and Maldives.<sup>\*6</sup> Another argument advanced by some is the weak claim that if 'universal human rights' are intended to apply to 'everyone,' then rights applying to women, for example, "could not be 'human' rights, since not all humans are women" (Rendel 42). This argument can be reversed as it was by some participants in the drafting process of the 'Universal' Declaration, who argued that 'men' do not represent the species, but rather a gender (Pietila). In other words, not 'all human beings' are men. Nevertheless, with the participation of the Commission on the Status of Women, the

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<sup>\*6</sup> The above-mentioned countries are mentioned as examples of States that have entered reservations regarding the application of the Convention on the Elimination of All Forms of Discrimination Against Women. The reservations have been identified by various countries including the Netherlands and Canada as incompatible with the "object and purpose of the Convention," see Irene Stuber, Bodil Begtrup, U.N. Delegate, 14 Jun. 2002 <<http://www.undeleterg.org/woa/woa11-12.html#1>>; and Convention on the Elimination of All Forms of Discrimination Against Women. 1979. 15 Jul. 2002 <<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty9.asp>>.

delegates Soviet Union and various female delegates from a multitude of nations, the issue was debated extensively and intensively on an article-by-article, paragraph-by-paragraph, word-by-word basis and as a result, while the first political victors may have limited the concept of 'human rights' to men's human rights and determined the purpose and its meaning; women's human rights activists ensured that the foundation of international human rights was solidly grounded in the principle of the equal rights of women and men.

#### iv) Exercising Dignity: Why Dissent Matters

##### ***What It Means in Practice: The Effects Principle of the "Equal Rights of Men and Women" and the 'Universal' Declaration of 'Human Rights' "Guiding Light"***<sup>97</sup>

The *rights of Man* doctrines culminated with the establishment of the first 'Universal' (meaning "as many nations as possible") Declaration (signifying acceptance of "the fact that men, for one reason or another, were born free and equal in dignity and rights... and should act toward one another in a spirit of brotherhood") of 'Human Rights' (indicating the adoption and proclamation of resolution 217 A III of 10 December 1948 "an international Magna Carta for all men everywhere").<sup>98</sup> The key to the success of this international effort, according to Eleanor Roosevelt "was to find words that everyone would accept."<sup>99</sup> At that point in time, the *rights of Man* doctrine was completely acceptable given the horrors of two 'world wars,' while the *rights of Woman* had evolved on a case-by-case basis and right-by-right basis up until the founding of the United

<sup>97</sup> See Florence Bird et al., Report of the Royal Commission on the Status of Women in Canada, 1970. Ottawa: Minister of Supplies and Services Canada, 1977.

<sup>98</sup> These quotes are from the thoughts and public expressions of Eleanor Roosevelt, who presented her vision of the process of defining "enduring principles that would be perpetually recognized by all nations," see United Nations, "Eleanor Roosevelt," 16 Jun. 2002

<<http://www.udhr50.org/history/Biographies/bioer.htm>>.

<sup>99</sup> Ibid.

Nations and the drafting of its Charter. At that point in time, the case for women's human rights had irrevocably shifted, due to the recognition of the "equal rights of men and women," a phrase that continued to resonate during the drafting process of the 'Universal' Declaration of 'Human Rights.' As a result of the inclusion of this *phrase* in the framework of the sole organization dedicated to the peace and security of the entire world, the *querelle de femmes*, in addition to being a right-by-right and case-by-case challenge, became a 'paragraph-by-paragraph' and word-by-word endeavour, which inspired mid-to-late twentieth century activism, achievements, and awareness of the devastating effects of the historic political, social, and economic gender-based injustices.

### ***Activism, Achievements, Awareness, and More Work***

In 1954, the General Assembly of the United Nations recognized that many women were still "subject to ancient laws, customs, and practices" that violated the principles of the Declaration and in Resolution 843, IX, called on governments to abolish all laws, customs, and practices that violated the human rights of women.<sup>100</sup> Although some action on behalf of eliminating discrimination that violated women's human rights had begun, for example in Ontario, which became the first province in Canada to enact "equal pay"<sup>101</sup> legislation" in 1952, the United Nations resolution served as a catalyst for further

<sup>100</sup> For dates and facts on how the United Nations 'progressed' towards the decision to draft and adopt the Convention on the Elimination of All Forms of Discrimination Against Women, over a period of thirty-six years, see United Nations, "Calendar of Progress of the Convention on the Elimination of All Forms of Discrimination Against Women," 16 Jun. 2002

<<http://www.unsystem.org/ngls/documents/publications/en/develop.dossier/dd.06/a12annex2.htm>>.

<sup>101</sup> "Equal pay" is a notion based on formal equality, which in this case equates to the idea that women should be paid the same salary as men when they perform the same work—in other words, equal pay for equal work. Prior to this legislation, employers paid or could pay women less than men, despite the fact that they performed the same job, see Prentice et al. 362-364.

action.<sup>102</sup> Accordingly, Governments around the world began the process of taking stock of legislation, policies, and practices that violated international human rights law that prohibits discrimination based on sex. Canada, as one of the first signatories to the ‘Universal’ Declaration of ‘Human Rights,’ readily responded to the challenge with a steady flow of legislative action, which included removing “restrictions on the employment of married women in the federal public service” (1955); enacting legislation that guaranteed “equal pay for equal work within the federal jurisdiction” (1956); appointing the first female federal Cabinet Minister, Ellen Louks Fairclough, as Minister of Citizenship and Immigration (1958);<sup>103</sup> and responding to the demands of “thirty-two organizations representing more than two million women, [who] lobbied the federal government to establish a Royal Commission on the Status of Women in Canada,” an idea that represents “the single most important event in advancing the status of women in Canada at that time.”<sup>104</sup> On the other hand, however, the Government of Canada continued to promote or rather impose the “queen of the household” (1940-1960) ideology that “told... [women] it was their patriotic duty to leave the work force in order to make room for men returning from military service”; and later, encourage the “feminine mystique” (1960s) propaganda that extolled the virtues of the feminine ideal

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<sup>102</sup> For key historical dates and facts in the history of Canadian women in the 20<sup>th</sup> century, see Canada, Status of Women, “Key Dates in the History of Canadian Women Throughout the 20<sup>th</sup> Century,” 28 Jun. 2002 <<http://www.swc-cfc.gc.ca/whm/whm2000/whmdates-e.html>>.

<sup>103</sup> Ibid.

<sup>104</sup> The Bird Report, as it is commonly referred to, revealed “disturbing facts about discrimination against women and women in poverty.” The idea of “discrimination against women” and particularly women living in poverty will be explored further in the next chapter, which will assess the issues, actions, and outcomes of public policy choices with regard to women’s human rights (that is women’s ongoing ascent towards full recognition and acceptance as “human beings” and the social, political, economic, and cultural benefits that derive from this status; recall that women in Canada fought to be recognized as *persons*) in the Canadian domestic context. For a brief overview of the status of women in each decade of the 20<sup>th</sup> century in Canada, see Canada, Status of Women, “Making History, Building Futures: Women of the 20<sup>th</sup> Century,” 2000. 28 Jun. 2002 <<http://www.swc-cfc.gc.ca/whm/whm2000/whm2000-e.html>>.

along with the “joys of domestic life and femininity.”<sup>105</sup> This seemingly contradictory approach mirrored the international level in that on the one hand the activism of women’s human rights advocates triumphed and on the other hand, the weight of men’s human rights and privileges nevertheless continued to set social, political, and economic standards for ‘all’.

By outlining the critical debates surrounding the *rights of Man* and the *rights of Woman* and examining the legacies of men’s rights advocates and women’s rights defenders, it becomes clear that both class and gender played significant roles in the quest for and achievement of ‘human rights.’ While class, during the *rights of Man* debates, ultimately, referred specifically to men; gender, nevertheless, pertained to and continues to relate to both men and women,<sup>106</sup> although the language and culture of 20<sup>th</sup> century international and domestic ‘human rights’ instruments allow ‘men’ to “pass themselves off as generic human beings with no gender;”<sup>107</sup> although in every practical sense, ‘men’ are the “only gender that is recognized.”<sup>108</sup>

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<sup>105</sup> For a brief overview of the status of women in each decade of the 20<sup>th</sup> century in Canada, see Canada, Status of Women, “Making History, Building Futures: Women of the 20<sup>th</sup> Century,” 2000. 28 Jun. 2002 <<http://www.swc-cfc.gc.ca/whm/whm2000/whm2000-e.html>>.

<sup>106</sup> While gender pertains to both women and men; gender also describes the relation between variously constituted categories of men and women, differentiated by ‘race,’ ‘class’ (in the contemporary sense that is gender inclusive), state, generation, and a variety of categories, which identify, differentiate, and divide human beings, see Harraway.

