UNIVERSALITY: RECOGNIZING THE RIGHT TO HAVE RIGHTS

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ABSTRACT

A starting point of this Article is the dissonance between the idea that human rights adhere on the basis of being human ("universality"), and the lack of access to those rights as a practical reality for many, sometimes resulting in activism and campaigning. It critically explores the political contingency of universality by revisiting Hannah Arendt's concept of the right to have rights. As a fundamental political act in modernity, the right to have rights is posited as the recognition of politico-legal personhood, which is key to unlocking universal, indivisible, and interdependent rights. Under international human rights law nation states are the key institutions for the recognition and fulfilment of rights. By infusing the political act of the right to have rights with a recognition paradigm, and adding other elements from psychoanalysis, identity theory, and sociology, it is possible to address questions such as – who is recognized as belonging to the rights fulfilling community? The model advanced here applies to those whose key social identity is given meaning by human rights. In addition, by considering human rights identities fleshed out in various recognition spheres (family, society, state), the Article interrogates the consequences of misrecognition, partial recognition, and non-recognition in terms of rights and activism. On the one hand, it sets out a normative account of a properly functioning rights society. But by reading in theory and empiricism from the social sciences, it demonstrates the consequences for rights where these recognition processes fail. In this account, recognition of the individual as a politico-legal person is considered the pinnacle of recognition relations. Moreover,

being regarded as belonging to the world of rights opens the horizon of universality. However, the politico-legal sphere of modernity in its current form is presented as highly exclusionary because the intersubjective dimensions of recognition in human rights are not properly acknowledged. If the political contingency of recognition was better understood, this could act as a touchstone for expanded recognition to marginalized groups. Thus, human rights activism and campaigns for universal rights are framed as socially mediated through these recognition relations. Success, measured as "universality" or unlocking the right to have rights, is actually contingent on whether the rights fulfilling body recognizes the claimants in their human rights identities. A new frame for human rights activism could be a simple appeal: the right to be seen as human.

INTRODUCTION

This Article explores relational elements of human rights and human rights activism. It does so by looking at social recognition processes on three different levels, arguing that politico-legal recognition as a human bearing rights is essential to universality. This recognition paradigm presents a new and original critique of universality through the adoption identity theory, psychoanalysis and other lenses. Furthermore, it argues that politico-legal recognition unlocks the enjoyment of "universal", indivisible, and interdependent rights. This picks up and builds on Hannah Arendt's concept of the right have rights. In the *Origins of Totalitarianism*, Arendt

famously critiqued the "Rights of Man," in which ""humanity" has in effect assumed the role formerly ascribed to nature or history," because in Arendt's view, this signifies that "the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself."[2] Arendt was doubtful as to whether this was at all possible and concluded that rights are in fact alienable when they lose their political context. Thus, the key focus of analysis shifts to the right to membership of a community because this is seen as a precondition to all other rights.

This Article takes up Arendt's challenge by providing an understanding of how membership of a political community can be understood through recognition processes. While her critique pointed to the political contingency of rights recognition as an objective fact, the current analysis also examines subjective conditions that could lead to opposition consciousness should recognition of rights be withheld by the state. It is a timely addition to the theoretical canon on human rights and provides a roadmap for new avenues of research and empiricism. Challenges to universality generally do not present normative alternatives but this thesis outlines possibilities for expanded recognition relations and by engaging in these complex issues creatively, it opens the door to future conversations about human rights normativity and universality.

Many contemporary human rights struggles are campaigns for recognition as belonging to humanity equal in rights to others. Yet, identity and recognition processes connected to human rights activism remain underexplored. Fighting for universal rights is both shaped by and constitutive of identity formation processes pivoted towards recognition by rights granting institutions. Human rights activists, rights defenders, people whose rights have been violated, people advocating for themselves or on behalf of others – a fundamental tenet of their campaigning is this central identity claim – I

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[2] Hannah Arendt, THE ORIGINS OF TOTALITARIANISM (1951), 378.

am (or they are) human too, seeking recognition as belonging to a human rights society without gradations. Recognition is envisaged as a political act exercised by a rights granting body. Presented as human rights identity activism, the framework in Section II conceptualizes several stages of identity formation across different socio-political spheres (family, community, state) in this orientation. Applying social theory to human rights in this way is important because it illuminates how defective or failed recognition galvanizes human rights activism and it details the significance of community membership for politico-legal recognition.

Modern international human rights law mandates that UN member states fulfil the role of recognizing everyone subject to their jurisdictions, by virtue of their humanity, as having access to universal human rights on par with others.[3] However, universality drawn from natural law misses the political contingency of rights recognition, which leads to a frustrating gap between the conceptual claims to universality and the egalitarian enjoyment of social goods or rights on the ground.[4] Human rights identity activism attempts to bridge that gap when petitioners seek recognition of their universal rights, which is essentially membership of the rights fulfilling community, thus cashing in on the hypothetical social compact promised by universality. Rather than affirming universality as "natural" or inalienable, rights recognition processes are considered as social and political in their subjective and objective dimensions. Regarding the social dimension of rights recognition claims, the parameters are fleshed out by perspectives on inter-subjective relations drawn from

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[3] Jack Donnelly, *The Relative Universality of Human Rights*, 29(2) HUMAN RIGHTS QUARTERLY 281, 282 (2007). *See* the Preamble to the Universal Declaration of Human Rights, "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), hereinafter Universal Declaration of Human Rights.
[4] Lord Hoffman, *The Universality of Human Rights*, Judicial Studies Board Annual Lecture (19 March 2009).

psychoanalysis, identity theory, sociology, and symbolic interactionism. A nexus to the political act of rights recognition is established by reading recognition and identity theory into the right to have rights as an alternative way to illustrate the political contingency of human rights universality.

The first part of this essay sets out recognition processes engaged in three different spheres, from family and small group level to politico-legal recognition by the state, before crafting a vision of an idealized rights recognizing society. This is then critiqued by a deeper exploration of issues connected to recognition. The theory then folds back onto human rights identity activism, with the final section querying how defective recognition leads to resistance and the demand for recognition as belonging to humanity.

Looking at universality through the prism of social, legal, and political recognition leads to interesting conclusions regarding rights recognition processes. Liberal theories of atomised individual rights-bearing units fail to take account of the inter-subjective elements of rights recognizing and rights-fulfilling communities. Yet, problems with politico-legal recognition inhibit the full flourishing of a rights respecting egalitarian society. The theoretical scaffolding presented here could be supplemented by empirical research examining the stages of recognition in human rights identity activism. These novel insights on the intersubjective dimensions of claiming rights can help the frame the theoretical agenda for rights recognition scholarship and activism.

I. RECOGNITION IN DEFENCE OF HUMAN RIGHTS?

While there is no agreed definition as to who exactly is a human rights defender, the Preamble to the 1998 UN Declaration on Human Rights Defenders notes "the

valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals".[5] Subsequent articles detail certain characteristics of human rights activism which engages UN recognition and protection.[6] First, that activities are conducted through peaceful means; second, that activism is consistent with the juridical framework of human rights, and finally, a related criterion – that defenders accept human rights as being "universal, indivisible, interdependent and interrelated".[7] Thus, acceptable human rights activism within the UN system is disciplined and oriented towards moral universals. Rather than attempt to verify whether human rights defenders operating within the UN maxim actually accept universality, the essay imagines an abstract rights claimant whose recognition campaigns are textured by equality and non-discrimination as principles and moral codes for their activism. It is hypothesized that equality and non-discrimination can shape intersubjective relations in the movement to rights recognition. Moreover, this allows an alternative to universality by offering access codes to the rights fulfilling political community.

