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Washington University Journal of Law & Policy

The Politics of Identity after Identity Politics

Introduction

Adrienne D. Davis*

During the presidential election of 2008, policy commentators and cultural critics alike had their hands full. The primary race between Barack Hussein Obama and Hillary Rodham Clinton and Sarah Palin's subsequent entry as the vice presidential candidate transformed identity and political discourse in ways we are still trying to comprehend. The primary race caught the Democratic Party and its "big tent" rhetoric off guard as pollsters broke voter preferences for candidates Obama and Clinton down to ever-finer gradations of race, gender, class, and age. On the other side of the aisle, Republicans embraced feminist rhetoric in unprecedented numbers to defend Sarah Palin's gender performance, reproductive choices, and work/family balance. Meanwhile, efforts to secure gay marriage in California suggested that old presumed political alliances had given way to new religious and racial coalitions. In the twenty-one months since the election, identity politics has continued to morph. We now speculate about whether and how racism remains operative in a country led by an African-American president. Conservative political identity has manifest new forms in the birther and tea party

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movements. A stunning spate of sexual scandals involving socially conservative politicians, as well as Elena Kagan's Supreme Court nomination, has generated new debates over the appropriate role of sexual politics within national politics. Los Angeles, a city with a large number of Latino residents and a Latino mayor, is threatening to withhold its business from the state of Arizona because of the latter's newly adopted immigration policies. In short, the interplay of identity and politics has become more complex—and more fascinating.

The Articles in this volume seek to shed some light on the politics of identity after this election in which identity politics dominated. To explore how 2008 and its aftermath have shifted both academic and political debates, I invited scholars from a variety of disciplines who embrace diverse methodologies—political theory; cultural studies; history; and law. These authors explore identity politics as a field of academic inquiry; a cultural discourse; a legal claim; a negotiation of institutions and power; and a predicate for political alliances. Collectively, the Articles both develop new frameworks and intervene in old ones for theorizing the politics of identity.

Whether identity politics should have any currency or value in the modern state is a matter of increasing contest, to scholars and political communities alike. In *Identity and Political Theory*, Clarissa Hayward and Ron Watson intervene in this debate, theorizing an appropriate role for the state in the contested field of identity politics. They start by parsing different theories of multiculturalism that favor state recognition of minority identity, distinguished by commitments to protect identity groups from external intervention and to permit the groups to impose illiberal restrictions on their own members. They then summarize the retreat from recognition found in poststructuralist arguments that recognition promotes “particularistic attachments” and “exacerbates normalization and coercive subjectification.”¹ Their Article provides an important corrective to Charles Taylor's pathbreaking paper, *The Politics of Recognition*.² They contend that

1. See generally WENDY BROWN, STATES OF INJURY (1995); Clarissa Rile Hayward & Ron Watson, *Identity and Political Theory*, 33 WASH. U. J.L. & POL'Y 9, 24–29 (2010).

2. CHARLES TAYLOR, *The Politics of Recognition*, in MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 25 (Amy Gutman ed., 1994).

the “recognition framework” misled the debate, failing to capture how states “play a critical role in helping produce and reproduce” identities.³ The question is “not *whether* states should intervene in identity-constitution, but *how*,” a question they answer by urging a principle of facilitating democracy and non-domination.⁴

Linda Nicholson’s Article tackles the complexity of how identity politics manifest in the 2008 election. In *Identity after Identity Politics*, she notes that during the election political and popular commentators continued to speculate about how race and gender were affecting the election, even as people proclaimed that “the era of identity politics was dead”⁵ and ushered in a post-identity world. Attempting to explain this contradiction, Nicholson urges an historical explanation rooted in two different visions of identity “difference” that emerged in twentieth century. *Identity after Identity Politics* investigates how environmental explanations for race and gender differences were put to different political uses. On the one hand, some used environmentalism to minimize the importance of differences, urging a politics of commonality and individualism and a legal regime of anti-discrimination. Others acknowledged these differences but contended they were products of environment, often using the denomination “culture” to describe and value these differences. Using radical feminism and Black Power as her case studies, Nicholson shows how these latter activists built political movements predicated on preserving and valuing these differences as culture, not eliminating them. While valuing difference differently, Nicholson contends that both frameworks depict race and gender as “relatively stable bodily and behavioral characteristics whose effects . . . are stable across social contexts.”⁶ She rejects these assumptions, instead contending that race and gender should be understood as symbolic or linguistic means “by which bodies, behaviors, and their relationships with each other and with diverse social situations are variously interpreted.”⁷ In this sense, Nicholson brings a Butlerian

3. Hayward & Watson, *supra* note 1, at 10.

4. *Id.*

5. Linda Nicholson, *Identity after Identity Politics*, 33 WASH. U. J.L. POL’Y 43 (2010).

6. *Id.* at 46.

7. *Id.*

approach to refute articulations of race and gender as “social constants,” instead urging their context specificity.

