

**IN THE SHADOW OF GASLIGHT: REFLECTIONS  
ON IDENTITY, DIVERSITY, AND THE  
DISTRIBUTION OF POWER  
IN THE ACADEMY\***

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“[I]t could have been something else. . . . Sometimes you just know when it is racism. . . . Sometimes you are not sure. And you begin to feel paranoid. That is what racism does: it makes you question everything, the whole world, the world to which you exist in relation. . . . You are not sure.”

—Sara Ahmed<sup>1</sup>

Postmortems of the 2016 Presidential election continue to proliferate in the aftermath of a grueling campaign and its dramatic conclusion. For many years to come, academics will be dissecting the unexpected defeat of Hillary Clinton and the

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\* This article is one of six written for CUNY Law Review’s inaugural cross-textual dialogue. The author was invited to write a short piece in response to the following quotation: “When you say racism, they say: it could have been something else. Sometimes you just know when it is racism. It is as tangible as hitting a wall, that the problem is you; that part of you that makes you the person they do not want or expect, the part of you than makes you stand out from the sea of whiteness. Sometimes you are not sure. And you begin to feel paranoid. That is what racism does: it makes you question everything, the whole world, the world to which you exist in relation. Heterosexism and sexism are like that too: are they looking at me like that because of that? Is that why they are passing us over, two women at the table? You are not sure.” Sara Ahmed, *Evidence*, FEMINISTKILLJOYS (July 12, 2016, 2:00 PM), <https://feministkilljoys.com/2016/07/12/evidence/> [https://perma.cc/T39A-28S3].

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<sup>1</sup> Sara Ahmed, *Evidence*, FEMINISTKILLJOYS (July 12, 2016, 2:00 PM), <https://feministkilljoys.com/2016/07/12/evidence/> [https://perma.cc/PJ3X-CBKM].

Democratic Party to a billionaire reality television star who won the election through a strategy of denigrating women, Latinxs, Muslims, and the disabled while promoting a crude white nationalism.<sup>2</sup> As both the academy and the punditry search for clues as to how this country elected a long-shot outsider to the highest office in the land, the people of the United States will continue to struggle forward, some with renewed hope, others with a sense of foreboding.<sup>3</sup> For the younger generations, those who came of age in the 1990s and 2000s, this is a strange new reality which has upended their expectations for the future.<sup>4</sup> This age group from which we draw our students now must adjust to a country that is divided along identity lines on what feels like an unprecedented scale. On our majority Latinx campus, I was met with scenes of dejection if not mourning the day after the election; there was a palpable sense of disbelief at the very least. A lot of ground seemed to have been lost for all minorities both in terms of substantive protections (particularly for the undocumented) as well as in popular respect and civility.

In the first wave of analyses, some writers resurrected an old complaint: Democrats' engagement in "identity politics" and "political correctness" was the primary reason for the dramatic and unexpected defeat, we were told.<sup>5</sup> For those of us minorities who came of age in the late 1980s and early 1990s, blaming it on identity politics is a familiar story. As the history of subordination by a dominant group—both structurally, through the institutions of the state, as well as socially, through quotidian denigrations if not outright violence—from well before the founding of this nation attests, we inherited the historical problem of "identity" and

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<sup>2</sup> See generally Heidi M. Przybyla, *After devastating Loss, Democrats Left Searching for Answers*, USA TODAY (Nov. 9, 2016, 6:02 PM) <http://www.usatoday.com/story/news/politics/elections/2016/11/09/hillary-clinton-loss-democrats-trump/93563634/> [<https://perma.cc/6JLF-FDSU>].

<sup>3</sup> See, e.g., Mirren Gidda, *How Donald Trump's Nationalism Won Over White Americans*, NEWSWEEK (Nov. 15, 2016, 3:00 AM), <http://www.newsweek.com/donald-trump-nationalism-racism-make-america-great-again-521083> [<https://perma.cc/9KPH-MQVW>].

<sup>4</sup> See generally Maya Kosoff, *Millennials for Trump? Twenty-Somethings in Battleground States Ponder Their New Reality*, VANITY FAIR (Nov. 11, 2016, 3:03 PM), <http://www.vanityfair.com/news/2016/11/millennials-in-battleground-states-ponder-their-new-reality> [<https://perma.cc/N5N7-R8WU>].