When considering the efficacy of human rights mechanisms and associated discourses, it is impossible to ignore the wide gap between the normative landscape of human rights and practical access to human rights.[8] Empiricism has emerged from a range of different disciplines to interrogate the conditions under which the ratification of human rights treaties results in enhanced protection of human rights on the ground.[9]

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[5] UN GA A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (8 March 1999).
[6] *Id.*, *see* also Articles 12 and 13.
[7] Alice M. Nah, Karen Bennett, Danna Ingleton, James Savage, *Research Agenda for the Protection of Human Rights Defenders*, 5 J OF HUMAN RIGHTS PRACTICE, 401, 403 (2013).
[8] Oona A. Hathaway, *Do Human Rights Treaties Make a Difference*, 111 YALE LJ 1935 (2002).
[9] Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does it make a Different in Human Rights Behaviour?* 36 J OF PEACE RESEARCH 95 (1999); Ryan Goodman and Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EJIL 171 (2003); Emilie Hafner-Burton and Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*,

In these studies the correlation between domesticization and compliance is found to be weak or non-existent, though Eric Neumayer does suggest more positive practices within strong democracies that have robust civil societies.[10] This gap between human rights norms and reality occurs at a time when there is near universal ratification of the main human rights treaties by UN member states, yet rights violations persist and vast swathes of the human population are excluded from protection.[11] By interrogating this dissonance, it is possible to comprehend entry points to politico-legal personhood.

The Universal Declaration of Human Rights asserts that "everyone has the right to recognition everywhere as a person before the law".[12] However, a lack of politico-legal recognition by the state jeopardizes this and other "inalienable" rights. Recognition claims have become the central focus for human rights identity activism. In highlighting the distance to universality, such essential questions are posed: who is recognized as a rights-bearer by the rights fulfilling state? Who is granted politico-legal personhood? Who is included or excluded from the political community where rights are enjoyed? How can politico-legal recognition be expanded?

This challenge to universality is not an abandonment of human rights normativity, which is still considered the most useful common language for the moral ends of increasing personal autonomy and freedoms. In *The Human Condition*, Arendt uses the Greek city-state, *polis*, as a metaphor for political community. By *polis*, she means not the city-state in its geographic or physical location, but as the "organization of the people as it arises out of acting and speaking together, and its true space lies

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110 AMERICAN J OF SOCIOLOGY 1373, 1411 (2005); David Forsythe, HUMAN RIGHTS IN INTERNATIONAL RELATIONS (2018).

[10] Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?* 49 J OF CONFLICT RESOLUTION 925 (2005).

[11] Wade Cole, Mind the Gap: State Capacity and the Implementation of Human Rights Treaties, 69(2) INTERNATIONAL ORGANIZATION 405 (2015).

[12] Universal Declaration of Human Rights, Article 6.

between people living together for this purpose, no matter where they happen to be."[13] Thus, *polis* is the organized community that results from humans coming together, sharing words and actions in the public realm. Revisiting and reimagining Arendt's *polis* or the politico-legal sphere in the context of human rights activism suggests that the right to have rights is politico-legal recognition, and from that recognition flows the enjoyment and availability of human rights to everyone within that political community.[14]

It is also clear that there are socio-economic consequences to recognition and the idea that "means are limited, disappointment is inevitable" is just a smokescreen for the current neoliberal order characterized by the exclusion of the many, allowing for the gross accumulation of capital in the few.[15] Whereas these patterns evince political decision making that perpetuates rampant social inequalities, recognition relations could be framed by the goal of equality without discrimination. Nonetheless, it seems evident that signalling how recognition unlocks the right to have rights should be accompanied by a thesis on distributive justice, which is unfortunately beyond the scope of this Article but such work has been advanced by Nancy Fraser, Samuel Moyn, Amartya Sen and others.[16]

Attempting to bridge the divide between universality and political recognition, the framework in Section II illuminates the path to rights recognition in political and juridical life. Unlike other conceptual developments on universality, the rights recognizing society is conceived through social theory on inter-subjective recognition

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[13] Hannah Arendt, THE HUMAN CONDITION (1958), at 198.
[14] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 16.
[15] Michael Ignatieff, HUMAN RIGHTS AS POLITICS AND IDOLATRY (2001).
[16] Nancy Fraser and Axel Honneth, REDISTRIBUTION OR RECOGNITION? A POLITICAL-PHILOSOPHICAL EXCHANGE (2003); Samuel Moyn, HUMAN RIGHTS IN AN UNEQUAL WORLD (2018); Amartya Sen, *Equality of What?* The Tanner Lecture on Human Values (22 May 1979).

and identity processes. Identity formation processes are shaped by interpersonal recognition relations on different social and political spheres. Many commentators see these forms of inter-subjective recognition relations as occurring in the family, in society, and the state. In the first stage, the formation of self and subjectivity occurs through interpersonal recognition by primary care givers, which is evidenced by incorporating child psychology, object relations theory, and psychoanalysis into the analysis (Section II.(A)). Somewhat departing traditional recognition frameworks, the Article argues that people become increasingly individuated and autonomous next through recognition in the social sphere of solidarity groups (Section II.(B)).[17] This stage of human subjectivity is worked through by reference to microsociology, symbolic interactionism, and identity theory. Understanding the social world of small groups reveals how micro domains impact identity formation, and how social identities and reference groups make up civil society. The subjects of concern here are claimants whose social identity is driven to recognition by rights fulfilling bodies. The salient role identity is thus textured by claims to universality, and ideas about reciprocal commitments to equality and non-discrimination are also advanced.

The framework is contoured to identity formation processes theorized both as underpinning and shaped by activism oriented towards universality. Thus, it is submitted that after primary inter-subjective recognition from our primary caregivers and small social groups, the ultimate sphere of recognition occurs when the individual is recognized as having universal rights. While the primary recognition relations form the essential foundations for human flourishing, access to universality through politico-legal recognition suggests entry to Arendt's *polis*. From a human rights and democratic theory perspective this is the most egalitarian form of recognition, where everyone

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[17] Such as Axel Honneth, THE POLITICS OF RECOGNITION (1995).

recognizes everyone else's rights and entitlements.[18] Normatively, this signals the subject's equal access to social goods called rights. The politico-legal institutionalization of reciprocal recognition among equals occurs in a properly functioning rights regime. According to Arendt, society is a completely inter-relational sphere of politico-linguistic existence occurring as a result of humans being speaking beings. Rights are political products, and as stated above, Arendt demonstrated how the right to have rights is actually a precondition to the enjoyment of all rights.[19]

A normative account of progressive inter-subjective relations in a hypothetical society underpinned by universal rights builds from the framework. Section III sets out what a human rights society according to current thinking on human rights normativity and universality should look like. Section IV analyzes the social reality of misrecognition, partial recognition, or complete disavowal of rights when human identities are not recognized. The work queries why many are not recognized within the politico-legal realm, and suggests that this is due to a failure of inter-subjective recognition by the rights fulfilling agency and results in people being unable to access universal rights because recognition relations have not unlocked their right to have rights. This lack of recognition by rights fulfilling bodies demonstrates the political contingency of "universal" rights, which was astutely observed by Arendt with respect to stateless persons.[20] Furthermore, human rights defenders and rights claimants are galvanized in a grey zone between conceptual "universality" and rights recognition, and the final section considers the socio-political forces that shape campaigns for recognition of universal rights. Drawing from subjectivist, historical, and empirical studies, the section shows how defective recognition can form the motivational basis of

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[18] Universal Declaration of Human Rights, Articles 1, 2, 3, 6, 7 and 8.
[19] Hannah Arendt, THE ORIGINS OF TOTALITARIANISM (1951).
[20] *Id.*, 351-368.

the struggle for rights recognition. It interrogates the mechanisms through which defective recognition relations can mobilize human rights defenders and activists to action, while at the same time critically evaluating how an individualist account of subjectivity can be knitted with objectivist accounts of societal progress. A strand of thinking is developed that queries the motivational substance of defending human rights and human rights activism. When an understanding of the self as a rights-bearer equivalent to all other rights-bears in society is fundamental to the individual's identity construct but politico-legal recognition of this identity is withheld, this forms the basis of the struggle for recognition. Collective resistance, however, does not always or automatically proceed from experiences of disrespect or defective recognition, and there are other variables, subjective and objective, that may contribute to a capacity for rights activism and an "oppositional consciousness" in these social justice recognition struggles for universality.[21]