<sup>107</sup> Black and Coward do not discuss human rights, however, their insights into language with regard to prescriptive grammar; their analysis of situations in which no grammatical rule compels speakers to identify gender, yet do so when women are present (for example, ten people survived, including two women); and their conclusions from this analysis clearly provide a fresh and relevant way of describing and clarifying how ‘standards’ operate (100-118).

<sup>108</sup> As noted previously, according to Irigaray, French is a ‘grammatical gender’ language; referring to how the use of the feminine and masculine occurs without necessarily denoting sexed beings. Nevertheless, Irigaray ‘suggests that the masculine gender tends to denote something more valuable than the feminine,’ because gender distinctions are based on the idea of ‘man/not-man.’ For example, the word ‘moissonneur’ is masculine and refers to a person who harvests and ‘moissonneuse’ is feminine and refers to a machine a harvester uses instead of a female harvester. Irigaray concludes that there is one sex; men, around whom everything evolves, see Irigaray 119-123.

Hence, while the idea of using the male referent as a 'generic' or as 'sex indefinite' derives from the state of gender relations that existed in the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries, the standard nevertheless thrived in the mid-twentieth century with the development of the international human rights system. This, despite the efforts of Christine de Pizan, Olympe de Gouge, and Mary Wollstonecraft, who published their ideas about the social, political and economic status of women (and men in the case of Wollstonecraft), protested against gender-based injustices against women, and proposed alternative ways of viewing and interacting with women (namely in the spirit of equality). In this way, gender relations and questions relating to gender inevitably reflected the times and values of what some label, patriarchal<sup>109</sup> societies, which in themselves had evolved from oppressive authoritarian monarchical states (in the case of England and France), by granting the right for 'men' to be equal to 'men' of privilege (or simply equal to one another).<sup>110</sup> At the same time, however, these oppressive states denied the demands of the *rights of Woman* advocates. Thus, given the history and outcomes of the *rights of Woman* and *rights of Man* debates as well as with the grammatical rules, prescribing the 'generic' use of the male gender; it is not difficult to understand how these beliefs persisted through the mid-twentieth century although in somewhat altered and more socially acceptable forms given the changes in social attitudes towards women and the

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<sup>109</sup> Patriarchy, literally describes, "rule by the father." "Hence, any social or political system that grants privileged status to males and permits or encourages their domination of females. Most Western cultures have been, and continue to be, patriarchal in this sense," see "patriarchy" Chronicle Encyclopedia of History, CD-ROM (New York: DK Multimedia, 1997).

<sup>110</sup> At first, the *rights of Man*, as noted in the previous chapter was limited to male property owners and over time would evolve to include 'all men'; particularly by 1945 with the founding of the United Nations (at that time there were 51 members and today there are 188 member and three countries that are not members including Taiwan, Switzerland, and The Vatican/ The Holy See), see United Nations, "United Nations Headquarters Online Tour," 9 June 2002 <<http://www.un.org/Overview/Tours/UNHQ/>>.

participation of women's human rights advocates in the creation and development of international 'human rights' law. Nevertheless, the problem of substantively taking women's human rights into account nevertheless remains the same. The next chapter will therefore examine questions regarding proposals for change and ongoing issues in both the international and Canadian domestic contexts.

Justice must always question itself, just as society can exist only by means of the work it does on itself and on its institutions. –Michel Foucault<sup>111</sup>

### **III. 'LESSONS TO LEARN': PROBLEMS TO RECOGNIZE (PROBLEMATIZING 'GENDER-NEUTRAL' APPROACHES TO HUMAN RIGHTS & PUBLIC POLICY IN CANADA)**

#### ***Historical Questions of Gender, Contemporary Issues of Recognition***

By outlining the critical debates surrounding the *rights of Man* and the *rights of Woman* and examining the legislative outcomes of the efforts of men's rights advocates and women's rights defenders in the previous chapters, it is clear that the language and culture of 20<sup>th</sup> century international human rights law is based on the successful incorporation of male-gender exclusive *rights of Man* principles and operates to reinforce the idea that men are universally, that is, both domestically and internationally, equal to one another and are collectively the subjects and beneficiaries of 'general' / 'gender-neutral'<sup>112</sup> human rights law. 'Women' on the other hand, in theory, through hard-won legal, social, and political victories, gained 'equal' status with men in the latest incarnation of this philosophy; yet in practice, when considered, are viewed as a 'special interests' or 'special cases,' as opposed to being recognized and accepted in a fully gender inclusive (taking both women and men into account) general standard.

From this analysis, it is clear that contemporary 'human rights' law, whether international or domestic, in most cases, is highly gender-specific in character, yet for all intents and

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<sup>111</sup> See Michel Foucault, "Vous Êtes Dangereux," in *Libération* (Paris, 30 June 1983; repr. in Didier Eribon, *Michel Foucault*, 1989; tr. 1991); and "Michel Foucault," *The Columbia Dictionary of Quotations*, CD-ROM (New York: Columbia University Press, 1995).

<sup>112</sup> As elaborated throughout this thesis, the basic argument has been that human rights are gendered in specific ways. Specifically, the 'general' or 'gender-neutral' standards of domestic and international human rights law are in actual fact men's human rights. Therefore, 'general,' 'gender-neutral,' and men's human rights are used interchangeably.



purposes is believed by many, including most parliamentarians and citizens, to represent the principles of ‘universality,’ ‘gender-neutrality,’ and ‘equality.’ This impression derives from the language of ‘universal human rights,’ which includes seemingly inclusive terms and phrases such as ‘universal,’ ‘equal rights of men and women,’ and the word ‘human rights.’ Nevertheless, as demonstrated by 18<sup>th</sup> and 19<sup>th</sup> century debates on the *rights of Woman* and the *rights of Man*, and 20<sup>th</sup> century discussions on the use of male-gender specific language during the drafting process of the Universal Declaration of Human Rights, such terms and phrases obscure the political history and contentious outcomes of gender ideologies that inhibit substantive recognition of women’s human rights and perpetuate social, political, and economic inequalities. This approach, in essence, does little to alleviate women’s poverty and economic inequality, which not only violates the economic, social and cultural human rights of women, but also restricts women's enjoyment of their civil and political rights (FAFIA/ AFAI 2000 *Alternative Report*). The consequences of this situation include severely reducing the likelihood that women will stand for public office and influence political decision-making and subjecting economically vulnerable women to “different laws because welfare regulations and practices subject them to invasions of their privacy not experienced by other” citizens (FAFIA/ AFAI 2000 *Alternative Report*).

Thus, after more than fifty years of internationally sanctioned men’s ‘human rights’ law, it is not surprising that the great divide between *de jure* and *de facto* ‘equality’ between women and men persists. At issue, therefore, are the outcomes and unresolved issues of a ‘universal’ political consensus that at the time represented “a remarkable achievement”

given political, ideological, cultural, religious, and socio-economic diversity of the participants (Johnson 19-76). In other words, the question today, is about the outcomes and effectiveness of over a half century of international and domestic 'human rights' commitments to protect and promote the inherent dignity and equality of *all* human beings using the without 'distinction' or 'discrimination' models. As noted previous, human rights consists of civil and political as well as economic, social, and cultural rights and while Governments are entrusted to guarantee respect for 'human rights,' it is Governments nonetheless, that are the "main violators of human rights" (Bossuyt 50). Therefore, at the end of the day so to speak, women's and men's 'human rights' and freedoms are protected, promoted, and/ or violated by "what exists" or "what is lacking" in any given society regardless of what is written or said at the international level (Gallagher 201-227). Hence, compliance with and the implementation of international human rights law, ultimately resides within the national borders of each individual State (Gallagher 201; Knop 75-77). However, it is incumbent upon the individual State to respond and be accountable to both its citizens and the international community for what it does and does not do. For example, in Canada, the Standing Senate Committee on Human Rights in a December 2001 Report identified "the growing discrepancy between Canada's international human rights obligations and the measures actually taken to implement them," as potentially "harmful" to Canada's "human rights reputation" and at the same time, a denial of the international human rights of Canadian citizens (Canada *Standing Senate Committee*).

The aim in this chapter therefore, is to first, assess some of the changes and challenges

since the adoption of the ‘Universal’ Declaration of ‘Human Rights’ and explore the idea of gender mainstreaming; second to present a brief outline of gender disparities in the Canadian context through an exploration of gender development indexes and measurements commissioned by the United Nations; and finally, to draw attention to the Louise Gosselin and Kimberley Rogers cases, which raise several questions about international human rights and whether economic, social, and cultural rights are justiciable under the Canadian Charter of Rights and Freedoms (1982). The purpose of this exercise is to identify, as noted above, the consequences of ‘gender-neutral’ approaches to human rights and Canadian public policy; and in the process examine the role of international ‘human rights’ and the ways in which international commitments to gender mainstreaming influence the Canadian polity.

