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### A Civil Rights Agenda for the Year 2000: Confessions of an Identity Politician

Fran Ansley

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## A Civil Rights Agenda for the Year 2000: Confessions of an Identity Politician

FRANCES LEE ANSLEY\*

Good morning. It is a pleasure and honor to be here today,<sup>1</sup> and most especially a pleasure and honor to share the same platform with Anita Hill. The topic for this symposium would be a daunting one, even if it were not for her and the other illustrious company at this table with me: "Civil Rights and the African-American Community: Setting the Agenda for the Year 2000."

I am not an African-American, and I will not be speaking to you today from the perspective of the African-American community, although I am firmly convinced that my own material and spiritual well-being—and the material and spiritual well-being of my children, and of each person sitting here in this room—is intimately bound up with the well-being of that community. I will be speaking instead from my own perspective and my own situation: that of a European-American, a female, someone of an age to have been imprinted in a profound way by seeing in action the Jim Crow institutions of my Southern childhood, imprinted in another profound way by seeing a generation of black leaders, intellectuals, and ordinary citizens in breathtaking motion around me, a feminist, a teacher of law students, a person who has counted myself a part of legal and social struggles for justice—for men and women of color, for women of all races, and for people (of all races and both genders) whose economic resources consist only of their increasingly uncertain ability to sell their labor to others. I expect I will have less to say to and about

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1. The essay that follows is a slightly buffed and expanded version of a talk given at West Virginia University in Morgantown, February 26, 1992, as part of the First Annual Franklin D. Cleckley Civil Rights Symposium. Other speakers at various points during the two-day gathering included James Douglas, Dean of Thurgood Marshall Law School at Texas Southern University in Houston, Dennis Hayes, Assistant General Counsel of the NAACP, Anita Hill, professor of law at the University of Oklahoma, Dr. Benjamin Hooks, Executive Director of the NAACP, and Marilyn Yarbrough, professor of law at the University of Tennessee and visiting professor of law at West Virginia University College of Law, 1991-92. I wish to thank Professor Franklin Cleckley and all the faculty, staff, and students at West Virginia University who worked so hard to make the symposium a memorable event.

the African-American community than to and about the white community.

Finally, I come with few pat answers about what the civil rights agenda for the year 2000 should be. I find myself alternately confused, enraged, inspired, dejected, and sometimes even hopeful about the situation presently confronting us civil rights partisans.<sup>2</sup>

Now I need to pause for a moment and ask you to observe what I just said: "us civil rights partisans." I have noticed that when people use "we" or "us" or "our" or other such terms, it is important to recognize just who it is they mean, who it is they seem to be including and excluding, whether consciously or unconsciously, in their circle. I have concluded that such noticing has value, whether the person is the drafter of a constitution (remember "We the people"?), or a President of the United States (remember "We are not in a recession"?), or some obscure law professor from the University of Tennessee. So just now you (and I!) should notice that when I talk about "us" and "we," I mean "we racial justice advocates: we who believe that the dismantling of the structures and patterns of white supremacy in America has not been achieved and who believe that something needs to be done about that fact."

The definition I just gave may in fact exclude some people in this audience. If so, those of you who are excluded, please accept my warm welcome as witnesses to this part of the conversation. "We partisans" won't be the only "we" or "us" I'll talk about this morning, because I am part of many different groupings, just as each of you is. At this point, however, I intentionally have chosen to talk to "us civil rights advocates." Because I am not here to try to persuade anyone that entrenched racial hierarchy is a prominent feature of our society, or that the vast majority of Americans stand to gain immensely from its abandonment. I want to press on beyond those admittedly important and sometimes contested points to pose questions that, for me, are harder to resolve.

As we near the end of the millennium we seem to find ourselves at what law professor Derrick Bell has called a "crossroads" in civil rights theory and practice.<sup>3</sup> Many civil rights thinkers of many different persuasions have observed that the civil rights crusade faces a crisis.<sup>4</sup> For members of many communities of color there is a crisis

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2. For some earlier of my attempts at questions and non-pat answers, see Fran Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511 (1991) and Fran Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993 (1989).

3. Professor Bell taught a seminar at Harvard Law School entitled *Civil Rights at the Crossroads*. See DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* xii (1987).

4. See, e.g., Alan Freeman *Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay*, 23 HARV. C.R.-C.L. L. REV. 295 (1988);

in living standards, in quality of life, in education, in unemployment, and too often a crisis in survival itself.

