

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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1. Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <http://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

2. Benjamin Francis-Fallon, *Op-Ed: The Relationship Between Latinos and 'Latinx'? It's Complicated*, L.A. TIMES (Nov. 29, 2020, 3:05 AM), <http://www.latimes.com/opinion/story/2020-11-29/latinos-latinx-complicated-politics-history>; Giancarlo Sopo, Opinion, *Progressives, Hispanics Are Not 'Latinx.' Stop Trying to Anglicize Our Spanish language*, USA TODAY (Oct. 25, 2019, 6:43 AM), <http://www.usatoday.com/story/opinion/2019/10/25/latinx-race-progressives-hispanic-latinos-column/4082760002/>; Rachel Hatzipanagos, *'Latinx': An Offense to the Spanish Language or a Nod to Inclusion?*, WASH. POST (Sept. 14, 2018, 6:00 AM), <http://www.washingtonpost.com/news/post-nation/wp/2018/09/14/latinx-an-offense-to-the-spanish-language-or-a-nod-to-inclusion/>; Jose A. Del Real, *'Latinx' Hasn't Even Caught on Among Latinos. It Never Will*, WASH. POST (Dec. 18, 2020, 10:31 AM), <http://www.washingtonpost.com/outlook/latinx-latinos-unpopular-gender-term/2020/12/18/bf177c5c-3b41-11eb-9276-ae0ca72729bestory.html>.

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.⁴ 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.⁵ For instance, Black Trans Lives Matter's attempts to create a more inclusive racial justice movement⁶ 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."⁷ Similarly, the discussion rejecting the term "Latinx" based on language identity constructs and uninformed notions about Spanish as inherently binary⁸ 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.*

6. *See* Tracy Ollerenshaw & Michael Baggs, *Black Trans Lives Matter Protest: 'Why We're Marching'*, BBC (June 27, 2020), <http://www.bbc.com/news/newsbeat-53192703>; VICE News, *Violence Against Black Trans Women Is One of the US' Deadliest Epidemics*, YOUTUBE (Feb. 24, 2021), <http://youtu.be/lpYadyI3EiE>; VICE News, *The 29-Year-Old Activist Speaking Out to Protect Black Transgender Women*, YOUTUBE (Oct. 20, 2020), http://www.youtube.com/watch?v=xY5nCAYY9_I.

7. Similar discussions arise in my Politics of Gender, Sex, and Sexuality in Family Law seminar when we discuss the criminalization of HIV. Anibal 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.

8. Spanish is just one of the many languages Latinxs use to communicate. They also communicate in English, Spanglish, or aboriginal languages. *See* George Diepenbrock, *Indigenous Latino Immigrants Learn Spanish to Help Integrate, Seek Upward Mobility*, KU TODAY (Aug. 15, 2018), <http://today.ku.edu/2018/07/16/indigenous-latino-immigrants-learn-spanish-help-integrate-seek-upward-mobility> (discussing Andrea Gómez Cervantes' presentation at American Sociological Association's annual conference on how indigenous groups that have migrated to Kansas seek to speak Spanish); Kirk Semple, *Immigrants Who Speak Indigenous Languages Encounter Isolation*, N.Y. TIMES (July 10, 2014), <http://www.nytimes.com/2014/07/11/nyregion/immigrants-who-speak-indigenous-mexican-languages-encounter-isolation.html> (discussing the language realities of indigenous immigrants from Latin America).

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 lens⁹ 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.¹⁰

construction was Julián Castro in his race for the presidential candidacy. Samantha Schmidt, *'Why Don't You Speak Spanish?': For Julián Castro and Millions of Latinos, the Answer Is Not So Simple*, WASH. POST (July 15, 2019, 7:00 AM), http://www.washingtonpost.com/local/social-issues/why-dont-you-speak-spanish-for-julian-castro-and-millions-of-latinos-the-answer-is-not-so-simple/2019/07/14/681c13c6-a4c6-11e9-bd56-eac6bb02d01d_story.html.

Finally, these discussions ignore also the multiple discussions happening around the non-binarity in Spanish. Ártemis 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).

9. Albeit discrimination against LGBTQ+ people has existed in communities of color as in white communities, Latinx and Black people have been at the forefront of the queer movement. Kyle C. Velte, *From the Mattachine Society to Megan Rapinoe: Tracing and Telegraphing the Conformist/Visionary Divide in the LGBT-Rights Movement*, 54 U. RICH. L. REV. 799, 823 (2020) (stating that "[t]he core group of original Stonewall Riot protesters were transgender people of color—Stormé DeLarverie, Miss Major Griffin-Gracy, Sylvia Rivera, Marsha P. Johnson."); Elvia R. Arriola, *Faeries, Marimachas, Queens and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33 (1995) (recounting the leading role of drag queens and people of color in the Stonewall Riots); *A Brief History of Voguing, National Museum of African American History and Culture*, SMITHSONIAN NAT'L MUSEUM AFR. AM. HIST. & CULTURE, <http://nmaahc.si.edu/blog-post/brief-history-voguing> (last visited Mar. 3, 2021) (discussing the "distinctly black LGBTQ culture" in the beginning of the 20th century).