Nicholson’s Article notes the contradictions in how commentators discussed identity during the election. One of the key questions was whether the ascendancy of Barack Obama means that we now live in a “post-racial” world. Or, for those who remain skeptical of this claim, what, exactly, does the first African-American presidency mean for race and racial politics? Rebecca Wanzo’s Article, *Proms and Other Racial Ephemera: The Positive Social Construction of African Americans in the “Post”-Civil Rights Era*, tackles this question.⁸ Part of the obstacle facing cultural critics and policy analysts alike, Wanzo contends, is that we are most familiar with racism manifest in negative terms—discrimination, violence, and their accompanying discursive trope, negative representations of African Americans. This has left us perplexed by Obama’s ascendancy. Yet Wanzo contends that Obama manifests what she calls “positive social construction” of African Americans, which operates by displacing racial “anxieties” onto “safer” objects, thereby disabling material analyses of racist structures and behavior.⁹ Assessing events in the public sphere ranging from Don Imus’s racial epithets against the Rutgers Scarlet Knights; to segregated proms; to speeches by Eric Holder and Condoleezza Rice; to debates over Obama’s health care proposal, Wanzo unpacks the increasing complexity of racial discourse in the United States. Using the psychoanalytic concept of affective displacement, she elegantly demonstrates how positive and negative racial representations operate synthetically to affect public policy discourse, constructing racial progress narratives while disabling empathy for other racially suffering subjects.

If race and gender remain the most valuable currency of identity, Martha McCluskey’s Article intervenes to introduce other emergent categories. Her contribution, *How the Biological/Social Divide Limits Disability and Equality*, unpacks and criticizes the trajectory along

8. Rebecca Wanzo, *Proms and Other Racial Ephemera: The Positive Social Construction of African Americans in the “Post”-Civil Rights Era*, 33 WASH. U. J.L. & POL’Y 75 (2010).

9. *Id.* at 88–90.

which identity claims are expanding. She uncovers implicit rankings of race, gender, and disability operative in equality jurisprudence, showing how these rankings are reversed under formal and substantive equality models. Next, delving into the struggle for disability justice, she introduces and compares medical and social construction models of disability. Her Article contrasts how law defines disability under workers' compensation rules versus the Americans with Disabilities Act to show that, while these legal regimes implement differing models of disability, neither achieves substantive justice. Criticizing the limits of the social construction move in disability scholarship and law, McCluskey urges that the question "is not which physical differences are socially irrelevant, but which socially interpreted physical differences are relevant to *legitimate* substantive social functions"¹⁰ Her Article ends by embracing Martha Fineman's shared vulnerability model as best suited to render substantive justice.

Finally, two authors, Brandon Paradise and Jeff Redding, use the election to contend that identity practices and politics conventionally dismissed as "conservative" could be instrumentally rehabilitated as subversive and a source of political power for racial and sexual minorities. Their Articles push at two sacred cows of identity politics—that mainstream institutions should accommodate "authentic" expressions of black identity and that sexual minorities should be in primary coalition with racial minorities while viewing religious minorities as their enemies. In *Militant Covering*, Paradise considers the much-debated question of "authentic" black identity as manifest in the debate over whether Barack Obama is "black enough." He contends that "the cultural legacy of black power—black pride in black identity—has taken precedence over what was black power's organizing and governing goal: increasing black power."¹¹ Paradise shows that legal scholars urging "rights to difference" ironically then have missed one of the central goals of the Black Power movement. Borrowing Kenji Yoshino's term, he contends that blacks may "militantly" cover in the service of "gaining

10. Martha T. McCluskey, *How the Biological/Social Divide Limits Disability and Equality*, 33 WASH. U. J.L. POL'Y 109, 156 (2010).

11. Brandon Paradise, *Militant Covering*, 33 WASH. U. J.L. POL'Y 161, 162 (2010).

access to the economic and social capital that is critical to improving the circumstances of black people.”¹² Obama, then of course, is a “model case of covering and power.”¹³ Paradise then uses this insight to intervene in the “rights-to-difference” debate, engaging claims by Richard Ford, Barbara Flagg, and Kenji Yoshino about identity and its broader political meaning.

In *Queer/Religious Friendship in the Obama Era*, Jeff Redding delves into the politics of Proposition 8 and gay marriage more broadly. He urges self-identified queers to use their electoral defeat to reconsider both substantive political goals and coalitions. The Article rejects the conventional norms and metrics of identity politics in the U.S., which typically urge power and dignity through inclusion and accommodation of differences within mainstream institutions. Of course, in the Prop 8 debate, this means rejecting civil unions as inferior and insisting on access to marriage. Redding rejects this norm, instead contending that civil unions should be viewed as a potentially queer space, not unlike the personal law regimes utilized by some religious minorities in other countries. The development of recognition pluralism in the U.S. can both provide queers with some agency and dignity, while also “building a kind of legal regime that is more encouraging of legislative spaces protective of” queer interests.¹⁴ *Queer/Religious Friendship* also urges innovative and previously unthinkable alliances, urging for instance that queers build coalitions with religious minorities who also seek to carve spaces outside of state regulation. Both *Militant Covering* and *Queer/Religious Friendship* push at the conventional functioning of identity politics, imagining other forms.

These Articles seek to enrich the already robust literature on identity and politics. They interrogate the historical and contemporary meaning of identity politics; unpack new ways in which identity is operative in political discourse; explore the ongoing evolution of identity as a political and legal claim; and investigate the possibility of new deployments and coalitions. Taken together, the

12. *Id.* at 164.

13. *Id.* at 174.

14. Jeffrey A. Redding, *Queer/Religious Friendship in the Obama Era*, 33 WASH. U. J.L. POL’Y 211, 220–21 (2010).

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Articles open space for innovative and wide-ranging new scholarship and debate on the politics and possibility of identity.