II.   AN INTER-SUBJECTIVE FRAMEWORK OF RECOGNITION RELATIONS
A. DYADIC/FAMILIAL RECOGNITION RELATIONS

The development of a self is predicated on inter-subjective recognition through our primary dyadic and familial relationships. Love represents the first stage of reciprocal recognition, "because in it subjects mutually confirm each other with regard to the concrete nature of their needs and thereby recognize each other as needy creatures".[22] Unconditional love and an orientation towards our objects of affection shape this realm of recognition. We are fundamentally social beings, who develop

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[21] Renante Pilapil, *Disrespect & Political Resistance: Honneth and the Theory of Recognition*, 114 THESIS ELEVEN 48, 57 (2013).
[22] *See* Honneth, *supra* note 17, at 65.

through our meaningful engagements with other subjects. [23] At first, there is an "interpersonally active infant"; a baby who seeks recognition from a secure caregiver as essential to infant development.[24] It is considered that inter-subjective recognition naturally frames the emergence of self through dyadic relations within the family.[25] Against the affinity for inter-subjective socialization with a nurturing other, the naturalness of whom that should be, in terms of biological sex, is a historically grounded human construct and really has no bearing on the dynamics of subjectivity via recognition.[26]

To comprehend these primary recognition relations in the context of the Article's framework, this section relies on the inter-subjective views of the self provided by psychoanalysis. Contemporary psychoanalysts, such as Jessica Benjamin and Donna Orange, have crafted their inter-subjective theories on the basis of clinical observations, empiricism drawn from early communication and developmental studies, and attachment research.[27] In this scholarship, inter-subjectivity signifies a relationship of mutual recognition,[28] which "is established by directed attention from others".[29] Thus, the self and the other represent an existential symbiosis and the development of self-consciousness occurs when recognition is given by the caregiver – a critical milestone in infant development.[30] Mutuality in inter-subjective theory means that the

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[23] Jessica Benjamin, THE BONDS OF LOVE: PSYCHOANALYSIS, FEMINISM, AND THE PROBLEM OF DOMINATION (1988).

[24] Jessica Benjamin, *The Bonds of Love: Looking Backward*, 14 STUDIES IN GENDER AND SEXUALITY 1, 4 (2013); Nancy Chodorow, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER (1978).

[25] Universal Declaration of Human Rights, Article 16.

[26] Allison Weir, SACRIFICIAL LOGICS: FEMINIST THEORY AND THE CRITIQUE OF IDENTITY (1996), at 44.

[27] Donna Orange, *Recognition as: Intersubjective Vulnerability in the Psychoanalytic Dialogue*, 3 INTERNATIONAL JOURNAL OF PSYCHOANALYTIC SELF PSYCHOLOGY 178 (2008); Jessica Benjamin, THE BONDS OF LOVE: PSYCHOANALYSIS, FEMINISM, AND THE PROBLEM OF DOMINATION (1988), *see* also Melanie Klein, LOVE, GUILT AND REPARATION AND OTHER WORKS 1921-1945 (1975); John Bowlby, *Attachment theory and its therapeutic implications*, 6 ADOLESCENT PSYCHIATRY 5 (1978).

[28] *See* Benjamin, *supra* note 23.

[29] Kelly Oliver, WITNESSING: BEYOND RECOGNITION (2001), at 26.

[30] *See* Orange, *supra* note 27.

other must also be recognized for the self to experience full subjectivity. Infancy research reveals mutuality in these early experiences, showing infants to be, "active participants who help shape the responses of their environment, and "create" their own objects".[31]

Benjamin theorizes that subjectivity occurs through relationships with others and in these encounters, the self meets another who is recognizably a subject in his or her own right.[32] For Benjamin, inter-subjectivity re-orientates us from a view of the psychic world as a subject relating to an object, to a subject meeting another subject. Mutual recognition is "that response from the other which makes meaningful the feelings, intentions, and actions of the self. It allows the self to realize its agency and authorship in a tangible way".[33] Reflecting on her earlier work, Benjamin notes that mutual recognition does not connote symmetrical or identical experiences and that these intersubjective relations can accommodate "a great deal of difference or asymmetry in identities".[34]

Kelly Oliver has asserted that loving attention in this personal sphere has an analogue at a social level, and that an individual or group cannot develop a sense of social purpose or social agency "without a loving social space" in which to articulate that agency and meaning.[35] Thus, while the crucible of individual autonomy and agency occurs in the personal sphere, the development of agency remains incomplete and becoming independent continues in a "loving social space," which could also be interpreted as one's chosen community of support.[36]

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[31] *See* Benjamin, *supra* note 23.
[32] *Id.*
[33] *Id.* at 16.
[34] *See* Benjamin, *supra* note 24, at 8.
[35] *See* Oliver, *supra* note 29, at 43-44.
[36] *See* Honneth, *supra* note 17, at 107.

Though there is an assumed naturalness to these unconditional inter-subjective recognition relations, it is probable that some conditionality is implicated in these early inter-subjective exchanges. For example, recognition could be infused with moral codes about what is right and wrong. Furthermore, these nascent bonds may fray or be marred by dysfunction. It would be an overstatement to suggest that these recognition relations are shaped by ideas of equality or not unfairly discriminating against others, even if this framework covers an idealized rights claimant tilted towards these principles. Nevertheless, for the purposes of the normative account elaborated in Section III, an emphasis on the functional is required. In any event, growing autonomy from intersubjective relations continues beyond the home.

B. RECOGNITION WITHIN SOLIDARITY GROUPS

Sociology provides us with a range of community formation theories based on ideas of intimacy, solidarity, commitment, and identity.[37] Sociological perspectives generally pattern three categories of societal analysis at micro (dyadic, familial), meso (small group), and macro (state) level, which largely map the recognition framework proposed here.[38] This aspect of the recognition framework evaluates the sociology of small groups, arguing that these groups are critical for the production of shared meaning, inter-subjective recognition relations, and social commitment - elements that drive the motivational basis for social activism.[39] Using Émile Durkheim as a springboard, a microsociological approach considers the local context of small groups and how dynamics within these intimate spaces constitute the micro-foundations of civil

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[37] Edward Lawler, Shane Thye, and Jeongkoo Yoon, SOCIAL COMMITMENTS IN A DEPERSONALIZED WORLD (2001).
[38] Claire Forstie, *A New Framing for an Old Sociology of Intimacy*, 11 SOCIOLOGY COMPASS 1 (2017).
[39] International Covenant on Civil and Political Rights, Article 27.

society.[40] Within communities of interest the "collective conscience" of the generalized other is a mediator of identity.[41]

Gary Fine provides incisive meso-level analysis of small groups, arguing that micro-communities to "which we feel allegiance actively shape self-definitions".[42] Brooke Harrington and Gary Fine regard small groups as "groups that depend upon personal (typically face-to-face) interaction with the recognition by participants that they constitute a meaningful social unit".[43] Size is relevant to determining what constitutes a small group, though a critical determinant is whether members of the collective know each other as individuals. Small groups are significant to social order because they create a behavioural and linguistic space in which civil society is enacted. The role that small solidarity groups play in civic engagement and social action will be picked up as a thread of analysis. This subjectivist account of the social world is incorporated into the recognition framework because it explains how micro-domains are involved in identity formation, and the attachments that people have to small groups allows us "to understand how public identities develop and how individuals use these identities".[44] Identity is a cornerstone of social ordering, textured by the local context and "referential interaction with influential communities".[45] Thus, social identity and civic society are mutually constitutive through processes that occur within micro-communities.

[40] Anthony Giddens (ed.), EMILE DURKHEIM: SELECTED WRITINGS (2002); *see* also Randall Collins, INTERACTION RITUAL CHAINS (2004).

[41] Michael Ryan, *Collective Conscience*, in George Ritzer (ed.) ENCYCLOPAEDIA OF SOCIAL THEORY (2005).

[42] Gary Fine, *Group Culture and the Interaction Order: Local Sociology on the Meso-Level*, 38 ANNUAL REV. SOCIOLOGY 159 (2012).

[43] Gary Fine and Brook Harrington, *Tiny Publics, Small Groups and Civil Society*, 22 SOCIOLOGICAL THEORY 341, 343 (2004).