<sup>5</sup> Amanda Hess, *How 'Political Correctness' Went from Punch Line to Panic*, N.Y. TIMES MAG. (July 19, 2016), <https://www.nytimes.com/2016/07/24/magazine/how-political-correctness-went-from-punch-line-to-panic.html> [<https://perma.cc/65FT-J7FE>]. See also Kelton Sears, *A Marxist Critiques Identity Politics*, SEATTLEWEEKLY (Apr. 25, 2017, 1:30 AM), <http://www.seattleweekly.com/news/a-marxist-critiques-identity-politics/> [<https://perma.cc/MBY5-CA7G>].

difference.<sup>6</sup> Even though it has been a mere sixty years since we began to achieve some victories in the fight for racial civil rights and women's rights (and for LGBTIQ rights)<sup>7</sup>, it has taken an additional five decades or so) at every victory there has been a questioning of how much redress is due to the "heretofore" subordinated based on identity and group membership.<sup>8</sup> Moreover, these victories, though limited and insufficient, have catalyzed a number of backlashes the advocates of which have themselves appropriated the conceptual register of equality to reinstate old hostilities and oppressions.<sup>9</sup> With different sides engaging in "identity politics" and leveling the charge against the other, minority academics and activists are left to determine how to move their anti-subordination efforts forward. Should identity now be discarded, reformulated, decentered? Or should we continue to embrace identity and recommit to diversity in the face of reinvigorated oppression and the rise of an unmasked white supremacist, right wing?

In this essay, I want to make two interventions in rethinking the place of identity and diversity in the Academy. First, I want to briefly sketch the evolution in the late 1980s and 1990s of identity politics on campus from its use in resistance to assimilation and erasure to its use as a tool of discipline within minority groups. Second, and more importantly, I want to raise the problem of the easy cooptation of identity and diversity by institutions in defense of the status quo. I argue that in the Academy, in the 1990s and early 2000s multiculturalism and the institutional embrace of diversity gave us the illusion of progress but masked ongoing subordination and repelled efforts to change structural inequality

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<sup>6</sup> See Peggy C. Davis, *Law as Microaggression*, 98 *YALE L.J.* 1559 (1989); See generally IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (10th ed. 2006); EDIBERTO ROMÁN, *CITIZENSHIP AND ITS EXCLUSIONS: A CLASSICAL, CONSTITUTIONAL, AND CRITICAL RACE CRITIQUE* (2010).

<sup>7</sup> See Terri R. Day & Danielle Weatherby, *The Case for LGBT Equality: Reviving the Political Process Doctrine and Repurposing the Dormant Commerce Clause*, 81 *BROOK. L. REV.* 1015, 1021-32 (2016).

<sup>8</sup> See generally MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004). C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 149-200 (commemorative ed. 2002). See generally RORY DICKER, *A HISTORY OF U.S. FEMINISMS* (2008).

<sup>9</sup> See, e.g., SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (15th anniversary ed. 2006). More recently, Van Jones has articulated the phenomenon of a "whitelash" in his analysis of Donald Trump's victory. See John Blake, *This is What "Whitelash" Looks Like*, CNN (Nov. 19, 2016, 9:09 PM), <http://www.cnn.com/2016/11/11/us/obama-trump-white-backlash/> [https://perma.cc/TV9L-4N6X].

on campus.<sup>10</sup> During this time, it was easy to gaslight minorities into doubting their experiences of exclusion and unfair treatment. As Sara Ahmed's quote<sup>11</sup> illustrates, there is a pervasive sense of self-doubt and second-guessing on the part of minorities because of the increasing subtlety of racism and hetero/sexism.<sup>12</sup> In the epigraph, I reduce her words to amplify this equivocation in the minds of the subjects of racism: "*Sometimes you just know . . . . Sometimes you are not sure. . . . You begin to feel paranoid. . . . [Y]ou question everything. . . . You are not sure.*"<sup>13</sup> The blog post in which the quote appears was written in response to Ahmed's own difficult experience with diversity work in the Academy and it reflects the ways in which institutional gestures by way of diversity policies can create a false sense that *racism* is being addressed<sup>14</sup>. But as she notes "doing the document" is not "doing the doing."<sup>15</sup> Moreover, the identity of the doer may not tell us much about the politics behind the deed. Indeed, traditional identity proxies no longer hold the in same way now that an ingenious Right can count on its own set of diversity combatants. All this to say that identity and diversity can be coopted by institutions and can complicate anti-subordination practices and scholarship. We must proceed with caution.

I end the essay with a reminder that minority mobilizations of identity continue to be an important tool against the pervasive, constitutive nature of white identity and dominance in the Academy and in general. As such, rather than fighting for equality in neutral terms we ought to wage that battle more effectively by calling out the misuses of identity politics and imagining alternatives. But to do so, we must not forget the ways in which identity can be put into service of the status quo by institutional actors. Now more than any time in our recent history, we *must* be able to tell the difference between superficial diversity politics and a radical politics of inclusion. Sureness about minority subordination must underwrite our resistance to white supremacy and dominance in the Academy and in the country, yet advisedly

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<sup>10</sup> See SARA AHMED, ON BEING INCLUDED: RACISM AND DIVERSITY IN INSTITUTIONAL LIFE (2012).