**i) International Human Rights Commitments: Challenges To Recognize**

***Setting the Stage: Evaluating the Outcomes of the International ‘Gender-Neutral’ Approach to Human Rights***

It has been over fifty years since Eleanor Roosevelt and the members of the drafting committee found the “words that everyone would accept” in a ‘Universal’ Declaration of ‘Human Rights’ (United Nations *Eleanor*). Since that time, an array of specific covenants, conventions, and declarations have been elaborated to either give legal force to the ‘Universal’ Declaration of ‘Human Rights’ or to address its inherent weaknesses particularly with regard to women’s human rights. Again, the Commission on the Status of Women<sup>113</sup> actively pursued women’s human rights, since the ‘general’ or ‘gender-

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<sup>113</sup> The United Nations Commission on the Status of Women acts as the main UN body that addresses policy decisions relating to the status of women. The Commission also monitors issues relating to women and prepares “recommendations for the UN and its Member States,” see (*The UN System*).

neutral' 'human rights' instruments had not been sufficient to guarantee women the protection of their rights (United Nations *Convention 20<sup>th</sup> Anniversary*). As a result of the work of the CSW, treaties including the Equal Remuneration Convention (1951), Convention on Political Rights of Women (1953), the Convention of the Nationality of Married Women (1957), the Discrimination (Employment and Occupation) Convention (1958) and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962) were adopted by the General Assembly of the United Nations. As denoted by the titles of each of these international human rights instruments, some explicitly take women into account, while others employ the non-discrimination approach. Regardless of approach, whether it be the issue of equal remuneration, discrimination in employment and occupation (Article 23),<sup>114</sup> women's political rights (Article 21),<sup>115</sup> women's nationality when married (Article 15)<sup>116</sup> or consent to marriage (Article 16);<sup>117</sup> these issues raise questions about first, the precarious status of women in terms of the 'Universal' Declaration of 'Human Rights' itself and consequently, the effectiveness of its 'general' or 'gender-neutral' approach to 'human rights.'

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<sup>114</sup> Article 23 of the Universal Declaration of Human Rights states: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests.

<sup>115</sup> Article 21 of the Universal Declaration of Human Rights states: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

<sup>116</sup> Article 15 of the Universal Declaration of Human Rights states: (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

<sup>117</sup> Article 16 of the Universal Declaration of Human Rights states: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### ***Towards an International Bill of Men's Human Rights***

Significantly, these points are of particular import, when considering that on the day the 'Universal' Declaration of 'Human Rights' was adopted, "the General Assembly"<sup>118</sup> requested the Commission on Human Rights to prepare, as a matter of priority, a draft covenant on human rights and draft measures of implementation" (United Nations *International Bill*). Interestingly, in 1950, prior to the drafting of the aforementioned treaties, the General Assembly, in resolution 421 (V), section E, declared that "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent" (United Nations *Fact Sheet No. 2*). As a result, the General Assembly decided to include economic, social and cultural rights as well as an a re-affirmation of the "equality of men and women in related rights" in the covenant. Thus, while what would eventually become the 'general' or 'gender-neutral' International Bill of 'Human Rights' was being drafted, the aforementioned treaties were nevertheless, drafted, accepted, and ratified instead of being deemed repetitive since the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were in the process of being drafted.<sup>119</sup> Granted, the adoption of these treaties occurred during the fifteen year period between the General Assembly's commitment to the aforementioned rights and the stipulation of the equality of women and men; however, at the same time, such commitments were not reaffirmed for men in a 'Convention on the Civil and Political Rights of Men,' for example.

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<sup>118</sup> The United Nations General Assembly is the "highest intergovernmental body for the formulation and appraisal of policy, including [the] rights of women and related issues," see *The UN System*.

<sup>119</sup> The International Labour Organization (ILO) sponsored certain treaties, such as the Equal Remuneration Convention, while the General Assembly adopted others, such as the Convention on the Political Rights of Women was adopted by the General Assembly, see United Nations *Conventions*.

***Towards an International 'Bill of Women's Rights'*<sup>120</sup>**

Thus, when considering women's economic, political, social rights, civil, and cultural rights, which are supposedly protected by the ICESCR and the ICCPR the matter of the status of women and the 'gender-neutral' approach re-emerges. Nonetheless, both Covenants, as decided by the General Assembly in 1950, explicitly oblige States guarantee 'non-discrimination' (Article 2. ICESCR)<sup>121</sup> and ensure 'non-distinction' (Article 2 ICCPR)<sup>122</sup> based on 'sex.' These obligations are then followed by another assurance in the form of a re-affirmation of the principle of the "equal rights of men and women" (Article 3 in both);<sup>123</sup> a standard set forth in both the Charter of the United Nations and the Universal Declaration of Human Rights. Nevertheless, men's human rights in and of themselves, despite this seemingly plausible multi-pronged approach, constitute the sole standard by which international human rights are measured today.

<sup>120</sup> The term "Bill of Rights for Women" was used by Louise Frechette, the first Deputy Secretary of the United Nations (1998) on the 20<sup>th</sup> anniversary of the CEDAW, see "Deputy Secretary-General."

<sup>121</sup> Article 2.2 of the International Covenant on Economic, Social, and Cultural Rights states: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>122</sup> Article 2 of the International Covenant on Civil and Political Rights quite decisive and states: (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. (3) Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

<sup>123</sup> Article 3 of the ICESCR states: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant. Article 3 of the ICCPR states: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Although this point is not officially<sup>124</sup> recognized and accepted in explicit terms, increasing attention is currently being placed on the “mainstreaming of a gender perspective”<sup>125</sup> into all policies and programs in the United Nations system” pursuant to the Beijing Platform for Action (PfA),<sup>126</sup> which UN Member States unanimously agreed upon and General Assembly resolution 55/71 of 4 December 2000 (DAW *Gender Mainstreaming* 1-2). As a result, the UN Commission on Human Rights, in April of 1999 began debating “the integration of the human rights of women and the gender perspective” (OHCHR *Commission Takes Up*). The Commission on Human Rights is the main UN body on human rights; it is responsible for the development and codification of “new international norms” and it monitors the observance of men’s human rights around the world (United Nations *The UN System*).

### ***Women’s Human Rights Prior to Mainstreaming***

Prior to the launching of this debate, however, “women’s issues” (women’s human rights) were commonly referred to the Committee on the Elimination of Discrimination against Women, which was set up in 1982 to monitor the implementation of the Convention on the Elimination of Discrimination Against Women (Women’s

<sup>124</sup> On 18 September 1997, the General Assembly was however, presented with the acknowledgement of the Economic and Social Council, that thus far, a gender perspective had not yet been “fully integrated into the Mainstream of the United Nations,” see United Nations *General Assembly*.

<sup>125</sup> Mainstreaming a gender perspective, according to the United Nations, refers to “the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality,” see *General Assembly*.

<sup>126</sup> The Beijing Platform for Action (Fourth World Conference on Women, Beijing, 1995, paras. 79, 105, 123, 141, 164, 189, 202, 229, 238, 252, 273) endorsed gender mainstreaming “as the approach by which goals under each of its Critical Areas of Concern are to be achieved.” Gender mainstreaming refers to a process in which “governments and other actors... promote an active and visible policy of mainstreaming a gender perspective in all policies and programs, so that, before decisions are taken, an analysis is made of the effects on women and men, respectively,” see UNDP *Why Gender*, and *Beijing PfA*.

Convention).<sup>127</sup> This treaty, according to Louise Frechette, the Deputy Secretary General of the United Nations (1998),<sup>128</sup> emerged as a result of “the experience of [women] seeking to secure” the rights guaranteed in the International Bill of ‘Human Rights’ (*Deputy Secretary*). This issue became a rallying point for the participants at the First World Conference on Women in Mexico City (1975). This First World Conference on Women transpired shortly before the ICESCR and ICCPR entered into force on 3 January 1976 and 23 March 1976 respectively.<sup>129</sup> At that time, the participants recognized, just as Olympe de Gouge, Mary Wollstonecraft, Minerva Bernardino, and Bodil Begtrup, that the ‘human rights’ in the International Bill of ‘Human Rights’<sup>130</sup> referred specifically to men’s rights, despite the assurances of non-discrimination and non-distinction as well as the re-affirmation of the principle of the “equal rights of men and women.” These pledges had been made previously, when the ‘Universal’ Declaration of ‘Human Rights’ was being drafted. The result as noted above, was a necessity to reinforce, through specific

<sup>127</sup> The Committee convenes once a year for a period of three weeks (while the Commission on Human Rights convenes for a six week period). During this period, the members review reports regarding ‘progress’ towards the implementation of the Women’s Convention by the State Parties. In addition to this review, the Committee may “suggest specific measures as well as make general recommendations to the States parties on eliminating discrimination against women.” On the matter of “women’s issues,” the Committee can “invite UN specialized agencies to submit reports for consideration and may receive information from non-governmental organizations,” as well. This information is then reported to the Economic and Social Council, which in turn reports to the General Assembly. The Economic and Social Council also transmits these reports to the Commission on the Status of Women (United Nations *Committee*).

