

1997

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Recommended Citation

Testy, Kellye Y. (1997) "Wouldn't It Be Nice: Linking Struggles for Justice," *California Western Law Review*.
Vol. 33 : No. 2 , Article 9.
Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol33/iss2/9>

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WOULDN'T IT BE NICE: LINKING STRUGGLES FOR JUSTICE†

KELLYE Y. TESTY*

When I first heard it, it sounded comforting—familiar and pleasant—much like a well-worn Beach Boys' song. I was drawn to it and it washed over me in all of its melodious harmony: "*Oh, wouldn't it be nice.*"¹ Oh, and it was nice. Nice like just the right breeze on a day full of sun, a cleansing, uplifting breeze. The kind that can take you to places you wish you still lived, remind you of things you wish you still knew. And I felt it, felt it pull my shoulders up a little straighter, felt it push my breath out a little easier, felt it lift the corners of my eyes and my mouth, felt it circle my spirits, floating, at last. At last.

At last a light shone on the dark question that had riveted me and other well-intentioned souls for years, showing us a way in, showing us a path we could walk, showing us that we could have it all, have it both ways, showing us, at last, a way to achieve political unity (and power) without erasing difference. Unity *and* Difference, the ends of the perceived spectrum had met and fused, a circle of possibility forming in its place. Sameness and Difference were reconciled at last, freeing us from this intolerable, ineffectual polarity. No dichotomy was now too engrained, freedom from an either/or world, at last, was in sight.

What this meant was startling: we could all retain our individuality, be women, be poor women, lesbians, poor lesbians, gay men, persons of color, Black lesbians, Asian-Americans, Latinos, African-Americans, bisexuals, bisexuals of color, transgendered persons, gay men and lesbians, queers, queers of color—any identity we wanted to claim—but we could also be united, and hence, politically effective. Different, but united. Powerful, yet ourselves. There was no stopping us now—our dark days of hegemony in the name of progressive politics was behind us and a radical and plural democracy was just a moment away. That melody, there it was again. "*Oh, wouldn't it be nice.*"

To make matters even better, the source of this pleasant state of affairs was a good friend, a trusted friend, a legal academic friend whom I had grown up with. And here was his most welcome, most soothing, most

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* Associate Professor of Law, Seattle University School of Law. These remarks were prepared for a Symposium, *Toward a Radical and Plural Democracy*, held at California Western School of Law in San Diego, California on February 22, 1997. I thank California Western for hosting this symposium and thank my friend and fellow traveler, Bob Chang, for organizing it and for inviting me to participate. I also thank my capable research assistant, Sharon Chirchillo. And as always, I thank Tracey—this time for her truth.

1. Brian Wilson & Tony Asher, *Wouldn't it be Nice* (Capitol Records 1966).

brilliant suggestion: the various struggles against oppression can be united by articulating a set of political commitments. The old world of fragmented and ineffective identity-based politics would give way, and in its place would rise a politics of identity.² Identity would be reconceptualized as “subject positions” no more essential or mooring than a brief stop at the top of a mountain to gaze out at the horizon.³ Like most great ideas, this was a simple and straightforward one. And like most great ideas, it seemed obvious in hindsight. The kind of idea that once you hear it makes you shout, “Of course, of course, why didn’t someone think of this before!” Instead of playing identity politics, we would articulate a politics of identity. Freedom was in our grasp and I could hear it. *“Oh, wouldn’t it be nice.”*

And as if he had not done enough already, my friend already had a list of these political commitments:

Anti-subordination;
 Political, economic, and cultural empowerment;
 Uncompromising opposition to hetero-patriarchy;
 Reconstructing the meaning and language of race;
 Self-critical/self-reflective approach;
 Learning and openness to our histories;
 [Insistent commitment and identification with a subordinated race];
 Weak link theory of social change;
 Egalitarian deliberative participatory democracy;
 Willingness to sacrifice and struggle;
 Contextualized judgment and responsibility; and
 Willingness to be disciplined as a group.⁴

