A Keen Eye for Cultural Diversity

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Catchy yet cryptic, the title of Professor Yvonne Donders' inaugural lecture set the tone for its actual content. *Human rights: eye for cultural diversity*. The title suggests that human rights are attentive to cultural diversity and that they are clear-sighted in how they relate to cultural diversity. These far-reaching propositions were recurrent Professor Donders' *oratie*, but her detailed, nuanced treatment of the propositions tempered them, and they became all the more persuasive for that tempering.

Professor Donders delivered her inaugural lecture, upon her appointment to the Chair of Professor of International Human Rights and Cultural Diversity, in the Aula of the University of Amsterdam on 29 June 2012. The focus of her Chair could hardly be more apt as her name has become synonymous with this specialisation in recent years, both in the Netherlands and internationally.

The inaugural lecture began with the exposition of "Donders' Law" - a knowing wink towards Yvonne's namesake, Professor Franciscus Donders (1818-1889), who was an eminent international scholar in eye physiology. Put simply, Donders' Law states that "no matter how the eye turns or moves, the three-dimensional position of the eye is always the same because of a correction mechanism in the brain". Carrying the same name and now endowed with an equivalent professorial title, Yvonne felt well-placed *and* well-qualified to adapt Franciscus' Law and apply it to international human rights. She thus announced her intention to demonstrate that: "the international human rights system, including its standards, norms and monitoring mechanisms, is the brain that ensures a steady multidimensional view, while allowing for the moves and turns that are necessary to accommodate cultural diversity".

Human Rights and Cultural Diversity

The relationship between the international human rights system and cultural diversity boasts many synergies, but it also has to overcome many frictions. Culture is, Donders explained, "not static, but dynamic; [...] not a *product*, but a *process*, which is influenced by internal and external interactions". It has objective and subjective dimensions as well as individual and collective dimensions. Culture is also, she cautioned, neither an abstract nor a neutral concept: it "may be a mechanism for exclusion and control, whereby negotiation and power structures play a role". Thus, it is important to ask "*who* decides which cultures and cultural aspects should be promoted and protected?" and as cultures are dynamic, "which interpretation of a certain culture, including cultural practices, should be followed?"
Donders' interim conclusion that the "broadness, complexity and sensitivity of culture are serious challenges in the integration of this concept into international human rights law" set out a path towards her announced central focus on the international human rights system. She followed that path through the terrain of "Universalism and Cultural Relativism" with a determined step. She argued that the "dichotomy between universalism and cultural relativism can be overcome by making a distinction between formal universality and substantive universality, between universality of application and universality of implementation, between universality of the subjects or beneficiaries and universality of the objects or norms". She added that the "universal *value* and *application* of human rights does however not necessarily imply the *uniform implementation* of these rights" and that "while human rights apply universally to everyone, the implementation of these rights does not have to be uniform and leaves considerable space for cultural diversity".

International Human Rights Standard-setting

This focus dealt primarily with the nature and impact of cultural reservations by States to various international human rights treaties. Such reservations are typically prompted by, and refer to, specific cultural or religious backgrounds pertaining in the States in question. Donders synthesised her key findings in this connection as follows:

> "Reservations therefore may be a useful and essential reflection of cultural diversity. Such cultural reservations, however, must be formulated in specific terms. They must explain the cultural or religious reasons behind the reservation, which determine the scope, content and consequences of the reservation. Moreover, cultural reservations have to pass the object and purpose test, to prevent them from going against the essential parts of the treaty".

International Human Rights Norms

This focus comprised the sub-focuses, diversity within equality, cultural rights and the cultural dimension of human rights. The first entailed the principle of equality – which recognises and ensures respect for cultural differences - as a vector for cultural

diversity. The second concerned human rights that explicitly "promote and protect cultural interests of individuals and communities" and are "meant to advance their capacity to preserve, develop and change their cultural identity". The third involved the many human rights that have a cultural dimension or cultural implications, such as the right to health (incl. religious and linguistic rights), the right to a fair trial (incl. linguistic rights), the right to a particular lifestyle, etc.

Monitoring Human Rights and Cultural Diversity

This focus drew on the earlier discussion of the perceived dichotomy between universalism and cultural relativism. Donders recalled the crucial importance of implementing human rights in ways that are cognizant of cultural diversity. She expressed her appreciation of the margin of appreciation doctrine, describing it as a "valuable means for [international human rights] supervisory bodies to allow states to diversify in the implementation of international human rights", subject to international supervision. She also underscored the importance of participation and impact assessment as the former can help to articulate claims for cultural diversity or different cultural interests and the latter can help to evaluate negative effects on cultural diversity or particular cultures.

No Blind Spot in the Conclusions

Drawing the main strands of her lecture together, Donders was mindful of the need to qualify - and sometimes temper - the potential and actual roles of cultural diversity in human rights law and discourse. For instance, she correctly insisted that "cultural practices that are clearly in conflict with international human rights law cannot be justified as a reflection of cultural diversity". Furthermore, the accommodation of diversity "cannot condone harmful cultural practices or the exclusion of certain categories of persons, such as women, from the enjoyment of human rights".

By the time Yvonne had repeated her earlier reformulation of Donders' Law, there was no doubt about either the keenness of her own eye for cultural diversity or the clarity of her vision for her future research orientation. *Zij had gezegd.*

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All quotations used in this article have been taken from the transcript of the inaugural lecture (and not the more detailed published version), which was kindly provided by Professor Donders.