<sup>11</sup> Ahmed, *supra* note 1.

<sup>12</sup> I use the term "hetero/sexism" to denote both sexism and heterosexism as a short form. This does not denote that sexism and heterosexism are equivalent or coextensive, rather, it is simply a way to shorten the list of exclusionary identities that this paper seeks to include as subordinated.

<sup>13</sup> *Id.* (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

and thoughtfully, we must also recognize the role of some minorities in doing the work of subordination. As we enter another era of unapologetic racism, we must come to terms with the reality that, in fact, very little has changed. Historical lessons about solidarity and anti-subordination and the perils of mistaking identity for political commitment are worth revisiting.<sup>16</sup>

#### I. MULTICULTURAL TOLERANCE, IDENTITY POLITICS, AND THE CONTINGENCY OF PROGRESS

Taking a longer view of the treatment of minorities in the United States, the past two decades were an exception insofar as many whites believed that we had “solved” the race/minority problem through the embrace of multiculturalism.<sup>17</sup> It was the heyday of diversity programs even as substantive legal enactments like affirmative action and Title VII were being whittled away.<sup>18</sup> The justification for that retreat was precisely that we did not need race-based programs any longer because blacks had overcome historic subordination through these policies of redress and inclusion.<sup>19</sup> Similarly, with gender, the rapid advance of women in the workforce was followed by the slowing of gender discrimination wins both legislatively and in courts.<sup>20</sup> Progress towards important goals like paid maternity leave, better work-life balance, and access to health care and abortion rights was either stalled or set back.<sup>21</sup> In general, efforts at material redistribution were countered with calls for personal responsibility and ownership of one’s choices as evidenced by a landmark Democratic welfare reform law: *The Per-*

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<sup>16</sup> In the period of the overt racism of Jim Crow, during the internment of Japanese-Americans, the segregation of people of color from white society in housing, education, and work, the sort of anguished self-questioning of whether you were subject to racism would have been bizarre and out of place. But the progress of the movements for greater equality, though it achieved a great deal, did not expunge racism, sexism, or heterosexism from our lives. Rather the strategies of oppression changed and the modes of resistance similarly changed. See, e.g., KLARMAN, *supra* note 6.

<sup>17</sup> *The End of Racism? Somebody Tell Marge Schott*, EXTRA!, Mar./Apr. 1996, <http://fair.org/extra/the-end-of-racism/> [<https://perma.cc/Y8JU-LCGB>] (noting the claims that racism is over).

<sup>18</sup> See Cary Franklin, *Inventing the Traditional Concept of Sex Discrimination*, 125 HARV. L. REV. 1307 (2012); Sachin S. Pandya, *Detecting the Stealth Erosion of Precedent: Affirmative Action After Ricci*, 31 BERKELEY J. EMP. & LAB. L. 285 (2010).

<sup>19</sup> The culmination of this was *Shelby County v. Holder*, which dismantled the Voting Rights Act of 1965. 133 S. Ct. 2612 (2013).

<sup>20</sup> See FALUDI, *supra* note 9; Catherine A. MacKinnon, *Toward a Renewed Equal Rights Amendment: Now More than Ever*, 37 HARV. J.L. & GENDER 569, 569-75 (2014).

<sup>21</sup> See FALUDI, *supra* note 9; MacKinnon, *supra* note 20, at 569. See also sources cited *supra* note 18.

*sonal Responsibility and Work Opportunity Reconciliation Act of 1996.*<sup>22</sup>

On college campuses during these decades, diversity, cultural sensitivity, and accommodation became important institutional indicators of progress in fighting racism and sexism.<sup>23</sup> While it is true that speech codes and conduct policing gave rise to a sense of oppressive political correctness for some, for many minorities who attended college in the 1990s, we remember all too well the pervasive racism that, in fact, existed on our campuses and to which we were subject.<sup>24</sup> Student reactions to these experiences of exclusion was often a greater demand for Black Studies, Ethnic Studies, and Women's Studies departments.<sup>25</sup> If you wanted to learn about the contributions of African Americans to science or math or women's history, you could now choose a course in Black or Women's Studies.<sup>26</sup> This strategy was sometimes adopted instead of demanding that the general curriculum integrate silenced or erased histories.<sup>27</sup> Nevertheless, these courses allowed students to learn alternative histories as well as modes of analysis and critique based on experiences of exclusion and identity that were unavailable before 1980s.<sup>28</sup> For those from minority backgrounds, these academic spaces of insight provided an affirmation of personal identity and a way of imagining oneself as a real participant in history.