<sup>128</sup> Louise Frechette is the first person to hold the office of Deputy Secretary General (March 1998), which was established by the General Assembly in December 1997. Prior to this, Deputy Secretary Frechette held the position of Canada’s Deputy Minister of National Defence and at one time, was Canada’s Ambassador and Permanent Representative to the United Nations, see *First UN Deputy Secretary General*.

<sup>129</sup> For a brief summary and history of CEDAW from a feminist perspective, see Feminist Majority Foundation.

<sup>130</sup> For a detailed elaboration on the background of the International Bill of Human Rights, see Office of the High Commissioner for Human Rights, *Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights*, June 1996. 9 February 2002 <<http://www.unhcr.ch/html/menu6/2/fs2.htm#worldwide>>.



conventions, women's human rights, particularly with respect to political rights.<sup>131</sup>

Accordingly, a call for a comprehensive 'Bill of Rights of Women' emerged (Feminist Majority Foundation). As a result, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>132</sup> became the "central, most important, and comprehensive" document for women's human rights at the United Nations (Mahoney 437-461), while the International Bill of 'Human Rights' served a similar purpose for men's human rights.<sup>133</sup> Thus, as noted by Eleanor Roosevelt in a speech in 1949 after the adoption of the 'Universal' Declaration of Human Rights and later, on the occasion of the 50<sup>th</sup> anniversary of the 'Universal' Declaration by Josiah Van Aartsen, the Foreign Affairs Minister for the Netherlands; politics or the words that can be accepted by the greatest number of people often dictate the reality in which the norms and ideals of

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<sup>131</sup> In 1951, for example, in Canada, while many women had previously campaigned for and won the right to vote (1917-1918 at the federal level), the human rights of Aboriginal women on this issue continued to be violated until 1960 (*Canada Making History*).

<sup>132</sup> The Women's Convention was "adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979." It subsequently entered into force on 3 September 1981, see (United Nations *CEDAW*). This convention is problematic for many, since there are several Member States, who ratify with reservations in effect limit their obligations to implement the principles of CEDAW in major ways. The "focus of these reservations varies... they [frequently] concern potential conflicts between CEDAW and customary or religious law, or... [are about] the State's obligations in the area of family relations." As of June 2002, 170 countries have signed CEDAW, see (UNIFEM *Bringing Equality*).

<sup>133</sup> Although welcomed by many at the time, as the first 'comprehensive' international human rights instrument to address women's political, cultural, economic, and social human rights in addition to taking up the issue of women's human rights in terms of family life (Feminist Majority Foundation); the issue of violence against women had not yet been explicitly addressed, although the ICCPR had addressed the matter in terms of men's human rights. Elizabeth Evatt, who served on the Women's Committee as Chairperson from 1989-1990 and as a member between 1985-1992 (United Nations *CEDAW Note*) however, notes that the Committee addressed the issue of violence against women by inviting State Parties to report on "the incidence of violence against women and measures that have been taken to prevent or deal with its occurrence" (438). Nevertheless, on 20 December 1993, the Declaration on the Elimination of Violence against Women (DEVAW) became the first international human rights norm that specifically sought to address the issue, see WHO. As such, with CEDAW, DEVAW, and the adoption of resolution E/CN.4/1998/NGO/3 by the UN Commission on Human Rights, that is, the Declaration of Human Rights from a Gender Perspective (CLADEM 1998), a more comprehensive, yet unrecognized International Bill of Women's Human Rights has begun to develop due to the efforts of the global women's human rights movement. The Declaration of Human Rights from a Gender Perspective is essentially a re-conceptualized late 20<sup>th</sup> century version of the 'Universal' Declaration of 'Human Rights.' Further discussion on this matter is beyond the scope of this thesis, it is however a subject for further study.

human rights can be accomplished. In this case, the International Bill of [Men's] Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women reveal the state of gender, politics, and human rights as it had evolved over the past few centuries since the *rights of Woman* and *rights of Man* debates in the 18<sup>th</sup> and 19<sup>th</sup> centuries.

***Mainstreaming Women and Men's Human Rights: Promises for the 21<sup>st</sup> Century***

This being said, the mainstreaming of a gender perspective, in contemporary human rights context, therefore, begins the process of strategically making both women's as well as men's concerns and experiences integral dimensions of all United Nations and Member States considerations with regard to the “design, implementation, monitoring and evaluation” of policies, programs, and legislation. This capacity effectively gives the UN and the Member States the opportunity to either substantively support and promote women and men's human rights or formally disregard women's human rights by adhering to a political consensus of a previous era. The issue is, of course, that international norms and principles are not self-executing, nor for that matter are national or provincial legislation, although it is a fundamental step on the way. Hence, taking women's human rights into account, like any other desirable social achievement, necessitates work on many fronts including raising the consciousness of the Governments to understand that commitments to gender-based analysis are always appropriate particularly when discussing the implementation of ‘human rights’ and in all public policies, programs and legislation. Simply put, “human rights that do not include women are not human” and

public policies, programs and legislation that do not include women are not public (Koenig).

**ii) Canada's International 'Human Rights' Commitments: Measuring 'Gender-Neutrality'**

***Why Gender Mainstreaming Human Rights Matters***

While only the realization of human rights for *all human beings* will ensure that women are included as fully human, women specifically have suffered violations and neglect as a consequence of gender-neutral approaches to human rights and public policy. Canada, according to the Status of Women, “recognizes that women face multiple forms of discrimination, which prevent them from fully enjoying their human rights” and further acknowledges the necessity of “a firm commitment to equality for women in all aspects of the social, economic, and political spheres of society” (*Canada Beijing* · 5).

To date, Canada is a party to more than 30 international human rights instruments that address a broad range of human rights subjects, including: basic civil liberties and political rights (ICCPR); social, economic, and cultural rights (ICESCR); labour standards for workers (Equal Remuneration Convention); and women's human rights (CEDAW and DEVAW), among others (*Canada Senate Standing Committee*).

Furthermore, Canada up until the year 2000, led the United Nations Development Programme's Human Development Index as the “best country in the world,” in terms of human development. Nonetheless, in terms of gender development, gender empowerment, and upholding the economic, social, and cultural rights of women, Canada's international and domestic records reveal how problematic gender-neutrality

becomes in a country that “has the capacity to achieve a high level of respect for all Covenant rights” (United Nations *Committee on Economic*).

***‘Gender-Neutrality’: An International Analysis of a Domestic Problem***

On December 4, 1998, the United Nations Committee on Economic, Social, and Cultural Rights concluded an analysis of Canada’s compliance with respect to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) as well as commenting on previous recommendations and major concerns for Canada’s consideration when adopting policies, which might potentially exacerbate poverty and homelessness among its ‘poorest and weakest’<sup>134</sup> citizens (United Nations *Committee on Economic*). In its assessment, the Committee listed the positive aspects of Canada’s commitment to the Covenant and noted that for the previous five years<sup>135</sup> Canada scored the highest ranking on the United Nations Development Programme’s (UNDP) Human Development Index (HDI) indicating that Canadian citizens, in general, benefit from “a singularly high standard of living.” However, the Committee also noted that Canada has not achieved its potential with regard to respecting the Covenant, which is reflected in the fact that Canada ranked tenth on the UNDP’s Human Poverty Index (HPI),<sup>136</sup> ninth on the Gender

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<sup>134</sup> In this group of Canadian citizens, “single mothers and other ‘unattached women’ are the most likely to be poor, with poverty rates for these groups reaching as high as 57.2 percent for single mothers under 65, and 43.4 percent for unattached women over 65 years of age,” see FAFIA *Towards Equality*.

<sup>135</sup> The United Nations Development Programme’s Human Development Index (HDI) has ranked Canada the ‘best country in the world’ for the past seven years beginning in 1994 and including the UNDP’s most recent report for the year 2000.