For scholars and legal advocates there is also something of an intellectual crisis. The tools and weapons we and our forerunners fashioned earlier in the fight—tools like the Fourteenth Amendment (designed to assure the rights of citizenship to the newly freed slaves), tools like Title VII of the Civil Rights Act of 1964 (designed to assure open participation in the world of work), tools some people gave their *lives* to forge, tools we sincerely hoped (and sometimes even believed) would cause the structures of racial subordination and domination to tumble down—these tools in many cases lie bent and twisted at our feet. They may even be turned against us now to block or hobble ongoing efforts to ease the racial disparities that continue to plague our society. The very fruits of victory in some cases seem to have become the ashes of defeat.

I want to suggest two reasons this morning why the victory of civil rights law reform has sometimes left such a bitter aftertaste. First, in far too many cases and places, the “victory” of even formal equality is still yet to come. I believe it is crucial, especially for “us white people” (please notice that I have shifted to a different “us” at this juncture—stay alert!), to realize just how much old-style, flat-out racial bigotry and unequal treatment is still with us.

Such a realization is something we will have to work at, because in the absence of special luck or special effort, most of us whites simply don’t have equal access to adequate information on this score. We can, of course, seek such information out, through reading and study and movie-going and cross-race conversations and through engaging in efforts to change things (which is often the very best way to find out what makes those things tick), all endeavors I highly recommend.

Sometimes, through some association with people of color, we stumble onto information about persistent racist beliefs and disparate treatment. I find myself remembering particular incidents here. One is the racism my brother-in-law found among teachers at the local high school in the district where he and his family live. This racism never came to his attention when his two older boys, who are white, were attending the school. It became all too evident, however, in his dealings with the school when his third, mixed-race child came along.

I think of other incidents too. Now that we are beginning to desegregate the profession of law teaching, for instance, we law

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Walter E. Williams, *The False Civil Rights Vision*, 21 GA. L. REV. 1119 (1987); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Linda S. Greene, *Race in the 21st Century: Equality Through Law?*, 64 TUL. L. REV. 1515 (1990).

professors may now hear stories—by mouth and in print—from African-American and Latino and Asian-American colleagues. Thus, my profession has afforded me the chance to hear, from a fellow teacher in the Northeast, what it is like to commute two hours to work because of her repeated inability to find suitable rental housing. Her white peers have experienced no such problem. The dishonest and depressingly similar conversations she has with landlord after landlord leave their scars.

Sometimes one of my white students relates a similar window of opportunity in his or her own life. One student who had been an undergraduate at Ole Miss recalled inviting an African-American friend down from Nashville for the weekend. He left the friend at home for a couple of hours one afternoon while he went out, returning to find his friend shaken and enraged. Apparently the friend had made the mistake of stepping out of the apartment momentarily for a breath of fresh air. Once outside he was accosted and questioned exhaustively by security guards who simply couldn't believe he might "belong" in that apartment complex. My student's friend was angry but not surprised, whereas the student, a young white man, had learned a brand new lesson.

I had a similar opportunity myself last summer when I made a trip to the United States-Mexico border with a group of women factory workers from Tennessee. We were visiting the border area to see for ourselves what is happening in the industrial zones there where so many United States companies are moving. Our group was mostly Anglo, but one member of the delegation was a black woman, and during part of our trip we traveled with a Latino man who served as our translator. When we stopped at the border the whites in our group watched in amazement as (1) the Latino man was removed from our car, taken off by U.S. border guards to an adjoining building and interrogated alone at length, (2) the black woman was questioned extensively and with evident hostility and distrust about her country of origin, and (3) the rest of us were waved through without a hitch. Had we been traveling without these special "tour guides," my guess is our impression of the border would have been quite different.

We white people thus may have to work at obtaining information and perspectives that others are in a position to observe and verify on a daily basis,<sup>5</sup> but I should not overstate the case. We probably have access to some information on this score that people of color often don't have: we hear the language of other whites who feel they can "speak freely" in our presence. Again, stories from my students

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5. Proofreading this text in May, 1992, I feel compelled to mention the special kind of window created by the Rodney King videotape, though I imagine most of my readers are well ahead of me.

have enriched my understanding of this phenomenon. I will share some of them in paraphrase. One told me of the comment he heard in his fraternity: "A black can rush this fraternity; there's not really anything we can do about that, but there will never be a black pledge as long as there is a breath in my body." Another told me of his aunt who is a member of management in a Fortune 500 company, and who supervises a number of black employees. She refers to them as "niggers" when she is home, though she must be more self-conscious about her language on the job. Others tell me stories as well: the child in my Girl Scout troop whose father told her she will not go to a college in a big city, because too many black people would be there. I recall the file clerk at a former job who was surprised I didn't know it was good luck for a white person to rub the head of a young black child.

