

FIVE THESES ON IDENTITY POLITICS

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The kind of freedom I want to address is the most vital kind: political freedom. By that I mean the summoning and exertion of energy to engage one another on matters of collective government. What I have in mind specifically is democratic political freedom. By that I mean political freedom in a context shaped by three simple norms: political equality, popular sovereignty and, therefore, majority rule.

What should we make of identity politics as an exercise of democratic political freedom? Let me respond with five connected theses.

Number One. All politics is identity politics. Political activity is—and, at its best, is—animated by efforts to define and defend who I am, or we are, or you are, or hope to be, or hope to be seen to be.¹ By extension, it is motivated by our imagination of what is or ought to be mine or ours or yours. It is not *only* about self-government. Nor does it always involve much in the way of public debate. What structures it, often beneath the surface, is the always unfinished enterprise of self-construction and self-presentation.

The reason, first of all, is that politics² involves making comparisons and choices among—and commitments to—values and interests and groups and individuals (including choices not to choose among available choices). The choices and the commitments we make in politics are ones with which we mean to—or by which we cannot help but—identify ourselves.³

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1. This is a premise of RICHARD D. PARKER, *HERE, THE PEOPLE RULE: A CONSTITUTIONAL POPULIST MANIFESTO* (1994) (arguing that political activity is an effort to express and defend identity).

2. “Politics,” as I understand it, may go on in contexts we call “private” as well as in ones we call “public.”

3. All that may be true of shopping: We define ourselves to others and ourselves by what we buy, after all. Hence, there is more to it.

What is more, politics involves comparison, choice, and commitment under conditions of conflict. There are winners and losers. Crucially, over time, it is an open-ended conflict: The first ones now may later be (and often are) last. And, over time, political conflict is open in another respect. It is without permanent bounds or rules. The most unexpected issues may one day become salient political issues; allegiances and alliances shift; and, at some point, any mode of struggle, even war, may turn out to be politically decisive. This contingency of politics tends, in turn, to open up the enterprise of self-identification that animates it—keeping it on edge and, so, alive.

In democratic politics, moreover, the conflict is among putative equals. The norm of political equality not only destabilizes temporary victories. It also unsettles taken-for-granted hierarchies and, so, identities—and thus renews the spring of political energy.

In this way, identity politics and democratic political freedom are, in principle and often in practice, mutually supportive, each of them enabling the vitality of the other.

Number Two. However, it can also work the other way around. Identity politics can dampen or smother democratic political freedom. And democratic politics itself sometimes seems to sponsor this tendency, undermining itself by fostering a perversion of identify politics. The question is: What accounts for that? What sorts of identity politics, what aspects of identity politics, are pathological to democratic political freedom and where do they come from?

Number Three. Certain familiar answers⁴ to the question are deeply misguided. They are as follows: That the pathology of identity politics has to do with its promotion of a self-regarding (rather than a public-regarding) political culture. Or of “stereotypes.” Or that identity politics tends to portray and purvey differences and grievances (rather than similarities and bonds) among groups and individuals. Such diagnoses are wrong not simply because they flush out the baby with the bathwater, but because they seem not to recognize the baby—to understand the value of identity politics—in the first place.

4. These are answers that I assume are familiar to the multitude assembled at the Federalist Society conference where I made my remarks.

Of course, identity politics is self-regarding. It is, after all, about the construction and presentation of oneself. That matters to everyone. That is what accounts for the energy, the motivation, which identity politics can infuse into democratic politics.⁵ It shouldn't take Adam Smith to remind us that self-concern is not necessarily antithetical to—that it can accompany and foster, even be indispensable to—promotion of the well-being of others.

Of course, identity politics involves construction and presentation of personae—caricatures, even “stereotypes” if you like—imagining and portraying particular individuals in terms of certain general traits. Needless to say, they distort “reality.” And they are often prefabricated. But so what? That, as they say, is life. It is part and parcel of the life that identity politics contributes to democratic politics. In and of itself, nothing should be said against it.

