

Chapter 2

Conceptions of Human Identities

Human rights assume particular views of what being “human” means. In Chapter 1, it was pointed out that in the articulation of “human rights”, the “human” in “human rights” is projected as universalistic, generalised and depersonalised. Universalistic due to reference to all human beings in the world; generalised in terms of both the universalistic reach of human rights as well as in the use of generalised social categories in the description of people; and, depersonalised in the lack of focus on the subjective, individual and personal experiences in specific conditions of human existence. The "human" in “human rights”, then, is generic and abstract.

On the one hand, this may be seen as necessary in the articulation of human rights in that it allows for human rights not to appear to be driven by particular interests but applicable to all human beings in the world. In addition, this generic application of human rights also attempts to project human rights as impartial. It is important to keep in mind that these universalistic, generalised and depersonalised views of the human in human rights are linked integrally to the formal, rationalist and legalistic framing of human rights, as discussed in Chapter 1. On the other hand, however, it is arguable whether it is desirable for the human to be conceptualised in human rights in such universalistic, generalised, abstract and depersonalised terms. As will be argued in this chapter, if human rights cannot “speak to” actual human beings in the contexts of their specific lives, human rights cannot be assumed to be upheld and practiced in reality. If particular human experiences, on individual levels are not addressed, it will be shown then that human rights do not in fact cover “all people in the human family” and remain quite meaningless in people's actual lives.

In this chapter, I discuss theories of identity by way of making explicit the ways in which human rights suggest particular orientations to questions of human identity. Using Stuart Hall (1989), in particular in this regard, I argue that human rights are

cast in “enlightenment” and “modernist” worldviews and do not get to work with the particularity and specificity of post-modern forms of identities.

I also use Charles Taylor's (1994) important notion of "recognition" to further elaborate on the processes of identity formation, the importance of language in articulations of human identity and to draw attention to the significance of a "politics of identity" which has come to the fore in the latter half of the 20th century, and which is increasing in ascendancy in the 21st century. I develop this argument by discussing Catherine MacKinnon's (1993) interrogations of human rights and their implications for women in particular. I also look at human rights in Africa to explore the implications of the Western and European presuppositions and framing of the United Nation's Universal Declaration of Human Rights for Africa. In this light, I use Mahmood Mamdani's (2000) argument that human rights are seriously matters of power, and argue that the "misrecognition" of women and the people of Africa in the Universal Declaration of Human Rights indicate further the problems with a universalist, generalised and depersonalised depiction of human beings. In this light, conceptions of human rights and identities are shown to be constructions of power, upholding the interests of some within particular social orders in a complex interplay of legitimated ideologies and ways of viewing the world and being human.

In keeping, however, with the understanding that human rights cannot be said to exist outside of the law, I also explore the legal implications of making human rights more specific by considering “substantive equality” principles in international law. I conclude this chapter by looking at the implications of the proliferation of rights in the context of contemporary global economic orders. I argue that the “recognition” of/by “the other”, unavoidable in current contexts, lead to the proliferation of rights, and in so doing, also increases points of potential conflict. Such contradictions, I argue, are necessary and endemic to human rights.

The Social Construction of Human Identities

Stuart Hall (1992) draws a distinction between “enlightenment”, “modern or sociological” and “post-modern” views of identity in his insightful and useful review of theories of identity. Hall suggests that the “enlightenment” notions of the individual were framed by an understanding of human beings as centred, rational, conscious and universalist. This, he points out, was a reaction to the religiously based notions of being human and against which the emergent sciences of the enlightenment era battled. The “modern, sociological” understandings of human identity seriously critiqued the assumptions of the enlightenment era. It was demonstrated that whilst ontologically universal, human beings are not the same. Human beings are classed, raced and gendered, *inter alia*. They are not just or simply human. The “post-modern” view, Hall points out, is one that is de-centred and allows for a multiplicity of identities in the characterisation of individuals. The “post-modern” view of identity, then, is complex, pluralised, de-essentialised and de-centred, allowing for the multiplicity of identities to be present within the individual as opposed to only being prevalent across individuals, as with “modern” views of identity. All of these claims about human identities across historical periods are elaborated in what follows.

All forms of identity are constructed in relation to a perceived “other”. One is able to articulate a sense of “I” only in relation to an “other”. This being both a logical and ontological necessity in that a sense of identity can only be assumed to exist if it is distinguishable from “other” things. If there is no way in which a thing may be distinguished from other things, then it takes on the identity of the things from which it cannot be distinguished, and does not exist as a thing with an identity of its own. “Black” is “black” in relation to “not white”, “not blue” or “not purple”. “Day” is “day” in relation to “not night”; “cold” is “cold” in relation to “not hot”; and, so on. In the same way human beings’ identities are also defined in relation to a perceived “other”. Later, I develop this further by using Taylor (1994) to argue that the relation of the “I” and the “other” in the formation of identities rests

critically on a process of "recognition" and dependent upon the use of language in the ways the "other" is "named" by the "I".

Hall (1992) argues that in the “pre-enlightenment” period people tended to define themselves in relation to God or a metaphysical being. This was due to the predominance of religious discourses during the pre-enlightenment era. This articulation of identity in relation to God also provided a way to categorise other human beings. Thus, human identities, in being defined in relation to God, were defined as being mortal, while God is immortal; human beings as being finite and God being infinite; human beings as being earth bound, whilst God being in the heavens; human beings as being human in relation to "not God".

At the same time, pre-enlightenment views of human identity also provided a way with which to classify other human beings, again pivotally being informed by the “I-God” construct. Human beings were viewed either as “believers” and “non-believers”; “Christian”, “Muslim” or “Jewish”; “pagans” or “heathens”; “Hellenes” or “barbarian”. As such, pre-enlightenment views of human identity were informed centrally by the “I-God” relation and also defined human beings in their interactions with each other. The dominance of religious forms of thinking and their implications for human rights were also discussed in the genealogy of human rights in Chapter 1.

The pre-enlightenment view of identity also took on the characteristics of being essentialist, homogenised and generalised. Human identities are essentialised in terms of relations to God. The relations to God provide “the essence” in understanding and defining human identity. All human beings so defined are then homogenised in the categories within which they are placed. All “believers” were just that, “believers”. All believers are homogenised and, consequently, the Other, the “non-believers”, also homogenised. This homogenisation also suggests that people within these categories are generalised. Particular individuals do not get to be treated specifically when they are being homogenised and generalised within essentialist categories of description, as also pointed out in Chapter 1.

