The Ouroboros of Identity Politics

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The major events of 2020, from the significant support of Black Lives Matter (BLM),1 the never-ending controversies over the use of Latinx,2 the elections, the decision in Bostock v. Clayton County,3 to the response to the COVID-19 pandemic, seem to be inextricably linked to identity politics. Throughout the year, we have been constantly immersed in discussions about inequality based on race, sex, gender, and national origin (among others). Yet, every time I conclude a discussion about these

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3 Bostock v. Clayton County, 140 S. Ct. 1731 (2020) (holding that Title VII of the Civil Rights Act of 1964 anti-discrimination protection based on sex protects employees against discrimination because of their sexual orientation or gender identity).
events, I am left with the unsettling feeling that the identity conversation, much like an ouroboros, devours its tail in an eternal cycle of discrimination.

The ouroboros’ first bite feels like a tingling numbness of not knowing exactly how to talk about discrimination without caving into intersectionality essentialism. In other words, it seems unavoidable reaffirming the identity constructs that marginalize us while expounding on how discrimination operates in multiple axes of our persona. For instance, Black Trans Lives Matter’s attempts to create a more inclusive racial justice movement could be read by some as construing blackness in opposition to queerness while reaffirming some racial stereotypes by assuming an inherent exclusion of queer people from the term “Black.” Similarly, the discussion rejecting the term “Latinx” based on language identity constructs and uninformed notions about Spanish as inherently binary feels like a reaffirmation of long-standing othering stereotypes.

4. Teri A. McMurtry-Chubb, There Are No Outsiders Here Rethinking Intersectionality as Hegemonic Discourse in the Age of #MeToo, 16 LEGAL COMM. & RHETORIC: JALWD 1, 4-5 (2019) (explaining how intersectionality is an “inadequate conceptual tool” as it reduces hegemonic conversations about power relationships to “overly simplistic categories” that reinforce the discrimination that we seek to prevent). I refer to that oversimplification of the hegemonic relationships here as intersectionality essentialism.

5. See id.


7. Similar discussions arise in my Politics of Gender, Sex, and Sexuality in Family Law seminar when we discuss the criminalization of HIV. Aníbal Rosario Lebrón, Assistant Professor of Lawyering Skills, HOW. UNIV. SCH. L., Politics of Gender, Sex, and Sexuality in Family Law Seminar. Debates usually end up in conversations about how communities of color are allegedly more homophobic, how queer people feel more welcome or comfortable in white spaces, how Black women tend to sacrifice their equality claims in favor of those of their male counterparts, or how these issues are linked to class beyond race, gender, and sex.


Moreover, not speaking Spanish does not preclude a person from being identified or self-identifying as Latinx. The most recent prominent example of the perils of this language identity
I found these debates elucidating on how identity conversations could perpetuate the discrimination they seek to eradicate. It is as if by talking about multiple identities and their interaction we are forced to erase the nuances that we seek to expose with an intersectional lens and reify monolithic ideas about our communities. At the same time, it feels like the ouroboros’ bite precipitates us into the race to the bottom that dominant groups have historically forced us into to divide us and preserve the status quo.


Finally, these discussions ignore also the multiple discussions happening around the non-binariness in Spanish. Artemis López, Tú, Yo, Elle y El Lenguaje No Binario, 19 LINTERNA TRADUCTOR 142 (2019) (Spain) (discussing the many forms Spanish speakers are dealing with making Spanish more inclusive for non-binary people); Marcha Atrás: La Real Academia Española Retiró la Palabra “Elle” de su Observatorio para Evitar “Confusiones,” CLARÍN (Nov. 1, 2020, 11:20 AM), http://www.clarin.com/cultura/real-academia-espanola-retiro-palabra-elle-observatorio-evitar-confusiones-_0_rc0aFhDNe.html (noting how La Real Academia Española retired the non-binary pronoun “elle” from its Word Observatory in four days).