<sup>136</sup> The Human Poverty Index (HPI) measures the distribution of progress and deprivations that exists among human beings. While the Human Development Index measures the ‘overall’ achievements of a country’s human development, the human poverty index (HPI) assesses the denial of opportunities for the most basic human development. Poverty, according to the UN standard is measured in terms of the ability to enjoy a long, healthy, creative life with “decent standard of living, freedom, dignity, self-esteem and the respect of others,” see UNDP.

Development Index<sup>137</sup>, and sixth on the Gender Empowerment Index (GEM).<sup>138</sup> This, on the one hand indicates that Canada fails to sustain its status as “best country in the world” when the poverty (HPI), gender-related development (GDI), and gender empowerment (GEM) indexes factor in economic, social, and political inequalities, which impede the choices and opportunities for the human development of many women, and this, despite the promise of living in prosperous times. On the other hand, Canada, not only fails to sustain its “best country in the world” status, it also confirms Canada’s failure to take into account the human rights of both women and men. As a result, in some cases, Canadians are being denied their human rights and at the same time, Canada’s international human rights reputation is being ‘unnecessarily’ jeopardized (*Senate Standing Committee*).

### ***Canada’s Response: The Federal Plan for Gender Equality***

Accordingly, the question becomes what steps has Canada taken to act upon its international human rights obligations. In other words, what is Canada’s strategy for “making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated” (*General Assembly*)? To begin to address this issue,

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<sup>137</sup> The Gender Development Index (GDI) or gender-related development index, measures the same variables as the Human Development Index—longevity, knowledge and a decent standard of living—but puts the human in human development, since it measures the inequalities in achievement between women and men. In other words, “it is simply the HDI adjusted downward for gender inequalities. The greater the gender disparity in basic human development, the lower a country’s GDI compared with its HDI,” see United Nations *Human Development Glossary*.

<sup>138</sup> In the most recent report for the year 2002, Canada ranked twelfth on the HPI, fifth on the GDI, seventh on the GEM, and third on the HDI. ‘The Gender Empowerment Measure reveals the degree to which “women can take active part in economic and political life. It focuses on participation, measuring gender inequality in key areas of economic and political participation and decision-making. It tracks the percentages of women in parliament, among administrators and managers and among professional and technical workers—and women’s earned income share as a percentage of men’s. Differing from the GDI, it exposes inequality in opportunities in particular areas,” see United Nations *Human Development Glossary*.

Canada, in 1995, responded to the Beijing Platform for Action and the United Nations commitment to gender 'equality' with "Setting the Stage for the Next Century: The Federal Plan for Gender Equality (Canada *Setting the Stage* i).<sup>139</sup> This plan outlines Canada's national commitment to gender 'equality' in eight specific objectives. The primary objective of the plan is the implementation of a gender-based analysis throughout the policy process. This objective is the foundation of the plan, since it underpins subsequent objectives, which include improving "Women's Economic Autonomy and Well-being" (Objective 2) and "Women's Physical and Psychological Well-being" (Objective 3).<sup>140</sup> At this point in time, it is necessary to recognize that in Canada, the Governor in Council (in effect, the federal Cabinet) possesses the legal authority to sign and ratify international treaties (Canada *Senate Standing Committee*). However, the federal government does not have the authority to unilaterally implement international human rights commitments if provincial laws and policies are involved (Schneiderman). To respond to the issue of divided jurisdictional powers, the Canadian Government adopted the practice of consulting with the provinces and territories before signing and ratifying international treaties. In addition, most provincial and territorial governments have charters or codes guaranteeing equality between women and men; thus enabling the international strategy for gender mainstreaming an objective that Canada can accede to despite the division of powers between the federal, provincial, and territorial

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<sup>139</sup> From this point forward, the document will be referred to as the Federal Plan for Gender Equality.

<sup>140</sup> The final five Objectives in the Federal Plan for Gender Equality include reducing violence against women and children, promoting "gender equality in all aspects of cultural life," incorporating "women's perspectives in governance," promoting and supporting "global gender equality," advancing "gender equality for employees of federal departments and agencies. This chapter, however, will focus on the first three objectives; since the case of Louise Gosselin and Kimberley Rogers relate to economic, physical, and psychological well-being.

governments.<sup>141</sup> This being said, in May 1995, at the 14<sup>th</sup> Annual meeting of federal, provincial, and territorial Ministers Responsible for the Status of Women all representatives “agreed on the importance of having gender-based analysis undertaken as an integral part of the policy process of government” (Canada *Setting the Stage* 16). Thus far, the Governments in British Columbia, Newfoundland and Labrador and most recently Quebec (2000)<sup>142</sup> have begun to implement the gender-based analysis (Williams). In any case, issues of jurisdiction or other obstacles emanating from domestic law do not invalidate international treaty obligations once undertaken (Canada *Senate Standing Committee*). Accordingly, the question becomes, what is a gender-based analysis in the Canadian context and how will this approach to legislation, policies, and programs address gender inequalities, which for all intents and purposes are ultimately violations of women’s economic, social, and political human rights.

### ***‘Gender-Neutrality’ v. Taking Women and Men Into Account*<sup>143</sup>**

The contemporary definition of ‘gender-neutrality,’ as noted in the previous chapter, applied to policies, legislation, programs, and/or human rights, in theory, suggests that discrimination based on sex is absent, since explicit references to gender are not present; or if ‘generic’ references to men are used, then it is assumed that said references are

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<sup>141</sup> This being said, the issue of funding social programs clearly divides and causes dissension between the two levels of Government. This issue however is beyond the scope of this work.

<sup>142</sup> Prior to this commitment, Quebec initiated two pilot projects - one at the Ministère de la Santé et des Services sociaux, and the other at the Ministère des Finances. Beginning in 2000 the Ministère de la Solidarité sociale, the Ministère des Transports, the Ministère des Relations avec les citoyens et de l’Immigration, the Ministère de l’Éducation and the Ministère de la Culture et des Communications will also adopt a gender-based analysis as a “management approach.”

<sup>143</sup> In the working document entitled “Gender-Based Analysis: A Guide for Policy-Making” (1995), all references to “women and men, include girls and boys, as appropriate” and it is recognized that women and men are not homogenous groups and differ according to “age, ethnicity, level of ability, sexual orientation, socio-economic status, etc” (1). This thesis therefore adopts this approach, however examples will present data that is disaggregated beyond the category gender.

simply facts of grammar as opposed to linguistic remnants of a discriminatory 18<sup>th</sup> century ideology (Cameron 85). Nevertheless, recall, to attain a gender-neutral standard, “the reference must be completely free of either implicit or explicit allusions to gender or sex” (The American Heritage Dictionary). In reality, for this standard to be obtained, one cannot in anyway refer to human beings, since the human species consists of at least two genders and sexes. For example, a reference to ‘men,’ that purports to be gender-neutral cannot be gender-neutral by the above mentioned standard, since ‘men’ refers to the male gender either explicitly or implicitly depending on one’s interpretation. It is the same for women, although the idea of using women as a gender-neutral standard is not a common occurrence; this in contrast to the persistence of the idea that ‘men’ as a group can be gender-neutral when the category ‘men’ manifestly refers to a gender. Hence, the idea that policies, legislation, programs, and/ or human rights can be ‘gender-neutral’ is counter logical since each example profoundly affects the lives of women and men. According to Heather McIvor, “it is impossible to understand why a government passes a law, or does not pass a law, without examining the context in which the policy is made: the social, economic, and political context within which the political system operates” (307). Similarly, it is impossible to live a world that is so profoundly gendered and apply in good faith the principle of ‘gender-neutrality’ when for all intents and purposes it represents the well being of ‘men’ alone. This, idea, when applied to the concept of ‘gender-neutral’ human rights, according to Marilyn Waring describes a world in which on the one hand, women are for all intents and purposes excluded from ‘general’ international human rights guarantees; and on the other hand, a world in which men, not only benefit from international human rights guarantees, but are recognized for their



contributions to the societies in which they live and rewarded through parliamentary processes that are set up to 'neutrally' take their needs, wants, and desires into account (161-163).