The BLM movement echoes this reality as it was created by three women and part of the movement's tenets is not only opposing systemic racism but affirming the lives of Black queer and trans people and all Black lives along the gender spectrum. *Herstory*, BLACK LIVES MATTER, <http://blacklivesmatter.com/herstory/> (last visited Mar. 3, 2021). Recently, however, the BLM removed its statement about "dismantle[ing]" cis-gender privilege, sexism, and misogyny. Aaron Colen, *Black Lives Matter Removes Anti-Nuclear Family, 'Cisgender Privilege' Content from Statement of Beliefs*, BLAZE (Sept. 22, 2020), <http://www.theblaze.com/news/black-lives-matter-deletes-anti-nuclear-family-queer-affirming-statement-of-beliefs-from-website>.

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),

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

americans-divided-and-conquered-the-poor-to-create-the-concept-of-race/2016/04/19/2cab6e38-0643-11e6-b283-e79d81c63c1b_story.html; Alex M. Johnson, Jr., *How Race and Poverty Intersect to Prevent Integration: Destabilizing Race As A Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1615-16 (1995) (analyzing how “the discrimination against Blacks can be attributed to the fact that there is a property right in “whiteness” that poor whites maintain and protect through the enforcement of residential segregation.”).

11. Ian Haney López & Tory Gavito, Opinion, *This Is How Biden Should Approach the Latino Vote*, N.Y. TIMES (Sept. 18, 2020), <http://nyti.ms/35SPzrP>.

12. See The Experiment, *Inventing ‘Hispanic,’* WNYC STUDIOS (Mar. 11, 2021), <http://www.wnycstudios.org/podcasts/experiment/episodes/latinos> (discussing the history of the term “Hispanic”).

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 McMurtry-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 LGTBQ+ 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 LGTBQ+ 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 Reflection on Resistance*, HARV. L. REV. BLOG (Aug. 24, 2020), <http://blog.harvardlawreview.org/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 LGTBQ+ 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 LGTBQ 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 LGTBQ+ Equality*, ADVOCATE (Feb. 23, 2021, 8:06 AM), <http://www.advocate.com/exclusives/2021/2/23/justices-thomas-and-alito-and-threat-lgbtq-equality>.

19. Dean Spade & Craig Willse, *Marriage Will Never Set Us Free*, ORG. UPGRADE (Sept. 6, 2013), <http://www.organizingupgrade.com/index.php/modules-menu/beyond-capitalism/item/1002-marriage-will-never-set-us-free>; Hugh Ryan, Opinion, *We Didn't Queer the Institution of Marriage. It Straightened Us*, GUARDIAN (June 29, 2014, 9:47 AM), <http://www.theguardian.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.

color have been at odds with the goals of white women and how that has created schism in the feminist movement).

20. See generally Hannah Critchfield, "It's Kind of Terrifying How Little Has Changed:" *Reflecting on Two Pandemics Faced by the Black & LGBTQ Communities*, N.C. HEALTH NEWS (June 30, 2020), <http://www.northcarolinahealthnews.org/2020/06/30/reflecting-on-two-pandemics-faced-by-the-black-lgbtq-community>; DAN ROYLES, TO MAKE THE WOUNDED WHOLE: THE AFRICAN AMERICAN STRUGGLE AGAINST HIV/AIDS 223-26 (Univ. N.C. Press 2020); Derrick L. Anderson & Robert W. Simmons III, *Coming Out of The HIV/AIDS Closet: The Disparate Impact of HIV/AIDS on African American Men*, in THE STATE OF THE AFRICAN AMERICAN MALE, 165-88 (Eboni M. Zamani-Gallaher & Vernon C. Polite eds., 2010).

21. Ian F. Haney López, *Is the "Post" in Post-Racial the "Blind" in Colorblind?*, 32 CARDOZO L. REV. 807, 828 (2011); Anthony Cook, *The Ghosts of 1964: Race, Reagan, and the Neo-Conservative Backlash to the Civil Rights Movement*, 6 ALA. C.R. & C.L. L. REV. 81, 95 (2015); Darren Lenard Hutchinson, *The Majoritarian Difficulty: Affirmative Action, Sodomy, and Supreme Court Politics*, 23 LAW & INEQ. 1, 27 (2005).

22. Stacey Y. Abrams et al., *E Pluribus Unum? The Fight Over Identity Politics*, FOREIGN AFF. (Mar.-Apr. 2019), <http://www.foreignaffairs.com/articles/2019-02-01/stacey-abrams-response-to-francis-fukuyama-identity-politics-article>.

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. Anibal 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.