[44] *Id.* at 343.

[45] *See* Fine, *supra* note 42, at 162.

But what specific mechanisms give rise to inter-subjective recognition relations within micro-communities of interest? How does the small group anchor the reflexive self? To understand this social ontology, it is necessary to turn to the realm of symbolic interactionism. A key point of departure for Anna Riley and Peter Burke is the assumption that humans communicate through significant symbols and shared meaning structures.[46] The "self" is a crucial meaning construct that develops through social interaction between the individual and society – people arrive at self knowledge through their interactions with others. Symbolic interactionists like George Herbert Mead have identified mechanisms that lead to the emergence of the reflexive self. In society with others, the meaning of self is a shared meaning. The social self (or Mead's "Me" construct) is reflected by interaction partners as a symbol or object, and selfhood occurs when "I" can take the role of the other in apprehending "Me" as object.[47] Peter Burke and Jan Stets detail this view, "it is when one's self is encapsulated as a symbol to which one may respond, as to any other symbol, that self-control becomes possible and the "self" emerges".[48]

Within the space of a small social world, key meaning constructs such as norms, values, beliefs, and performances are shared.[49] But also self-verification processes that commenced in the safe haven of the familial unit form multi-layered identity constructs within our different reference groups. It is important not to regard the inner "I" as an unthinking receptacle for exogenous social values, as this could lead to an existential crisis – the end point surely being the dissolution of self. Instead, consider that within the matrix of micro-communities the apprehension of the self as object is a key

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[46] Anna Riley and Peter J Burke, *Identities and Self-Verification in the Small Group*, 58 SOCIAL PSYCHOLOGY QUARTERLY 61 (1995).
[47] George Herbert Mead, *The Social Self*. in F. Carreira da Silva (ed) G.H. MEAD: A READER (2011).
[48] Peter Burke and Jan Stets, IDENTITY THEORY (2009), 9-10.
[49] *See* Lawler, Thye and Yoon, *supra* note 37.

structuring framework providing stability across the many different reference domains in which we interact. Of course, some affiliation groups are more salient to our dynamic identity construct, perhaps due to the specific solidarity group's values that infuse the self as object leading to greater consonance with the inner "I".[50] Identity is considered fluid, not static, and identity theory explains the ways in which our social identity arises "through the shared perspective of others" in local contexts.[51] In addition, strong affiliation necessary for the stability of the reflexive self can motivate behavioural change and encourage adherence to accepted standards. Finally, such a microsociological perspective can help us to understand how identity formation in the local situation leads to social commitment and social activism.

Recognition essential for identity formation occurs through shared symbolic systems for interpreting the social situation that are linked together through multiple interlocking points.[52] Identity theory proposes an interesting control system through which the self is verified and social structures established. From the symbolic interactionism tradition, identity theory views the self, "not as an autonomous psychological entity but as a multifaceted social construct that emerges from people's roles in society"; permutations to self-concepts are linked to the different social roles people occupy.[53] Thus, the meaning standard of a social role creates a set of expectations for behaviour deemed appropriate by others. A person's commitment to a particular role is indicative of the importance of that particular identity to them. According to Hogg et al, commitment to a particular role identity is deemed to be high if "people perceive that many of their important social relationships are predicated on

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[50] *See* Fine, *supra* note 42, at 162.
[51] *Id*. at 167.
[52] Axel Honneth, *Recognition and Justice: Outline of a Plural Theory of Justice*, 47 ACTA SOCIOLOGICA 351 (2004).
[53] Michael Hogg, Deborah Terry and Katherine White, *Identity Theory and Social Identity Theory*, 58 SOCIAL PSYCHOLOGY Q 255, 256 (1995).

occupancy of that role".[54] Role identities imply action, and identity theory provides a persuasive account of the motivational basis for behaviour. In essence, feedback about the self from the social situation needs to roughly correspond with internalized self-concepts already integrated into the identity standard. The model's account of motivation is premised on the need to maintain consistency between "external self-relevant feedback" and "internal self-relevant feedback," and that role performance can be modified to synthesize these two sets of standards.[55]

Compatible role performances can sustain and verify one's identity standard in a self-verification feedback process. When the perceived self-relevant meanings are congruent with self-views, this has positive results leading to feelings of efficacy, mastery, and self-esteem. Burke and Stets have demonstrated that commitment to the social group is elicited in an affirming self-verification process.[56] On the other hand, a failed self-verification feedback loop produces feelings of distress, discomfort, and dissatisfaction.[57] Burke and Stets theorize that the subjective experience of dissonance resulting from differences between the meaning standards produces an "error signal," and under such conditions there is strong motivation to reduce the error signal and the according feelings of distress and depression.[58]

Shortly the analysis will return to the specific mechanisms upon which identity theory predicts social action after some general observations drawn from subjectivist microsociological accounts of collective action. Erving Goffman considers local contexts as providing the "cultural basis for action".[59] Small groups are shapers of action in various ways, specifically, according to Harrington and Fine, by defining

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[54] *Id.* at 258.
[55] *See* Riley and Burke, *supra* note 46, at 61.
[56] *See* Burke and Stets, *supra* note 48, at 349.
[57] Peter Burke, *Identity Processes and Social Stress*, 56 AM. SOCIOLOGICAL REV. 836 (1991).
[58] *See* Burke and Stets, *supra* note 48, at 350.
[59] Erving Goffman, *The Interaction Order*, 48 AM SOCIOLOGICAL REV 1 (1983).

which social issues would merit a civic response, and thereafter providing people with the platform and resources for mobilization.[60] Thus, they conceive of the small group as historically being a "locus of tactical innovation in civic activism".[61] Identity formation in the solidarity group is an observable microsociological phenomenon according to Fine, which enhances the individual's commitment to the group and strengthens social cohesion.[62]

In addition, identity theory provides us with a paradigm through which the nexus between identity formation via self-verification and role performance or social action can be understood. As mentioned above, an error signal in the identity control system signifies a negative subjective experience, and there is a strong motive to reduce distress through a range of behavioural and cognitive mechanisms.[63] For the purposes of this Article, a social world (the micro-situation with relevant interaction partners) is conceptualized where key meaning constructs or norms of justice, equality, and non-discrimination circulate. The critical social role identity is the self as a bearer of rights or as a rights defender. However, the external self-relevant feedback from the social world is not in accordance with the rights defending, rights bearing identity standard. As this feedback process is crucial to the self's identity standard, if there is a mismatch between the external feedback and the internalized identity standard, modified role performance or behavioural adjustments can be anticipated in order to reduce dissonance.

Turner has observed that in such situations, individuals may intensify their self-presentations to sustain the self.[64] Other responses to dissonance between external self-

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[60] *See* Fine and Harrington, *supra* note 43, at 344.
[61] *Id.*
[62] *See* Fine, *supra* note 42, at 173.
[63] *See* Burke and Stets, *supra* note 48, at 349.
[64] Jonathan Turner, *Toward a Sociological Theory of Motivation*, 52 AM SOCIOLOGICAL REV 15 (1987).

relevant feedback and the identity standard include withdrawal, switching to another salient role identity instead, selective interpretation of the interaction partners' feedback, or changing one's identity standard. Because the social role identity as a human with rights is so significant to the petitioners at the centre of this enquiry, the subjective experience of being disavowed of rights by external input (defective recognition) may lead to human rights activism and civic engagement (though not always in predictable ways due to a range of other variables that affect mobilization).

What then is the link between recognition via self-verification processes at the meso level and politico-legal recognition within the *polis*? Meso level analysis focuses on micro-communities, finding that "[s]ocial structures depend for their tensile strength on groups with shared pasts and imagined futures, that are spatially situated, that create identification, and that are based on enduring relations".[65] Civil society is constituted by these micro-communities – the groups where people are socialized and identities form. These micro-cultures can be ephemeral and not always harmonious, and, at times, orientated towards larger society and macro level reference standards. Though it is not necessary to view centralized government as some kind of macro or supra level institutional monolith (this would require engaging a theory of power), because the highest level of recognition is conceived as politico-legal recognition, and because state governments are the only interaction partner normatively mandated by international human rights law to respect and fulfil everyone's rights within their jurisdictions, it makes sense to focus on this critical interaction partner in the ultimate recognition sphere explored next.