This being said, the implementation of a gender-based analysis or gender mainstreaming explicitly recognizes that in practice, the outcomes of policies, legislation, programs, and/or human rights first, affect women and men and therefore cannot be neutral; and second, implicitly acknowledges the legacy of the social, political, and economic inclusion of the male gender and exclusion of the female gender from being taken into account in policies, legislation, programs, and human rights, which has led to discrimination and disproportionate adverse effects on the lives of women. This is particularly relevant when considering the impact of 'gender-neutral' fiscal policies on women's economic autonomy and well-being (as noted in Federal Plan for Gender Equality, Objective 2). Therefore, the gender-based analysis takes into account the "differential impact of proposed and/or existing policies, programs, and legislation on women and men" and effectively challenges the centuries long assumption that 'everyone' is affected by policies, programs, and legislation in a similar manner regardless of gender, that is, the a notion often referred to as 'gender-neutral policy' (*Canada Gender-Based Analysis* 4). In other words, gender-based analysis or the integration of a gender perspective provides a "tool for understanding social processes and for responding with informed and equitable options" by comparing "how and why women and men are affected by policy issues" (*Canada Gender-Based Analysis* 4). Thus, contrary to the idea of 'gender-neutrality,' which clearly does not take into account a long

history of hierarchically organized social, economic, and political relationships based on a gender ideologies that dictated the precedence of men over women; the integration of a gender perspective, in theory acknowledges differences between women and men in terms of “social realities, life expectations, and economic circumstances” and attempts to comprehensively address such differences at the “front end” of the process (Canada *Gender-Based Analysis* 4).

### ***Gender-based Analysis in Canada v. Gender Mainstreaming in the United Nations***

In this way, gender becomes an analytic tool for understanding social processes, which underpin social, economic, political, and material disadvantages and advantages in access to resources and power between women and men (Canada *Setting the Stage*).

Nevertheless, despite international human rights commitments to gender ‘equality’ and the implementation of a ‘gender-based analysis,’ an incrementalist approach continues to prevail in Canadian public policy; particularly where the advancement of gender equality is concerned. According to the federal government and the “socially included” public policy-makers (O’Connor 222), strategies that advance gender ‘equality,’ which admittedly help “women attain economic autonomy and well-being” are “not something that can be achieved overnight” due to the “complex economic, social, political, and cultural realities of today” (Canada *Setting the Stage* 2). In addition, Objective 1 of the Federal Plan and the Working Document entitled “Gender-Based Analysis: A Guide for Policy-Making”(1998) both stipulate that the Federal Government is “committed to...ensuring that all future legislation and policies include *where appropriate*, an analysis of the potential for different impacts on women and men.” The question becomes

what does “where appropriate” allude to exactly? Does this mean that women become an additional heading or a section in a Ministers briefing notes or a few points in a document dedicated to addressing the implementation of the human rights of *all* Canadians (*Senate Standing Committee*). Or maybe, using the proviso, “where appropriate” is a way to allow parliamentarians, policy-makers, and citizens for that matter, to continue to use the assumption of ‘gender-neutrality’ when clearly the United Nations has committed to gender mainstreaming,<sup>144</sup> which expressly states that “issues across all areas of activity should be defined in such a manner that gender differences can be diagnosed – that is, an assumption of gender-neutrality should not be made” (*General Assembly*).

### iii) **Canada’s Record: ‘Gender-Neutrality’ Facts and Figures**

#### ***Economic Inequalities and ‘Gender-Neutral’ Assumptions***

Over the past decade, Canada and other OECD members adhered to a collection of economic policies aimed at encouraging “macroeconomic stabilization, structural adjustments, and globalization of production and distribution” (Jenson 6). While, for the most part successful in supporting economic expansion, combating inflation, and reducing debt; the social sacrifices and human costs of such policies clearly reinforced social inequalities, as noted by the UN Committee on Economic, Social, and Cultural Rights (1998). In other words, the impact of ‘gender-neutral’ policies designed to eradicate deficits, high rates of inflation, and stalled growth on the economic side

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<sup>144</sup> Louise Frechette, the first Deputy Secretary General of the United Nations (1998), the highest ranking woman in the United Nations, in her capacity as Deputy Secretary General is charged with managing UN operations at Headquarters in New York and around the world and has publicly stated that her two objectives in this position are first, “to ensure that a gender perspective [is] taken into account in all UN resolutions and projects around the world” and second, to “ensure women were given a fair and equal opportunity for promotion to the highest levels of responsibility” (Frechette *First UN Deputy Secretary*).

translated into significant reductions in social programs directly affecting the poorest families in Canadian society, single parent families mostly headed by women (NAWL; Day). Moreover, these expansionary economic policies generated massive cuts to social housing, shelters for battered women, child abuse services, pay equity and employment equity programs, which continue to affect and violate the human rights of, for the most part, the most economically vulnerable groups in Canadian society; women and children (NAWL; Day). In this way, "one important fact is overlooked: women are especially dependent on, and affected by, the state and its policies...[since] women make up the majority of state employees: teachers, nurses, clerical staff, social workers... [and] are more likely to be unemployed or on social assistance" (McIvor 307). In other words, women more so than men (and for different reasons), are likely to be dependent on the state for employment or some form of material assistance; and as a result, government reductions in spending tend to affect women disproportionately, thereby exacerbating gender inequalities.

Nevertheless, public policy makers have assumed that this 'gender-neutral' economic policy model is *a rising tide that will lift all boats* and that the benefits trickle down to all: policy outcomes, however clearly demonstrates otherwise (Jenson and Philips 111-136). Similarly, assumptions that define women solely in terms of their relationships with men,<sup>145</sup> whether in terms of the labour market, women working as a secondary income (Bakker 1-33; Waring 161-163); or the tax system, the tax benefits of marriage (Young 1-

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<sup>145</sup> "The concept of heterosexism, by which many if not all societies operate basically assumes that "a woman's life will be organized around and defined in relation to a man." Heterosexism, "falsely presumes that all women will marry and have children, and that all worthy paths for women lead to marriage and motherhood." For a detailed elaboration of this concept, see Bauer 13.

33); or in terms of the social welfare system (Scott 7-36) are assumed to be unproblematic as opposed to being systemic barriers to women's economic autonomy and well-being, Objective 2 in the Federal Plan for Gender Equality. Thus, moving towards respecting international and domestic human rights obligations is not a technocratic goal; it is a political process that necessitates new ways of assessing social, economic, and political deficits created by social, political, and economic agendas that continue to use a 'gender-neutral' approach to public policies and programs.

'Gender-neutral' treatment of economic, social and cultural rights fails to uphold the international commitment to the equality of women and men, since this approach alleges that, as noted above, policy 'everyone' (Day). Gender-based analysis on the other hand, enables governments to incorporate the various realities of women and men's economic statuses in economic and social policies, for example (Bergeron-de Villiers 18). This in contrast to, programs designed to improve economic and social circumstances, which often benefit men the most, since "they do not consider or account for the gendered character of poverty" (Day). An example of this is noted in the Federal Government's working document entitled "A Gender-Based Analysis: A Guide for Policy-Making"; the situation described is how "young women on welfare are predominantly single mothers, while very few young men have family responsibilities" (14). In essence, this example outlines the different social and economic realities in which young women and young men live and how this ultimately affects their prospects in the labour market and ultimately, their well-being. A gender-neutral approach to such a situation, as noted above, would benefit young men since the primary focus would be on evaluating labour market needs and offering training in the field of science and technology a field which

has traditionally excluded young women; and for women with child care needs, this opportunity becomes even more remote. Hence, a 'gender-neutral' analysis, fails to take into account a legacy of economic exclusion that negatively affects the choices and opportunities of many young women, whereas a gender-based analysis takes such factors into account and can therefore respond with informed and equitable options.

This being said, women are poorer than men in every society, and as noted above, are poor for different reasons (UNDP *Human Development Report 1995; 1999; 2002*). Social, political, and economic inequalities are central facts in the lives of most women in every country and are indicative of gender discrimination (NAWL; Day). Women's persistent poverty and economic inequality are manifestations of several interconnected factors, including, as noted previously: "the social assignment to women of the unpaid role of caregiver and nurturer for children, men, and elderly people; the fact that in the paid labour force women perform the majority of the work in the 'caring' occupations and this 'women's work' is usually lower paid than 'men's work'... the economic penalties that women incur when they are unattached to men, or have children alone; and laws, policies and traditions which treat women as adjuncts to men" (Day). Hence, the question again becomes how can human rights violations continue to occur, particularly in a country that is so well positioned to promote and protect the human rights of *all* its citizens, women, men, girls, and boys (United Nations *Committee on Economic Rights*). Moreover, given Canada's international commitments to women's social and economic human rights; how, understanding that gender-based analysis can begin to create better public policies and begin to address over one hundred years of

gender discrimination, can a ‘gender-neutral’ approach continue to be an option under the auspices of the proviso “where appropriate”? In other words, who is benefiting and who is being left behind and why, and what are the longer-term social implications of economic policies that fail to factor in the human costs of gender inequalities?