In the context of trying to unseat the dominance of whiteness/maleness/heterosexuality, identity politics in the 1990s was a demand for recognition of difference and a resistance to some-

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<sup>22</sup> Lest we forget, the 1990s saw a rising narrative of personal responsibility for achievement and failure, placing the onus on the individual to be "entrepreneurial" and overcome societal setbacks that "everyone" faced. This narrative of responsibility is perhaps best captured by the welfare reform enacted by President Bill Clinton. See, e.g., Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER SOC. POL'Y & L. 247 (2014).

<sup>23</sup> *Id.*

<sup>24</sup> Fabio Rojas, *Activism and the Academy: Lessons from the Rise of Ethnic Studies*, in PROFESSORS AND THEIR POLITICS 243, 251 (Neil Gross & Solon Simmons eds., 2014); Noel Jacob Kent, *The New Campus Racism: What's Going on?*, THOUGHT & ACTION, Fall 2000, at 83, 86-87, [http://www.nea.org/assets/img/PubThoughtAndAction/TAA\\_00Fal\\_10.pdf](http://www.nea.org/assets/img/PubThoughtAndAction/TAA_00Fal_10.pdf) [<https://perma.cc/SSK3-FGQJ>].

<sup>25</sup> Bob Wing, "Educate to Liberate!": *Multiculturalism and the Struggle for Ethnic Studies*, COLORLINES (May 15, 1999, 12:00 PM), <http://www.colorlines.com/articles/educate-liberate-multiculturalism-and-struggle-ethnic-studies> [<https://perma.cc/WR5E-47YR>]; MICHELE S. MOSES, EMBRACING RACE: WHY WE NEED RACE-CONSCIOUS EDUCATION POLICY 101-03 (2002).

<sup>26</sup> Rojas, *supra* note 24, at 244; Wing, *supra* note 25.

<sup>27</sup> Wing, *supra* note 25.

<sup>28</sup> See Rojas, *supra* note 24, at 244 (noting that ethnic studies programs began to develop in the late 1960s but took more than a decade to reach their peak); see also Kent, *supra* note 27, at 91-92.

times unachievable and undesirable forms of assimilation.<sup>29</sup> These efforts were linked to and carried forward earlier political programs like decolonization,<sup>30</sup> feminism(s),<sup>31</sup> and black nationalism<sup>32</sup> which were projects also founded on a recognition of identity. But these earlier projects included a clear set of distributional demands that could not be met by mere increases in numbers of minorities or with superficial power-sharing through tokenism.<sup>33</sup> Activists and scholars demanded some kind of substantive shift that went beyond mere compliance with liberal expectations of adequate redress. As the 1990s wore on, perhaps because of the difficulty in achieving redistribution, many anti-subordination activists began to focus on representation and difference.

Criticisms of exclusion in the 1990s did not, of course, foreclose cooperation among minority groups.<sup>34</sup> However, as some have pointed out, because of the centrality of representation, it became more difficult to form coalitions and solidarity across difference. For example, while early critiques of the universalizing of white feminism to represent all women regardless of difference helped (and continue to help) reorient feminism to be more responsive to the particularities of religion, race, class, and sexual orientation, some feminists later used difference to silence others from questioning culture or religion.<sup>35</sup> Some feminists condemned this demand for the recognition of difference for depoliticizing and fracturing feminism and “making everything about race” or

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<sup>29</sup> Azizah Y. Al-Hibri, *Is Western Patriarchal Feminism Good for Third World/Minority Women?*, in SUSAN MOLLER OKIN ET AL., *IS MULTICULTURALISM BAD FOR WOMEN?* 41 (1999). *But see generally* BRIAN BARRY, *CULTURE AND EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM* (2001).

<sup>30</sup> *See, e.g.*, *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* (Chandra Talpade Mohanty et. al eds., 1991); *FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES* (M. Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).

<sup>31</sup> *See generally* CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF STATE* (1989).

<sup>32</sup> MICHAEL C. DAWSON, *BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS* 205-08 (1994).

<sup>33</sup> *See supra* notes 32-34. *See also* Sears, *supra* note 5.

<sup>34</sup> Regarding critiques of exclusion, see, for example, Serena Mayeri, Note, “A Common Fate of Discrimination”: *Race-Gender Analogies in Legal and Historical Perspective*, 110 *YALE L.J.* 1045 (2001) (describing the exclusionary tactics of white feminism). Regarding coalition-building, see, for example, Barbara Ellen Smith, *Crossing the Great Divides: Race, Class, and Gender in Southern Women’s Organizing, 1979-1991*, 9 *GENDER & SOC’Y* 680 (1995) (recounting efforts at intersectionality in feminist organizing).