These and similar attitudes result in hundreds of thousands of human decisions every day, such as decisions not to hire. (Yesterday, Jim Douglas mentioned<sup>6</sup> a recent study where paired teams of identically qualified black and white job seekers tried their luck in two urban job markets. White applicants were three times as likely to get the jobs.<sup>7</sup>) Such attitudes result in other decisions as well: not to rent an apartment, not to grant mortgages in a certain neighborhood, not to promote, not to make eye contact, not to mentor, not to challenge, not to befriend . . . . These hundreds of thousands of decisions help to weave a social fabric, a fabric where the pattern of racial disparity is still being laid down, row by row, day by day, generation by generation.

One reason, then, why the great victory of formal equality with whites has not "worked" very well for African-Americans is that in far too many cases it has never really been tried. Some aspirational goals have been articulated, which is certainly important, and some major inroads have been made. These strong attitudes and decisional patterns persist, however, not as vestiges or remnants or deviant exceptions but as part of the experience of daily life for vast numbers of people. Even formal equality remains an abstract dream in many contexts.

But the frequent failure to achieve formal equality is not enough of an explanation. I think we can and should say more than this about why the victory of civil rights reform has proven so inadequate to the eradication of racial injustice. The problem is more complicated

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6. Dean Douglas had spoken the previous afternoon, Feb. 25, 1992, on the opening panel of the First Annual Franklin D. Cleckley Symposium, sharing with the audience a collage of his earlier civil rights writings by way of historical and critical analysis of present trends.

7. See Julia Lawlor & Jeffrey Potts, *Job Hunt: Blacks Face More Bias*, USA TODAY, May 15, 1991, at 1A.

than simple persistent bigotry and disparate treatment. I believe that both the underlying state of the economy and the underlying state of the law in this country are such that even if true formal equality were achieved tomorrow, the great bulk of African Americans would still be in a perilous condition, and the civil rights movement would still find itself in crisis.

Regarding the economy, I will try to keep my remarks brief. Suffice it to say that the group of the very wealthy is growing, and the group of the poor and near-poor is growing, but what used to be the great group in the middle (typified by the blue collar jobs in industry—mining, steel, auto, furniture, clothing, electronics—which were such an important ladder for black non-professional families into a more secure situation) is shrinking with alarming speed. We are a deindustrializing society whose relative economic strength is in decline. Our government policy has been harnessed to the task of widening the gap between rich and poor, and massive social resources have been shifted from those at the bottom of the social pyramid to those at the top.<sup>8</sup>

As for the state of the underlying law, we have a system of property rights and legal entitlements that results in most people enjoying less security, fewer services, sparser social goods, and fewer cushions against economic disaster than any other advanced industrialized country in the world. The increased pressure for the United States to compete in the global economy will do nothing but exacerbate these tendencies.

If you are black and are not among that top 20% of all Americans who are on the escalator going up, but instead you are part of the bottom 80% that is losing ground, then even true no-faking-it achievement of formal equality would yield only the opportunity for you to stand around with a lot of other people on a glass floor and pray it didn't break. Formal equality would not help you to solve your most basic problems.

What I am saying is two-fold. First, we have won formal equality in principle but continue to learn how hard it is to achieve even formal equality in consistent practice. Second, we are forced to see that formal equality, even if it were honored in practice, would mean little in a society that is in deep economic trouble and that has thus far chosen to guarantee its citizens only the barest of substantive entitlements. Faced with this dilemma, what should "we civil rights advocates" do?

One answer that has emerged from the civil rights movement and from the other struggles for justice that it helped to spawn is what I will call "identity politics." This phrase has been applied to forms

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8. See, e.g., Sylvia Nasar, *However You Slice the Data the Richest Did Get Richer*, N.Y. Times, May 11, 1992, at C1.



of organizing and forms of political discourse that stress how important it is for subordinated groups of people to mobilize themselves around their own group identity. The recent history of reform movements in the United States has contained a strong dose of identity politics. The civil rights movement itself (especially in its more nationalist manifestations), the women's movement, the gay and lesbian movement, and the movement of the physically challenged are all examples of identity politics at work.