That identity politics promotes difference and grievance is the most misguided complaint—and, in the end, the least troubling—of them all. Difference, of course, is vital to self-definition and self-assertion. And grievance is a fuel that motivates the exercise of political freedom. Neither is necessarily inconsistent with respect for one's antagonists.⁶ Indeed, in a nation like ours, the respectful democratic antagonism they can foster is woven into the patriotism that binds us together.⁷

If there is a problem here, it is not in the ills highlighted by these diagnoses. It is, instead, in the diagnoses themselves. For it is not the supposed ills but the cure they imply—a neo-Victorian regimen of highfalutin “deliberation” or “civic virtue” or “public reason”—that would tend to stifle democratic political energy at its source.

Number Four. So, in what ways can identity politics become pathological? Put simply: It becomes pathological insofar as it is perverted to stifle, rather than to animate, the openness of democratic political conflict. The irony—a working-out of the old dialectic?—is that the very exigency of open conflict is what

5. See Richard D. Parker, *Taking Politics Personally*, 12 *CARDOZO STUD. L. & LITERATURE* 103, 107–08 (2000) (defending the role of the “personal” in politics).

6. See Richard D. Parker, *Democratic Honor: Liberal and Populist*, 39 *HARV. C.R.-C.L. L. REV.* 291, 292 (2004) (describing how personal political honor provides a source of agency in populist democratic politics).

7. See Richard D. Parker, *Homeland: An Essay on Patriotism*, 25 *HARV. J.L. & PUB. POL'Y* 407 (2002).

motivates tendencies to suppress it. Hence, any such tendencies of identity politics are likely to be, at once, resistant and vulnerable to revision. Let me point to three.

The first is a well known tendency to “essentialism.” The academic fashion is to treat this as just an “idea”—the idea that individuals sharing a particular trait (such as race or gender) are essentially the same, share the same identity, in myriad other respects. As such, right-thinking (which is to say left-thinking) professors are against it. But it is not just an idea. It is an embedded practice. It is embedded in the practice of elites who seek to establish and maintain a position as “spokesmen” or “advocates for” one or another “affinity group.” And it is embedded in the practice of some rank and file “members” of such groups who, by means of group opinion, seek to keep other “members” in line. No doubt, such practices can be rationalized as a necessary girding for battle in the wider political arena. But the effect is to truncate that conflict, erecting walls that keep some in, some out—calcifying the arteries of democratic politics.

The second pathological tendency of identity politics arises as healthy grievance against others turns to consuming blame and then to taken-for-granted prejudice. This is what academics describe and deplore as “demonization.” Again, however, it is not simply a bad idea that can be calmly corrected or an emotion susceptible to control by adjusting the volume knob. It begins as what may seem a useful weapon in political struggle. Yet it ends as another, even more deadening, barrier to open political engagement. If “conservatives” or “religious fundamentalists” or “whites”—or, more likely “white men”—are dismissed as wrongdoers having no “identity” worth respecting,⁸ the possibilities of political conflict (including compromise, its concomitant) tend to shrink. And politics turns into a sort of theater of self-righteous narcissism, segmented to gratify little clots of the like-minded and angry.

It is the third tendency that can be most devastating. An extension of the second, it arises when blame and prejudice against wrongdoers induce a conviction of impotence—a conviction which then can become central to the group’s very iden-

8. A moment of illumination for me was the afternoon I walked by our open-doored faculty lounge and overheard a group of my colleagues earnestly attesting that, needless to say, it would be terrible if identity politics were ever to excite the consciousness of white males.

tity. Ultimately, its identity may be sucked into such black-hole characterizations as “the powerless” or “the disenfranchised” or “the subordinate.” This is the “victimhood” syndrome. Like the other pathologies, it is much deplored. But like the others, once entrenched, it is difficult to dislodge.⁹ The reason, again, is that it is so useful a weapon in democratic conflict. It is a weapon with which to denigrate the terms of the conflict and then to short-circuit the political fray. This, however, is not the worst of it. The worst is its potential for self-fulfilling prophesy, the tendency of “victim talk” to undermine self-responsibility, even to sever the nerve of political action, among voters whose supposed impotence has been made to define who they are.

Number Five. It follows that one of the more problematic identities in today’s identity politics may be one of the most common. What I have in mind is the identification of a group not in terms of a trait such as race or ethnicity or sexual orientation, but as a “minority” group—and, worse, the identification of an individual “member” of such a group as “a minority.” The banality of the label blinds us to its significance. Consider the ways it can exacerbate the three pathologies.