C. POLITICO-LEGAL RECOGNITION IN THE *POLIS*

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[65] *See* Fine, *supra* note 42, at 160.

The final stage of recognition occurs within the politico-legal sphere of the *polis* where individual legal personality is recognized.[66] From a human rights and democratic theory perspective this is the most egalitarian form of recognition, where everyone recognizes everyone else's rights and entitlements. Normatively, this signals the subject's right to equal access of social goods. The politico-legal institutionalization of reciprocal recognition among equals occurs in a properly functioning rights regime. Politico-legal personhood is conceived as the Arendtian political person of speech and action.[67] For Arendt, entry into the sphere of equality does not simply occur due to natality – biological birth as human (natural justice arguments). Society is a completely inter-relational sphere of politico-linguistic existence occurring as a result of humans being speaking beings. Rights are thus political products and participation in a common political world is a precondition to the enjoyment of all human rights.[68]

Egalitarian recognition occurring in the *polis* is conceived here as essential to human dignity. That is to say non-recognition and exclusion from the *polis* signifies the negation of human dignity, the latter understood as intimately linked to inter-subjective recognition. This is a departure from the concept of dignity in modern human rights law which assumes that rights proceed from the "inherent dignity of the human person".[69] Thus, the Article diverges from natural law narratives: humans are not born in or with dignity. Human dignity is realized through recognition relations that function cumulatively, reaching full term in politico-legal personhood.[70] This approach aligns to

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[66] International Covenant on Civild and Political Rights, Article 16.

[67] Alison Kesby, THE RIGHT TO HAVE RIGHTS: CITIZENSHIP, HUMANITY, AND INTERNATIONAL LAW (2012). See Lida Maxwell, in Stephanie deGooyer, Lida Maxwell, Samuel Moyn, Alasteir Hunt and Astra Taylor, THE RIGHT TO HAVE RIGHTS (2018), p. 48.

[68] Christoph Menke, *Dignity as the Right to Have Rights: Human Dignity in Hannah Arendt*, in Düwell M, Braarvig J, Brownsword R and Mieth D (eds) THE CAMBRIDGE HANDBOOK OF HUMAN DIGNITY: INTERDISCIPLINARY PERSPECTIVES (2014).

[69] G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

[70] Christoph Menke, *The "Aporias of Human Rights" and the "One Human Right": Regarding the Coherence of Hannah Arendt's Argument*, 74 SOCIAL RESEARCH: AN INTERNATIONAL QUARTERLY 739, 752 (2007).

Christoph Menke's interpretation of Arendt, when he observes that dignity is not a natural property to which humans are endowed, but rather "it consists in nothing other than their politico-linguistic existence: their speaking, judging, and acting as faculties, which they have essentially through, with, and in relation to others".[71] Thus, Arendt and Menke maintain that politico-linguistic existence is the ontology of social order – the essential form of human existence and the human condition. These theories of inter-relational recognition in the public square can be further developed by drawing in subjectivist accounts from recognition theory, identity theory, and symbolic interactionism.

In practice, the categorization suggested here does not necessarily mean three neat, incremental stages of recognition leading to legal personhood and democratic citizenship. The picture is messier; processes may overlap or occur simultaneously, and individuals move in unpredictable and unchartered ways through these realms of recognition. Some individuals or groups of individuals never experience the full benefits of the *polis* due to oppression and withheld recognition.[72] And critically, pathologies can enter the fabric of recognition relations in any stage, leading to devastating impacts on human subjectivity and identity.

The injuring of recognition relations animates many contemporary struggles against social injustices.[73] Whereas acknowledgement reconciles us to the world, non-recognition alienates us, and according to Costas Douzinas, the "[l]ack of recognition or misrecognition undermines the sense of identity, by projecting a false, inferior or defective image of self".[74] Honneth understands structural domination in society as

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[71] *Id.*, at 339.

[72] Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN L REV 1241 (1990-1991).

[73] *See* Honneth, *supra* note 52.

[74] Costas Douzinas, *Identity, Recognition, Rights or What Can Hegel Teach Us About Human Rights?* 29 J OF LAW & SOCIETY 379 (2002).

pathological, or in Jean Paul Sartre's nomenclature – neurotic recognition relations. Examining the colonial state, Sartre views interactions between settlers and the colonized as marked by asymmetrical recognition. [75] In essence, the colonialist apparatus only fully recognized the colonials as human beings to whom rights attached, while the "natives" were denied the title of humanity on "the principle that the native is not one of our fellow-men".[76] This pathological distortion of recognition relations is complicated and involves "the simultaneous denial and maintenance of relationships of mutual recognition" from both sides.[77] Interaction was maintained by a fundamental contradiction whereby the colonials laid claim to, while simultaneously denying, the humanity of subaltern people. Thus, the colonized were prevented from accessing "that very exclusive club, our species". [78] The sociological substrate of colonialism is dysfunctional inter-subjective recognition relations.

Defective recognition can be seen as a form of oppression as it does not allow for its victims to be recognized in their concrete and unique selves.[79] Taking a cue from Charles Taylor who views non-recognition and misrecognition as forms of harm and oppression that can imprison "someone in a false, distorted, and reduced mode of being," it is submitted that contemporary defence of human rights occurs in conditions where politico-legal recognition has failed and human rights defenders and activists mobilize against non-recognition or withheld recognition, misrecognition, and/or partial recognition.[80]

Modern societies are founded on the notion of the legal and moral accountability of their individual members. In Hegel's metaphysical order this meant that legal norms

[75] Jean Paul Sartre, *Preface*, in Frantz Fanon, THE WRETCHED OF THE EARTH (1963), at 7.
[76] Jean Paul Sartre, *Preface*, in Albert Memmi, THE COLONIZER AND THE COLONIZED (1965)
[77] *See* Honneth, *supra* note 17, at 157.
[78] *See* Sartre, *supra* note 75, at 17-18.
[79] Iris Young, JUSTICE AND THE POLITICS OF DIFFERENCE (1990), at 56.
[80] Charles Taylor, THE POLITICS OF RECOGNITION (1992), at 25.

and institutions crucially influenced personality development. Mead considered this type of self-understanding as derived from seeing "oneself from the perspective of the generalized other".[81] Essentially, full human subjectivity or self-consciousness is a dialogical social process linked to legal subjection. In principle, inter-subjective recognition in the public domain occurs because legal relations "obligate every subject to treat all others according to their legitimate claims".[82]

For Hegel's abstract legal subject, this stage of recognition equates to autonomy and freedom, insofar as the individual appreciates that he is the bearer of "universalizable rights".[83] Autonomy increases, becoming real when universal laws and socio-political institutions "give content to reason, shape our personality, and give substance to our moral duties".[84] This type of autonomy comes about by conscious awareness of the self as bearer of universal rights and part of humanity. Honneth argues that once we see ourselves as a member of a community of rights bearers, we are self-conscious legal subjects insofar as we are certain that our legal claims will be assured. But who can enter the echelons of universal legal subjectivity? Feminist theorists posit that the prototypical rights bearer is gendered male.[85] Critical race theorists understand the invisible privilege of whiteness as automatically conferring rights and freedoms to whites within this constructed racial hierarchy.[86] Kimberlé Crenshaw apprehended the

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[81] *See* Honneth, *supra note 17*, at 79.
[82] *Id.* at 50.
[83] *See* Douzinas, *supra* note 74, at 382.
[84] *Id.*
[85] Diane Otto, *Disconcerting "Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law*, in Doris Buss and Ambreena Manji (eds), INTERNATIONAL LAW: MODERN FEMINIST APPROACHES (2005) at 105; Ivana Radacic, *Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law*, 14 UCL JURISPRUDENCE REVIEW 238 (2008); Hilary Charlesworth, *The Public/Private Distinction and the Right to Development International Law*, 12 AUSTRALIAN YEARBOOK OF INTERNATIONAL LAW 190 (1992); Hilary Charlesworth, Christine Chinkin and Shelley Wright, *Feminist Approaches to International Law* 85 AM. J. INTERNATIONAL LAW 613 (1991).
[86] Kimberlé Crenshaw, Neil Gotanda, Garry Peller and Kendall Thomas, CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (1996).

aggregate effect of multiple obstacles that compound exclusion from the *polis* in her theory of intersectionality.[87] In this Article's framework, recognition or defective recognition affects whether one encounters a permeable membrane or a barrier at the point of entry to the *polis*. Before rights and entitlements attach, one has to be recognized as legitimately belonging to the rights conferring community.

