

Feminism and the Politics of Rights: A Qualified Defense of Identity-Based Rights Claiming

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In this essay, I consider whether or not the contestatory potential of rights politics turns on replacing identity claims with universalist ones, and why one might be inclined to urge such a move from “the ontological” to “the political.” While this argument has much to commend it, as it sheds light on the constitutive dimensions of identity-based rights and their depoliticizing tendencies, I remain unconvinced that a better form of rights necessarily requires detachment from identity per se. Engaging the work of Wendy Brown, Michel Foucault, Hannah Arendt, and Judith Butler, I argue that an understanding of rights as political claims should include an appreciation of the importance of identity and injury, for rights can function as a discourse through which identity is contested and reconfigured rather than simply reified.

INTRODUCTION

When Wendy Brown first brought her Marxist and Foucauldian frameworks to bear on the ubiquity of rights in emancipatory political movements like feminism, she made visible problems that had previously gone unnoticed (1995). Neither the equality of abstract rights

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nor the specificity of identity-based rights, she argued, truly addressed women's subordination. Instead, they contributed to it by obscuring the power dynamics by which women were constituted and regulated as subjects of the law. Rights claims marshaled on behalf of "women," whether successful in gaining recognition from the law or not, actually entrenched women in injury-based identity categories and undermined efforts to build sustained democratic practices. The disciplinary dimensions of the law, Brown illustrated, were disturbingly inescapable and deeply depoliticizing.

Ten years later, feminists are still struggling to respond to the problems Brown so trenchantly identified. Cognizant not only of the masculinism implicit in "abstract" rights but also of the essentialism that accompanied the first generation of "particular" identity-based rights, some feminists have sought to revise rights discourse so that it more adequately accounts for the diverse experiences of women (e.g., Hirschmann 1999; Roberts 1997; West 1997).¹ According to this perspective, if rights accurately represent the complexity of women's lives and identities, however multiple and fluid, their emancipatory potential can be achieved.² Yet skepticism remains about the ability of even these kinds of rights to address the multiple dimensions of women's subordination. Indeed, dissatisfaction with the continued reliance on such identity-based rights discourse appears to be growing once again. At the same time, however, rights remain a much utilized weapon in the fight against women's subordination, nationally and globally. And given a political climate poised to reverse important gains made on behalf of women, few feminists suggest that we give up on rights completely. Thus, those who remain committed to rights but critical of identity suggest that if rights are to remain a viable language of political contestation, rights claims should focus less on the legal recognition of difference and more on politics, on what is to be done (e.g., Benhabib 2002; Kruks 2001). Fore-shadowing this growing concern a decade ago, Brown suggested that it was time to replace the "I am" of identity-based rights claims with a claim of greater universality, "I want this for us," time to shift from

1. Though not specifically addressing the issue of rights, Gloria Anzaldúa's work is often taken as an exemplar of this approach to theorizing identity. See Sonia Kruks (2001) for a discussion of the problematic implications of Anzaldúa's work for feminist rights politics and Susan Bickford (1997) for a more positive assessment of the democratic potential of Anzaldúa's work.

2. What we see here is an attempt not to challenge the entrenchment of identity, but rather to ensure the entrenchment of the correct kind of subject. I discuss this perspective in greater detail below.

considering rights as ontological claims to recognizing them as political ones (1995, 75).³

In this article, I take a closer look at the frustration with identity-based rights claims. Focusing my attention on the arguments of Wendy Brown, I consider whether or not the contestatory potential of rights politics turns on a rejection of identity-based rights claims, and why one might be inclined to urge such a move from “the ontological” to “the political.” While this argument has much to commend it, as it sheds light on the constitutive dimensions of identity-based rights and their depoliticizing tendencies, I remain unconvinced that a better form of rights *necessarily* requires detachment from identity per se. Indeed, as I suggest here, an understanding of rights as political claims should include an appreciation of the importance of identity and injury, for rights can function as a political practice through which identity is contested and reconfigured, rather than simply reified.

What follows, then, is a qualified defense of identity-based rights claiming that both questions certain conclusions to which Brown comes, and yet builds quite explicitly on the insights she offers. While I mean to shed light on and increase appreciation of certain aspects of the relationship between identity and rights that are obscured by her cautionary tale, I also accept her provocation to consider rights as political rather than ontological claims. Thus, I begin by reconstructing Brown’s argument sympathetically, carefully analyzing her profound skepticism about, yet deep commitment to, rights. Illuminating a move often overlooked in her work, I explore the relationship between her critique of rights and her call for a form of right less tied to past injury or aimed at the state and directed more toward “political universal(s)” and democratic participation (2000a). Unfortunately, she gives us only a hint at what it might mean to embrace rights as universal political claims, and thus I turn to the work of Michel Foucault to explore this idea more fully. The new form of right to which Brown alludes, I suggest, becomes a comprehensible ideal when considered as an expression of what Foucault called a “relational right,” a rights claim that refuses “what we are” in favor of imagining a future of living differently.