In reactions to and against pre-enlightenment views, different conceptions of human identity were articulated during the enlightenment period. During the enlightenment period, which heralded the development of “science”, a fundamental shift occurred in the understanding of human identities. Human beings were, in the enlightenment era, placed in relation to a “phenomenal world”, upon which human beings acted. The definition of human identity was now not only in relation to God but also in relation to “the world”. In this development, being human meant belonging to “the human race”, with the features of being capable of reason and conscious action – the rational, conscious, centred “(Every) Man” in control of the phenomenal world.

In relation to the pre-enlightenment era, the enlightenment view of human identity is earth based, physical, conscious and rational. Whereas in the pre-enlightenment period human identity was metaphysical and spiritual. However, both the pre-enlightenment and enlightenment views of human identity are essentialist and homogenised. There are no references to a socially specific and thus particular individual human being within these views of human identity. All human beings are seen as being in the same relation to the “phenomenal world” in the enlightenment view, and all human beings are seen in the same relations to God within pre-enlightenment views. In both, all identities are understood in terms of these “essences”. In the wake of the modern era, it is precisely these homogenising and essentialising tendencies that get critiqued.

In the modern era, conceptions of human identity, according to Hall, were influenced by the development of complex social organisations and advancements in capitalism, which pluralised the spaces that people inhabit and thereby fractured a commonality in human experiences and positionalities. Analyses of the workings of modern power (Foucault, 1972) exposed the ways in which human identities are actively constructed in the workings of power within various disciplinary spaces, which are constituted in, and which constitute, the modern era. In the modern era, to put it very crudely, people are no longer in self

contained villages of their clans but occupy various and varying spaces, partake in different forms of activities, inter-relate with many kinds of people (outside of their clans) and through major advancements in technology have access to more information, able to move places, including countries, more easily, and the performance of what were laborious tasks in the past are now facilitated considerably in terms of effort and time. Within the modern era, then, as Hall points out, the conception of human identity is "sociological" and constructed in complex social interactions.

Foucault's notions of "disciplinary power" and "disciplinary spaces", to which Hall also refers, is useful in elaborating the sociological character of modern conceptions of human identities. For Foucault (1972), human identities are constructed in and by the regimes of disciplinary powers they are “subjected” to. Human beings become males and females by genderised patterns of discipline. They become students or professors through the institutional rituals and regulations of the academy. They become patients, doctors, prisoners, husbands, fathers, mothers, children, wives, gay, lesbian, able bodied or disabled, “black”, “white”, etc. through processes of “subjectification” and “individuation” (Giddens, 1990). People, thus, “become somebody” (Wexler, 1992) within processes of “power constructions in disciplinary spaces” (Foucault, 1972). This modern view of the individual, therefore, calls for an understanding of the contexts within which human beings exist, the nature of their experiences and the dynamics of the forces acting upon them and with which they interact. This modern view of the individual is, therefore, context specific, interactional and sociological.

Through the influences of Marxism in the modern era (Marx, 1969; Engels & Marx, 1930), human beings were conceptualised as “classed”. For Marxists, one’s class position affects the ways in which one experiences “the world” and one’s human identity. Being “working class” implies a person without access to most things that people from the upper classes would have. Through feminism (de Beauvoir, 1972; Mitchell, 1971; Oakley, 1972) it was pointed out that women, as

women, experience “the world” and their human identities in ways that are specific to women. Through antiracism (Biko, 1975; Du Bois, 1969; Fanon, 1967, 1967a; Mandela, 1996; Mason & Rex, 1986; Gilroy, 1987; Gillborn, 1990, 1995; Miles, 1989; Troyna, 1993), it was shown that “black” and “white” people's experiences of “the world” and themselves are fundamentally influenced by their ‘race’. Through psychoanalysis (Freud, 1965), people were understood to act out unconscious impulses and in irrational ways in their relations to “the world”. Structural linguistics (de Saussure, 1983) also alerted us to the ways in which we “name” “the world” in our use of language as being context specific and structured in discernable patterns in relation to our immediate environment. Thus, in the modern era, through Marxism, feminism, antiracism, psychoanalysis and structural linguistics, human identities were shown to be context specific.

The “post-modern” view of the individual is a logical progression of the developments within and challenges to modernity. The following quotation from Stuart Hall captures the “post-modern” view of identity quite succinctly:

The post-modern subject (is) conceptualised as having no fixed, essential or permanent identity. Identity becomes a ‘moveable feast’: formed and transformed continuously in relation to the ways we are represented or addressed in the cultural systems which surround us. It is historically not biologically defined. The subject assumes different identities at different times, identities which are not unified around a coherent ‘self’. Within us are contradictory identities, pulling in different directions, so our identifications are continuously being shifted about. If we feel we have a unified identity from birth to death, it is only because we construct a comforting story or ‘narrative of the self’ about ourselves. The fully unified, completed, secure and coherent identity is a fantasy. Instead, as the systems of meaning and cultural representation multiply, we are confronted by a bewildering, fleeting multiplicity of possible identities, any

one of which we could identify with – at least temporarily (Hall, 1992: 277).

Following this line of argument, human identities are critically affected by “cultural systems” of “representation” and “meaning”. They are historically contingent, context specific and socially constructed. Thus, being human means different things to different people. There is no fixity or essentialising way in which all human beings are actually “the same”. This, however, does not suggest that we are not human. Instead it points out that we understand and experience our humanity in varying and various ways, and that these ways of conceptualising and making meaning of and experiencing ourselves change continuously.

Post-modernism is significant because it is also possible to work with an understanding that people can and do possess more than one identity at any point in time. For example, a person may be female, “black” and a lesbian. The post-modern view allows for the carrying of multiple identities within a single individual. Furthermore, the post-modern view also makes possible the understanding that such identities which people possess can also change. The same “black”, female, lesbian may become “aged”, a workerist activist and “disabled”. Such possibilities of change in and development of individual identities are provided for within the post-modern view.

The purpose of this discussion on the historical development of conceptions of human identity is to draw attention to ways in which human identities may be understood and to demonstrate that conceptions of human identities are historically contingent, have changed and are constructed socially. Human identity, then, is not a given. The conception of human identity one uses implies a particular approach to understanding what being human means and is not something that is straight forward or simple. Given this, it is now appropriate to raise the question about what conception/s of human identities inform the United Nations Universal Declaration of Human Rights.

Conceptions of Human Identity in the United Nations Universal Declaration of Human Rights

In the movement from pre-enlightenment, enlightenment, modern to post-modern conceptions of human identity, one can infer the ways in which these modes of conceptualising human identities could impact on understandings of human rights. Given the preceding discussions, the United Nations Universal Declaration of Human Rights was proclaimed in 1948 at the time when the modern era was unfolding. The post-modern influences were not existent at the time, so it is not surprising that the Universal Declaration of Human Rights does not use any of the post-modern conceptions of human identity.