I believe there are some very good and important features of identity politics: the proud identification, study, nurture, and transmission of a group's culture can help to celebrate properly the achievements and sacrifices of subordinated people, to preserve cultural memory, and to create environments that are conducive to human flourishing.<sup>9</sup> Participation in a movement that stresses one's identity and one's bonds with others who share that identity can promote the self-esteem of group members and help them articulate powerfully their concerns and experiences to the larger community. Organizations built around identity politics can create spaces where subordinated people experience a kind of validation, growth, and healthy challenge that may be available to them in no other company and in no other environment.

Further, both history and present observation show only too clearly that certain categories of identity are drastically significant for the distribution of power and resources (and the distribution of powerlessness and pain) in our society. Holding up the lens of race or gender to our world reveals startling patterns that should be noticed and studied. A strategy based on mobilizing members of those groups around visions revealed by those "identity lenses" would seem to have great cogency. For these reasons and more, I view myself as an "identity politician." I am steeped in the habits and outlook of identity politics and believe it offers us important things as we stand here at the crossroads.

In the case of race, racial subordination has been such a lynchpin of our social system for so long and has been built into our lives in so many destructive ways that I believe nothing but a color-conscious movement (and a color-conscious jurisprudence) stands a chance of successfully analyzing or opposing that subordination. That color-conscious movement may find itself entering into much-needed coalitions, but it will and should also find itself insisting that its coalition partners fairly encounter and respond to the tough issues, the history, and the insights afforded by the identity politics of race.<sup>10</sup>

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9. Margaret Radin introduced me to this evocative phrase. See Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987).

10. This is why the fight to defend affirmative action is so important, for example. It forces an examination of the problems with the ideology of "colorblind-

I believe similar dynamics are at work around the politics of gender. Similar needs exist for independent spaces for feminist work and for an independent women's movement that can prod and challenge its allies to encounter the tough issues, the history, and the insights afforded by the identity politics of gender. I'm sure each of you can think of other examples of groups that could benefit from identity politics.

Dangers are involved, however, in identity politics. Whenever identity is an issue, for example, defining membership in the identity group unavoidably becomes an important task. People involved in identity politics may find themselves spending a lot of intellectual and emotional energy on questions of who is "in" and who is "out." Policing the boundaries can sap people's energy and tax their relationships with others, requiring a kind of "defense budget" for "identity security" that may not be the best use of precious resources.

Related to the problem of military spending in identity politics is the problem of categories. Like all such constructs, the categories of contemporary United States identity politics can distort our vision and the way we think. (The trouble is, of course, while we can't think clearly *with* categories, we can't think *without* them either. This paradox remains unresolved.<sup>11</sup>)

One of the main distortions created by categories in this context is that identity politics creates difficulties in coping with people who fall into two categories at once, like people who are both black and female. Of course, a moment's thought will reveal that *all* of us human beings fall into two (and more!) categories at once. Therefore, at least in some ways, identity politics must create difficulty in coping with each and every one of us.

I want to draw your attention to two dynamics in particular that I believe are problematic in the way identity politics handles multiple categories. First, those of us who involve ourselves with identity politics have a tendency to treat the different "identities" a person has as somehow separable from all their other possible identities and also from some generic humanness we all have in common. This is the kind of thinking that leads to questions like, "Which is more important to you, that you are black, or that you are a woman?"

I sometimes think of this as my File Drawer Problem. It has invaded my office space in a very real way. I have one drawer in my filing cabinet labeled "WOMEN" and another labeled "RACE." This makes a certain amount of sense, but I run into all kinds of

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ness" as it presently functions in public discourse. See Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1 (1991).

11. I am indebted to Angela Harris for putting this difficulty in a particularly elegant light. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

problems when I file things. Where should I put information relating to the problems of Latina women in South Texas, for instance? Should I create a Latina file for my WOMEN drawer or file the information in the Latino file in my RACE drawer? If I file it in the RACE drawer, am I not implicitly saying that the problems of Latinas at the border are best thought of as racial? Isn't that also inaccurate and misleading, because I know many of their problems are directly tied to their identity as women? If I put the information in the WOMEN drawer, am I not muting that incredibly important part of the problems of Chicana women that springs from their identity as brown people?

Furthermore, if I put the Latinas in my WOMEN drawer, that leaves me with a Latino file in the RACE drawer. What am I supposed to put there? If I put in it anything that relates to Latinos that is not explicitly related to women, am I not giving basic humanity to the men while reserving some special, modified, qualified, different-from-plain-old-Latin status for women? You can see I have a real problem!

