
Troubling Universalized Human Rights: The Complexities of Identity and Intersectionality

Malia Lee Womack

Ph.D. Candidate

Ohio State University

<https://wgss.osu.edu/people/womack.48>

malia.lee.womack@gmail.com

Abstract: *One hundred ninety-three countries are members to the United Nations. A core function of the intergovernmental organization is to produce human rights treaties. The multilateral agreements define humanity and its needs through a universalizing approach that deduces subjectivity/individuality and homogenizes humans into shared identities. Some of the conventions are intended to protect all humans and others are designed to protect group rights. Each multilateral agreement produces a narrative about what it means to be human or a member of a particular human group. However, the universalized identity defined in each treaty is incomprehensive and fragmented. Universalization divides human needs along rigid lines. This approach creates an understanding of victimhood that assumes people experience human rights violations in the same way. Attention to intersectionality is majorly lacking in the homogenizing approach; a more complex understanding of identity is necessary. This manuscript argues for increased attention in human rights to intersectionality and its complexness, in order to address the intricate needs of diverse humans (especially those who are most subjugated). This paper also argues for a restructuring of the human rights system to allow oppressed groups agency to define their needs, design their rights, and oversee implementation of the provisions. Moving forward theories of rights practices must explore what types of legal frameworks and institutions are best equipped to meet the needs of all humans. Is it better to use a universal framework or a plurality of frameworks? Can universalism be redesigned to comprehensively address intersectionality and the complexities of identity, and if so, how should this design be constructed? What design will provide subjugated groups agency to define their needs and be core overseers of their rights? Human rights are not static and profound attention to intersectionality and complex personhoods can assure rights protect people who are otherwise marginalized.*

Key words: human rights; universalism; intersectionality; complexities of identities; group rights

One hundred ninety-three countries are members to the United Nations (UN). A core function of the intergovernmental organization is to produce human rights treaties. The multilateral agreements define humanity and its needs through a universalizing approach that deduces subjectivity/individuality and homogenizes humans into shared identities. Some of the conventions are intended to protect all humans and others are designed to protect group rights. Each multilateral agreement produces a narrative about what it means to be *human* or a member of a particular *human group*. However, the universalized identity defined in each treaty is incomprehensive and fragmented. Universalization divides human needs “along rigid substantive lines” (Bond, 2003, p. 72). This approach creates an understanding of victimhood that assumes people experience human rights violations in the same way (Bond, 2003). Attention to intersectionality is majorly lacking in the homogenizing approach; a more complex understanding of identity is necessary. Although human rights practitioners increasingly support universalizing rights, critiques about the lack of attention to intersectionality is also emerging in

the UN system (Simmons, 2011; Yuval-Davis, 2006).

The 1995 Beijing Declaration and Platform for Action, which was produced because of the Fourth World Conference on Women, is a groundbreaking document that prompted discussions of intersectionality in human rights (Yuval-Davis, 2006). The declaration discusses how women experience oppression differently depending on their varied identity traits. In 2000, the monitoring body for the UN's core anti-racism treaty, The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), also highlighted the importance of designing human rights from an intersectional perspective. The expert committee submitted General Recommendation Twenty-that advises countries to take a gendered approach when implementing the racial equality multilateral agreement (Yuval-Davis, 2006). Later that year in Zagreb, Croatia, the United Nations Division for the Advancement of Women, the United Nations Development Fund for Women, and the Office of the High Commissioner for Human Rights held a meeting that produced the Gender and Racial Discrimination Report (UN Women). The report informs that an intersectional approach to human rights is necessary, yet the document is not clear on how this approach should be modeled (Yuval-Davis, 2006). Furthermore, similar to General Recommendation Twenty-Five, the report predominantly only recognizes race and gender as what constitutes a person's intersectional identity (Division for the Advancement of Women, 2000). The pages below argue for increased attention in human rights to intersectionality and its complexness, in order to address the intricate needs of diverse humans (especially those who are most subjugated). This paper also argues for a restructuring of the human rights system to allow oppressed groups agency to define their needs, design their rights, and oversee implementation of the provisions.