<sup>35</sup> *See* DIANA FUSS, *ESSENTIALLY SPEAKING: FEMINISM, NATURE & DIFFERENCE* (1989) (questioning anti-essentialism which is a basis for the critique of dominant feminism); *The “Identity Politics” We’re Not Talking About*, *FEMINIST WIRE* (Aug. 2, 2016), <http://www.thefeministwire.com/2016/08/william-ruhmk/> [<https://perma.cc/QM2A-87LF>].

difference.<sup>36</sup>

In the past two decades, minority scholars and activists repeatedly raised the question of who gets to represent minority experience.<sup>37</sup> Who is authorized to speak and about whom? Identity, in other words, became a sort of credential of authenticity authorizing some to speak.<sup>38</sup> It also authorized others to use identity to silence.<sup>39</sup> Recall the popular discussion of Barack Obama's identity during the 2008 Presidential campaign. The question of whether Obama was "black enough"—a question about the authenticity of not only his identity but also his authority to represent black experience—was raised repeatedly.<sup>40</sup> More recently, on campuses, student activism around identity and representation has sometimes been taken too far and had absurd results.

The recent treatment of the director of the film *Boys Don't Cry*,

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<sup>36</sup> For a recent example, this writer pits white women against all other identities in her complaint about the inclusivity of the Women's March on Washington: "But the attempted hijacking of the march's agenda and all the nasty tit-for-tat between white versus black/queer/Muslim/trans and other identities tells a very disturbing story about the divided state of feminism today." Emma-Kate Symons, *Agenda for Women's March Has Been Hijacked by Organizers Bent on Highlighting Women's Differences*, N.Y. TIMES: WOMEN IN THE WORLD (Jan. 19, 2017), <http://nytlive.nytimes.com/womenintheworld/2017/01/19/agenda-for-womens-march-on-washington-has-been-hijacked-by-organizers-bent-on-highlighting-womens-differences/> [https://perma.cc/GJW5-BBAY].

<sup>37</sup> See *supra* notes 34-35.

<sup>38</sup> This is quite different from critique and engagement among people who disagree. For instance, in their response to Nancy Fraser, Brenna Bhandar and Denise Ferreira da Silva point out that liberal feminists continue to obscure the work of Third World and feminists of color, assuming universalized subject position from which they can speak of "us" as a collective or group. This is not to chastise her for speaking for women of color but to point out that dominant feminist theorists continue to ignore the work of women of color, oftentimes publishing similar works which are then treated as novel contributions. See Brenna Bhandar & Denise Ferreira da Silva, *White Feminist Fatigue Syndrome*, CRITICAL LEGAL THINKING (Oct. 21, 2013), <http://criticallegalthinking.com/2013/10/21/white-feminist-fatigue-syndrome/> [https://perma.cc/F3JX-GY8U], critiquing Nancy Fraser, *How Feminism Became Capitalism's Handmaiden—and How to Reclaim It*, GUARDIAN (Oct. 14, 2013, 1:30 AM), <https://www.theguardian.com/commentisfree/2013/oct/14/feminism-capitalist-handmaiden-neoliberal> [https://perma.cc/7NA4-Z75Z].

<sup>39</sup> See Jack Halberstam, *Hiding the Tears in My Eyes—Boys Don't Cry—A Legacy*, BULLY BLOGGERS (Dec. 7, 2016), <https://bullybloggers.wordpress.com/2016/12/07/hiding-the-tears-in-my-eyes-boys-dont-cry-a-legacy-by-jack-halberstam/> [https://perma.cc/442K-SF6B] (discussing the debate around a cisgender, white movie director's depiction of the murder of Brandon Teena, a young trans person, in the 1990s).

<sup>40</sup> David A. Graham, *A Short History of Whether Obama is Black Enough, Featuring Rupert Murdoch*, ATLANTIC (Oct. 8, 2015), <https://www.theatlantic.com/politics/archive/2015/10/a-short-history-of-whether-obama-is-black-enough-featuring-rupert-murdoch/409642/> [https://perma.cc/LAG7-BB2J].