My own sense, although it is hard for me to hold onto, is that the "gender part" of a person and the "race part" of the person are not layers that can be thought of as separable strata.<sup>12</sup> A colleague of mine<sup>13</sup> has suggested that perhaps we should stop thinking of things like race and gender as separate layers stacked on each other. She believes it may be more helpful to think of these aspects of identity as "enzymes" that interact with other identity aspects, altering them (and being altered by them) in deeply constitutive ways. They are transformative and interactive rather than add-ons.

While a person's identity may be multi-faceted when seen in this way, that does not mean it is segregable. Asking someone whether her race or her gender is more important would be like asking a molecule of water whether its oxygen or its hydrogen is more important. One familiar with water's elements and properties would recognize this as an incoherent question. After all, if you took away either its oxygen or its hydrogen, you would have no water molecule left. An African-American man is not just a generic male layered over with a stratum of generic blackness. His race has "done something" to his gender identity, and his gender has "done something" to his racial identity. The two form an inseparable whole.

Meanwhile, I have no idea what to do with my file drawers (or with the related problems I find in having to run back and forth

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12. It is Regina Austin I remember first articulating this for me. See, Regina Austin, *Sapphire Bound!*, 1989 Wis. L.J. 539 (attacking "icing on the cake" thinking).

13. Professor Martha Mahoney to be precise, to whom I owe this and other insights.

between two different floors of the library when I want to browse in the holdings on black women). I fantasize that the answer probably lies in a Data Base somewhere in heaven, where all the information I want to collect sits constantly suspended in a sort of humming, never-static matrix, just waiting for me to ask it to reveal itself along one axis or another, but always provisional, partial, perspective-dependent, and contextual. This will require further technology, I suppose. The real problem is what to do with our *minds*, which tend to operate too much like file drawers.

Those of us trying to think about, reason about, and act on these matters of identity still are left with, and need to be aware of, the distortions of categorization that may occur when we try to build a civil rights vision based on identity politics. We do violence to people's multipleness and complexity. We blind ourselves to occurrences that do not fit our categories and that are obscured when we look at a situation with only one lens. We build walls that keep us in our places, even in the process of protesting the injustice of our position.

A second and related problem with categories of identity, a problem at which I hinted when I told you about my File Drawer Problem, is the strong tendency for each category to carry within itself an unstated norm, and for that norm to reinforce and mirror some of the very inequities that the civil rights movement set out to overcome.<sup>14</sup> I am afraid that last sentence may be hard to follow. Perhaps I can best explain by giving an example.

At one point in the development of the feminist movement, white feminists launched a campaign against rape. The idea was to tell the story of sexual violence from a woman's point of view, to redefine the law of rape in a way that was mindful of women's welfare, and so on. This was a terribly important campaign. Those of us in law and legal education are painfully aware of the shameful record of non-enforcement, the need for reform of evidentiary practices, the scandalously high under-reporting rate associated with this violent and traumatizing crime, and related problems. "We law teachers" should thank feminists for bringing these matters into the public consciousness. I want to talk just now, however, about three things "we white feminists" left out of our early accounts of rape:

—We did little investigation, and spoke very little, of the long and special history of sexual abuse of black women at the hands of white men. This is an important part of the history and dynamics

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14. On this point, I especially appreciate the fine work of Kimberlé Crenshaw, who has productively explored these patterns. See Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

of rape, and the early white feminist account was impoverished by its relative absence.

—We did little investigation and spoke very little, of the racist use of the rape charge against black men as an instrument of racist terror during long stretches of our national history: a practice in which white women were often complicit, and a setting in which those women could hardly be described as the victims of a prosecutorial process biased against conviction.

—We did little investigation, and spoke very little, of the sexual abuse of black women at the hands of black men, therefore missing entirely an additional burden and constraint often borne by black rape victims seeking security and redress. These victims often experience deep ambivalence about invoking law enforcement authority against a black man because of what they know about racial politics and about the police.

In other words, white women confidently spoke of “We women.” We announced that “we” had a whole special set of problems in regard to rape. Upon closer examination, however, the “we” of those initial analyses was not really “we women,” it was “we white women.” The unstated norm hidden in the term “woman” was in that case “white.” Black women’s experiences were left out of this account, and the account itself suffered from a narrowness and parochialism that weakened it for everyone. Fortunately, black feminists have been willing to take up this issue and discuss it, and they have provoked an extremely productive reassessment, at least in many quarters of the women’s movement.<sup>15</sup>

Another example of an unstated norm occurred in a class I teach on race and gender matters. One day I had asked the class to compare the events, movements, and ideologies that led to passage of the Fifteenth Amendment with those leading to passage of the Nineteenth Amendment. At one point in our far-ranging discussion an African-American male student said something like, “Women have not had to endure the sheer inhumanity that went along with race discrimination and that we blacks have had to bear.”