It is also the case that in the Universal Declaration of Human Rights the notions of individual rights, and consequently human rights, are used centrally; notions which were argued for by Locke and Hobbes during the enlightenment era, in response to claims about natural rights, natural law and justice. As such, it is also not surprising to note that the Universal Declaration of Human Rights does not use pre-enlightenment conceptions of human identities within religious frameworks. In this regard, consider the following:

Everyone is entitled to all the rights and freedoms set forth in
this declaration, without distinction of any kind such as
...religion (Universal Declaration of Human Rights, Article 2,
1948).

As such, for the Universal Declaration of Human Rights “religion” is no longer the “mark of distinction”. The Universal Declaration of Human Rights, given its historical context, uses enlightenment and modern views of human identities.

The enlightenment influences in the Universal Declaration of Human Rights are related directly to the Lockean and Hobbesian notions of equality of all human beings and in the emphasis on reason.

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (UNDHR, preamble, 1948).

In this first statement of the Preamble of the Universal Declaration of Human Rights the “recognition” of “all members of the human family” as having “equal and inalienable rights” points to the enlightenment influences in the Universal Declaration of Human Rights. The enlightenment claim of “equality in a state of nature” is the expressed meaning of such “recognition”. In regard to the enlightenment emphasis on “reason” the Universal Declaration of Human Rights states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Universal Declaration of Human Rights, 1948, Article 1).

In keeping with enlightenment conceptions of human identity, the Universal Declaration of Human Rights uses a conception of human identity that is characterised by “reason”, an “endowment” that is equally given to everybody. In addition, “reason” is coupled with “conscience”, suggesting two features that are also consistent with enlightenment views. First, “conscience” implies that acts of “reason” are not unconscious, but reflexive, active and conscious. “Reason”, thus, is viewed as deliberate and considered, not just a simple act of thinking with reason. Second, “conscience” also implies a sense of responsibility. What “reason” brings to the fore is what human beings can take responsibility for, and in their reflections on what “reason” reveals, decisions about what forms of action to take in response are made. Human beings, thus, are not passive in the face of “reason”, but are in control of how to respond to what it reveals. Human beings, thus, are conscious and active with a responsibility for responding accordingly. This is consistent with the enlightenment idea of “Man” being in conscious and rational control of the “phenomenal world”.

Given that the Universal Declaration of Human Rights was proclaimed during the modern era, it is expected that it would use modern views of human identity. How and where are these modern views of human identity used in the Universal Declaration of Human Rights?

In Article 2 in the Universal Declaration of Human Rights, and the ways in which “second generation rights” are approached in Articles 15 to Article 28, one notices modern influences within the Universal Declaration of Human Rights. Article 2 reads as follows:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction will be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty (UNDHR, Article 2, 1948).

In this articulation of Article 2 modern categories are used in the description of human identities. Human beings are noted to be “raced”, gendered, belong to different classes (“social origin”, “property”, “birth” and “other status”) and as being speakers of different “languages”. Human beings’ locations in “the world” are spelt out. However, as pointed out in Chapter 1, Article 2 recognises these modern categories in order **not** to make a “distinction” on these bases but to make the universalistic claim about the equality of all human beings.

In Articles 15 to 28, which articulate “second generation rights”, i.e. those rights which are social, economic and cultural rights which human beings acquire in various sites of human interactions, point to a description of human life that is distinctly modern. Second generation rights are about rights to “nationality”

(Article 15), “marriage” (Article 16), “property” (Article 17), “freedom of thought, conscience and religion” (Article 18), “freedom of opinion and expression” (Article 19), “freedom of assembly and association” (Article 20), “taking part in government” (Article 21), “social security” (Article 22), “choice of employment” (Article 23), “rest and leisure” (Article 24), “health and well being” (Article 25), “education” (Article 26), “participation in cultural life” (Article 27) and “social and international orders” (Article 28). All of the provisions in these Articles (15-28) imply a world in which people live largely modern lives. They are not bound by the religious strictures of pre-enlightenment societies. They also have greater access to modern political, “social and international orders” which emerge directly out of the experiences of WW II and to which the Universal Declaration of Human Rights is directed. In addition, as was pointed out in Chapter 1, second generation rights are those rights which have a strong socialist orientation (cf. Weston, 2002), emerging out of working class movements which are also distinctly modern developments. As such, the Universal Declaration of Human Rights is informed by modern ways of viewing human identities as well.

In doing both, being influenced by enlightenment and modern forms of thinking, the Universal Declaration of Human Rights is able to straddle across universalistic, homogenising and essentialising claims of human identity within enlightenment views, and acknowledge that the experiences of people, particular to the modern era, as being sufficiently distinct to warrant specific mention. However, and similar to the point made by Bentham discussed in Chapter 1, there is a tension and ambiguity in the Universal Declaration of Human Rights carrying both enlightenment and modern conceptions.

On the one hand, the Universal Declaration of Human Rights recognises historical developments in society, such as modern conditions and social categories. On the other hand, it denies that such factors warrant "distinction" and uses such distinction to make universalistic, ahistorical claims about human beings and human rights, thereby, in Zizek's (1989) terms "stripping (human identities) of any history".

The use of enlightenment and modern conceptions of human identity in the Universal Declaration of Human Rights is aimed primarily at reinforcing the claim of equality among all people. Enlightenment and modern conceptions, then, are constitutive of the universalist, generalised and depersonalised projection of human identity. Is it possible, though, to use modern views of human identity, following the contributions of Marxism, antiracism, feminism, structural linguistics and accounts of the workings of disciplinary power to enable human rights to be more specific, particular and personal? At the same time, although the Universal Declaration does not use post-modern views of human identity, given its historical context, is it possible to use such post-modern views to also enable human rights to be more particular and to "speak to" the specificity and complexity of de-centred post-modern human identities?

The modern view of human identity provides us with a way to analytically address the issue of human rights without assuming that all people actually are the same. Human rights, which remain universally applicable to all in the "human family", require specification to relate substantively to people's actual lives. Legalistic discourses of human rights, which tend to be totalising, homogenising and universalist, have the potential to silence many people's particular experiences of what being human means to them. In projecting all people as the same, it is possible to slip into a humanism that ignores the specificities of the ways in which people are oppressed and exploited under very particular conditions (Burke, 1987; Marx; 1969; MacKinnon, 1993). The importance of acknowledging the specificities of people's actual lives is necessary if human rights are supposed to be meaningful. "Black" people, "women", "gays and lesbians" need particular protections and interventions to relate to the nature of their own experiences and the precise ways in which they perceive their human rights being violated. These protections would be different from the protections and interventions that the "disabled" or the "working class" or the "aged" require. Modern views of human identities enable us to recognise the social categories that have influence on people's daily lives, which the Universal Declaration of Human

Rights does; and, to specify what human rights provisions are necessary for people positioned in such categories, which the Universal Declaration of Human Rights does not do sufficiently. Modern views, thus, can potentially significantly enable human rights to be more specific, particular and linked to people's material conditions of existence, rather than treat "all human beings" as if they are the "same".