3. The association that Brown draws between the political and the universal is not always clear and is, in fact, a relationship explored throughout this article. What is clear, as I discuss here, is that Brown’s use of the term “universalism,” especially in her more recent work, is not simply a reference to notions of equality and sameness as were found in earlier feminist equality/difference debates (1995, 2000a, 2000b). While an extensive discussion of the distinction between the current use of this term and earlier uses is beyond the scope of this article, Butler, Laclau, and Žižek (2000) and Zerilli (1998) provide excellent accounts of these issues.

But should this new form of right be adopted as an alternative to identity-based rights claiming? In the second half of the article, I argue that the contestatory potential of rights need not require their disaggregation from identity, if we understand identity as something other than ontological. In fact, claims about what we want for our future may not be wholly separable from claims about who we are now or have been in the past. To make this second point, I turn to the work of Hannah Arendt. I read Arendt as helping us to see the limits of universalist rights claims, while drawing our attention to the importance of identity claims making as part of the practice of politics. In her Lessing Prize acceptance speech, Arendt exemplifies a particular orientation to injury-based identity that looks at once to the past and the future (1968). She explicitly rejects an ontological orientation to identity, considering it instead as a “political fact” that helps constitute but does not wholly determine who an individual is. When this orientation to identity is coupled with rights discourse, it is possible for identity-based rights claims to do the work of contestation and politicization that Brown imagines. Here I turn to the work of Judith Butler to illustrate this point.⁴ Butler’s recent engagement with human rights discourse brings to light the extent to which presumably universalist rights claims contain an identitarian moment, and the extent to which such identity-based rights claims always entail resignification of that identity, rather than simply reification. Thus, I use Butler’s work to illustrate that the contestatory potential of rights resides simultaneously in their universalist and particularist orientations.

To those who urge feminists to theorize and/or do rights differently, this argument is meant to give pause. It may not be that we need to theorize or do something differently, but rather that we need to adopt a new orientation to identity-based rights claiming that allows us to appreciate more robustly the kind of politics in which we are already engaged when we make rights claims.

TOO ATTACHED TO IDENTITY?

The Critique: Imprisoned in Identity

As I suggested, Wendy Brown offers one of the most well known and forceful critiques of identity-based rights claiming put forth in recent

4. Thanks to an anonymous reviewer for the suggestion to take another look at Butler, particularly the debates engendered by *Excitable Speech* (e.g., Allen 1998; Passavant and Dean 2001).

years. Though appreciative of the work that rights, both abstract and particular, do to mitigate the inequality and injustice that attends politicized identities, Brown is concerned that these advances come with great risks and problems. In the context of women's subordination, she draws our attention to the fact that the problem with rights is not simply that they are masculinist or monolithic, and thus fail to reflect or address adequately the experiences of women's lives. Rather, the problem is that even when rights claims reflect the complexity of women's (or African-Americans', or gays' and lesbians') lives, they may do more to entrench than to redress inequality and subordination (Brown 1995, 2000a, 2000b).

One of the political strategies that troubles Brown greatly is the tendency of feminists to seek redress through highly specified identity-based rights claims, through attention to greater and greater particularity. Although she addresses the work of Catharine MacKinnon specifically, this attention to specificity—efforts “to make the law ‘gender sighted’” (1995, 129)—can be found in a variety of contemporary feminist works. For example, Dorothy Roberts suggests that rights arguments must “take into account the background social conditions that may have constrained [women's] decisions” (1997, 295). And Nancy Hirschmann urges feminists to reformulate rights in a way “that addresses and accommodates feminist concerns of difference, particularity, context, and identity”; that allows and empowers women to “articulate their situation and their need . . . to name their own experiences, and not have them named by others” (1999, 29, 44). The implication is that if women are able to speak their experiences in all their specificity through rights claims, their needs will more likely be recognized and their rights protected. Entrenchment *per se* is not the problem to be addressed. Rather, the problem is the entrenchment of an inaccurate identity.

Brown suggests that these efforts to represent correctly the subject of rights fail to recognize the constitutive character of legal discourse because they rely on a problematic set of ontological commitments. In other words, those who hope to make rights more effective by having them reflect a complex identity ultimately turn experience and perspective into truth (1995, 131). They make women's experience into the ontological basis of the rights claim, and seek recognition by the state of already constituted identities. This renders identity that already-existing object of recognition that simply needs to be illuminated through the rights claim. Brown, however, challenges us to recognize that it is through rights discourse—a set of words, ideas, practices, strategies—that women's putatively “true” identity is created. Legal recognition, in other words, is

not a simple matter of acknowledging an already existing truth, but rather it is through rights claiming itself that identity is brought into being. Rights discourse reinforces, for example, the norms of femininity and heterosexuality that actually constitute us as particular kinds of women. By drawing attention to the fact that “rights produce the subjects they pretend only to presuppose” (2000a, 472), Brown challenges us to recognize that individuals do not just use or invoke rights to represent or reflect their complex identities; they are also produced in and through that discourse.