Now that was a list that I could sign on to. I racked my brain to find something missing, some oversight. I peered into shadows; I looked between the lines, and I looked with the eyes of one used to being left out. Was it all there, was sexuality accounted for? Yes. Class? Yes. Race? Yes. But wait, what about intersectionality, did this list account for the particular oppression one can experience when he or she is a “member” of two or more oppressed groups? Even that was there! I could feel myself relaxing and again, I could hear that alluring melody, soaked in the promise of sun and dripping with all the sweetness of coconut milk. *“Oh, wouldn’t it be nice.”*

Well, yes; but as from a dreamed fall just as sleep comes, I jumped, startled. Something just did not feel right. Dark clouds of doubt rolled through my mind, filling me with worry. Was this move from identity politics to political identity really the welcome, salutary move it seemed at first glance? Or was it an empty word play, or worse yet, a harmful

2. Robert S. Chang, *The End of Innocence or Politics After the Fall of the Essential Subject*, 45 AM. U.L. REV. 687 (1996).

3. *Id.* at 690.

4. *Id.* at 691 n.22. This list was formulated by a break-out group during a plenary session on Racial Formation Theory at the 1995 Critical Race Theory Workshop. With the exception of the bracketed item, the break-out group came to a consensus on the contents of the list. *Id.*

diversion of precious energy? I tried to push these nagging doubts away, but they persisted. What was I thinking? This was a sensible and long-overdue solution to an intractable barrier. What part of me recoiled? What part of me had the nerve to look askance at my friend's well-intentioned resolution? Had I grown too bitter? Too hard-edged? Too cynical? Too hopeless? Or worse yet, was I selfish—did I care more about combating “my” particular oppression than linking with others to combat oppression altogether? Had I so internalized the domination norm that I had unwittingly adopted an “us against them” mentality? I listened hard and tried to hear that sweet melody again, but it wouldn't come. Where had it gone and what meaning could I give to my nagging discomfort?

Perhaps only this: What I think it means is that there is no simple solution to combating oppression. No magic method, no grand theory, no one way, no unified way. In fact there is no *thing* that we can hold up that will dissolve subordination. No “thirty pounds in thirty days” magic pill to reduce it; no “shout it out” stain remover to eliminate it; no “flatter fit” clothes to hide it. It is ugly and it is real and it requires hard work to understand and to transform. And some days, this is not what I want to know.

My friend's list was not an end, but a beginning—not a resolution, but a way in. The very process of trying to identify commonalities among oppressions, the process of looking for linkages between democratic struggles holds our promise of freedom. Thus, the process of making that list, not the list itself, is what has meaning and value in the struggle for freedom, the search for a pathway to a just world. And even with the trailhead marked, there is still a long way to walk. I could hear music again, but it had changed. What I heard was the call of a quail,⁵ and I followed it.

Marilyn Frye once noted that “the root of the word ‘oppression’ is the element ‘press’ [and that] something pressed is something caught between or among forces and barriers which are so related to each other that jointly they restrain, restrict, or prevent the thing's motion or mobility.”⁶ This is a potent reminder that oppression comes from many interrelated sources—from convergences—and that it restricts, molds, flattens, and reduces life. At this juncture in society, we have a proliferation of “democratic struggles”—struggles against oppression or subordination on the basis of ethnicity, race, gender, class, and sexuality. These various struggles are testament to the fact that resistance to oppression and orthodoxy lives despite the crushing

5. See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, in *WHERE IS YOUR BODY?* 3 (1996). This essay, which was originally given as an address before the Yale Law School Conference on Women of Color and the Law (April 16, 1988), was first published in 11 *WOMEN'S RTS. L. REP.* 1 (1989).

6. Marilyn Frye, *quoted in* A. BRITTAN & M. MAYNARD, *SEXISM AND OPPRESSION* 1 (1984).

strength and persistence of the vices of domination, and certainly because of the blood and loss that stains those vices. While these resistance efforts have made gains, particularly in the realm of articulating positive conceptions of difference,⁷ a more “pressing” task remains: How can we move ahead and give real meaning to words like freedom, liberty, equality, and justice? How can we avoid erasing difference and at the same time also participate in each other’s struggles? That is, can we politically unite the various struggles against oppression without repeating the very oppressive acts to which those struggles respond?