There are a couple of interesting things about this remark. First, you will probably not be surprised that several women in the class wanted to argue against the implication that “women” have not had to bear “sheer inhumanity.” Some of the oppressions experienced because of gender are, after all, about as sheer and about as inhumane

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15. Here I owe a debt to black feminists Angela Davis and Paula Giddings, and to white feminist Elizabeth Spelman, among many others. See ANGELA Y. DAVIS, *WOMEN, RACE AND CLASS* (1981); PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* (1984); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988).

as one could imagine. Also, this question of rank-ordering oppressions can be a troubling one.

I believe the student's remark had an even more interesting feature, however. Listen to it again: "*Women* have not had to endure the sheer inhumanity that went along with race discrimination and that *we blacks* have had to bear."

The clear implication of that remark is either that all "women" are white (otherwise some of them too would have had to endure race discrimination) or that all blacks are men (otherwise it would be nonsensical to say that "women" as a group can be neatly separated from "we blacks.") The result of this unconscious train of assumptions is the erasure of black women from the mental picture. This way of conceptualizing the problem leads both white women and black men to assume their black sisters away. Black women find a home in neither file drawer.

This puzzle, this utterly unintended slant in my student's language, reveals again the problem of the assumed norm. In the category "women" as used by some feminists in the rape campaign, the assumed norm was white. In the category "blacks" as used by my student, the assumed norm was male. You will note that in each case the assumed norm was that of the dominant half of a polarity: white over black, and male over female. Thus in the very act of claiming one's own identity, one may create another hierarchy that suppresses or erases somebody else, especially if the commitment to one axis of identity is strong enough to block one's ability to see other axes that are also at work.

But that is not all. There is a third problem as well. In addition to the problem of overconcern with boundaries that sometimes accompanies identity politics, and in addition to the difficulty identity politics engenders in accounting for and supporting the multiple, complex identities which people actually do have, the turn to identity politics as a solution to the civil rights crisis can set different groups against each other—groups who ought to be making common cause. It can divide the large group of people whose interests lie in serious change into warring factions resentful and distrustful of each other, worried that any attempt to empathize with the situation of another may threaten the sense of their own identity they have worked so hard to build.

The foregoing discussion reveals some very real problems I perceive with identity politics despite my own position as an "identity politician" of sorts. Now I want to argue that the structure of civil rights law as it has evolved has promoted identity politics in ways that sometimes have been very positive, but at other times have produced real problems in the achievement of meaningful social change.

Our civil rights law is centrally built around the notion of membership in a victim group—what we call a "protected group"

in Title VII doctrine and a "suspect class" in Fourteenth Amendment lingo. In other words, to have a cause of action under much of our civil rights law, one must assert a cognizable "identity," and beyond these special categories of recognized victimhood, one has no grievance.

I first began to appreciate this situation as a limit and a contradiction in the area of employment law. When I had just begun to work for legal services years ago, a worker came in for an interview one day. This worker was convinced by her own astute reading of the signs that she was about to be fired. Her supervisor had taken a personal dislike to her, her children had been through a series of illnesses that had caused her to miss work on several occasions, she had recently been subjected to petty disciplinary actions when it seemed to her that other workers were not similarly disciplined, and her supervisor (a female) had begun criticizing her publicly in ways that seemed both unwarranted and calculated to make her lose her temper. I felt she was right to be concerned about losing her job.

The difficulty, however, was trying to explain to her about The Law. She had this idea that the law would protect her against arbitrary actions by her employer. I asked her if there was a collective bargaining contract at her workplace—if she was represented by union. She replied, "No" (statistically the most probable answer she could have given, of course, here in the U.S.A. in the late twentieth century). I asked whether she had an individual contract of some kind. "No," she laughed (appropriately enough, because she was a blue collar production worker). I asked whether any type of employee manual set out the terms and conditions of her employment. No, she said. I then had to explain that in the absence of a collective or individual contract to the contrary, her employer could fire her for "good cause, bad cause, or no cause at all."

At first she refused to believe me. I explained again. Then she challenged me by reporting that her cousin had once won his job back after he was fired. It seemed her cousin had been the only black man in his department, and his supervisor had repeatedly given him the dirtiest, most dangerous work. After the cousin complained to management about his treatment, the supervisor fired him, but through an anti-discrimination complaint he had been successful in winning back his job. Well, she had me. I had to back up and correct my earlier explanation. Our law was more complex than I had originally told her. Actually an employer could fire her for good cause, bad cause, or no cause at all, except: an employer could not fire her because she was black. There was one particular type of bad cause that the law had put off limits.