The problems with identity-based rights are, however, not just philosophical; they are also political. According to Brown, identity-based rights claiming promotes a dangerous attachment to past injury that cripples political action. Butler describes this as a narcissistic attachment to the terms that constitute our very being: “Called by an injurious name, I come into social being, and because I have a certain inevitable attachment to my existence, because a certain narcissism takes hold of any term that confers existence, I am led to embrace the terms that injure me because they constitute me socially” (1997b, 104). What concerns Brown about this attachment is the kind of ethos and politics to which it gives rise—a politics marked by moralizing, righteousness, blame, and a desire for punishment. She calls this a politics of *ressentiment* (1995, 27; cf. 2001). Identity-based rights claiming, she argues, rests on an understanding of politics as punishment and political action as the instrumental attempt to achieve a very specific end. When specific legal ends come to signify freedom and specific instrumentally effective rights arguments come to signify political action, however, the result is a transformation of “the instrumental function of law into a political end” and the “bartering of political freedom for legal protection” (Brown 1995, 28). Identity-based rights claiming, in other words, undermines a democratic politics of participation, a politics that allows “humans [to] govern themselves by governing together” and to create an egalitarian society through struggling together (p. 5). By confusing legal recognition with emancipation, identity-based rights politics devalues a robust participatory and contestatory democratic politics.⁵

Moreover, by codifying identity as injury, turning it into a “truth” represented by rights claims, rights discourse may do more to reinforce than to subvert the subordinating policies against which it is directed. Attachment to injury, Brown argues, serves to fossilize identity, rendering it not

5. For a compelling response to Brown that addresses the radically democratic potential of rights, see Samuel Chambers (2004).

only static but supposedly natural and normal, and making the transformation of norms extraordinarily difficult (e.g., 2000a, 470–71). By calling attention to the specific injuries that the denial of certain rights has on individuals, we codify particular understandings of gender and sexuality that then “imprison us within the subject positions [rights] are secured to affirm or protect” (1995, 120). For example, in claiming a right to privacy to limit state power in the arena of sexual relations, one fails, according to Brown, to recognize, let alone challenge, the way in which power works through other institutions and techniques to regulate the sexual acts and identities of individuals. As she suggests, “the rights that women bear and exercise as women tend to consolidate the regulative norms of gender, and thus function at odds with challenging those norms” (2000b, 234).⁶ In other words, rights claims with specific content, attentive to injury-based identities, actually entrench women in normative identity categories that render them more susceptible to state regulation and surveillance. Recognition may present the illusion of individual freedom and sovereign subjectivity, even the illusion of state responsiveness. And yet, all the while, the disciplinary power of law reinforces normalizing identity categories, increases state surveillance, and undermines robust political engagement.

The Provocation: Political Universals and Relational Rights

Not surprisingly, Brown’s stinging critique of rights has led some readers to conclude that she rejects rights completely (Baynes 2000). Yet Brown’s work also contains a provocation, an exhortation to progressive political movements and marginalized individuals to eschew identity-based rights claims in favor of a different form of rights that may be more universal or abstract. The problem, she explains, is “not whether women should have rights but what kind of rights will procure emancipation from those powers rather than reinscribe them (e.g., as matters of privacy) or, rather than continue to regulate women through them (e.g., by installing the state, the economy, and the medical establishment as brokers of women’s

6. For good examples of this process, see also Butler’s *Undoing Gender* (2004) and *Excitable Speech* (1997a). In the former, she describes how welfare legislation that prohibits certain individuals from receiving entitlements produces the norm of the welfare recipient (2004, 55). And in both, she details the ways in which the regulation of gay speech in the military produces and maintains norms of masculinity and femininity, and norms of sexuality that restrict activity and reinforce an ideal.

access to abortion . . .)” (2000a, 477). That requires disaggregating rights from identity, allowing rights to function as empty signifiers, for rights

may be most effective to the degree that they remain empty of specific content, that is, to the degree that they are not closely bound to particular identities nor aimed at redressing particular injuries but, instead, function to articulate a political universal that, as an ideal or a vision, operates as a critique of status quo inequalities and hence as incitement to address those inequalities politically rather than legally. (2000a, 470)