We have a bit of a paradox, for in order to overcome the violence of unquestioned identities, we have assumed strategic identities. One approach to this paradox is attention to “convergences.”⁸ Even here, however, there are several routes to pursue. One would be to seek to articulate a set of convergent interests or commitments. This is the route pursued by the notion of articulating shared political commitments as a strategic alternative to identity politics.⁹ Another route would be to seek to interrogate those “forces and barriers which are so related to each other that they jointly [converge] to restrain, restrict, and prevent” further advances toward freedom. Here, the commonalities and particularities of types of oppression are revealed as a vital first step in dismantling structures of domination and subordination. Because this paradox is so complex, and because untangling it is so vital to the ability of so many to lead fully realized, authentic lives, we need to pursue both of these routes, and others, to understanding and unlocking convergent systems of oppression.

IDENTITY POLITICS/POLITICAL IDENTITY

As noted above, the project of articulating a set of dynamic aspirational political commitments as an alternative to essential identity politics is a seductive move in seeking methods of uniting the various democratic struggles extant today. While the focus on shared political commitments is an important one for the process of intersectional awareness that is vital for progressive liberation movements, I wish to sound a few brief cautionary notes.

First, this focus on shared commitments can lead us to a more sophisticated understanding of identity rather than rekindling well-trodden debates¹⁰

7. See, e.g., works cited in *infra* note 23.

8. The symposium panel at which these remarks were presented was entitled “Toward Interest Convergence,” and was charged with addressing the challenge to organized the disenfranchised around a set of common interests.

9. See Chang, *supra* note 2.

10. See, e.g., DIANA FUSS, *ESSENTIALLY SPEAKING: FEMINISM, NATURE & DIFFERENCE* (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990); Daniel R. Ortiz, *Creating Controversy: Essentialism and Constructivism and the Politics of Gay Identity*, 79 *VA. L. REV.* 1833 (1993).

over whether identity is useful as an organizing principle for politics. To say that identity in its essential form is a stumbling block for coalition politics is not to say that identity is meaningless. Understood as constructed, strategic, fluid, and political rather than essential, fixed, natural or determined, identity functions in much the same way as Bob Chang's preferred term, "subject positions."¹¹ While I prefer the less academic term "identity," the point is the same. Identity (or subject position) is reconceptualized as a "process" and "effect" that is "neither fatally determined nor fully artificial and arbitrary."¹² In this light, identity can be appreciated for all of its complexity, at once both enabling and constraining.

This focus on the limits of identity, rather than the abandonment of this politically useful and socially inescapable construct, paves the way for broader intersectional work. For instance, the more one believes that one knows who occupies the position "lesbian," the more one likely believes she knows who does not. That is, the more stable we view an identity, the more we risk misrepresenting its "peripheral" members. Furthermore, reconceptualizing rather than abandoning identity as an organizing concept will more fully respect individuals in society who have only recently been empowered to assert an identity and who gain comfort, a sense of belonging and power from that emergent identity.¹³ Such a reconceptualization will also permit the needed exploration of the meaning of shared identities. What does it mean for a group of persons to share the identity "lesbian," for instance? Certainly it does not mean that all lesbians are alike or that all face the same privileges or obstacles in life. But it is a commonality, the meaning of which is worth exploring.

Second, in articulating a set of shared political commitments, we should be watchful of abstractions and universals, and chary in our position-taking. Erasure and silencing often can occur when we speak in universals and abstractions—we know already how badly this feels and how it limits the law's integrity and reach. Moreover, problematization, which is so healthy for a critical approach to law and institutions, is necessarily suspended when one "takes a position." Thus, too much position-taking translates into too little critical thinking. Similarly, let us not divert our precious energy putting together the "perfect list." Again, if we focus on the *process* of identifying the shared commitments rather than the list as *end product*, this pitfall can be avoided. The conversation is what matters, so there should be many conversations with lots of participants. Furthermore, let us not fool ourselves into thinking that these convergent commitments mean anything unless the active work is done to ensure their realization. Mission statements are important, but they are not self executing. We cannot rely on abstrac-

11. See Chang, *supra* note 2, at 690 (relying upon work of Chantal Mouffe).

12. See JUDITH BUTLER, *GENDER TROUBLE* 147 (1991).

13. I would point to gay, lesbian, bisexual, and transgendered persons (or queers) as specific examples of this dynamic.

tions to do the local work that needs to be done. We must remember to ask ourselves and each other: "Where is your body?"¹⁴

Finally, in seeking to unite the various democratic struggles through shared political commitments, we must recognize that we are seeking power. This is not news to those who would oppose progressive agendas. Power is not necessarily bad, but it can be (and often is) used badly. *This* is not news to those of us *with* progressive agendas. As gains are made (and there have been gains), the focus on the use of power is vital. Of course, we know too well the usual model, which is to deploy center against periphery, dominant against subordinate. We need to do better, but it often is difficult not to emulate that with which we are most familiar. But this is our most urgent task: to be ever watchful for how power is deployed.