Kimberly Pierce is a case in point.<sup>41</sup> In the context of the struggles among feminist, queer and transgender groups, trans activists protested Pierce's talk and the film for transphobia because Pierce cast a cis-gendered woman (Hillary Swank) to play the trans victim of murder, Brandon Teena.<sup>42</sup> The repeated use of epithets, "fuck you bitch" and "fuck this cis-gendered bitch" against a queer filmmaker whose work *in 1999 was groundbreaking* indicates the shallowness of identity unmoored from earlier struggles. Jack Halberstam writing about this incident notes that:

The accounts given of these recent protests at Reed College give evidence of enormous vitriol, much of it blatantly misogynist (the repeated use of the word "bitch" for example) directed at a queer, butch film maker and *they leave us with an enormous number of questions to face about representational dynamics, clashes between different historical paradigms of queer and transgender life and the expression of queer anger that, instead of being directed at murderous enemies in the mainstream of American political life, has been turned onto independent film makers within the queer and LGBT communities.*<sup>43</sup>

Certainly, other communities have had similar experiences of fracture. It is easy to see the reduction of identity to a politics of superficiality pitting the "shifting bottoms"<sup>44</sup> against each other in these cases. These contestations become particularly problematic as silencing techniques, for instance, when some Zionist organizations conflate critique of Israel and anti-semitism in protesting speakers who support Palestinian rights,<sup>45</sup> or when some Muslims question the authority of others to "represent" Islam or Muslims.<sup>46</sup> Furthermore, as these schisms multiply, they have been easy to manipulate. Identity and the politics of representation can then be coopted in ways that discredit any shared experience of subordination.

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<sup>41</sup> Halberstam, *supra* note 39.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (emphasis added).

<sup>44</sup> Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1183 (1999).

<sup>45</sup> Jon Marks, *Cancellation of Palestinian Speaker Leads to Teacher Suspensions and Unrest at Friends*, JEWISH EXPONENT (Feb. 16, 2017), <http://jewishexponent.com/2017/02/16/cancellation-palestinian-speaker-leads-teacher-suspensions-unrest-friends/> [<https://perma.cc/4N8G-T7HW>].

<sup>46</sup> Asra Nomani, *Islamic Feminist: Duke Students Tried To Cancel My Speech. That Made It Even More Important.*, TIME (Apr. 13, 2015), <http://time.com/3818372/islamic-feminist-duke-speech/> [<https://perma.cc/3SXH-42NV>].

## II. COOPTING IDENTITY AND REPRESENTATION IN THE SERVICE OF THE INSTITUTIONAL STATUS QUO

There are two specific strategies by which identity reduced to representation has been easily manipulated to protect the status quo. The first is by making all people of color and women fungible which in turn allows institutions to hire white women as their diversity candidates rather than people of color—particularly women of color.<sup>47</sup> By this logic, one or two people of color *or* white women are enough to “diversify” an overwhelming majority of white males. And even by its own metric of numerical representation, this liberal strategy continues to fail. The legal profession is an excellent example of failure. The *National Association for Law Placement* finds that even after decades of diversity policies, the profession remains 88% white and largely male and as one moves up the ranks in every area of law from of counsels, to partners, to tenured law professors, diversity falls.<sup>48</sup> This is widely acknowledged as a problem but simply adding a few people of color and stirring the pot has not addressed the causes of underrepresentation particularly in senior positions.<sup>49</sup> Anemic will in hiring people of color, lack of support, bias in evaluation and promotion, and the use of double or special standards has resulted in steady attrition up the ranks.<sup>50</sup> In addition, minorities who challenge the status quo and these double standards face discipline through tenure and promotion denials, unfavorable reviews based on subjective criteria, and exclusion from positions of authority in the institution.<sup>51</sup> Those who make it

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<sup>47</sup> And this observation can be taken further and made more granular by incorporating class: affluent immigrants from Africa or Asia often find more in common with similarly placed whites than they do with working class minorities or whites.

<sup>48</sup> *Women and Minorities at Law Firms by Race and Ethnicity - New Findings for 2015*, NALP (Jan. 2016), <http://www.nalp.org/0116research> [https://perma.cc/E8SN-CLSY]. Alternatively, by Professor Lindgren’s account, we should hire more white males because they are “underrepresented” in law faculties *as compared to the legal profession* in which they are, of course, *overrepresented* to begin with. Jim Lindgren, *Law Faculty Diversity: Successes and Failures*, WASH. POST: THE VOLOKH CONSPIRACY (Mar. 21, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/21/law-faculty-diversity-successes-and-failures/> [https://perma.cc/GEE8-79BL].

<sup>49</sup> See Lindgren, *supra* note 48.

<sup>50</sup> See *id.*

<sup>51</sup> SHELLEY J. CORRELL & STEPHEN BENARD, GENDER AND RACIAL BIAS IN HIRING (2006), [http://provost.upenn.edu/uploads/media\\_items/gender-racial-bias.original.pdf](http://provost.upenn.edu/uploads/media_items/gender-racial-bias.original.pdf) [https://perma.cc/TE3C-BZAL]; Marybeth Gasman, Opinion, *An Ivy League Professor on Why Colleges Don’t Hire More Faculty of Color: ‘We Don’t Want Them’*, WASH. POST: GRADE POINT (Sept. 26, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/09/26/an-ivy-league-professor-on-why-colleges-dont-hire-more-faculty-of-color-we-dont-want-them/> [https://perma.cc/7ACJ-UZKM].

are likely to do so because they are comply with institutional politics and expectations.