But what does this mean? What does Brown have in mind when she suggests that rights “articulate a political universal”?⁷ Unfortunately, she only hints at what this might mean, often raising more questions than she answers. What is clear, however, is that she is calling for a rejection of rights claims that have a highly specified content in favor of a turn to “universal rights” (e.g., 2000a, 473). Universal rights, it appears, are those that are less specific, more idealistic, and certainly oriented to the future rather than the past. They are, in other words, political claims rather than ontological ones. Ontological claims, such as “I am,” are backwards looking and moralizing, entailing a “defensive closure of identity [and] insistence on the fixity of position” that is depoliticizing. They ought, therefore, to be replaced by political claims, such as “I want this for us,” claims that are future oriented and nonmoralizing. Political claims, “rather than dispensing blame for an unlivable present, inhabit a necessarily agonistic theater of discursively forging an alternative future” (1995, 76). And while ontological claims demand the “affirmation of difference” or “remedy to social injury” that gives rise to disciplinary power, political claims attend to a kind of universality that is potentially transformative. Taking the recent campaigns for equal rights for gays and lesbians as an example, Brown argues that rather than seeking recognition for a specific gay identity, such campaigns engender “political disruptiveness” and “democratiz[ation]” by “sustain[ing a] universalist fiction of this discourse, a universalism that the charge of ‘special rights’ attacks” (pp. 133–34). Rights claims focused on equality and inclusion rather than difference, that challenge exclusive notions of personhood rather than demand recognition for specific kinds of identity, would seem to be what Brown has in mind here. But given this tantalizingly brief example, one is left to speculate.

7. See Chambers (2003) for a provocative rethinking of the universality of rights.

By way of speculation, let me offer one possible understanding of what a universalist political form of rights claiming might look like. To do so, I return to one of Brown's interlocutors—Michel Foucault. As I suggested, Brown's critique of rights is informed by a Foucauldian notion of disciplinary power and his concern that rights discourse remains invested in an ancient theory of sovereignty that both misunderstands modern power and contributes to its workings. As he explains, when one uses rights discourse, and turns to the state for recognition and redress of specific kinds of injuries, one is working with a conception of power as a commodity that can be transferred from one individual or institution to another. Rights, in this scenario, are presumed to fix the limits of the legitimate power of the state or the individual. Unfortunately, according to Foucault, this equation of rights with freedom fails to account for the fact that modern power circulates "at the extremities," through nonstate, nonjuridical institutions, locations, and techniques. And this power works not through repression or prohibition, but through production, surveillance, and normalization far exceeding the reach of the juridical edifice, rendering rights an ineffective, if not dangerous, language of political contestation ([1976] 1980). Or so it would seem.

Despite his devastating criticism of rights as a juridical discourse, Foucault is not ready to abandon them altogether. Indeed, he suggests that the contestation of modern power can include the discourse of rights, but only if understood anew: "If one wants . . . to struggle against disciplines and disciplinary power, it is not towards the ancient right of sovereignty that one should turn, but to a new form of right, one which must indeed be anti-disciplinarian, but at the same time liberated from the principle of sovereignty" ([1976] 1980, 108). In other words, if rights discourse is deployed to challenge norms, rather than traditionally conceived state power, and if we recognize that rights are not things that an individual has or that the state can simply protect, then their transformative potential may come to fruition. If rights are deployed to expand the possibility of living, thinking, and doing differently, are oriented toward the future, and work to refuse imprisonment in already existing identity categories, then they hold out a promise. Like Brown, Foucault does not spend significant time detailing the content of this "new form of right," yet in essays and interviews given not too long before his death, he begins to develop a concept of a "relational right" that appears to satisfy the criteria for a form of right liberated from the principles of sovereignty, which Brown might identify as universal rights (Foucault [1982] 1997).

Juxtaposing relational rights to natural individual rights as well as identity-based group rights, Foucault describes relational rights as those that recognize and create new ways for individuals to relate to each other. Relational rights, he suggests, have nothing in particular to do with either individual rights, such as privacy, or group identity. Instead, a relational right entails “the right to gain recognition in an institutional sense for the relations of one individual to another individual. . . . It’s a question of imagining how the relation of two individuals can be validated by society and benefit from the same advantages as the relations . . . which are the only ones recognized” ([1982] 1997, 162). Relational rights, in other words, represent and constitute new ways of living that exceed the heretofore recognized possibilities. While struggling for and winning a juridical right, such as the right to marry, entails fitting oneself within the confines of existing ways of being and doing, relational rights involve the creation of new forms of relationships beyond those currently codified in the law and recognized by the state. As such, they are an act of refusing what we are, as well as an attempt to bring into existence new attitudes and to enact new ways of living and relating to each other previously unrecognized or legitimated (1982, 216).⁸

Importantly, then, Foucault ([1982] 1997, [1987] 1997) does not use the term “relational rights” in the same manner as do feminists. Relationality, as discussed in recent feminist work, refers to a particular way of understanding the subject of rights as embedded within and influenced by relationships. Relationality is posited as an alternative, indeed antithesis, to atomistic individualism (Minow and Shanley 1997). Foucault’s conception of relationality seeks not to establish the “truth” of human nature as relational, but rather to identify relationships, and the identity categories that are implicated in relationships, as sites of contestation. Indeed, through relational rights, he suggests, marginalized individuals can challenge the norms and disciplinary mechanisms that maintain their subordination.