My client pressed on. How about the woman that her mother knew who had gotten back pay for having been fired when she refused to sleep with the boss? Well, I hastened to explain, that was another type of unfairness that our law prohibited. An employer

could not fire her because she was a woman, and the courts had developed the view that if someone was fired because she refused to grant sexual favors, that would count as gender discrimination. I went on to explain some other identity groups that might be protected, and some other types of unfair treatment that might be actionable under our anti-discrimination law.

The trouble was that the experiences of this black woman didn't really fit a race discrimination or sex discrimination mold. We could have probed and stretched and perhaps made out a case, but she didn't believe her experiences resulted from race or gender animus. She felt they were individually and personally motivated, arbitrary, and unfair. She felt she should have some recourse and basic job security, and she could not fathom why the law would protect her from one type of arbitrary treatment and not from the others.

Another recent experience reminded me of the strangeness of our anti-discrimination law. A friend of mine served last term on a grand jury in a mid-sized Southern city. One part of that jury's job was to tour the local jails and report on what they found. In this particular locality there were two jails: one city and one county. One of the jails was significantly more comfortable, less depressing, and more spacious than the other. Recently the authorities at the city and county had gotten together and decided to put the women prisoners from both the city and the county together in the less desirable location because that facility was the smaller of the two, and there were fewer women prisoners. The impact on quality of life was, in my friend's view, significant. What was strange for us, however, was to think about how the law might apply to this situation. Many times in the past prisoners had been assigned to this prison through sex-neutral criteria. It seemed likely to my friend and me that a complaint of sex discrimination by the grand jury could succeed in forcing a return to some form of the old days, with a reassignment of prisoners along sex-neutral lines. Exactly the same number of prisoners, however, would still suffer from inadequate quarters. It was hard to feel much victory in such an accomplishment, even though one bad type of arbitrariness would undeniably have been removed from the system.

One important unspoken message of much anti-discrimination law is that our legal, social, and economic system is basically sound and just. This law suggests there is an admitted problem with some social behavior that deviates from this sound and just norm, behavior that makes "arbitrary," "irrational" classifications such as those based on racial or sexual identity. Anti-discrimination law holds out the promise that the legal system can and will eliminate those particular types of arbitrary and irrational deviations. The very promise suggests its corollary, however: that beyond the "fixable" deviations, the law will not and should not intervene.

There were and still are many arbitrary irrational classifications based on race and sex, of course. In my view, however, even if those



were eradicated, plenty of arbitrariness would be left. As Dr. Hooks so wryly reminded us last night, "Most of the folks you know had absolutely nothing to do with how they got here."<sup>16</sup> I wonder, today in West Virginia, how we explain to ourselves who it is that gets born to a college professor, and who to a coal miner? Who is it that is born to a family lucky enough to have a miner at work and who to a single mother struggling to stretch a welfare check? Who is it that is born to a Charleston chemical company executive and who to someone in McDowell County hoping for a job in one of Appalachia's new industries: perhaps burying garbage shipped in from New Jersey or guarding prisoners shipped in from Washington, D.C.? These inequities remain untouched by American anti-discrimination law.

I want to make it clear that I am not blaming the persistence of these non-racial, non-sexual inequities on the selfishness of identity politicians, although those who complain that race and gender issues are the provenance of "special interest groups," or those who oppose affirmative action sometimes seem to suggest as much. Quite the contrary. For example, people of color frequently have litigated to expand the law beyond the suspect-classification, identity-politics branch of equal protection and to strengthen the other, "non-identity" branch of Fourteenth Amendment equality, which is rooted in fundamental rights. Likewise they have lobbied repeatedly for legislation that would benefit more whites than blacks, such as increases in AFDC benefits, food stamps, and the like. Far too often they have enjoyed far too few allies in these endeavors.

If we are searching for causes of "non-racial" problems that beset disadvantaged groups in America, we might well conclude that the stubborn racism of large segments of the white electorate has been the most crucial one, a racism that has prevented those segments from making common cause with people of color. This deep racial divide has been a major reason why the United States lags astoundingly behind other industrialized countries in basic indices of human welfare, such as infant mortality, universal availability of health care, employment security, and adequate education.

So I do not blame us identity politicians for these other kinds of inequities. But I do want to exhort us to action. Identity politicians, and I include myself in that category, must see beyond the lens of their own group identification.