The post-modern view allows for human rights to be interrogated in ways that are non-essentialist and non-legalistic. It also allows for a sociological analysis of both macro and micro forces that are concurrently at work in the construction of particular identities in specific historical cultures of meaning. This is the case because through the post-modern view one needs to look at the specificities of people's daily lives and investigate the configuration of forces – laws, policies, social discourses, institutional dynamics and relations – that impact on the ways in which people "become" who they are and how. Post-modernism also allows for viewing individuals as having multiple identities and which operate simultaneously within the individual, albeit in contradictory and complex ways.

The possibilities of making human rights more specific and in that sense more actual seem to lie within modern and post-modern views of identity. Through them we are able to shift from the homogenisation of human beings in the image of "Man" and, particularly with post-modern views, get closer to the particularities, multiplicity and complexity of identities as they are lived, rather than lapse into the essentialism of some preferred narrative.

Human Rights and Recognition

But, why should human rights be made more specific and personal? Apart from the need to ensure that human rights address people in the conditions of their actual lives, there is another reason why human rights need to be made more specific and personal. This is tied to Taylor's (1994) notion of "recognition".

When human rights are framed in generalised, universalistic and depersonalised ways, the implication is that people are recognised only in abstract and homogenised terms. They are not recognised as individuals, they are not recognised for who and what they are, neither are the conditions of their lives.

The demand for recognition ... is given urgency by the supposed links between recognition and identity, where the latter term designates something like a person's understanding of who they are, of their fundamental defining characteristics as a human being. The thesis is that our identity is partly shaped by recognition or its absence, often by *misrecognition* of others, and so a person or a group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm; can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being (Taylor, 1994: 105).

In light of the above, one can, as does Taylor, talk about a "politics of recognition"; a politics of recognition that is linked to identity. Who or what is recognised, how and why are, thus, important issues to address. Nonrecognition or misrecognition "can inflict harm; can be a form of oppression" and is, thus, of importance in the context of human rights.

For Taylor the construction of identities in the "I" – "Other" relation is based on recognition. As discussed earlier on, identities are constructed in relation to an Other. This suggests that the Other needs to be recognised or misrecognised or not recognised in the construction of the I. In this way, Taylor points to the logical necessity for recognition in the construction of identities. At the same time, in this recognition of the Other by the I, the I "names" the Other on the basis of the recognition that is employed. "Language", thus, becomes crucial in the processes of recognition and identity construction. For Taylor, "language" is used,

in a broad sense covering not only the words we speak but also other modes of expression whereby we define ourselves, including the "languages" of art, gesture, of love, and the like (Taylor, 1994: 112).

Taylor outlines what he call the "politics of inequality" and the "politics of recognition" to elaborate the ways in which forms of recognition and the language with which they are articulated. In the politics of inequality, which correlates with the periods prior to the modern era and in which colonial, monarchical, hierarchical forms of mentality dominated, Taylor suggests recognition was "monological" and characterised centrally by misrecognition. Allow me to use the example of colonialism to illustrate how the monological mode works.

Colonialist identities are constructed in the relation between the colonisers and the colonised. The colonised are regarded as inferior in relation to the self proclaimed superiority of the colonisers. The colonisers view the colonised through their own constructed images of the colonised, and not in the terms in which the colonised see themselves. The colonised are assumed to be inferior, savage, barbarian, undeveloped, uncivilised, etc. due to self generated constructions of the colonisers, through which they constitute their own superiority. The colonisers misrecognise the colonised, accord dignity only to fellow colonisers and not the colonised. This misrecognition of the colonised by the colonisers is monological in that the colonisers use their own views, perceptions and images of the colonised Other in order to construct the colonial order which is imposed on the colonised. The colonisers do so in a conversation with themselves, not in dialogue with the colonised Other. It is thus monological, not dialogical; and, based on misrecognition.

The politics of recognition, also known as the "politics of difference" or the "politics identity", however, is based on people asserting their own senses of themselves, and as such demand recognition of themselves in the ways they see themselves, as opposed to the ways in which others perceive them. The politics of recognition, then, is based on "authentic recognition", not misrecognition or

nonrecognition. The authentic recognition of people is achieved in dialogue with the Other so that the Other is able to express him/herself in the ways in which s/he sees him/herself, rather than what they may be assumed to be.

This discussion on Taylor's views of the politics of recognition is of crucial importance to an understanding of conceptions of human identity and human rights. Not only do nonrecognition and misrecognition lead to violations of human rights and forms of oppression, but generalised, universalistic claims about human identity and human rights also run the risk of not recognising authentically who people are and how they see themselves. The universalism and generalisation of human identities and human rights, thus, could constitute the basis for misrecognition, and despite their own intentions, could lead to violations of human rights rather than protecting them. In the next section, I will demonstrate why making human rights more specific and personal is important in order to avoid lapsing into a monological treatment of people's identities. Human rights need to be in dialogue, following Taylor, with people's own senses of themselves and their experiences, allowing for an authentic recognition of people's identities and lives, so that human rights can be based on actual people's daily experiences, rather than monological abstractions which misrecognise and deny who people are and what needs to be done in order for human rights to address the specificities of people's lives as they live them.

I now amplify these critical points about recognition in the context of human identities and human rights by focusing on the experiences of women and people on the African continent. The multiple forms of oppression that women have suffered globally and historically, and the devastation of the African continent through processes of colonialism have significant implication for human rights. Feminism and anti-colonialism, as well as anti-racism, were significant movements in the modern era, and provide a useful way to illustrate the implications and effects of misrecognition and nonrecognition for human rights.

Making Human Rights Personal

Catherine MacKinnon (1993) highlighted powerfully the problems with the dominant framing of human rights in her critical interrogation of them in the context of what they mean for women. MacKinnon points out that the generalised, rationalist, universalistic, formal and legalistic register of human rights is masculinist in its construction. MacKinnon states,

Women's absences shape human rights in substance and in form, effectively defining what a human and a right are. What does it mean to recognise a principle called human rights that does not apply to the systemic and systematic violations of the dignity and integrity and security and life of over half of the human race? (MacKinnon, 1993: 85).