#### iv) Public Policies: Who and What ‘Gender-Neutrality’ Obscures

##### *27418 Louise Gosselin c. Le Procureur général du Québec*

On December 11, 1986, Louise Gosselin filed a class action challenging “the validity of s. 29(a) of the Regulation respecting social aid (Québec), R.R.Q., 1981, c. A-16, r.1 (the “Regulation”) (Canada *Supreme Court*). The Gosselin case raises several issues regarding the human rights of Canadian women and men and the ways in which public policies affect the lives of those who have “exhausted” all of their entitlements (Pettiti and Meyer-Bisch 157-180). On a legal level, the Gosselin case alleges that the regulation violates Section 7<sup>146</sup> and Section 15<sup>147</sup> of the Canadian Charter of Rights and Freedoms as well as section 45<sup>148</sup> of Quebec’s Charte des droits et libertés de la personne. At the international level, Article 3 of the ‘Universal’ Declaration of ‘Human Rights’ protects the right to “life, liberty, and security of the person.” In essence, Gosselin argues that the above

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<sup>146</sup> Section 7 (Legal Rights) of the Canadian Charter of Rights and Freedoms states “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice,” see *Canada Charter*.

<sup>147</sup> Section 15 (Equality Rights) of the Canadian Charter of Rights and Freedoms states “(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability,” see *Canada Charter*.

<sup>148</sup> Section 45 of the Quebec Charter of Rights and Freedoms (Assistance financière) states “Toute personne dans le besoin a droit, pour elle et sa famille, à des mesures d’assistance financière et à des mesures sociales, prévues par la loi, susceptibles de lui assurer un niveau de vie décent,” see *Québec Charte*.

mentioned social assistance regulation violated her human rights by discriminating against her and others in her situation based on age and denied her the right to the basic necessities of life and an adequate standard of living (NAWL *Gosselin*). In terms of the gendered aspect of the lives of women on social assistance, the National Association of Women and the Law (NAWL) intervened “before the Supreme Court to argue that the Court must take into account the impact of clearly insufficient welfare benefits on women... [which] exacerbates women’s existing inequality, poverty and vulnerability to sexual and racial violence and discrimination” (*Gosselin*).

### ***Public Policies Have Consequences on Women’s and Men’s Lives***

In terms of governmental responsibility, the Gosselin case is about a public policy that drastically reduced the social assistance benefits of adults under the age of thirty living alone, who were considered as able to work (*Canada Supreme Court*). In other words, it is about a public policy that seriously jeopardized the well-being of this group of citizens; since it reduced social assistance from \$448 per month to \$163 per month, an amount far below the poverty line and an amount that ensured that Gosselin and others in her situation were forced to endure ‘extreme’ poverty in one of the wealthiest countries in the world. In Canada, extreme poverty for Louise Gosselin meant “it was impossible to eat, dress and have a roof over [her] head (NAWL). At that time, “a one-bedroom apartment cost at least \$320 a month [and] renting a room cost between \$180 and \$200 a month,” clearly beyond the assistance provided by the Government; thereby rendering recipients in such a situation, homeless (NAWL). For Gosselin personally, and many others in her situation, this public policy meant staying in shelters, and having to resort to prostitution



to survive. It also meant having “no change of clothes, no haircut, no soap or shampoo or deodorant,” thereby making it more difficult to seek employment (NAWL *Gosselin*). Later, upon being accepted into an employment program, poverty meant that Gosselin, “in order to dress and eat properly... stayed with a man for whom she had no affection but who, in exchange for her sexual availability, offered her shelter and food” (NAWL). The ramifications of extreme poverty in Canada extend beyond what is noted here today, the psychological, physical, and emotional trauma of this situation goes beyond what has been expressed and understood thus far. What is clear however, is that “poverty is more expensive” than the public and public policy-makers might believe, and “everyone pays the price” (Canada NCW *Poverty Is Costing*). According to a recent report (February 2002) by the National Council of Welfare, poverty in Canada increases health care costs and crime and decreases labour force productivity, human well-being, social cohesion, and the public’s confidence in governments and in the economy (*Poverty Is Costing*). With this, bear in mind, that “at no point between 1986 and 2001 did any province or territory provide welfare benefits that allowed welfare recipients to reach the poverty line” (Canada NCW *Poverty Profile*).

***Poverty as a Crime: The Kimberly Rogers Case, How Could This Happen In Canada?***

This being said, the Gosselin case, represents the first challenge to the blatant violation of the international, national, and provincial human right to a decent standard of living. The case was presented to the Supreme Court of Canada on October 29, 2001 and judgement the decision is pending.<sup>149</sup> The Court’s decision, according to many, “could very well

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<sup>149</sup> The Supreme Court of Canada reserved its decision on the Gosselin case. When a judgment is reserved, it means that the “decision of the Court has not been given at the hearing, but is postponed until a future date,” see Canada *Frequently Asked Questions*.

determine whether basic welfare benefits are a right or a privilege in Canada and Québec” (NAWL). Kimberly Rogers on the other hand, did not have the opportunity to pursue her constitutional challenge at the Supreme Court of Canada, however. On a legal level, the Rogers case alleged that the Government of Ontario policy that banned social assistance recipients from receiving benefits if “they... defrauded the system in anyway” (Small) inflicted “cruel and unusual punishment” (MacKinnon and Lacey F8). This policy, according to Rogers and her lawyers violates Section 12 (Treatment or Punishment) of the Charter of Rights and Freedoms. Section 12 states “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.” This right is also enumerated in Article 5 of the ‘Universal’ Declaration of ‘Human Rights,’<sup>150</sup> Article 7 of the ICCPR,<sup>151</sup> and Article 10 (2) of the ICESCR.<sup>152</sup> For Kimberly Rogers, the challenge will forever be unheard, since her punishment needlessly cost her, her child, and Canadian society two lives.

***Back to the Beginning: The Least Attention and Protection for those Who Need It the Most***

Kimberly Rogers was born in Sudbury, Ontario in 1961 and was raised in a working-class family by her mother, Myrel, and stepfather, Daniel Caetano (MacKinnon and Lacey F8). She moved to Toronto at 19 years of age and worked at various “pink

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<sup>150</sup> Article 5 of the Declaration states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

<sup>151</sup> Article 7 of the ICCPR states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

<sup>152</sup> Article 10 (2) of the ICESCR states “Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

ghetto”<sup>153</sup> jobs including being a receptionist, waitress, and bartender (MacKinnon and Lacey F8). In 1995, Rogers was forced to flee an abusive relationship and had returned to Sudbury. By 1996, Rogers was on social assistance and had hit rock bottom. Rogers, severely depressed, had attempted suicide. After surviving her suicide attempt, Rogers decided to change her life and return to school. There was no way for Rogers to afford this endeavour, since her social assistance left her with \$70 per month after paying her rent and tuition fees cost approximately \$2250 per year. To make a long story short, Rogers was caught after she had completed her degree, at the top of her class, in social work (MacKinnon and Lacey F8) At that time, Rogers pleaded guilty to the welfare fraud charge, a crime of poverty. What Rogers did not know at that time, was that she would be “automatically suspended from the welfare rolls” and would be sentenced to six months’ house arrest in the sweltering heat of an unforgiving summer (Gordon).

### ***Poverty and Punishment***

“Confined to her home, her rent due and the cupboard bare, five months pregnant and alone,” she sought legal help and charity to survive (Gordon). Toronto lawyer, Sean Dewart, argued Rogers’ situation puts her health and the health of her unborn baby at risk and because she was unable to leave her home to work directly put her life and the life of her unborn child in danger. Roger won an injunction that allowed her to receive social assistance benefits, while she mounted her Charter challenge (MacKinnon and Lacey F8). According to lawyer Grace Kurke of the Sudbury Legal Clinic, “this is probably the first time a court has ever agreed to an interim judgment on a charter challenge...it...is a

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<sup>153</sup> The “pink ghetto” refers to “women clustered in full or part-time positions with little power or influence...at the bottom of the hierarchy.” Low salaries and lack of career opportunities characterize the “pink ghetto,” see Centre for Gender in Organizations.

precedent” (Gordon). Despite this victory, in the end, Kimberly Rogers, who was eight months pregnant, and her unborn child died together on August 9<sup>th</sup> 2001. Rogers, for all intents and purposes received a death sentence for welfare fraud, a crime of desperation, a crime of poverty and most of all, a crime of attempting to escape the deprivation (of food, distractions, money, medication, and hope).