This brings me to the second strategy of protecting white dominance in the Academy.<sup>52</sup> If promoting minority representation becomes an institutional goal (as it is for the Association of American Law Schools<sup>53</sup>), recruiting minorities willing to act as identity shields can help maintain the structural status quo and distribution of power while providing cover for what amounts to superficial inclusion masking the de facto, ongoing systemic racism and intersectional hetero/sexism.<sup>54</sup>

Racial or identity shielding, in other words, uses willing minorities to discipline other minorities and provides a cunning defense against any charge of discrimination. By functioning as overseers, minorities in these positions trade their identity and extract valuable benefits from the institution and they can act powerfully to maintain white dominance. Some examples of the work that identity shields in positions of authority do to preserve the dominant power are: appoint whites and other shields to powerful committees and administrative roles like deanships; place control of student admissions and curriculum in the hands of traditional powerholders who have no commitment to diversity; structure merit to overvalue the scholarship, teaching and service of whites; to distribute to opportunities afforded faculty and staff to those who are compliant, and; decide how to implement diversity policies.<sup>55</sup> Thus, the identity of the shields can be deployed by the institution to confuse and obscure the existing exclusionary power distribution and it can create the kind of paranoia Ahmed refers to in her post. The subjects of such disciplining—both minorities *and*

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<sup>52</sup> Gasman, *supra* note 51.

<sup>53</sup> See *About*, AM. ASS'N LAW SCHOOLS, <https://www.aals.org/about/> [<https://perma.cc/72UP-8EHQ>] (noting “promot[ing] . . . diversity, including diversity of backgrounds” as part of the mission of the organization).

<sup>54</sup> See, e.g., Robin D.G. Kelley, *House Negroes on the Loose: Malcolm X and the Black Bourgeoisie*, 21 *CALLALOO* 419, 420, 423 (1998) (noting Malcolm X’s differentiation of the role of house and field slaves). The concept of a racial shield comes from colleagues at Florida International University College of Law, I have broadened it to include other identity categories. An analogous or parallel theorization of the use of race or gender to thwart discrimination claims is articulated by Mitu Gulati and Devon Carbado. They describe the Title VII jurisprudence as being unable to address discrimination against black women in a workplace where black men are advanced and white women are advanced, masking both race and gender discrimination. See generally Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 *J. CONTEMP. LEGAL ISSUES* 701 (2001).

<sup>55</sup> See generally Jenessa R. Shapiro, & Steven L. Neuberg *When Do the Stigmatized Stigmatize? The Ironic Effects of Being Accountable to (Perceived) Majority Group Prejudice-Expression Norms*, 95 *J. PERSONALITY & SOC. PSYCHOL.* 877 (2008).

*their white allies*—are made to questions the *validity* of their *experience* of racial or gender subordination because it comes at the hands of other minorities.<sup>56</sup>

Without attending to the overall context in which these enclaves of inversion exist and with minorities serving as proxies to maintain prevailing race and gender subordinating distributions of power, it is easy to think that those overarching, structural conditions are inoperative, interrupted, or that minorities are not invested in them simply because of identity. This was articulated by Malcolm X in the 1960s in his distinction between the house and field and the critique of black bourgeois complicity in keeping working class blacks in their place.<sup>57</sup> And, indeed, anti-colonial thinkers very early on theorized that one of the most effective strategies of keeping the colonized in line was to train an elite cadre of natives, distribute to them enough of the benefits enjoyed by masters, and tie those gains to keeping the others in line.<sup>58</sup> This strategy of using minority shields blurs the lines between “us” and “them” in ways that identity politics reduced to representation simply cannot address.<sup>59</sup>

### III. LESSONS FROM THE PAST: WHAT ARE WE STRUGGLING FOR AND AGAINST?

In spite of the perils of “identity as representation,”<sup>60</sup> I do not propose a complete retreat from identity even if that were possible. We cannot redress the harms experienced by minorities meaningfully without a recognition that they arise from identity-based subordination.<sup>61</sup> My purpose in this essay is to underscore two areas in

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<sup>56</sup> See Ahmed, *supra* note 1.

<sup>57</sup> Malcolm X’s relationship to the black bourgeoisie was far more complicated than I can do justice to here. Robin D.G. Kelley’s work is instructive on this point. See Kelley, *supra* note 57.