Later MacKinnon states,

When things happen to women that also happen to men, like being beaten and disappeared and tortured to death, the fact that they happened to women is not counted in, or marked as, human suffering. When no war has been declared and still women are beaten by men with whom they are close, when wives disappear from supermarket parking lots, when prostitutes float up rivers or turn up under piles of rags in abandoned buildings, this is overlooked entirely in the record of human suffering because the victims are women and it smells of sex. What happens to women is either too particular to be universal, or too universal to be particular, meaning either too human to be female or too female to be human (MacKinnon, 1993: 84-85).

MacKinnon's critical engagement with human rights makes an important point, that the articulations of human rights in rationalist, generalised, universalistic and depersonalised terms have the effect of excluding women's sufferings from being

counted as human sufferings. They misrecognise and nonrecognise the experiences and identities of women. This is because mentioning these kinds of experiences of women is tantamount to becoming too personal and particular, and this cannot be allowed in human rights which “ought” to be rationalist, generalised, universalistic and depersonalised. Why it needs to be so is because it is masculinist. Consider the following by MacKinnon as well:

Male reality has become human rights principle, or at least the principle governing human rights practice. Men have and take liberties as a function of their social power as men. Men have often needed state force to get away with subjecting other men; slavery, segregation in the United States, and Hitler’s persecutions were explicitly legalised. So the model of human rights violations is based on state action. The result is, when men use their liberties socially to deprive women of theirs, it does not look like human rights violation. But when men are deprived of theirs by government, it does. The violations of the human rights of men better fit the paradigm of human rights violations because that paradigm has been based on the experiences of men (MacKinnon, 1993: 92-93).

For MacKinnon, then, the lack of specificity in human rights, its formal, rationalist, universalistic and depersonalised register, are not only due to enlightenment and modern forms of conceptualising human identity, but they are also masculinist, male views of male realities based on male experiences. I raise the contributions of MacKinnon here because her argument indicates powerfully the ways in which human rights, when not specific, personal and particular can lead to ongoing violations of human rights, misrecognition and nonrecognition, in this instance of women, in the individual contexts of people’s experiences.

In relation to MacKinnon, then, one can say that her engagement with human rights does two important things: first, it questions the United Nations’ modern

proclivities and forms of recognition in the Universal Declaration of Human Rights; and, second, it calls on the Universal Declaration of Human Rights to be more specific and personal – to go beyond its masculinist, legalistic formalism. I return to the latter point later in this chapter.

Similarly, the United Nations Universal Declaration of Human Rights has also been criticised for misrecognising and nonrecognising the particularities of the people of Africa. There are debates about the extent to which human rights are applicable to the African continent. The arguments here hinge pivotally on four claims:

- 1) Human rights and the Universal Declaration of Human Rights are Western and European constructions that misrecognise African experiences and are thus of questionable value to Africa (see Weston, 2002).
- 2) Conditions in Africa which are characterised by extreme poverty, disease and underdevelopment – all of which are also argued to be consequences of colonialism – imply that human rights in Africa have to focus on issues of sustainable development, eradication of poverty and disease, as opposed to the individual civil and political rights as seems to be the case in Europe and the West (Ambrose, 1995).
- 3) Due to colonialism, human rights in Africa are tied centrally to developing an independent nation, which requires far more state intervention than is allowed for or needed in Western and European contexts where reducing state interventions is emphasised (see Nanda, *et al*, 1981).
- 4) Indigenous African cultures do not fit neatly within a human rights paradigm and often contradict, if not violate, human rights. The cultures of Africa need to be taken seriously into account if and when human rights are considered on the African continent (Abdullah, 2000).

As pointed out in Chapter 1 and earlier in this chapter, the United Nations Universal Declaration of Human Rights is a Western and European document. It is framed with the European and Western contexts in mind and recognises Western and European people, their views and experiences. Uzgalis (in Ward and

Lott, 2002) argued that there is an “inconsistency” in Locke’s conception of human “subjects” in that “black” people are not included, and similarly Squadrito (*in* Ward and Lott, 2002) argued that in Locke’s definition of what a human being is, “Native Americans” were excluded. Goldberg (2002) also argued that assumptions of “white” supremacy are inscribed in the enlightenment project, the modern state and conceptions of human rights and human identities. In relation to the Universal Declaration of Human Rights it does not recognise Africa and African experiences, specifically. They were nonrecognised. In addition, the pretence, at universalism within the Universal Declaration of Human Rights is monological, since it assumes to speak on behalf of Africa but does not dialogue with it at all. In this light, the Universal Declaration of Human Rights does not take into account the importance of colonised people emancipating themselves from the gross human rights violations they suffered under colonialism, as they constitute themselves as a people in an independent nation of their own. These reasons provided the impetus for the establishment of the African Charter on Human and Peoples' Rights, which was adopted by the then Organisation of African Unity (now the African Union) in 1981 and entered into force in 1986 (Weston, 2002: 17).

Weston (2002) notes "four distinctive features" of the African Charter on Human and Peoples' Rights. First, and consistent with the Universal Declaration of Human Rights, it provides for social, economic and cultural rights as well as civil and political rights. Second, it recognises the rights of groups in addition to the family, women and children. The aged and the infirm are accorded special protection also, and the right of peoples to self-determination. Third, the African Charter also "uniquely embraces two third generation rights: the right to economic, social and cultural development and the right to national and international peace and security". Finally, according to Weston, "it is the only treaty instrument to detail individual duties as well as individual rights – to the family, society, the state and the international African community" (Weston, 2002: 17-18). The very existence then of the African Charter on Human and Peoples' Rights is an indictment of the misrecognition and nonrecognition of

African people and experiences in the European and Western Universal Declaration of Human Rights.

Having said that, though, it does not mean that the Universal Declaration of Human Rights did not have a positive influence on the people of Africa or in other colonised countries in the world. Many have argued that the claims of human rights and of equality of all people played a significant role in anti-colonial struggles by providing a basis to oppose the monological impositions and inequalities of colonialism. At the 50th anniversary of the United Nations Universal Declaration of Human Rights in 1998, South African constitutional judge Albie Sachs said:

Twenty years later, I am in exile ... I am using the text of the Declaration to prove that my country is the worst in the world ... I go through the Articles one by one and show how law and policy in South Africa violates them all (Sachs, 1998: 134).

Mandela (1964) in the apartheid courts also argued against racism as a violation of human rights using the Universal Declaration of Human Rights as the basis of and for his arguments. I discuss Mandela particularly in more detail in Chapter 4.