Power Frameworks and the Intricacies of Identity

Group identities are commonly determined as static and biologically based but they are, in fact, historically and socially constructed. Such group rubrics are formed, constituted, and reconstituted due to human interaction and state behavior; as cultural and political practices evolve so do definitions of group identities (Benhabib, 2011). Group rubrics are shaped by institutions, organizations, legislation, government agencies, and family and community behavior (Yuval-Davis, 2006). The rubrics are also predominantly constructed by "the exploiters' side of the international [and domestic] division of labor" (Spivak, 1988, p. 75). The most privileged in society have the greatest ability to shape how group identities are defined and maintained. The most empowered will is the "collective, political will of the proletariat" (Buck-Morss, 1991, p. 290). Human rights are formed by hegemonic systems which deem some people (perhaps unconsciously) so inferior that they are not deserving of rights protections (Simmons, 2011).

Law is not applied evenly or universally. Rights protect specific individuals and leave others unprotected or underprotected. Law serves a hegemonic system of dominance and control (Simmons, 2011). In human rights, what appears to provide subjugated groups agency can be a mechanism for marginalizing and dominating these groups. The construction, interpretation, and implementation of human rights treaties is conducted by people from privileged backgrounds who are generally well educated, live in urban areas, and are from privileged classes and positionalities in their communities. Theorists about universalism most often emerge from nations that are and have been oppressors or from privileged classes in poorer nations (Nussbaum, 2000). Therefore, universalizing philosophy is another form of domination and colonialism (Nussbaum, 2000). Privileged groups possess agency to define the needs of less privileged beings. In fact, many populations in the latter group do not even know what human rights treaties their nation has ratified. The dominating "us" acts as a voyeur

concerned with “them” who are subject to an egoist, objectifying, pitying gaze (Lather, 1997). Since human rights are designed by elite actors and concentrate on universal needs, they abstract the concrete experiences of the most subjugated “others” whose identities are least recognized in the human rights hierarchy (Simmons, 2006).

While systems of power oppress identity groups there are also variations in experiences among such groups. For example, a *female identity* is not as knowable and unified as it is often perceived to be and cannot be easily defined due to there being profound differences among those who are appropriated (or strive to be recognized) under this category (Fuss, 1989). Similarly, a *Black identity* cannot be simplistically defined due to profound variations within this group rubric. There have been a range of scholastic attempts to define *Black womanhood*, however much of these attempts are problematic. A range of academic discourse about Black womanhood determines that people under this identity rubric face a “triple oppression” due to being women, Black, and impoverished (Yuval-Davis, 2006). This produces a narrow understanding of women who are Black that does not address the reality that first, while it is common for these women to be impoverished, not all women in this identity group are poor. Second, this narrow “triple oppression” understanding trivializes other experiences of people in the group rubric, for example in relation to their sexuality, gender performance, age, disability status, religion, nationality, ethnicity, immigration status, and geo-political location (Yuval-Davis, 2006).

Just as women who are Black have complex identities, all humans have complex subjectivities. People experience their identity in subjective manners including when they encounter discrimination and/or exploitation. There is a multidimensionality in identities; “categories of identity do not merely intersect; they mutually constitute one another. The meaning of race [is] influenced by the meaning of gender, and vice versa” (Cooper, 2008, p. 682). Similarly, every other identity trait a person possesses impacts all traits that constitute their personhood. “It is not so much that we possess ‘contingent identities’ but that identity itself is contingent” (Fuss, 1989, p. 104).

Moreover, people define their identities in a variety of ways which differs depending on when and for what reason their identity is being articulated. These definitions are shaped by factors including, but not limited to, their current state and environment, as well as how they experience their intersectionality, family, religion, communities, locality, nation, and a globalized society. “Self-ascribed identity is often multifaceted and fluid, and rarely is it completely voluntary, being constrained by societal norms and various power structures” (Simmons, 2011, p. 161). People are ever evolving beings and are impacted by their surroundings.

Even though all people are uniquely complex with intersectional ever evolving identities and individualized lived experiences, there are also concrete trends in identity groups’ socio-economic positionality and experiences. For example, the majority of people who are Black tend to be of lower socioeconomic status and women tend to be more impoverished than men (Yuval-Davis, 2006). Thus, despite the issues that arise when doing so, politicizing identities around narrow markers such as *race* or *gender* (or both) is useful in order to mobilize against oppression of certain groups. Discrimination and human rights abuses people endure is determined by their intersectional identities *as well as* identity hierarchies in a spectrum of power frameworks in the local, domestic, and global spheres (Bond, 2003). The manner in which diverse humans’ moral dignity is protected and basic human needs are met is based on historical, socio-economic, legislative, and political structures of oppression, subjugation, and privileging certain group identities while exploiting others.