To illustrate the challenge that relational rights pose, Foucault offers the example of the right of adult adoption. At the present time, he argues, we have no way of thinking about and understanding relationships

8. While Foucault, himself, is notoriously vague on how it is that making rights claims engenders change and disruption, I think it is fair to consider rights claiming here as a performative speech act, the contestatory potential of which resides in its ability to resignify the very terms deployed. I borrow this understanding from Butler, whose discussion of rights as “insurrectionary speech acts” is clearly inspired, at least in part, by Foucauldian notions of agency and resistance (Butler 1997a, 1997b, 2004).

of care and obligation among adults except in terms of marriage and the family. The right to adult adoption would question these accepted relationships while expanding the possibilities for living together and caring for others ([1982] 1997, 158). It would bring into existence a new way of understanding intimate relations of care and dependency, allowing us to “escape as much as possible from the type of relations that society proposes for us and try to create in the empty space . . . new relational possibilities” (p. 160). And this “escape” would come not necessarily or only by way of legally sanctioned rights. In fact, Foucault imagines deploying the language of a right of adult adoption not simply to create state-sanctioned rights but also, and perhaps more importantly, to expand what counts as an acceptable relationship in realms beyond the state.⁹

As Foucault suggests, by using rights discourse in this way, directed at both the state and disciplinary norms, one challenges “the effects of power which are linked with knowledge, competence, and qualification,” calling into question the very mechanisms by which identity categories are constituted and policed (1982, 212). Rights language, then, involves questioning the knowledge and practices that produce individuals by imprisoning them within particular identities and norms. Through relational rights arguments, we create new cultural forms that challenge the status quo, rather than make rights claims that attempt to make visible and demand redress for a past injury. Such an antidisiplinary politics of rights contests attempts to naturalize and solidify identity, and, by denaturalizing identity, makes it possible to cultivate generosity toward a plurality of identities and lifestyles.

The notion of relational rights, thus, not only points the way to a new understanding of rights but also challenges feminist critiques of rights’ disciplinary character for downplaying, indeed, at times denying, the contestatory potential of rights. This argument, of course, presupposes a particular theory of agency and resistance whereby discourse is not simply an effect of power but “a hindrance, stumbling block” to it as well (Foucault 1978, 101). In other words, disciplinary power does not extinguish a subject’s capacity for agency or foreclose all possibility of freedom, but

9. Foucault also uses the sadomasochistic subculture as an example of a relational right for which we might want to struggle. Rejecting the notion that S/M is the reflection or manifestation of natural sexual drives or tendencies toward violence, he argues that “it’s the real creation of new possibilities of pleasure, which people had no idea about previously” ([1987] 1997, 165). According to Foucault, through practices of S/M, individuals come to relate to each other and to their own bodies in new ways. These practices create a new set of attitudes about pleasure and sexual relationships, as well as new notions of identity and new kinds of behavior absent from more traditional relationships of marriage and family.

actually makes freedom and resistance possible (cf. [1987] 1994). As Foucault explains, “freedom must exist for power to be exerted . . . since without the possibility of recalcitrance, power would be equivalent to a physical determination” (1982, 221). Disciplinary power may produce us as particular subjects, but this production is not totalizing or seamless. Nor is it wholly constraining. In fact, according to Foucault, disciplinary power produces us as subjects capable of freedom, capable of action, capable of resistance.¹⁰

That is not to deny that practices of resistance may entrench power, that the relationships and identities constituted through practices like adult adoption may be used to reinforce normalization. However, this, Foucault argues, is not an adequate objection to the practices of resistance themselves. As his work illustrates, no language or style of resistance can bring about the end to political debate and struggle, no matter how liberated from an ancient theory of sovereignty. The best a practice of freedom can do is to protect or create “the political, social, and cultural conditions under which individuals are allowed the possibility of struggling to change these same conditions” (Thiele 1990, 919). And this is precisely what relational rights do; they work to resist and refuse the imposition and naturalization of identity. As such, they are one aspect of antidisiplinary, agonistic politics of resistance, a politics of “reciprocal incitation and struggle; less of a face-to-face confrontation which paralyzes both sides than a permanent provocation” (Foucault 1982, 222).

Relational rights, or what Brown might call universal rights, appear quite promising. Through the adoption of this new rights discourse that eschews concerns with individualized identity categories and past injury, progressive political movements can seek to articulate ways of being heretofore nonexistent, and do so in realms beyond the state. But must we understand relational rights or a more contestatory form of rights discourse as somehow opposed to or distinct from identity-based rights claims? Certainly, both Foucault and Brown rightly challenge us to let go of thinking of identity as an attribute or truth. But might there be times when responding in terms of universals is not useful? Or rather, when it is not so clear that identity claims are extricable from universal ones? To answer these questions, I turn to the work of Hannah Arendt and Judith Butler.

10. A detailed discussion of a Foucauldian notion of resistance and agency is beyond the scope of this article, but Butler's *The Psychic Life of Power* (1997b) provides a helpful discussion of these issues.