In drawing these remarks to a close, let me suggest one way we might start the kind of process I envision. I am searching for an approach that would not require the discarding or transcending of one's own identity, but rather the deepening of it. Here is my

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16. Dr. Benjamin Hooks had given the keynote address for the First Annual Franklin D. Cleckley Symposium the evening before, and had offered his reflections on the past, present, and future of the civil rights movement.

proposal: all of "us identity politicians" who have chosen to identify with a social group and to engage in political activity around that identity, should consciously and as a matter of principle consider the perspectives, the experiences, and the political needs of those members of our identity group who are least privileged. We should conceive of our problems and design our reform strategies with their needs and perspectives firmly in mind.

In other words, a woman like me (a self-identified feminist, white, employed, presently-abled, American, heterosexual, and in a two-parent, two-wage-earner family) needs to investigate how things might look from the points of view of women who are, for instance, black, brown, poor, alien, ill, single, lesbian, third-world, battered, unemployed, or all of the above. Viewing women's problems from those perspectives, I believe, will complicate matters but it will often suggest fruitful answers to strategic questions. Seen from this vantage point, for instance, the goal of helping my sister attorneys crash the glass ceilings at their law firms seems less compelling than universal health insurance, free day care centers, battered women's shelters, and family leave, not to mention development of a responsible industrial policy that aims at sustainable growth both in the United States and for our neighbors in the South. Marilyn Yarbrough was modeling something of this approach for us yesterday, when she urged us to evaluate school choice plans by the standard of how they would affect poor children of color.<sup>17</sup>

In a recent discussion about these matters with a Canadian colleague about this way of approaching identity politics, I was challenged to examine my own assumptions about the meanings of privilege and disadvantage. Some First Nations people,<sup>18</sup> she said, have pointed out to her the ways in which they feel more richly endowed than those in mainstream culture and have urged her to rethink some of her own contrary notions. The point was a provocative one, with which I am still struggling. Nevertheless, there is something I mean here and want to emphasize: certain groups of women have less access to resources, fewer ways to make themselves heard or felt by others, more chances of being marginalized as deviant from a presumed norm, and more likelihood of suffering material deprivations. It is these women I am suggesting "we feminists" should place at the center in our visions and strategies.

You may notice something about the implications of this approach. This conscious and explicit valuing of what some of "us Christians" refer to as "the least of these,"<sup>19</sup> this suggestion that

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17. Professor Yarbrough had delivered a talk the previous afternoon on school choice programs and their implications for the African-American community.

18. Some readers may not be familiar with this name for native peoples in the Americas. It is in widespread use in Canada.

19. *Matthew* 25:20.

identity politicians should privilege the least privileged among them, has an interesting side effect: it often suggests coalitions beyond the original identity circle and therefore an expansion beyond the particular identity group in which the project began and in which it remains rooted. What intrigues me is that one arrives at this point by thinking deeply and inclusively about one's "own" group. In the case of feminists, for example, I would argue that points of connection and common cause with men are suggested by thinking deeply and inclusively about the vibrant and elusive category "women".

I will close now by simply leaving it with you. These problems and dilemmas are ours to solve. I invite you to think about your own identity and about the categories of belonging and exclusion that have helped to define you. I invite you to think about those who share some aspects of your identity but not others, and to think especially about those "at the bottom" of whatever category you have chosen for your focus or whatever efforts and institutions in which you find yourself. How might the world look from their perspective? I invite you all to think about each other and about those not here in today's circle at all. Much lies before us.

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Students of liberation theology are familiar with the notion of a preferential option for the poor. The story is too long to be explored fully here, but a capsule statement follows.

The "Medellin documents," which emerged from the second plenary meeting of the Latin American Bishops' Conference (CELAM) in Medellin, Columbia, in 1968, comprise a founding statement for liberation theology. See PHILLIP BERRYMAN, *LIBERATION THEOLOGY* 22 (1987) (describing the Medellin documents as "the Magna Carta"). Eleven years later CELAM met again in Puebla, Mexico, and declared the bishops' continuing commitment to the Medellin meeting's "clear and prophetic option expressing preference for, and solidarity with, the poor." *Id.* at 43. They continued, "We affirm the need for a conversion on the part of the whole church to a preferential option for the poor." *Id.* at 43-44. See also DEAN WILLIAM FERM, *THIRD WORLD LIBERATION THEOLOGIES: AN INTRODUCTORY SURVEY* (1986).

In the world of legal scholarship, Mari Matsuda has been one of the most insistent that the fact of multiple perspectives suggests partisanship, that it calls for choice. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