Strategic Essentialism

Oppressed groups mobilize around narrow identity markers they share with other beings in order to combat subjugation of their shared identity trait. These activists strategically essentialize an element of their identity through a cultural lens to empower themselves against systems of oppression. For example, activists of color commonly essentialize their race through a cultural (not biological) lens to combat historical, social, and political adverse practices that generate and maintain racial inequality. This strategy is utilized to influence adverse cultural ideologies and practices. "Strategic essentialism in this sense entails that members of groups, while being highly differentiated internally, may engage in an essentializing and to some extent a standardizing of their public image, thus advancing their group identity in a simplified, collectivized way to achieve certain objectives" (Eide, 2010, p. 76).

Strategic essentialism, when utilized to advance the political goals of a group identity, can improve people's lived experiences. However, there are also limits to the strategy. The approach is used in human rights to mobilize around oppression of group identities, yet over-homogenization of collective identities invisibilizes the oppositions and competitions within such identities (Benhabib, 2011). Mobilizing around basic group rubrics has proven to privilege the needs of some groups over others under the rubrics. For example, organizing around a racial marker usually prioritizes the needs of men under the marker unless it is qualified as female. When strategic essentialism is used, there is a constant risk of "playing into the hands of those whose essentialism is more powerful than their own" (Eide, 2010, p. 76). Subjugated people also have an internalized hegemonic understanding of their subjecthoods/needs due to them constantly being appropriated by oppressors. Narrow identity markers marginalize particular people under the group rubric in question and delegitimize their needs which form due to their intersectional and less privileged identities. "Individuals do not experience neatly compartmentalized types of discrimination... rather, individuals experience the complex interplay of multiple systems of oppression operating simultaneously in the world" (Bond, 2003, p. 76). It is problematic when one part of a person's identity is recognized while other parts are not (Fuss, 1989). This leads to a hierarchy of identities within one human subject which does not recognize the complexity of their experiences due to their intersectional identity (Fuss, 1989). Therefore, identity groups "deemed worthy of legal recognition remains a contentious matter in all debates on group rights, and has consequences for *which* collective rights groups are deemed entitled" (Benhabib, 2011, p. 51). Nevertheless, strategic essentialism has been a source of empowerment to mobilize against adverse state and cultural behavior and the institutionalization of prejudices such as racism and sexism. Essentializing identities in relation to their historical and socio-political constructs has generated meaningful political effects despite the issues with this approach (Fuss, 1989).

Redesigning Human Rights to Address the Needs of Intersectional Beings

As explored above, (1) identity groups are historically, politically, and culturally constructed; (2) people within identity groups are diverse and have complex intersectional identities; (3) people exist within systems of power that oppress them in ways that intersect with other people's experiences; (4) strategically essentializing group rubrics is a source to mobilize against oppression but also prioritizes the needs of the most privileged beings in the group rubric in question.

What does this all mean for human rights? Universalizing *human* or a *group identity* cannot adequately reflect the needs of diverse beings who experience discrimination and rights violations in unique manners due to their intersectional personhoods and subjectivities (Bond, 2003). Human rights

treaties are a site of failure. “The current theoretical foundations, organization structure, and practices of the United Nations... does not permit a nuanced human rights analysis that [accounts] for multiple forms of human rights abuses occurring simultaneously” (Bond, 2003, p. 74). Metaphorically speaking, the United Nations is a culture industry that perpetually cheats its consumers (global citizens) of what it promises (to protect their human dignity) (Adorno & Horkheimer, 2016). The UN does not fulfill its promises because they are void of a comprehensive definition of humanity. Universalizing identity invisibilizes the complex nature of human suffering and produces a narrow understanding of human need that is ineffective in protecting diverse populations. The approach as it is currently operationalized assures the human rights system is one of oppression and domination in which some groups’ desires and needs are recognized while those of others are not or are marginalized. The system “impedes the development of autonomous, independent individuals who judge and decide consciously for themselves... [such development is] the precondition for a democratic society” (Adorno, 1975, p. 17). Democracy requires that all people see themselves as law creators as well as those who obey laws; democracy must circulate throughout all areas of society (Benhabib, 2011).

There is hope. Just as identity groups are continuously redefined due to state practices and cultural behavior, human rights treaties are also not static. The treaties are *alive* because they are in constant evolution due to them being repeatedly reinterpreted; they exist as complex dialogues in the international and domestic spheres (Benhabib, 2011). Human rights evolve due to political and institutional practices based on negotiation, communication, and justification (Benhabib, 2011). However, increased attention to intersectionality is crucial. It is vital to reinterpret the governing policies to better address the needs of diverse populations. This paper advocates for the reconstruction and restructuring of the human rights system so that it prioritizes intersectional needs, the diverse nature of human identity, and desires for particular kinds of rights by people who are most in need of them.