As such, whilst the African Charter on Human and Peoples' Rights points critically to the misrecognition and nonrecognition of African people and experiences in the Universal Declaration of Human Rights, it is not as if the Universal Declaration of Human Rights did not have any positive effects in Africa. It would be fair to say that in most cases throughout the world, including in Western and European contexts, the Universal Declaration of Human Rights and its ideas of human rights and the equality of all people, have provided crucial support for resisting violations of human rights, forms of oppression and exploitation. As Vaclav Havel, Czech playwright and once President of Czechoslovakia and the Czech Republic said: " to put it simply: the life of all those who scorn human rights is much more difficult with the Declaration in

place" (Havel, 1998: 87). So too has it been in Africa.

The material conditions in Africa are vastly different from those in the Western and European countries. At both the World Conference Against Racism in 2000 and the World Summit on Sustainable Development in 2002, there was general consensus internationally that the material conditions prevalent in Africa are a direct result of the devastation caused by processes of colonialism. The significance of these differences in material conditions is that they imply different sets of priorities and points of emphasis of human rights in Africa. As Ambrose puts it:

While much of the emphasis in the West has been on promoting civil and political rights, the action plan for human rights and development in Africa must take on a different look. Africa's recovery calls for the juxtaposition of both political and economic rights because in most countries, hunger and diseases kill even more than guns do (Ambrose, B, 1995).

It is, thus, not surprising that the African Charter on Human and Peoples' Rights places emphasis on sustainable development and prioritises second and third generation rights, as opposed to first generation rights only. For the same reasons, it is also not surprising to note that in Western and European contexts it is first generation rights that are highlighted.

The emphasis on sustainable development also has the effect of calling for a greater degree of state intervention than would be the case otherwise. Linked to the project of developing an independent nation on the basis of self determination, postcolonial states are under greater pressure than their Western and European counterparts to intervene more directly in civil society in order to ensure the development of an independent nation and recover from the havoc of colonialism. Whilst human rights in the Western and European contexts are more about first generation rights and minimising state involvement in the affairs of society, the

African context expects greater state intervention as necessary for the development of the conditions within which human rights can prosper (see also Nanda *et al*, 1981).

Finally, the worldviews, values, beliefs, customs and cultures of Africa are vastly different from those that exist in European and Western contexts. The Universal Declaration of Human Rights, which presupposes such Western and European views, are based on what seems to be a selfish individualism, and thereby do not take into account the selfless, in-community and collective consciousness that is claimed by Africans to prevail in Africa (see O Dora Hoppers, 2001). Abdullah (2000), in focusing on the struggles of women in Nigeria, indicates the labyrinth of obstacles women have to face in order to fight for the recognition of women's experiences and rights. Nigerian women have to confront the sexism within dominant religions such as Christianity and Islam, in African indigenous customs and beliefs, including female genital mutilation, the absence of opportunities for women and marginalisation of women in all spheres of society, including social, political and economic areas of activity. In addition, they also have to deal with masculinist governments who are averse to even mention the rights of women, let alone provide for them. As N'diaye says in this regard:

I felt that Western countries had an approach that was completely wrong, because of the lack of cultural understanding. Take for example the issue of genital mutilation of women. Some people said this was an example of male repression of women. But we realised that the practice was seen as sacred, and defended it from a religious point of view. Also, it was mostly women who were trying to retain the practice ... We realised the feminist movement needed to be more deeply rooted in non-Western cultures (N'diaye, 1998: 119).

The examples of human rights in relation to women and Africa point critically to ways in which human rights are constructions of power. Who is recognised within human rights, by whom, why and how, is embedded within complex forces that

construct the power bases of those who are in control. The following statement by Mahmood Mamdani very poignantly captures this:

Imagine that a man slaps a woman in rural KwaZulu-Natal, South Africa. At the same time, another man slaps a woman in a popular neighbourhood in Khartoum, and yet a third does the same in a classroom at the Sorbonne in Paris. All three women protest: the woman in Paris that her rights are violated, the woman in Khartoum that her dignity has been violated, and the woman in KwaZulu-Natal that custom has been violated. Every victim protests. But the language of protest is different in each case. How is one to understand the difference?

The language of protest, I will argue, bears a relationship to a language of power. To understand why protest employs the language of rights in Paris, dignity in Khartoum, and custom in KwaZulu-Natal, it is worth recalling that power claims to uphold rights in Paris, dignity in Khartoum and custom in KwaZulu-Natal (Mamdani, 2000).

Mamdani usefully alerts us to the links with power that exist with and within the discourse of human rights. Human rights are viewed differently in different contexts and within different sets of power relations. In their origins human rights were seen to be protections of individual's rights, and against the excesses of centralized nation-states. This is the case because human rights prescribed and proscribed the rights and responsibilities between citizens and states and were informed essentially by Eurocentric and Western views and contexts. The matrices of power in European contexts, then, promote individual rights, and mainly their civil and political dimensions. And, the language used in this context is that of human rights. But for Others, in Other contexts, human rights clash with their worldviews and epistemologies which intersect with, as they are defined by, power relations within these Other contexts. Thus, in contexts where power relations foreground issues of "dignity", human rights are articulated within the framework of "dignity", and so too with "custom". As such it is critical, following

Mamdani, to recognize the ways in which power relations in societies define the ways in which human rights are framed and articulated. As a mechanism of social governance, human rights have direct links with power relations in societies and the particularities of specific contexts. Both the cases of women and Africa in relation to human rights demonstrate this.

However, the question about how is one able to incorporate the personal or particular in legalistic terms remains, since, as pointed out in Chapter 1, rights cannot be said to exist outside of the law. The legal is a necessary condition for the existence of human rights. Thus, the question remains.

Legally one is able to make a distinction between having “formal equality” and “substantive equality” (Henrard, 1996). Henrard points out, in the context of international law, that legal provisions to ensure particular, individual protections do exist within the law in terms of what is called the “substantive equality principle”. The substantive equality principle, whilst still formal, rationalist and legalistic, addresses specific people in particular contexts, for example, the passing of laws that ensure discrimination on the basis of ‘race’ or gender does not occur in places of employment. In such laws the points of application (places of employment) are specific and the people they address are particular (women and black people). This is in contrast to “formal equality” which treats all people in homogenised and generalised terms.

Generally substantive legal provisions take on the forms of “affirmative action”, “preferential treatment” or “differential treatment” programmes. The point of such programmes is that they specify the legal measures that need to be taken in order to address the violations of human rights that are known to have existed in relation to particular people. In contrast to generalised human rights provisions, substantive equality provisions are positive obligations on the part of states in order to provide for the enhancement of human rights in relation to particular people. Whereas generalised, universalistic provisions of human rights establish negative obligations on states, in so far as they prevent states from violating

human rights, more in keeping with Berlin's (1971) arguments about "positive and negative" forms of "liberty".