In effect, "the universal" is truly the pinnacle of a hierarchy of legal subjectivities. A closer examination reveals a critical disjuncture or dissonance between the explanation of how legal personality should function normatively, and the praxis of unfulfilled legal recognition, rights violations, and ineffective claims. Now it well could be that this dissonance is a result of failed recognition. But if this is the case, we should be honest enough to admit that all our societies are organized along gradations of recognition – with full legal subjectivity being the purview of a privileged few. Unrealized politico-legal subjectivity is conceptualized as an awareness that the self, possessing certain characteristics linked to identity, cannot actually enjoy this personhood, despite being human.[88] This type of identity formation arises from a negative positing.[89] Human rights defenders fighting for legal recognition operate within this zone of dissonance, or in the nomenclature of identity theory – they attempt to reduce the error signal resulting from a mismatch between external self-relevant feedback from the social world and the individual's own identity standard.

III.   A NORMATIVE ACCOUNT OF POLITICO-LEGAL RECOGNITION

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[87] Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43(6) STANFORD LAW REVIEW 1241 (1991).

[88] Costas Douzinas, *The Poverty of (rights) Jurisprudence*, in Costas Douzinas and Conor Gearty (eds), THE CAMBRIDGE COMPANION TO HUMAN RIGHTS LAW, at 56; *See* Arendt, *supra* note 2, at 370.

[89] Wendy Brown, STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY (1995).

Rights are social products – to be enjoyed in society with others. T.H. Green argues that there are no rights independent of society, so rights do not attach to people individually or in social isolation.[90] Green further contends that rights only exist "in a society where men recognize each other as equal".[91] Full human subjectivity occurs with the unhindered enjoyment of human and legal rights through several interrelated strands of recognition. People who are socialized in moral codes that suggest having universal rights signifies belonging to the human family seek recognition of their own rights in this type of identity activism. The discourse of our age, human rights are politico-linguistic meaning constructs produced by the generalized other that become codified and legally institutionalized. Substantively, the right must have a justifying element or a moral principle, which is widely accepted and endorsed by society.[92] In addition, these social rights are integrated into the practices of organized societies through the codification of legal rules. Thus, the key institution for politico-legal recognition is the government or state. David Boucher, in his examination of idealist thought on the subject, notes that rights are inextricably linked to social recognition, and that without recognition there are no rights.[93] The analysis next turns to an examination of the individual rights-bearer to consider how the social subject comes into being and develops the highest relation-to-self through politico-legal recognition.

In his reading of recognition theory, Douzinas concludes that having rights is a key recognition element "necessary for the constitution of a full self".[94] Humans exhibit a basic and complex need for acceptance, expressed in the various spheres of

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[90] Rex Martin, *Human Rights and the Social Recognition Thesis*, 44 J OF SOCIAL PHILOSOPHY 1 (2013).
[91] David Boucher, *The Recognition Theory of Rights, Customary International Law and Human Rights*, 59 POLITICAL STUDIES 753, 756 (2011).
[92] *See* Martin, *supra* note 90.
[93] *See* Boucher, *supra* note 91.
[94] *See* Douzinas, *supra* note 74, at 390.

recognition.[95] One is recognized as a member of humanity when seen as a rights-bearer – of great significance for the development of the public self. Rights recognition correlates to the subject's self-conception as an accepted member of the community. This thesis posits that the inter-subjective assurance of being a member of the human community through the recognition of rights is constitutive of the individual's experience of dignity. Not only crucial for identity formation processes, it also signals a flourishing form of personal autonomy for human rights identity activists.

Taylor observes that the formation of an individual's identity "is closely connected to positive social recognition-acceptance and respect-from parents, friends, loved ones, and also from larger society".[96] Both Honneth and Douzinas regard legal recognition as leading to self-respect; the reason that rights facilitate the development of self-respect is due to the public character of rights that bestow certain behavioural expectations on the bearer "that can be perceived by interaction partners".[97]

The model proposed here is that equality and autonomy are unlocked through politico-legal recognition as an individual having rights. To have rights means to be recognized as having rights, and this inter-subjective recognition forms the fabric of human dignity, equality, and universality – politico-legal recognition essentially unlocks all unalienable and indivisible human rights. Liberation occurs when one's right to rights is recognized and one has equal access to the same rights and freedoms as everyone else.

In this indealized universalistic legal system, people extend respect to each other through the recognition of each other's rights.[98] A politics of equal respect is at the

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[95] Stephen Rockefeller, *Comment*, in Amy Gutman (ed), MULTICULTURALISM (1994), at 97.
[96] *Id.*
[97] *See* Honneth, *supra* note 17.
[98] Axel Honneth and John Farrell, *Recognition and Moral Obligation*, 64 SOCIAL RESEARCH 16, 20 (1997).

centre of most theories of legal subjectivity in modern societies.[99] What this means is that rights-bearers mutually recognize each other, and understand "themselves as fully dependent on each other and, at the same time, as fully unique and particular".[100] Relations of symmetrical esteem between autonomous subjects form the basis for social solidarity. An egalitarian society is assured by balanced reciprocal recognition relations, and all societies are underpinned by a matrix of recognition relations. A cooperative nexus of recognition relations between rights-bearers means that individuals will be aware of what obligations they possess vis-à-vis other members of society. Equivalence in these patterns of recognition relations is a cornerstone of social cohesion; the relevant social and moral codes of the generalized other perpetuate human subjectivity via socialization inter-generationally. The high point of recognition relations in modernity occurs as a result of the institutionalization of rights within the apparatus of state. Thus, the state represents the generalized other in recognizing people within its jurisdiction as rights-bearers and, of course, the state also has the resources and capacity to guarantee and grant rights.[101]

The preceding paragraphs explain how recognition relations ought to operate in a properly functioning human rights society knitted together by rights-bearing role identities. However, there is a critical disjuncture between norm and praxis, arguably this type of egalitarian recognition society does not exist in fact. That is to say, in practice, not everyone is recognized as having rights, which is a key argument sustained in this Article. As such, participation on the basis of universality may actually lead to exclusions because universalism cannot accommodate the radical distinctions and differences between individuals and groups at their points of entry into the politico-

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[99] Charles Taylor, *The Politics of Recognition*, in Amy Gutman (ed), MULTICULTURALISM (1994), at 68.
[100] *See* Douzinas, *supra* note 74, at 394.
[101] *See* Martin, *supra* note 90, at 5.

legal recognition sphere, nor take account of power relations. These distinctions may be linked to identity formation processes; politico-legal recognition signifies "acknowledgment of specificity", validation and acceptance of difference while committing to equality, and affirmatively removing any obstacles or disadvantages so that "others" can enter the realm of inter-subjective recognition relations on par with everyone else.[102]

The problem, however, is that social hierarchies have already infused the spirit of the generalized other because of its drive towards "normalcy", leading to the concretization of an idealized rights-bearer automatically granted recognition – the human rights subject as an autonomous "masculine individual," with access to resources and/or "achievements" in his name that allow him to operate in the recognition plane with his "equals".[103] In organized societies this schema informs the practice of politico-legal recognition by the state. Thus, individuals possessing characteristics or distinctions from the following non-exhaustive list: sex, gender, sexual orientation, race, disability, socio-economic disadvantage, and/or being a member of a non-dominant marginalized minority, may encounter barriers to full politico-legal recognition.