BEYOND RELATIONAL RIGHTS

Speaking as a Jew: Arendt and the Facts of Identity

In 1959, Hannah Arendt was awarded the Lessing Prize by the city of Hamburg. In her acceptance speech, Arendt (1968) ponders the fact that she, a Jew who only a few years earlier had been exiled from her country, a Jew who would not have been allowed to speak in public or celebrated as an important public intellectual, had been chosen as an exemplar of the humanist tradition. In considering the irony of her situation, she challenges her audience to consider the meaning of humanism itself, particularly in light of the attitude and spirit with which Lessing approached life—his recognition that plurality is a vital component of creating humanity (1968, 8).¹¹ And thus, in what must have been a surprising move, Arendt explains that she will accept the award, but only by speaking as a Jew, not as an abstract human being or world citizen but a member of a group whose religious identity had been used to justify their persecution.¹²

What can we learn from this explicit expression of identity? From the fact that she felt compelled to “bluntly reveal the personal background of [her] reflections” (1968, 18)? What can we make of such a statement offered by a thinker who very clearly rejected an ontological orientation to identity? Who argued that *who* someone is cannot be captured by attributes like biology or psychology?¹³ As I suggest in the following, Arendt’s identity claim draws our attention to the limits of universals and

11. According to Arendt, Gotthold Ephraim Lessing believed that humanity was created out of plurality and difference, and was not the result of homogeneity and singularity. He recognized, she explains, that making space for a plurality of voices and perspectives was actually constitutive of friendship and humanity; “he was concerned solely with humanizing the world by incessant and continual discourse about its affairs and the things in it” (1968, 30). For without plurality, “the world, which can form only in the interspaces between men in all their variety, would vanish altogether” (p. 31).

12. Here, Arendt reiterates a point made in 1954 in response to an inquiry about her political awakening. She explained that when she finally recognized herself as a Jew, she was compelled to act, and to act as a Jew. Thinking of herself in terms of universals was not helpful, for “if one is attacked as a Jew, one must defend oneself as a Jew. Not as a German, not as a world-citizen, not as an upholder of the Rights of Man, or whatever. But: What can I specifically do as a Jew?” (1994, 12). While it appears that Arendt is rejecting rights in favor of identity here, a careful reading of her criticism of the rights of man in *The Origins of Totalitarianism* reveals that she rejects a particular understanding of rights rather than rights per se (1958b). For an interpretation of her statements about rights to which my own understanding is indebted, see Jeffrey Isaac (1996).

13. Identity for Arendt, as Bonnie Honig (1993, 1995) and Lisa Disch (1996) remind us, is performative; it is not what we are, but what we do. Attributes or characteristics like sex or skin color, even our biological and psychological characteristics, may define *what* we are, but they do not capture *who* we are. “Who” we are, our unique identity, is expressed through our action in the public realm, through our words and deeds (Arendt 1958a, 186).

to the important role that the particularities of identity have to play in politics. Indeed, her message in “On Humanity in Dark Times” is that there are times when making universal claims may be politically dangerous, giving rise to “misunderstandings” that put politics and the very world that exists between individuals in jeopardy (p. 17). In “dark times,” when the political realm is shrinking and relations between individuals are diminishing, resuscitating humanity and politics, Arendt seems to be suggesting, requires not turning to universals and celebrating a presumed sameness of individuals, but acknowledging our unique and distinct places in the world. In dark times, “in times of defamation and persecution,” political engagement requires resisting “in terms of the identity that is under attack” (p. 18).¹⁴

Resisting in terms of the identity under attack is not, Arendt suggests, about making ontological claims: “When I use the word ‘Jew’ I do not mean to suggest any special kind of human being” (1968, 18). Rather, to speak as a Jew is to acknowledge a “political fact,” to shed light on an historical moment and a set of events, institutions, and relationships that conditioned the way individuals treated each other, to acknowledge “a political fact through which my being a member of this group outweighed all other questions of personal identity or rather had decided them in favor of anonymity, of namelessness” (p. 18). To deny her Jewishness, or simply accept the award as an abstract human being or generic world citizen, would have been “nothing but a grotesque and dangerous evasion of reality” (p. 18), part of “the widespread tendency in Germany to act as though the years from 1933 to 1945 never existed” (p. 19). It would have been an escape into what she calls “cloud-cuckoo-land” that would only have contributed to the disappearance of the world between individuals (p. 18). And thus, in bringing attention to past injury and specificity, Arendt is engaged in a decidedly political act that is both backward looking and future oriented, cognizant of the fact that possibilities for living differently in the future depend on the recognition, rather than the erasure, of past injustice.¹⁵

14. I do not mean to suggest that Arendt provides us with a comprehensive theory of identity in this speech. Rather, what I seek to do here is draw out some lessons we might learn from her explicit invocation of Jewishness in the context of an award celebrating the universality of the humanist tradition.

15. I am not suggesting that Brown urges us to erase past injustice at all. Rather, I am suggesting that the importance of identity—the bearing it has on future possibilities as well as its resignifiability—is somewhat obscured by Brown’s more immediate concern to show the limits of identity-based rights claiming than to suggest their potentialities.