<sup>58</sup> ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* (1965); FRANTZ FANON, *THE WRETCHED OF THE EARTH* 65 (1963).

<sup>59</sup> Thomas Erdbrink & Rachel Donadio, *Iranian Director Asghar Farhadi Won’t Attend Oscar Ceremony*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/movies/trump-immigration-oscars-iranian-director-asghar-farhadi.html> [https://perma.cc/D5JM-ZGW6] (describing an Iranian director’s decision not to attend the Academy Awards Ceremony given President Trump’s Muslim Ban and quoting him as saying “[i]n order to understand the world, [hardliners] have no choice but to regard it via an ‘us and them’ mentality, which they use to create a fearful image of ‘them’ and inflict fear in the people of their own countries”).

<sup>60</sup> See Mark Lilla, Opinion, *The End of Identity Liberalism*, N.Y. TIMES: SUNDAYREV. (Nov. 18, 2016), <https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html> [https://perma.cc/4PGA-KFB4].

<sup>61</sup> Sean Illing, *This Professor Set Off a War of Words Over “Identity Politics.” We Debated Him.*, VOX (Dec. 16, 2016, 11:13 AM), <http://www.vox.com/conversations/2016/12/>

which the use of identity has become a hindrance, first, *within* minority anti-subordination politics and, second, in the hands of institutions that seek to maintain the status quo by manipulating identity not to suggest that we discard identity. Furthermore, these two points come together to illuminate how minorities experiencing racial/gender/sexual orientation subordination can be gaslighted into questioning the validity or even the reality of their experiences. That is how I read Ahmed's blog post and quote: it can be hard to tell what is going on in a situation in which the institution is superficially committed to diversity and minorities are deployed against each other.<sup>62</sup>

The recent election jolted us back to the reality that we have been engaged in this struggle for both inclusion (but not necessarily assimilation) and equality since before the founding of the country. Whiteness and racism, sexism and heterosexism are constitutive of and foundational to the United States' dominant national identity.<sup>63</sup> Minorities in every generation have been attempting to dismantle these hierarchies in their various forms. Part of that work has been to make visible the sexualized and racialized violence that is being perpetrated even as proponents of white dominance in society and the state attempt to frame the struggle in gender and race neutral terms, without regard to any inherited inequality, and claim the problem to be "solved".<sup>64</sup> In such times, the paranoia that haunts Ahmed's quote needs to be set aside for certainty.<sup>65</sup> We cannot afford to second guess ourselves. As Jacob Levy argues, we must continue to challenge notions of neutrality and universality when they act as "a mask for the identity politics of the *staatsvolk*. As citizens of a liberal state trying to preserve it, we need to be able to hear each other talking about *particularized* injustices, and to cheer each other on when we seek to overturn them."<sup>66</sup> And in order for us to be able to hear each other

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16/13924742/mark-lilla-identity-politics-liberalism-trump-clinton-race-2016-election [https://perma.cc/SQ4P-SGD2].

<sup>62</sup> Ahmed, *supra* note 1.

<sup>63</sup> See generally LÓPEZ, *supra* note 6.

<sup>64</sup> The most recent example of this is President Trump's immigration Executive Order that has been commonly called the "Muslim Ban," which is now being characterized as not targeting Muslims. See, e.g., Brady Dennis & Jerry Markon, *Amid Protests and Confusion, Trump Defends Executive Order: 'This is Not a Muslim Ban'*, WASH. POST (Jan. 29, 2017), [https://www.washingtonpost.com/national/health-science/trump-gives-no-sign-of-backing-down-from-travel-ban/2017/01/29/4ffe900a-e620-11e6-b82f-687d6e6a3e7c\\_story.html](https://www.washingtonpost.com/national/health-science/trump-gives-no-sign-of-backing-down-from-travel-ban/2017/01/29/4ffe900a-e620-11e6-b82f-687d6e6a3e7c_story.html) [https://perma.cc/HKH8-GPXJ].

<sup>65</sup> Ahmed, *supra* note 1.

<sup>66</sup> Jacob T. Levy, *The Defense of Liberty Can't Do Without Identity Politics*, NISKANEN

talking, we need to stop using identity as *the* marker of authenticity and a proxy a commitment to anti-subordination. Those of us who already exist in diverse institutions can attest that while shared identity may be a starting point, finding shared cultural and political values takes a deeper commitment and more time, requiring us to revisit initial impressions and assumptions. Our experience of identity politics, the uses of diversity by institutional actors and the resulting distribution of power that maintains the status quo of minority subordination *through* minority collaboration has shown that one cannot distinguish an ally from an adversary based on identity alone.