As an example, one way that power is often deployed badly between and within various progressive communities is that it is used to reinforce the structures of domination that are asserted against those communities from without. This commonly occurs by opting in to a divide and conquer strategy. When a member of a subordinated group achieves a measure of power, the dominant group seeks to close whatever loophole that allowed that to occur by then holding that person up as the model—the person who “but for” her one (fill in the blank) trait, is just like everyone else (that is, just like the majority).¹⁵ For instance, a lesbian may achieve some measure of power, but be sure that she is White, educated, wealthy, feminine, and monogamous (if she must have a partner at all, single and celibate would be preferred, of course). This further reinscribes hierarchy by creating the “good” (the model) and the “bad” (anyone who deviates from it) lesbian. Similarly, an Asian-American woman may achieve some measure of power, but be sure that she is not a lesbian, and that she is educated, wealthy, feminine, and, better yet, politically conservative. Such moves sound the death knell for intersectionality work and for any movement toward emancipation from difference. Not only is pressure to mask difference applied from center to periphery, but within the periphery toward center. This use of power and privilege will lead us nowhere we want to go. Instead, we need to frankly recognize our privileges and use the spaces those privileges create for our work building bridges, not more barriers.

14. This is title of Mari Matsuda's collection of essays on race, gender, and law (*see generally* Matsuda, *supra* note 5), which was borrowed from the question students in the organization SNCC (Student Nonviolent Coordinating Committee) used to ask “armchair liberals and intellectuals [who] expressed sympathy for the movement.” *See* Matsuda, *supra* note 5, at 78.

15. *See* Ruthann Robson, *Convictions: Theorizing Lesbians and Criminal Justice in LEGAL INVERSIONS: LESBIANS, GAY MEN, AND THE POLITICS OF LAW* 180, 189 (Didi Herman & Carl Stychin eds., 1995) (noting the “but for” lesbian dynamic).

COMMONALITIES OF OPPRESSION

In addition to the task of articulating shared political commitments between and among the various democratic struggles, the task of understanding the common elements of oppression is also an important convergence point on which to focus. This is not to say that all types of oppression are the same, that they stem from the same source, or that they feel the same.¹⁶ Neither does it mean that one can necessarily understand subordination on the basis of race because she understands subordination on the basis of gender. What it does mean is that by understanding that commonalities exist, she will be motivated to talk to her sister about race, that she will include her sister and her sister's work in her work, and vice versa. That when she sees sexism she will ask if racism, too, is operating. That when she sees racism she will wonder whether homophobia plays a role as well. Exploring commonalities is certainly not meant to create a hierarchy of oppressions where time is spent fighting over what type of oppression is most severe or pervasive. Systems of oppression are interlocked; dismantling any piece of domination is cause for celebration. My point here is a modest one: There are common elements to types of oppression and understanding the commonalities not only helps dismantle each individually, but all collectively.

Lesbian activist Suzanne Pharr was an early writer attending to intersectional analysis.¹⁷ In her path-breaking book, *Homophobia: A Weapon of Sexism*, Pharr explores the intersection of class, gender, and sexuality at length.¹⁸ Moreover, Pharr specifically addresses the common elements of oppressions, asserting that all oppressions are "linked by a common origin—economic power and control—and by common methods of limiting, controlling, and destroying lives."¹⁹ The common elements that Pharr identifies are defined norms of right and good that are enforced through various means. Oppression begins when a dominant group sets out its own characteristics as the norm, defining all else as other—as unnatural, deviant, and abnormal. For instance, to be White, male, heterosexual, Christian, able-bodied, and have access to wealth is set up as a standard with all else seen as "not that" or other.²⁰ Not only are these norms defined, however, they are also enforced. Enforcement is accomplished through various means including economic power, institutional power, myths of scarcity, violence and threat of violence, invisibility through stereotyping and

16. See, e.g., Trina Grillo & Stephanie Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons between Racism and Sexism (or other isms)*, 1991 DUKE L.J. 397.