Amanda Chodura of the Elizabeth Fry Society “believes [that] the system failed Kimberly Rogers... she was not a criminal... [and] the word ‘persecution’ is not strong enough to describe what happened to her... this tragic case is a symptom of a government putting policies into place without doing any research... this should never have happened... two lives are over” (MacKinnon and Lacey F8). And, in Rogers’ own words in an affidavit in May, just two months before her death, she wrote “I still have no money to pay next months’ rent, and I am under considerable stress, I do not know whether or not I will receive the help I need, and currently live one day at a time. Emotionally, I am doing worse, and I worry all the time about how I am going to care for this child inside of me” (MacKinnon and Lacey F8). While Kimberly Rogers’ battle may have ended, those who support her; those who are outraged by public policies that dehumanized her and her unborn child; and those who suffer under these policies will not and cannot forget. The National Union of Public and General Employees and the Sudbury-based Committee to Remember Kimberly Rogers marked the first anniversary of Rogers’ Charter challenge “by launching a campaign to end the lifetime ban that Ontario has imposed on everyone who is convicted of welfare fraud” (NUPGE). In addition, Rogers’ lawyer Sean Dewart now represents three Ontarians, who are preparing to mount a Charter challenge that

invokes the “cruel and unusual punishment” argument as well as the argument that suggests that Ontario has infringed on federal jurisdiction by passing a criminal law (Small). In addition, after months of public outcry and political lobbying a public inquest in the death of Kimberly Rogers will be held beginning October 7<sup>th</sup> 2002 (Ontario).

### ***Judgement Reserved, Judgement Pending***

This chapter examined some of the changes and challenges regarding women and men’s human rights since the adoption of the ‘Universal’ Declaration of ‘Human Rights.’ What is clear from this exploration is that the ‘non-discrimination’ and ‘non-distinction’ approaches, that is what is often referred to as the ‘gender-neutrality’ failed to take into account, women’s human rights. This failure over time has led to the adoption of various measures to address the shortcomings of this approach, which basically as argued throughout this thesis, for the most part takes only men’s human rights into account. The ramifications of the ‘gender-neutral’ approach can be assessed in the various measurements and indicators of women and men’s well-being. It is quite telling when the ‘human development’ index situates a country in one position and the gender-related development index and the gender empowerment index reveal a completely different status. This is possible simply because the data is disaggregated to account for gender and what is revealed is gender discrimination. From this, the mainstreaming of gender moves beyond the measurement of gender disparities to address discrimination by strategically assessing the effects on women and men before decisions are made. In Canada, the federal government as well as the government of Quebec, British Columbia, and Newfoundland and Labrador have begun the process of implementing a gender-based

analysis as a management tool for generating increased efficiency and effectiveness of public policies. At the core of this discussion, beyond the idea of efficiency and effectiveness are the real life stories of how those, who have been and continue to be disproportionately vulnerable to violations of their economic, social, and political human rights. In this instance, the cases of Louise Gosselin and Kimberly Rogers demonstrate how women's susceptibility to economic dependence on the State can become Canadian violations of women's human rights (being the "best country in the world" for seven years, Canada can do better than this). Ultimately, such situations become political challenges to the ongoing use of 'gender-neutral' approaches to public policies, legislation, and programs, which in effect, reveal the ways in which the governments of Canada protect, promote, and/or violate the human rights of Canadian citizens.

...promises are necessary but not sufficient. –Mason Cooley

#### **IV. CONCLUSION: “PROMISES TO KEEP,” APPLYING LESSONS LEARNED (CANADA’S INTERNATIONAL LEADERSHIP OPPORTUNITY)**

##### ***Gender Mainstreaming the Way Forward***

The question today is the outcomes and effectiveness of over a half century of international and domestic ‘human rights’ commitments to protect and promote the inherent dignity and equality of *all* human beings. Clearly, the without ‘distinction’ or ‘discrimination’ models are in the process of change with the development and acceptance of gender mainstreaming at the international level. How this will affect the so-called general instruments of human rights law remains to be seen. Perhaps, the CLADEM approach, that is the re-conceptualization of the ‘Universal’ Declaration of ‘Human Rights’ from a gender perspective (1998) foreshadows some possibilities for what will evolve from this process. Similarly, the assumption of ‘gender-neutrality’ clearly in terms of women’s economic and social rights presents a severely flawed approach to public policy given the insights and commitments of the international community and the Canadian government, in this case. From this analysis, it is apparent from the literature and actions of the United Nations as an organization, that the implementation of gender perspective is focused and coordinated, particularly since the process is being overseen by the Deputy Secretary General of the United Nations, Louise Frechette. This approach has not materialized on the Canadian domestic front. This is apparent in the Report of the Senate Standing Committee on Human Rights entitled “Promises to Keep: Implementing Canada’s Human Rights Obligations,” which fails to identify the implementation of a gender-based analysis (Objective 1 in Canada’s Federal

Plan for Gender Equality); and in itself, scarcely takes account of women's human rights. Hence, when the Committee identified "the growing discrepancy between Canada's international human rights obligations and the measures actually taken to implement them," as a denial of the international human rights of Canadian citizens and at the same time, potentially "harmful" to Canada's "human rights reputation" the glaring absence of a gender perspective or minimally a commitment to implementing women's and men's human rights seemed shocking, yet quite telling of the prevailing approach to legislation, public policy, and programs; despite international leadership on the implementation of a gender perspective and Canada's own Federal Plan for Gender Equality.

i) **"Promises to Keep: Implementing Canada's Human Rights Obligations": A Brief Evaluation of the Standing Senate Committee on Human Rights Report**

According to the Report of the Senate Standing Committee on Human Rights, the first standing committee to exclusively address the human rights of Canadians, the first phase of human rights included the recognition of the concept of human rights and the domestic provision of legal protection for these rights. The second phase involved international development of instruments designed to ensure that *all human beings* benefit from the promise of a global human rights culture. The third phase returns to the domestic context and is characterized by the actual fulfilment of international human rights commitments. This phase, according to the Committee is the phase for which the Report is intended. Hence, the Report acknowledges the discrepancy between Canada's international human rights commitments and the actual implementation of measures to ensure observance of these obligations and sets the stage for the 'third phase' of human rights. At issue in this



‘third phase’ is how to actually implement international human rights law in a comprehensive and systematic way that ensures a ‘human rights’ perspective in public policies, programs and legislation. While the Report vaguely discusses “overarching concepts” of human rights, the “coalescing of various claims and interests,” and “the more generic notion of human rights we know today,” the context of this evaluation derives from the observation that prior to the constitutionalization of human rights in Canada, “organized labour, women’s rights movements, and other groups” lobbied the government for legislative change regarding “specific grievances” (*Canada Senate Standing Committee*). In this way, the Report reasserts a ‘gender-neutral’ approach to ‘human rights’ and consequently fails to acknowledge the issues that are at stake in the 21<sup>st</sup> century, a failure that is of particular concern given the potential importance of the Report. The question again is whose human rights (Rendel)?

## ii) **The Way Forward: From A Comparative Gender Perspective**

Therefore, at issue, as submitted throughout this thesis, is the use of ‘gender neutral’ language and values and assumptions that reinforce gender inequalities in international human rights law. This in effect means that the gendered character of economic, social and political relations from which public policy emerges, is for the most part, not a consideration, just as it was not a consideration for the Senate Standing Committee. In other words, many parliamentarians, public servants, and policy experts, still subscribe to the “myth of gender-neutrality” and believe that public policy outcomes are ‘gender neutral’ as well (Rankin and Vickers 28-29). This thesis challenges the concept of ‘gender-neutrality’ and reminds parliamentarians and policy-makers that *human rights*

*that do not include women are not human* and this should not be forgotten or left unsaid in any future analysis of women and men's human rights; and most importantly, it must be stated in *any and all* recommendations and actions aimed at effectively implementing both Canada's commitments to international human rights law and the Federal Plan for Gender Equality.

Lest we forget the pain and suffering of Louise Gosselin and Kimberly Rogers. And may we bear in mind the extraordinary courage of their desire to challenge that, which is ultimately unfair and unjust. Recall, women are poorer than men in every society, and they are poor for different reasons. Poverty is about the denial of opportunities and choices for the most basic human development and this is a public policy and human rights issue. And the only way to effectively address the gendered character of poverty and economic, social, and political inequalities is to take gender into account.

The preceding chapters have demonstrated that the idea of 'human rights' at first glance may appear to be a relatively simple and genderless concept. The political history of human rights, however, reveals that this is not the case. 'Human rights' from the beginning have been about women's human rights and men's human rights. And from the beginning, women's human rights have been matters for public debate and legislative challenges and men's human rights have been a matter of 'general' and 'gender-neutral' law. Similarly, the language of human rights and the drafting processes of these instruments clearly reveal how women's human rights matter word-by-word and paragraph-by-paragraph, while men's human rights are explicitly enumerated and

implicitly understood. Today, therefore, mainstreaming a gender perspective or implementing gender-based analyses is a matter of putting in place an assurance that human rights principles and public policies operate in fairness and justice, that is, beyond historic linguistic ideologies and alleged 'gender-neutrality.'

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