Substantive equality provisions, by being positive obligations on the part of states, also entail putting into place support mechanisms that would facilitate and ensure the implementation of substantive equality provisions. In this sense, substantive equality provisions have the potential to go beyond the law, unlike formal equality provisions that are contained in the law. This is because substantive equality is phrased as "what the state must provide", whereas with formal equality it is more the case of "what the state cannot do". This means that in the instance of formal equality the provision of rights is negative; they outline the prohibition of forms of discrimination. Whereas in the case of substantive equality the emphasis is on the positive obligation of the state; prescribing what the state should do to enable the realisation of equality. In actually "providing", the "state" moves out of the law and into civil society (see also Castells, 2000: 121).

Moving into civil society here refers to at least three types of activities. First, the state, as has increasingly been the case since the proclamation of the Universal Declaration of Human Rights, enters into "partnership" with non-governmental organisations (NGOs) with expertise in the areas of intervention to assist in the delivery of substantive equality provisions. Second, the state, through substantive equality provisions, is required to also put into place programmes that would support the people that are the beneficiaries of these provisions. For example, in relation to women, the state may need to put into place women empowerment programmes, set up shelters for abused women and provide counselling services for such women. Indeed in order to realise such programmes in practice, the state usually recruits the services of NGOs. Third, partnerships with NGOs and delivery of support programmes imply that the state needs to be aware of what are the specific experiences and conditions of the people it hopes to assist in its substantive equality provisions. In order to access what these experiences and conditions are the state is propelled to go into civil society, generally taking the

form of a "needs analysis". Thus, whilst “substantive equality” provisions remain formal, legal provisions, they do allow for the potential to go beyond the law.

However, and simultaneously, substantive equality provisions are time-bound. They are not meant to be in place forever. Once equality is said to be reached, then the provisions for which the substantive equality was aimed, would not have justification for continued existence. An example will be in order here. Let us assume, following MacKinnon, substantive equality provisions need to be put into place for women. This would mean that the state/s would need to put into place “preferential treatment” laws and programmes specifically directed at women to ensure their upliftment in society and their realisation of equality in relation to others. Laws could include increasing the employment rates of women in places of work to increasing access of women to education. Programmes for women could include things like skills development projects for women. Once women are noted to have reached the realisation of their equality with other human beings, have equal access to things as others do, particularly men, and do not suffer violations of their rights, then the rationale and the justification for continued preferential treatment of women could be said to cease. The ceasing of substantive equality provisions is hotly contested as seen recently in some states of the United States of America. Equality provisions for “minority groups” were argued by white right-wing groups to be unnecessary, whilst “minority groups” pointed out that they still suffer discrimination and the preferential equality provisions therefore should remain.

It is possible, for human rights and the law to be made more specific and personal. However, it should be noted that substantive equality provisions also allow for the possibilities for human rights provisions to go beyond the law by putting into place programmes that are aimed at directly addressing the specific realities of particular people in their personal lives and spaces.

The Proliferation of Human Rights

There are serious implications that are at stake in the above discussion. The argument is that modern and post-modern views of human identities have the potential to make human rights more specific, particular and personal. It has also been argued that such a move can be accommodated within legal frameworks through the use of “substantive equality provisions”. This argument has been advanced on the premise: for human rights to be meaningful and to actually prevent the violations of human rights, human rights need to “speak to” the specific conditions within which individuals live their lives and the complexities of the ways in which their identities are constructed. This argument implies: 1) that laws can actually change conditions of existence; and, 2) that the proliferation of rights, by making them more specific, is important. However, if legal recognition does occur and is made to become more specific and personal, this would entail that there would be a proliferation of human rights. This is already the case within contemporary situations. It is to these implications that I now turn attention.

The “politics of identity” characterises our age in the face of existential crises of meaning and self within global political and economic contexts (see Castells, 2001, Hall *et al*, 1992, Giddens, 1990, 1994, and Melluci, 1989). The increase in the amount of conventions, covenants and charters also points to the proliferation of rights. Castells (2001), for example, points to the impending Charter for the Rights of Women of the European Union and other covenants within the EU still to come. Given this context, it is fair to assume that it is unrealistic to expect that the proliferation of human rights can be stopped.

The proliferation of human rights is expected to continue for two reasons. First, the law itself is always subject to further development. It is not static. It does, as it will, continuously change and grow. This happens after much contestation and many may be resistant to making such changes. Nonetheless, such changes have occurred, as they will continue to occur. The second reason why the proliferation

of human rights is expected is due to assumptions about human beings themselves. There are two arguments in relation to this.

Nietzschean and existentialist views of human beings are cast within what may be termed “ontology of becoming” (see Nietzsche, 1968; Sartre, 1974). This suggests that human beings are always in a process of growth, of change, development or becoming. In this respect, human rights are bound to proliferate as more and more people assert their identities in their encounters with the structures, processes and interplay of forces (symbolic and material) that construct their worlds and themselves. The other argument is more psychoanalytic and suggests that human identities always would “desire” the “recognition” of and by “the other”. In their dialectical relationships with the Other, which are constitutive of their own identities, people become themselves. However, once recognition by the Other happens, desire is never satisfied and quickly displaces itself to “an/other”, from whom recognition is again sought. The dynamic of satisfying “desire” leads to a type of cul-de-sac, since “desire”, in order to keep itself alive, can never be satisfied. Its only end can be in “death”. One of the most illuminating expositions of this argument can be found in the work of Žižek (1989, 1991). In discussing Žižek's claim of the "insatiability" of "desire", and Lacan's views about the law, Douzinas notes:

Rights ... become a phantasmic supplement that arouses but never satiates the subject's desire. Rights always agitate for more rights: they create ever new areas of claim and entitlement, but these prove without exception insufficient. We keep demanding and inventing new rights in an endless attempt to fill the lack, but this only defers desire (Douzinas, 2000: 314).

As such, the proliferation of human rights is both in the “rights” and “human”; endemic and integral to human rights.

Simultaneously, the proliferation of human rights also implies potential for conflicts to proliferate. Douzinas points out that “rights often create rather than

address conflict” (Douzinas, 2000: 323). The proliferation of conflict through the proliferation of human rights can be seen in situations where women are granted the right to have an abortion and when this happens, “pro-life”, anti-abortion groups emerge. When “black” people are granted human rights, “white” supremacist groups assert their rights to be racist. When “refugees” are granted human rights, xenophobic narrow nationalist sentiments arise. The proliferation of human rights thus has the potential of proliferating conflict in societies.

However, for Castells, for example, it is important for laws to carry within them such ambiguities and potential for conflict. Castells states:

If you are going to develop a constitution in any country, ambiguity is fundamental. Constitutions should always be ambivalent because they should evolve with societies and with political conflicts (Castells, 2000: 120).