17. For an early work explicitly focusing on intersectionality, see Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine*, 1989 CHI. LEGAL F. 139.

18. SUZANNE PHARR, *HOMOPHOBIA: A WEAPON OF SEXISM* (1988).

19. *Id.* at 53.

20. *Id.*

isolation, and strategies such as victim blaming, assimilationism, and tokenism.²¹ These enforcement mechanisms operate not only to pit dominant against subordinate, but also to pit the subordinated against one another.

Pharr's work provides an insightful account of the commonalities among oppressions, suggesting many lines of fruitful analysis. For instance, if she is right that economic power and control is a common origin, then our struggles may repeatedly flounder unless this origin is understood and theories and strategies are developed to address its control and effects. Additionally, identifying the common enforcement methods of oppression helps us to spot the workings of domination, not only in our individual struggles but also in each others', and to build bridges across experience. To explore, for example, how stereotyping is used to enforce racial norms, gender norms, and sexual norms, begins to unravel the power of stereotyping itself—the power to keep the “other” unknown and dehumanized. When one looks for stereotypes at work on various axes, one begins to know the other—a radical, progressive act in and of itself. Furthermore, because many individuals are situated with multiple oppressions, it is only through intersectional analysis that we can begin to visualize and create law that will take account of this complexity.²²

For the law to be effective and legitimate, it cannot continue to make individuals choose a part of themselves to leave at the courthouse door. By exploring the commonalities and the particularities of oppressions, we can begin to unmask their underlying structures, and to see the shape of the house that we need to dismantle.

The process of dismantling oppressive structures and reconstructing a jurisprudence that furthers social justice, is, of course, underway. An expanding chorus of voices, many of them here at this Symposium either in person or in words and spirit, offer views of law that are both sharply critical and resoundingly hopeful.²³ The challenge of shaping law that will further

21. *Id.* at 53-64.

22. *See, e.g.*, Mary Eaton, *Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Identity* in *LEGAL INVERSIONS*, *supra* note 15, at 46 (exploring intersection of race and sexuality, concluding that homosexuality legally codes as White while race legally codes as heterosexual).

23. *See, e.g.*, *CRITICAL RACE THEORY* (K. Crenshaw, N. Gotanda, G. Peller, & K. Thomas eds. 1995); *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado ed. 1995); ROBERTO MANGABEIRA UNGER, *WHAT SHOULD LEGAL ANALYSIS BECOME?* (1996); Derrick Bell, *The Civil Rights Chronicles*, 99 *HARV. L. REV.* 4 (1985); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 *CAL. L. REV.* 1241 (1993); Margaret Chon, *Chon on Chen on Chang*, 81 *IOWA L. REV.* 1535 (1996); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331 (1988); Jerome M. Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991

justice is no easy task. It is more difficult than the classic formalism of an earlier day, more difficult than the neoclassical methods of legal analysis so popular among courts and academics today. Tomorrow's jurisprudence calls for more: It calls for more critical thinking, more rigor, more sophisticated understandings of interdisciplinary methods and analysis, more subtle attention to context, more reflection on policy and values, more understanding of power relationships, more knowledge about institutions and their functions, and more commitment to a wider array of people and cultures. And perhaps most daunting, it calls for sustained hope and imagination, both of which are admittedly difficult to muster in these times of churning backlash. But for those of us who would have democracy mean more, who would candidly concede that law can do more than it is now doing to negotiate the pathway to a just world, it is our task to create this jurisprudence. One vital part of that creation is close attention to exploring the complex interrelationships between systems of domination. For "no person is free until the last and the least of us is free."²⁴ Now, wouldn't that be nice.

DUKE L.J. 39; LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* (1994); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Charles Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); Matsuda, *supra* note 5; MARTHA MINOW, *MAKING ALL THE DIFFERENCE* (1990); RUTHANN ROBSON, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* (1992); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1 (1995); PATRICIA WILLIAMS, *ALCHEMY OF RACE AND RIGHTS* (1991).

24. Matsuda, *supra* note 5, at 65.