You might think there is no essentialist tendency to worry about in this case. How could so abstract and ambiguous a term excite *that* concern? If, however, it is as a practice, rather than as an idea, that essentialism is worrisome, then things look different. For, compared with more concrete identity categories, the greater abstraction and ambiguity of “minority”—even of “disadvantaged minority” or “discrete and insular minority”—creates even greater leeway for political manipulation and discipline. Authorities hand down and enforce definitions of “minorities” and their “members,” definitions used, in effect, to keep some groups inside and others outside.¹⁰ However useful this enterprise may be in the wider political struggle, it tends to accelerate the sclerosis of democratic engagement.

To that tendency, add the pathologies of demonization and victimhood. Shuffling the labels in order to construct and present certain individuals and groups, not as “Latinos” or “Span-

9. Indeed, it is difficult to dislodge even from the rhetoric of those who purport to deplore it.

10. See, e.g., JOHN D. SKRENTNY, *THE MINORITY RIGHTS REVOLUTION* 142 (2002) (“[The Equal Employment Opportunity Commission’s and Office of Federal Contract Compliance’s] designations of official minorityhood shaped the trajectory of American politics and the structure of opportunity for the next several decades.”).

ish-speaking" (or whatever), but as "minorities" tends to do a subtle—but deep—kind of damage. The term does not point to any actual trait of a person (ethnicity, gender, and so forth). Instead, it places a person in a group that is defined by its place in a larger structure. Not its place in a palpable social structure (say, class). But in a political structure—specifically, a democratic political structure, a system of majority rule. The implication of identification as "a minority" is that the group to which a person "belongs" is not, has not been, and will not be part of any majority coalition (which is, of course, all that shifting majorities can ever be) and, therefore, that she is bound to be ignored or abused (victimized) by that (demonized) majority. As to nearly all persons nowadays, this representation is absurd. How then to account for its currency? It is useful. It offers a leg up in democratic political conflict. But the cost—quite explicitly—is the trashing of majority rule, political equality, and popular sovereignty. When educational and economic elites, who have much to gain from such trashing, take up the cause and massage "minoritarian" identity politics into high-minded conventional wisdom, democratic political freedom—forever a threat to the privileged—is undermined.

What should a Federalist make of this? The Society's logo is a silhouette of James Madison. Didn't he famously (maybe too famously) fret about "majority factions"? Isn't he often (if unjustly) associated with Tocqueville's snooty hysteria about the "tyranny of the majority"? Haven't members of the Federalist Society often constructed and presented an identity as a suppressed minority in American law schools?

All true. But consider the practice of the Society. Though spurred by a healthy sense of grievance, it has not insulated itself. It has not sought to short-circuit engagement with, or set up enclaves protected from, dominant points of view. It has, instead, thrown itself into the fray. Indeed, it has invited the fray into its own events. Most Federalist get-togethers, as far as I know, involve debate with non-Federalists and anti-Federalists. What's more, they tend to include debate among Federalists, debate about the very identity of the group. Most everything is up for grabs. These are hallmarks of an identity politics that is open—not obsessed with victimhood or with demonization of its adversaries, not defensive. It invites the heterodox into its meetings because it has taken to heart an old political secret, the secret of the power of optimism: believing

that one day against present odds, it may prevail, it vastly enhances the odds that it may be right.

Hence, I offer a (not very serious) suggestion. It's time to give up the Madison silhouette. Madison's association with a depressive-defensive democratic politics really doesn't fit the Federalist Society. With what logo, then, might that one be replaced?

Here's a (still less serious) suggestion. What about a silhouette of Lenin? It would convey two messages. On one hand, a warning of the dangers of identity politics: When the construction and presentation of identities becomes a weapon of manipulation with which to stifle conflict—especially if taken to the extreme of claiming to create a “new man”—it becomes the deadly enemy of political freedom. On the other hand, Lenin's silhouette might offer a lesson in political optimism: His faction was in the minority. Hence, the name he chose for it was nothing less than “Bolshevik” . . . which, of course, means “the majority.”