People must object to adverse universalizing utopian ideals that are hegemonic, imperialist, and anti-democratic. It is necessary to revise the human rights hierarchy so that subjugated intersectional beings’ have the agency to define their needs rather than having their needs defined by the privileged actors that currently dominate the construction, interpretation, and implementation of the conventions (Simmons, 2011). Paternalism must be avoided in order to refrain from informing people what rights they most need when, in fact, oppressed groups are most capable of determining their needs (Nussbaum, 2000). In the current framework, the most subjugated beings are instructed about their humanity rather than having the agency to define their humanity and their rights. Universalism, as it is practiced, marginalizes diverse world views and the complex history of discourses and contestation among people (Benhabib, 2011). The human rights system should utilize valuable diverse perspectives among oppressed groups about their basic needs. Subjugated beings must define their fundamental rights (Simmons, 2011). They should also be core participants in overseeing the implementation of the provisions rather than the current hierarchal system operated by privileged actors.

Theorists have only recently begun to examine whether the human rights movement can “accommodate a complex, nuanced understanding of human rights violations” (Bond, 2002, p. 73). Moving forward, theories of rights practices must explore what types of legal frameworks and institutions are best equipped to meet the needs of *all* humans (Benhabib, 2011). Is it better to use a universal framework or a “plurality of different though related frameworks” (Nussbaum, 2000, p. 40)? Can universalism be redesigned to comprehensively address intersectionality and the complexities of identity, and if so, how should this design be constructed? What design will provide subjugated groups

agency to define their needs and be core overseers of their rights? Human rights are not static and profound attention to intersectionality and complex personhoods can assure rights protect people who are otherwise marginalized.

References

- Adorno, T. (1975). Culture industry reconsidered. Translated by Anson Rabinbach. *New German Critique*, 2(1), 12-19.
- Adorno, T., & Horkheimer, M. (2016, November 30). The culture industry: Enlightenment as mass deception. *Dialectic of Enlightenment*. Translated by Andy Blunden, Marxist.Org, 1944. Retrieved from www.marxists.org/reference/archive/adorno/1944/culture-industry.htm
- Benhabib, S. (2011). *Dignity in adversity: Human rights in troubled times*. Cambridge: Polity Press.
- Bond, J. (2003). International intersectionality: A theoretical and pragmatic exploration of women's international human rights violations. *Emory Law Journal*, 52(1) 71-186.
- Buck-Morss, S. (1991). *The dialectics of seeing: Walter Benjamin and the Arcades Project*. Cambridge, MA: The MIT Press.
- Cooper, F. R. (2008). 'Who's the man?': Masculinities studies, *Terry Stops*, and police training. *Columbia Journal of Gender and Law*, 18(3), 671-742.
- Eide, E. (2010). Strategic essentialism and ethnification: Hand in glove? *Nordicom Review*, 31(2), 63-78.
- Fuss, D. (1989). *Essentially speaking: Feminism, nature, and difference*. London: Routledge, 1989.
- Division for the Advancement of Women. (2000). Gender and racial discrimination report of the expert group meeting. *Gender and Racial Discrimination*, 21-24 November 2000, Zagreb, Croatia.
- Lather, P. (1997). Drawing the line at angles: Working the ruins of feminist ethnography. *International Journal of Qualitative Studies in Education*, 10(3), 285-304.
- Minh-ha, T. T. (1989). *Woman native other: Writing postcoloniality and feminism*. Bloomington, IN: Indiana University Press.
- Nussbaum, M. (2000). *Women and human development: The capabilities approach*. Cambridge: Cambridge University Press.
- Simmons, W. P. (2011). *Human rights law and the marginalized other*. Cambridge: Cambridge University Press.
- Spivak, G. C. (1988). Can the subaltern speak? In P. Williams and L. Chrisman, (Eds.), *Colonial discourse and post-colonial theory: A reader*. New York, NY: Columbia University Press, (pp. 66-111).
- UN Women. (2016). About UN Women. United Nations. Retrieved from www.un.org/womenwatch/daw/daw/
- Yuval-Davis, N. (2006). Intersectionality and feminist politics. *European Journal of Women's Studies*, 13(4), 193-209.