In this light, the proliferation of human conflict with the proliferation of human rights is viewed as constitutive, productive and positive, both in terms of human development and legal refinement. But, the proliferation of human rights leads to another level of conflict as well, and that is in relation to how one is supposed to recognise forms of human identities that are in themselves antithetical to human rights. For example, does one recognise religious formations that oppress women? Does one recognise systems of belief that are homophobic and/or racist? This remains a difficult and unresolved question and it is likely to be the nexus of debates around human rights for years to come. However, there are possible responses to the question.

A crude and inflexible response could be that one imposes the decree of human rights on all forms of human identities and forces those forms of human identity to re/define themselves in ways that are consistent with human rights. Following Castells (2000) this was done in France after the French Revolution and in the Union of the Soviet Socialist Republic under Stalin’s rule. According to Castells,

this crude, inflexible and autocratic response did not work in consolidating common and shared values and beliefs among the French or the Russians, although this was more the case with the latter than the former. This is a crude response because it is impositional and dictatorial. It is inflexible because it lays down the law, as it were, and forces compliance to it.

It is also possible to respond externally. By this I mean people from other countries can act against violations of human rights in countries other than their own. This is different from the French and USSR examples cited above which were responses from within countries. For Douzinas, the NATO bombing of Yugoslavia is one such example of this, and for him "in extreme cases and to prevent genocide" (Douzinas, 2000: 139) such action is justified.

It is also possible to respond to forms of human identities that are not consistent with human rights to be persuaded, through the use of rational argument, to assimilate human rights within their definition of themselves. Here the argument is that through rational and open discussion and debate, people's views and beliefs can be shifted. Through sustained and prolonged "dialogue" i.e. on the basis of authentic recognition over a protracted period of time, and in many ways, it is believed, forms of human identities that are antithetical to human rights will, in themselves, mutate and increasingly incorporate human rights. Taylor (1994) views this as a "fusion of horizons". Enslin (1994, 1999, 2000), however, in relation to women in the South African context has argued that such a response, based on rational persuasion, may not be enough or quick enough, under conditions, such as South Africa where women's rights and lives are seriously threatened. Enslin notes that rational persuasion requires time, and while such rational persuasion is in process, women continue to experience violations of their rights. Thus, whilst rational persuasion may be followed, accompanying measures that prevent further abuse of women may need to be considered simultaneously.

Whatever the responses to the proliferation of human rights and the accompanying potential for proliferating human conflict may be, the proliferation

of human rights, already underway, is likely to continue. Human conflicts may increase and through the engagement with such conflicts both human beings and laws are likely to develop further. After all, as Douzinas puts it:

Rights are not universal or absolute; they do not belong to the abstract man but to particular people in concrete situations with their infinite modification of circumstances, tradition and legal entitlement (Douzinas, 2000: 99-100).

Human rights and identities, thus, are dynamic and will change.

In this chapter I have argued that identities are constructed socially. Conceptions of human rights are influenced by the construction of identities at particular moments in history and under particular conditions. In this regard, I have shown, using Hall, that one can distinguish between four dominant forms of identities historically: pre-enlightenment, enlightenment, modern and post-modern. I have also argued that the Universal Declaration of Human Rights uses both enlightenment and modern views of human identities. In this I have shown that human rights “recognise” the mainly modern conditions of people’s lives and whilst this does indicate an attempt to make human rights more specific, it remains on the level of being generalised and depersonalised. Using MacKinnon’s engagement with human rights from a feminist perspective, I have shown that the failure of human rights to “speak to” people’s actual conditions of living, render human rights meaningless and abstract. I have also argued that in regard to women and Africa, the identities and experiences of women and people of Africa are misrecognised in the Universal Declaration of Human Rights which was shown to be Western, European and masculinist. In order to make human rights more “personal” I have suggested that both modern and post-modern views of human identities provide us with a basis to focus on the particularities of people’s existence and identities. I have also argued that substantive equality provisions, which exist within the law, provide the legal mechanisms through which human rights may be made more particular and specific. I have also shown that

substantive equality provisions enable human rights to go beyond the law through “affirmative action” programmes. It is important to re-emphasise that both formal and substantive equality provisions are provisions in and of the law. In themselves, then, substantive equality provisions do not go beyond the law. However, they do provide the basis for going beyond the law by allowing for programme interventions that address directly people's conditions of existence, like, for example, providing shelters for abused women. I have concluded this chapter by arguing that making human rights more personal entails a closer exploration of processes of recognition and a proliferation of human rights. I have argued that the proliferation of human rights is not only underway currently but is inevitable. Inevitable because the law is not static and because human beings are constantly in a state of becoming, trying to satisfy an insatiable desire that will always attach itself to an “other” in order to re/constitute itself. I have also argued that the proliferation of human rights leads to the proliferation of human conflicts, and that such conflicts may be viewed as constitutive and productive. The proliferation of human rights and conflict were also shown to be the probable nexus of debates on and developments of human rights within the 21st century.

The focus in Chapters 1 and 2 has been on tracing the historical origins of human rights and to chart out the interplay of theories and concepts in a web of meaning that construct human rights.

Throughout Chapters 1 and 2, the argument has been based on five claims:

1. Human rights are discursive, social constructions.
2. Human rights are framed as legalistic, rationalist, universalist, generalised and depersonalised.
3. Human rights frame human identities as homogenised and essentialised.
4. The framing of human rights, as they currently exist, is rationalist and partial, and,
5. Human rights, as they currently exist, lack the specificity with which to reach individual, particular and specific lives on the basis upon which they are personally lived.

This implies that in order for human rights to be more particular and specific it is crucial to focus directly on particular human identities and to chart out what human rights may or may not mean in the context of that particular identity. A theoretical approach, however, is needed in order to consider human rights in more particular and substantive ways. Chapter 3 puts forward the argument that a "theory of articulation" as enunciated by Hall and "portraiture" as developed by Sarah Lawrence-Lightfoot provide the means to develop such a theoretical approach. Chapter 4 applies this approach to the specific context of apartheid South Africa and explores human rights under apartheid in relation to 'race', gender and sexual orientation specifically. Using Chapters 1 and 2 as a backdrop, Chapters 3 and 4 attempt to work with non-essentialist and non-homogenised understandings of what being human means. As such, whilst 'race', gender and sexual orientation are focused upon, they are treated in ways that show the intersections and tensions between these forms of identities within individual human beings. Chapter 5 takes these forward and shows what substantive equality human rights provisions would entail in the contexts of 'race', gender and sexual orientation within the "new" South African order. This is in order to emphasise the need to make human rights more meaningful on individual, particular levels of human life, to make human rights more personal, more human and more humane.