To be denied politico-legal personhood and "prevented from participating as a peer in social life" has some troubling consequences for subjectivity and identity formation.[104] This manifests as the experience of rights being misrecognized, the partial recognition of rights, or the non-recognition or denial of rights. Human rights activists and defenders essentially fight for their claimants' equal right to politico-legal

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[102] *See* Fraser, *supra* note 16, at 38.
[103] Diane Otto, Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law,' 18 THE AUSTRALIAN YEARBOOK OF INTERNATIONAL LAW 1 (1998); Diane Otto Everything is Dangerous: Some Post-structural Tools for Rethinking the Universal Knowledge Claims of Human Rights Law, 5 AUSTRALIAN J OF HUMAN RIGHTS 17 (1999).
[104] *See* Fraser, *supra* note 16, at 35.

recognition by redressing defective recognition and by exerting tension on the membrane protecting the *polis*, a membrane that prototypical rights-bearers traverse with ease. This membrane doubles as a barrier to recognition – insurmountable to many on the margins trapped in the existential crisis of not being seen, not being heard, and not being considered fully human.

IV.   DEFECTIVE RECOGNITION RELATIONS

As a mode of inter-personal socialization, recognition frames human relationships and, in turn, human subjectivity. Douzinas notes that through this paradigm of practical inter-subjectivity we come to understand how others impact the constitution of self, and these processes can either reconcile or alienate the individual (or the group) to the world. Taylor characterizes due recognition as a "vital human need".[105] Human rights activists and defenders fight to restore or secure recognition from key recognizing bodies (such as the state or supra-national structures) to individual victims or groups, where victimization and exclusion has occurred in the context of defective recognition relations.

If the self is constituted reflexively across different recognition planes, and normatively a healthy functioning democratic society depends on egalitarian politico-legal recognition, then this pragmatic model of inter-subjectivity is powerfully persuasive in explaining the consequences of defective recognition. This is significant because denial of recognition inflicts psychic and social damage on people; Taylor describes this as a form of oppression where an individual or a group "can suffer real damage, real distortion, if the people or society around them mirror back to them a

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[105] *See* Taylor, *supra* note 80, at 26.

confining or demeaning or contemptible picture of themselves".[106] A positive relation-to-self between the "me," which is the construct of personhood reflected back through the social stages of recognition, and the "I," essentially the wants, needs, and desires of our primordial brain (the psychoanalytic *id*), is critical for identity formation.[107] Honneth argues that the experience of being disrespected is so potentially injurious that it can bring the individual's identity to a point of collapse and likewise Douzinas maintains that non-recognition or misrecognition can undermine a person's sense of identity. Kelly Oliver regards patterns of withheld recognition by dominant powers in society as a key aspect of their "pathology of oppression".[108]

Different recognition theorists distinguish gradations of disrespect or failed recognition.[109] In order to conceptualize the space in which human rights defenders operate, three key manifestations of defective recognition that form the fabric of exclusion are examined: non-recognition, misrecognition, and partial recognition. Just to reiterate, fulfilment of recognition, when the individual is recognized as a politico-legal person within the *polis*, is envisaged as the pinnacle of recognition relations. This is the fulcrum of interdependent and indivisible rights. Full recognition means that the individual is regarded as belonging to the socio-political world of rights.

Non-recognition is the most extreme failure of recognition insofar as it renders the person inter-subjectively invisible, and completely denies them the right to participate on the relevant recognition plane.[110] Lydia Lewis observes that when such

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[106] *See* Taylor, *supra* note 80, at 26.
[107] Axel Honneth, *Grounding Recognition: A Rejoinder to Critical Questions*, 45 INQUIRY 499, 502 (2002).
[108] *See* Oliver, *supra* note 29, at 26.
[109] Lydia Lewis, *Politics of Recognition: What Can a Human Rights Perspective Contribute to Understanding Users' Experiences of Involvement in Mental Health Services?* 8 SOCIAL POLICY & SOCIETY 257 (2009); Nancy Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation*, in Larry Ray and Andrew Sayer (eds), CULTURE AND ECONOMY AFTER THE CULTURAL TURN (1999); *See* Honneth, *supra* note 52, at 352.
[110] *Id.*, at 34-5.

patterns of disrespect and disesteem become institutionalized, inferioritization ensures social exclusion.[111] Symbolic violence is embedded in social structures through the institutionalization of patterns of disrespect and disesteem – fractured recognition relations project back inferior, confining, or demeaning schema of a person or a group, which become internalized, thus compounding alienation.[112] While gradations of disrespect can occur in any of the stages of recognition, if non-recognition or denial occurs during the two primary stages – considered here at micro (family) and meso (small groups/civil society) level – it will be much harder for the individual to be recognized as human on the politico-legal plane. Non-recognition threatens the dynamics of human dignity – dignity being the positive experience of having a concordant inter-subjective construct reflected back onto the "I" in politico-legal recognition. Without politico-legal recognition, the disavowed individual or group are not included as rights-bearers in society.

Lewis presents misrecognition as "being seen as lacking value and inferior," however this description does not sufficiently distinguish it from non-recognition.[113] Departing slightly from Lewis, misrecognition can also infer not being seen as fully human, but through a modus operandi distinct from denial. With misrecognition, a critical disjuncture in identity formation occurs because the "Me" schema reflected back by the generalized other has no bearing to the "I". This leads to distortions, an "error signal" in the language of identity theory, and a diminished relation-to-self as people internalize "the cultural or symbolic injustices of dominant understandings and values".[114]

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[111] *See* Lewis, *supra* note 109, at 257.
[112] Lois McNay, *The Trouble with Recognition: Subjectivity, Suffering, and Agency* 26 SOCIOLOGICAL THEORY 273, 275 (2008).
[113] *See* Lewis, *supra* note 109, at 257.
[114] *Id.*

Similarly, partial recognition inflicts oppressive harm by imprisoning people "in a false, distorted, and reduced mode of being".[115] In terms of rights, partial recognition gives the surface impression of the enjoyment of some rights, however, universality remains inaccessible. Autonomy occurs by being fully recognized as an equal partner endowed with politico-legal rights. One cannot be a partial rights-bearer normatively under universal human rights and partial recognition is not a powerful enough political force to unlock the right to have rights.

Gradations of disrespect can infuse any or all of the three stages of recognition: problems in the inter-subjective relations of love with primary care giver(s) leading to issues with self-confidence; forms of disrespect within solidarity groups damaging social self-esteem, and finally failures with politico-legal recognition, being excluded from "the possession of certain rights within a society," resulting in reduced legal respect.[116] What is important for analyses of social struggles in defence of human rights is how experiences of disrespect are anchored in the affective life of human subjects, at times providing the motivational impetus for social resistance and conflict, and indeed, the struggle for recognition. Human rights defenders are galvanized to action by tapping into – directly or indirectly – affective responses to faulty recognition relations.

V. MOTIVATIONAL BASIS FOR SOCIETAL PROGRESS?

Honneth maintains that the struggle for recognition is the key ethical framework of modernity within egalitarian and democratic systems of governance that have superseded feudalistic and highly stratified societies. The moral experience of disrespect underlies social conflicts, and the struggle for recognition is a structural feature of human existence. By this view, negative emotional reactions to feeling denied,

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[115] *See* Taylor, *supra* note 80, at 25.
[116] *See* Honneth, *supra* note 17, at 157.

misrepresented or partially recognized is the symptomology underlying all social struggles for human rights.[117] However, Lois McNay is sceptical about subjectivist accounts for suggesting that withheld recognition automatically results in critical agency and an oppositional consciousness.[118] This line of critique maintains that moral injuries do not inevitably motivate the disrespected person to action or even reliably predict the behavioural consequences of being disrespected.[119]

Undoubtedly, there are a range of variables that interact to produce human behaviour, and in the micro-context this fault line can be ameliorated by drawing in sociological theory and empiricism on identity formation and human behaviour. Additionally, historical analyses of social movements rising up against oppression reveal that social structures of domination are inextricably interlinked to pathological recognition relations. Fusing an analysis of how power functions in society with recognition theory would better predict the circumstances that might give rise to social movements, such as new waves of feminism, minority rights claims, nationalist and secessionist movements, socialism, and environmental activism. Furthermore, themes present in certain literature and disciplines, certainly within decolonization studies, depict subaltern groups attempting to overcome humiliation, insult, and degradation, in order to be recognized as human.[120]