Of course, Arendt's embrace of the facticity of her Jewish identity would seem to align her with the kind of specificity arguments embraced by Roberts and Hirschmann. Their specificity arguments suggest that self-affirmation of one's complex identity is the basis of or precondition for efficacious acts of political resistance. Arendt not only rejects such an ontology but also cautions against unnecessarily juxtaposing universal personhood to specific identity, while urging a rethinking of the very meaning of specificity. By recognizing her Jewish identity, she is making visible the fact that her Jewishness conditioned the way in which her actions were interpreted and her participation in the political realm was determined. Understanding identity as a political fact means recognizing the ways in which relations of power, institutions, and historical circumstances give meaning to identity categories that condition the possibilities of speaking and acting in public.

When the fact of being differently positioned and conditioned by identity is acknowledged rather than obscured, then the space of politics is created and it becomes possible to act and think differently. In dark times, for example, "under the conditions of the Third Reich, it would scarcely have been a sign of humanness for . . . friends to have said: Are we not both human beings? It would have been a mere evasion of reality and of the world common to both at the time" (1968, 23). And, as Arendt explains, it is only when individuals acknowledge the political fact of their identities, only when the Jew and German meet and engage together as Jew and German, as individuals conditioned in different ways by historically contingent constructions of identity, that it becomes possible to resignify and reconstitute the meaning of an identity category, particularly one that has been used to subordinate. Through the explicit invocation of her Jewish identity, she is able to acknowledge the power of a normative identity category at the same time that she exposes and challenges its status as a truth. She makes it possible to tell different stories about her own self and Jews in general, and this enables the disruption of norms. Acknowledging the fact of her identity is, then, part of a practice of "resisting the world as it was" (p. 23). In other words, Arendt's recognition of identity as a political fact is a part of a contestatory performance of identity. By acting in public as a Jew, she engages in the disclosure of her unique identity—"Who somebody is or was we can know only by knowing the story of which he is himself the hero"—that allows for the future disruption of norms (1958a, 186), while reminding us that under particular circumstances, this disruption, this resistance, requires an acknowledgment of the past.

By stressing her Jewishness, Arendt engages in a form of action that is meant to bring something new into existence. Her appreciation of identity as a political fact suggests that we can acknowledge injury and identity without being bound by them. Facts of identity can be made public without their being a claim about one's timeless and essential nature, without their serving as a narcissistic attachment to one's victimhood, and thus without the kind of *ressentiment* Brown so fears. By giving the facts that conditioned her existence narrative form, Arendt seeks not to "master the past," but rather to begin a process of reconciliation. Knowing what happened and "endur[ing] this knowledge" are necessary steps, she suggests, toward creating a better, albeit uncertain, future: We must "wait and see what comes of knowing and enduring" (1968, 20). And thus, Arendt's appreciation of the political facticity of identity reminds us that identity claims are an important part of political resistance, a necessary, but by no means perfectly emancipatory, step in challenging relations of oppression and domination.¹⁶

Rights and the Resignification of Identity

How might an appreciation of identity as a political fact function in the context of rights discourse? Arendt herself does not make this explicit, for she was not making rights claims when speaking to her audience in Hamburg. To consider the implications of the facts of identity for a politics of rights, I turn briefly to the work of Judith Butler.

In recent years, Butler has been involved in campaigns seeking human rights for gays and lesbians. She describes these campaigns, the fight for sexual rights, as part of a practice of resignifying conceptions of personhood:

[W]hen we struggle for rights, we are not simply struggling for rights that attach to my person, but we are struggling *to be conceived as persons*. . . . If we are struggling for rights that attach, or should attach, to my personhood, then we assume that personhood as already constituted. But if we are struggling not only to be conceived as persons, but to create a social transformation of the very meaning of personhood, then the assertion of

16. This is due, in part, to the fact that our performance of identity is never wholly within our control as actors. "Who" we are is always the indeterminate effect acting and speaking in public, particularly since it comes to be known by the stories told about an individual who acts in the public realm; it is disclosed through the interpretations others make of our political speech and activity (Disch 1996).

rights becomes a way of intervening into the social and political process by which the human is articulated. (2004, 32–33)

Here we find Butler making an argument that resonates with Brown's call for making universal rights claims, rather than ontological, identity-based rights claims. If we assert rights without presuming that such rights emanate from a specific attribute of our identity or without expecting that a specific injury be recognized, then what we are doing is demanding inclusion into a category—personhood—that simultaneously transforms or resignifies the meaning of that category. Seen from this perspective, international human rights discourse has political potential, however paradoxically arrived at. As Butler explains, making international human rights claims for gays and lesbians “is always in the process of subjecting the human to redefinition and renegotiation. It mobilizes the human in service of rights, but also rewrites the human and rearticulates the human when it comes up against the cultural limits of its working conception of the human” (p. 33). Through international human rights, we disrupt normative identity categories such as “the human” by orienting ourselves to a new and yet unimagined future, rather than seek recognition of a previously constituted identity.