10. There has been a rich discussion, for example, on how race has been used to divide poor people. Monet Clarke, Race, Partisanship, and the Voting Rights Act (VRA): African-Americans in Texas from Reconstruction to the Republican Redistricting of 2004, 10 TEX. J. C.L. & C.R. 223, 224 (2005) (explaining that “[r]acism against blacks thus obscured the apparent class differences between rich and poor whites, and it removed threats to the . . . white elite.”); Courtland Milloy, How American Oligarchs Created the Concept of Race to Divide and Conquer the Poor, WASH. POST (Apr. 19, 2016), http://www.washingtonpost.com/local/how-wealthy-
The past presidential election is an epitome of the risks we face when we are bitten by the ouroboros of identity politics. By essentializing groups and their needs, we obscure the heterogeneity within and risk losing political capital for change. Ian Haney López and Tory Gavito have discussed, for example, how contrary to expectations, “a majority across the [racial] groups . . . did not repudiate Trump’s rhetoric as obviously racist and divisive.” 11 They also pointed out how strategists could risk not mobilizing “Hispanics”12 against Trump by reaching voters merely on their identity as people of color.13 They suggested, according to their study, that political strategists should have framed their message in class rather than in color-blind or race-based terms in order for “Hispanics” and other groups to vote against Trump.14

Although this strategy seems to incorporate intersectionality more successfully than the debates about Latinxs and BLM have done, the inclusion is more of a mirage. The categories of race, ethnicity, and class are still essentialized and construed in opposition to each other.15 This is precisely why the class-coding strategy is successful; a group of “Hispanics” in the study reified the category of people of color and understood it in opposition to class.16

The study also shows how, as the ouroboros’ fangs get deeper into the skin, the wounds get more personal and the future looks bleaker as, in

13. Haney López & Gavito, supra note 11.
14. Id.
15. See id. These identities are not necessarily essentialized by the authors but definitely by the participants of the study. About essentializing identities see generally McMurry-Chubb, supra note 4, 16-18 (discussing how social and academic movements can essentialize identities); Katrina Irving, (Still) Hesitating on the Threshold: Feminist Theory and the Question of the Subject, 1 NWSA J. 630 (1989) (noting the essentialist trap in feminism); contra Kenneth B. Nunn, “Essentially Black”: Legal Theory and the Morality of Conscious Racial Identity, 97 NEB. L. REV. 287 (2018) (discussing and criticizing the anti-essentialism critique in Critical Race and LatCrit legal theory).
16. See Haney López & Gavito, supra note 11 (discussing how a group of Latinxs that did not identify as people of color opposed Trump’s rhetoric once it was codified in terms of class rather than race).
order to advance equality, it seems that we need to compromise the
demands of some of our identities in a utilitarian zero-sum game. The
ouroboros’ fangs are also a poignant reminder of Derrick Bell’s interest
convergence theory that explains how “the rights of Black people [the
marginalized groups] only advance when they converge with the interests
of white people [the dominant class].”17 The majority opinion in
Bostock, which protected gender non-conforming individuals against
discrimination18 by conflating discrimination based on gender expression,
gender identity, sexual orientation, and sex into the latter, exemplifies the
costs of compromises. The Court’s anti-discrimination approach risks the
erasure of decades of work by queer activists and scholars differentiating
between these identities. Similarly, a price was paid for prioritizing the
interests of affluent gay men in marriage equality, which converged with
the interests in equality of the LGBTQ+ community at large. Marriage
equality came at the expense of more forceful fights for the recognition as
a protected class and the enactment of anti-discrimination laws to protect
gender non-conforming individuals, low-income individuals, and people
of color in the LGBTQ+ community who were the ones who built the gay
movement pre-, during, and after Stonewall.19 The same holds true