Jean Paul Sartre viewed colonialization as a situation where intersubjective relationships of reciprocal recognition are distorted "in such a way that the participant groups are pressed into a quasi-neurotic scheme of behaviour".[121] Frantz Fanon considered that the biased stereotypes internalized by the colonized had the effect of

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[117] *See* Honneth and Farrell, *supra* note 98, at 20.
[118] *See* McNay, *supra* note 112, at 281.
[119] Jane Mansbridge and Aldon Morris (eds), OPPOSITIONAL CONSCIOUSNESS: THE SUBJECTIVE ROOTS OF SOCIAL PROTEST (2001).
[120] Upendra Baxi, THE FUTURE OF HUMAN RIGHTS (2002).
[121] *See* Honneth, *supra* note 17, at 157.

inhibiting the recognition of their common humanity. To achieve self-determination and autonomy, it was first necessary to dispense with these pernicious cognitive schemas. Perhaps due to the extreme structural violence that sustained colonial relations, alongside his interpretation of the Hegelian master-slave dialectic, Fanon understood that only a violent rupture to the system could make self-realization possible for the colonized. Since the end of the colonial era and the coming into being of the modern infrastructure of human rights, socially subordinated others draw on "human rights principles such as the affording of respect and value to persons".[122] Many of the recognition struggles of new social movements centre on ideas of personhood, principles of equality and belonging to humanity, as well as inclusive citizenship.

The struggle for recognition creates ethical moments in communal life, stages that alternate between reconciliation and conflict. It is important to note however, that there is no linear trajectory towards a greater inclusion of people within the *polis*; some who were once recognized may experience degradation; the prototypical rights-bearer imagined by the generalized other shifts and changes. That is to say, the definition of who is recognizably human with full politico-legal rights and freedoms is malleable, context specific, and historically grounded.[123]

In Mead's account of the motivational basis of the struggle for recognition, particular tensions between the surging needs of the psychological "I" and the "Me" – the perspective imposed by the generalized other, create a situation of conflict that is supposed to explain the moral development of individuals and society at large. The struggle for recognition is thus shaped by forces of the "I" that surge in a "continual rebellion" seeking the approval of the generalized other.[124] In Honneth's view, "the

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[122] *See* Lewis, *supra* note 109; *See* Oliver, *supra* note 29, at 26.
[123] Giorgio Agamben, HOMO SACER: SOVEREIGN POWER AND BARE LIFE (1998).
[124] Axel Honneth, *Grounding Recognition: A Rejoinder to Critical Questions*, 45(4) INQUIRY 499, 502 (2002).

existence of the "me" forces one to fight, in the interest of one's "I," for new forms of recognition".[125] An essential question posed by the Article is why subjects would seek to loosen the constraints of "Me" placed on them by the generalized other, and the resulting analysis can explain campaigns pressing for increased personal autonomy. As a paradigm underlying human history, it seems to suggest an increase of recognition relations in every epoch. However, the contingency of politico-legal recognition detailed here means that recognition of the right to have rights may increase or decrease depending on the interplay of political, social, economic and other variables in a given context. Human rights defenders and activists will be all too aware that progress in terms of legal recognition is not unidirectional, that available rights can contract, that the *polis* is a highly exclusionary zone, and that the expansion of recognition to "others" is painfully slow. This is not to abandon the dream of the universal enjoyment of rights, but to draw human rights away from some imagined characteristics of what we might share by birth as human by outlining the political contingency of rights recognition. Additionally, the central claim of human rights identity activism is illuminated – I am, we are, or they are human too – belonging to this rights recognizing community. Moreover, non-recognition or defective recognition invites a critique of the "human rights" fulfilling state, and a way to frame future campaigns and claims.

CONCLUSION

This Article argues that human rights activism marked by inter-subjective identity formation processes oriented towards human rights universals looks for recognition through a political act which essentially unlocks the right to have rights. A recognition paradigm was developed to best fit the focus of concern – essentially

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[125] *See* Honneth, *supra* note 17, at 82.

identity formation processes and variables that shape human rights identity activism. In unpicking these processes, it demonstrates the political contingency of "universal" rights by reference to the key interaction partner in international human rights law with the capacity to recognize rights – i.e. the state.

Explaining the struggle for rights recognition in this fashion reveals both utopian and dystopian possibilities. It is important to note that a starting point of analysis was the dissonance between human rights norms and praxis. By interrogating the pervasive dissonance in which human rights defenders and activists operate through these lenses, issues of inter-subjective recognition, particularly in the politico-legal sphere, were highlighted. Disentangling identity formation processes in activism tilted towards universality, the Article shows how the "rights fulfilling" society affirms or disavows these identities. Contemporary defence of human rights occurs in conditions where politico-legal recognition has failed – human rights activists and defenders mobilize against non-recognition or withheld recognition, misrecognition and/or partial recognition. Although a challenge to the received wisdom about the universality of human rights, this is not a pessimistic critique because if we really take seriously Arendt's thinking on the right to have rights, and we marry this with recognition theory, we can begin to see entry points to the *polis*. Primarily, the Article identified socio-political issues with rights recognition. By identifying the problem, solutions can be designed such that barriers are dismantled, increasing numbers seen as human, and inter-subjective recognition textured by commitments to equality and non-discrimination.

This new normative account of politico-legal personhood can be idealistic in its appeal for expanded politico-legal recognition, with consequences for human subjectivity and autonomy. An increasing horizon of recognition claims infuse the legal

sphere, and these developmental forces can accommodate a "growing circle of previously excluded or disadvantaged groups" as full members of society, which explains the relentless march of increasing demands for legal recognition.[126] However, drawing arguments from recognition theory on societal progress into the framework inevitably leads to questions about political contingency and power. A question still remains regarding the sociological and political forces that influence those with the power and authority to recognize people as human – to grant recognition and access to universal human rights. Despite modern nation states' authority for rights recognition and the proliferation of human rights, expanded recognition and social enrichment is not the only possibility – former rights-bearers, individuals or groups, may be pushed outside the membrane that separates the *polis* from undifferentiated spheres of social and intimate life where indivisible rights are fractured and elusive.

Further inquiry into the sociological, economic, and political forces that influence the rights fulfilling authority to recognize human identities and allow access to universal human rights, is needed. These lines of research could be beneficial to or benefit from radical approaches to autonomy and human subjectivity. For the moment, it is possible to frame these rights struggles in terms of recognition outcomes, though empirical research into the objective and subjective variables in claiming universal rights is needed. Undoubtedly, these struggles are historically grounded but as there is no modern nation state where everyone's right to recognition is granted (and we are witnessing regression in many places), the struggle for recognition will remain the structuring force for rights claims and rights defenders into the future.

Human rights activists, defenders, and educators are in need of new principles and values of continued contemporary relevance. The survival of well-intentioned

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[126] *See* Honneth, *supra* note 17, at 118.

humanitarian projects depends on the ability of proponents to realistically appraise the human rights landscape over 70 years since the Universal Declaration of Human Rights was adopted. While it has long been accepted that the field can only be properly comprehended by applying different disciplinary lenses to analyses of complex social issues, there is still a need for diverse and critical perspectives to reconceive what this humanist project might mean for the many into this century. A starting point for human rights activism could be along the lines of a simple appeal: the right to be seen as human – which instead of the right to have rights could be expressed as the "right to recognition". Also, to revisit the idea of personal duty somewhat lost from the rights narrative over the years – if duty could be reframed as an ideological commitment to equality and non-discrimination in these inter-subjective recognition relations, this could have significant psycho-social, legal, and political consequences.[127] Another potential avenue to explore whether the realm of affect could have structural relevance for politico-legal recognition, or whether the emotional lives of humans could be instrumentalized for progressive social change into the 21st century. Of course, issues such as distributive justice, socio-political and economic power are relevant, but these are topics for another day.

The corresponding author states that there is no conflict of interest.

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[127] Anne Phillips, UNCONDITIONAL EQUALS (2021).