Butler's description of rights discourse illuminates the work that rights do as performative speech acts, as political rather than ontological claims. Instead of assuming that rights emanate from “our autonomy—if by autonomy we mean a state of individuation, taken as self-persisting prior to and apart from any relations of dependency on the world of others,” the assertion of rights function to constitute us as individuals in political communities (2004, 32). By means of rights, that is, we constitute our individual identities as well as our political communities through a paradoxical process that expands the conception of personhood by drawing attention to previously unauthorized conceptions of personhood: “assert[ing] a right or entitlement to a livable life when no such prior authorization exists, when no clearly enabling convention is in place” (p. 224). Asserting rights thus entails avowing dependency—the norms that produce us—as well as challenging the status quo, for rights must be understood as a site of the contestation of the very meaning and possibility of personhood.

While this description of Butler's work would seem to align her with Brown in her call for universal rather than identitarian rights, I want to suggest that Butler's understanding of the relationship between rights claims and identity is somewhat more complicated than this. In fact,

Butler seems to appreciate the facticity of identity in much the way Arendt does, suggesting that universal rights claims are less distinct from identity claims than Brown seems to imply. Indeed, Butler is quite explicit that there are times when bringing attention to past injury is an absolutely necessary part of the process of resignification, when she acknowledges that contestation requires what Arendt would call recognition of the political facts of identity. For example, Butler argues that “one of the central tasks of lesbian and gay international rights is to assert in clear and public terms the reality of homosexuality, not as an inner truth, not as a sexual practice, but as *one of the defining features of the social world in its very intelligibility*” (2004, 29; my emphasis). Here she reminds us that norms of homosexuality make it possible for us to be intelligible as subjects, implying that there are and have been particular institutions, forms of knowledge, and relationships that have constituted our subjectivity, whether straight or gay, in particular ways. But she allows for the fact that this normalizing is not complete entrenchment. In fact, the very attachment to identity that Brown worries about becomes, on Butler’s reading, an attachment that is necessary to our formation as subjects as well as the possibility of our resistance to subjectification:

If . . . we understand certain kinds of interpellations to confer identity, those injurious interpellations will constitute identity through injury. This is not the same as saying that such an identity will remain always and forever rooted in its injury as long as it remains an identity, but it does imply that the possibilities of resignification will rework and unsettle the passionate attachment to subjection without which subject formation—and re-formation—cannot succeed. (1997b, 104–5)

We cannot, nor must we, deny the way identity categories normalize us; “our very individuality depends” upon that. Indeed, “the discourse of rights avows our dependency, the mode of being in the hands of others, a mode of being with and for others without which we cannot be” (2004, 33–34). And yet making these norms visible through rights, acknowledging that dependency, is a part of challenging these norms. For when we use rights language that acknowledges the facts of prior normalization, when we “assert an entitlement to conditions of life in ways that affirm the constitutive role of sexuality and gender in political life,” we do not simply reify these facts. We have the opportunity to contest them as well, to “subject our very categories to critical scrutiny” (pp. 37–38).

By drawing our attention to the way rights discourse allows us to resignify rather than simply reify identity, Butler helps us to see that the con-

testatory potential of rights need not require a complete refusal of identity or denial of our attachment to injury. While I do not mean to suggest that Brown would disagree with this insight, her tendency to juxtapose universality to injury-based identity and her suggestion that we loosen our attachment to identity are easy to read as a rejection of injury and specificity. With Arendt and Butler, I suggest instead that sometimes refusing what we are requires that we acknowledge what we have been taken to be, the political facts of our identity.

CONCLUSION

I am not trying to deny the troubling implications of identity-based rights politics so brilliantly illuminated by Wendy Brown. Nor I am suggesting that Brown urges us to reject identity claims altogether. Instead, I am suggesting that the potential of identity-based rights claiming to engender change rather than reify injury is somewhat obscured by Brown's more immediate concern to show the limits of identity-based rights claiming. What I want to suggest, then, is that along with the disciplinary dimensions of identity-based rights comes the possibility of resistance and resignification, and to the extent that Brown's argument suggests that we must loosen our attachment to identity in order to save feminist rights politics, these are often occluded.

In bringing attention to the contestatory potential of identity deployed in the context of rights politics, I do not mean to suggest that identity-based rights claiming, contesting, or resignifying should be the sum total of feminist or other progressive political activities. It certainly will not be able to address the myriad techniques through which subordination is practiced; no single theoretical advance or political technique will accomplish that. Indeed, identity-based rights claiming need not, in fact cannot, push aside the need for political judgment. The orientation to identity-based rights claiming detailed here recognizes that resignification is always a risky project, and innovation and change can be both positive and negative, for "terms are never finally and fully tethered to a single use," whether progressive or subordinating. Instead, "they assume a life and a purpose that exceed the uses to which they have been consciously put" (Butler 2004, 179). And a recognition of this excess, of the uncontrollability of language, demands that we keep sight of the importance of political judgment. At the same time, however, I suggest that before we give up on identity in our efforts to shift

from the ontological to the political, we take another look at identity. It may have more to offer a contestatory rights politics than we have come to believe.

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