17. Alexis Hoag, Derrick Bell’s Interest Convergence and the Permanence of Racism: A
derrick-bells-interest-convergence-and-the-permanence-of-racism-a-reflection-on-resistance. See
generally Derrick A. Bell, Jr., Brown v. Board of Education and the Interest-Convergence
dilemma, 93 HARV. L. REV. 518 (1980).
18. See Bostock v. Clayton County, 140 S. Ct. 1731 (2020). Assuredly, this advancement
in gender equality will be short-lived as the Supreme Court continues to weaponized the First
Amendment against women and LGBTQ+ individuals. It’s even stated in the opinion how the
Court has recognized “that the First Amendment can bar the application of employment
discrimination laws” and that how such doctrine and other laws protecting religious liberty “interact
with Title VII are questions for future cases.” Id. at 1754. See generally Erwin Chemerinsky,
Chemerinsky: Gorsuch Wrote His ‘Most Important Opinion’ in SCOTUS Ruling Protecting
LGBTQ Workers, ABA J. (July 1, 2020, 8:00 AM), http://www.abajournal.com/news/article/
chemerinsky-justice-gorsuch-just-wrote-his-most-important-opinion; Trudy Ring, Justices
Thomas and Alito and the Threat to LGBTQ+ Equality, ADVOCATE (Feb. 23, 2021, 8:06 AM),
equality.
19. Dean Spade & Craig Willse, Marriage Will Never Set Us Free, ORG. UPGRADE (Sept.
1002-marriage-will-never-set-us-free; Hugh Ryan, Opinion, We Didn’t Queer the Institution of
com/commentisfree/2014/jun/29/same-sex-marriage-straightened. The feminist movement has
confronted similar challenges. See Maya Manian, Coerced Sterilization of Mexican-American
Women: The Story of Madrigal v. Quilligan, in REPRODUCTIVE RIGHTS AND JUSTICE STORIES, 97-
116 (Melissa Murray et al. eds., 2019) (discussing how the reproductive justice goals of women of
regarding the HIV pandemic and how inequality in prevention and treatment still persists for gender non-conforming individuals, people of color, and women, whose work led to changes in HIV health policy and treatment.20

When thinking about the problems of essentialism, the race to the bottom, utilitarian compromise, and interest convergence that identity politics pose, the ouroboros’ fangs feel like they get into the bone marrow, suck its contents, and leave nothing behind but an aporia that preclude us from coming to a satisfactory solution. Moving away from identity politics and attempting to implode and transcend its constructs, paradoxically, negate the history of discrimination and disarticulate political action. The embodiment of such a strategy is colorblindness, which, as many have argued, “preserv[es] the status quo.”21 Thus, as Stacey Abrams has reasoned, the response to the problems that identity politics present “is not a retrenchment to amorphous, universal descriptors devoid of context or nuance.”22 It is “to pursue an expanded, identity-conscious politics.”23

While I agree with her invitation, I do not share her enthusiasm to embrace the prickly and uncomfortable contours of identities.24 When I think of the answer to break the eternal circle of the ouroboros of identity politics, I seek a solution that rejects embracing the problems with identity politics and its origins. The answer came lucidly to me a couple of years ago in an exchange that left me with the same unsettling feeling of this year’s conversations around identity politics.

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23. Id.

24. See id.
While at a conference that I regularly attend, a colleague attending the feminist panel in which I was participating asked me what I thought was a set of odd questions. She asked me, “Since when and why are you a feminist?” I knew very well the answers to the questions. But the inquiry, somehow, activated my alarms regarding identity politics. I shared with her the personal story of how I came to feminism, but I finished my answer by adding that I did not know how I could fight for equality for one group and not for others.

And that is the simplest answer that I have come to realize after many years of thinking about inequality and identities.25 If we understand that identities are forced upon us to build power and inequality, we cannot fight the ones that affect us and forgo the others. We must strive to eradicate them all. That is the only approach to circumvent the inherent problems of identities and pave the way towards true equality.

25. By no means is this a novel proposal. The gay liberation movement that preceded the current gay rights movement understood liberation beyond heteronormativity, including class, sex, and race. Michael Boucai, Glorious Precedents: When Gay Marriage Was Radical, 27 YALE J.L. & HUMAN. 1, 10-22 (2015). It was, in way, a “cause of freedom for all people.” Id. at 14. (quoting GLF Politics?, SEATTLE GAY LIBERATION FRONT NEWSL., Dec. 11, 1970, at 2). However, the subsequent gay rights movement follow more assimilationists goals. Aníbal Rosario Lebrón, For Better and for Better: The Case for Abolishing Civil Marriage, 5 WASH. U. JURIS. REV. 189, 228 (2013) (discussing how the marriage equality movement changed the narrative of embracing diversity and queerness from the gay liberation movement and transformed into an assimilationist plead of “we are just like you”). The same could be happening with the current BLM movement. See supra note 9 (discussing how BLM removed from its statement the dismantling of cis-gender privilege, sexism, and misogyny and the disruption of the nuclear family). Perhaps, what we need is a reminder not to forgo all other fronts of discrimination in our attempt to bring one down.