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() ESSENTIALIZING A FIXED NOTION OF HOMOSEXUAL IDENTITY BY CODIFYING IT IN CIVIL RIGHTS LAW RISKS NAZI-STYLE GENOCIDE

Lehring, Professor of Government Smith College, 1997 (Gary, Playing With Fire, ed. by Phelan, p. 192-193)

In 1951, writing in the Origins of Totalitarianism, political theorist Hannah Arendt documented the rise of racism directed at Jews in nineteenth-century Europe. Integral to this racism was the identification of Jews as a "race," as those born to a certain inescapable identity. She writes,

As far as the Jews were concerned, the transformation of the "crime" of Judaism into the fashionable "vice" of Jewishness was dangerous in the extreme. Jews had been able to escape from Judaism into conversion; from Jewishness there was no escape. A crime, moreover, is met with punishment; a vice can only be exterminated. The interpretation given by society to the fact of Jewish birth and the role played by Jews in the frame work of social life are intimately connected with the catastrophic

thoroughness with which anti-Semitic devices could be put to work. The Nazi brand of anti-Semitism had its roots in these social conditions.

Arendt was one who realized the same transformation was taking place in the arena of sexuality, arguing that "the 'vice' of Jewishness and the 'vice' of homosexuality . . . became very much alike indeed."⁹⁰ The medical transformation of criminal acts of sodomy into sexual vice and identities parallels the transformation described by Arendt. Replacing the terms "Judaism" and "Jewishness" with "sodomy" and "homosexual" in the quote above makes clear the danger of this parallel transformation to all sexual minorities today.

Until quite recently, gay historians have overlooked that the Nazis included gays and lesbians among those to be purged from society in the most apocalyptic use of identity politics by the modern state—the Holocaust. And while many today, even in the gay and lesbian community, remain convinced that "it can't happen here," the political success of candidates like Pat Buchanan and David Duke and of initiatives like those passed in Colorado should give us all pause.

The dilemma of a gay equal rights movement is that in accepting the essentialization of personal identity, they also accept the inferior status that this identity assigns them in the heterosexual/homosexual dichotomy. The fact that they seek state protection is evidence of their present social and political inferiority however unjust the discrimination they face. But in the struggle for equal rights, equality is defined by the superior partner in the dichotomy: in short, equality means "sameness." Gays and lesbians must struggle and fight to gain access to the same rights held by heterosexuals. They must take their demands to the state, seeking definition and protection and, after a long, often bitter struggle, they, no doubt, will be granted the same formal rights that the state provides for heterosexuals.

The danger of this drive to conform, this equal rights agenda, is that it adversely affects our desire to combine "what we regard as the better parts of the alternative; we want equality without its compelling us to accept identity, but also difference without its degenerating into superiority and inferiority."⁹¹ By simply demanding the same rights as heterosexuals, in requesting integration into the social institutions of marriage and family, nothing is done to change the process by which difference was constructed in the first place, leaving intact the cultural and social institutions which produce "otherness." Within the equal rights ethos, the goal becomes integration with that which we do not have. Demands for change become pleas for admission to the privileges held by the dichotomous "self" from which we have been estranged in the process of "otherness" creation.

() CODIFICATION OF IDENTITY ONLY INCREASES STEREOTYPES AND SUBORDINATION

Schacter, Prof. of Law Univ. of Wisconsin, 1997 (Jan. 110 Harv. L. Rev. 684, p. Lexis)

- A third liberal argument against identity particularity is that it works against equality by submerging and masking human individuality in broad categories, thereby encouraging category-based stereotypes. Here the claim is that identity particularity produces a consequence - group stereotypes - that equality laws, properly understood, should oppose. For example, Sullivan decries the way that classifying individuals based on sexual orientation ignores the "differing human experiences of these distinct human persons" and "flattens human society" (pp. 149, 151). Indeed, in an essay reflecting on the tour that accompanied publication of his book, Sullivan ridiculed people who expressly claim their identities, derisively calling "azzas" those who began their questions to him by self-identifying "as a" member of a particular group. n55

Along similar lines, liberal identity skeptics argue that identity categories can promote ideas about groups that are at odds with the goal of eradicating group-based prejudices. The phenomenon of "epistemological pluralism," n56 which posits a link between identity and how one makes sense of the world, has been an especially attractive target for many liberal skeptics. For example, Wilkinson has argued that identity categories based on ethnic background amount to "claims of an inaccessible racial experience" n57 that can "regrettably revive patterns of stereotypical thought." n58 Liberal skeptics also argue that, by failing to see that "our identities and our ideas are not reducible to our membership in a race," identity politics can foster problematic generalizations about members of groups. n59 Thus, in the liberal view, identity categories do not further equality, but instead encourage perceptions that sustain group subordination.

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(-) BY IMPOSING THE FORCE OF THE STATE BEHIND A PARTICULAR DEFINITION OF IDENTITY, CIVIL RIGHTS LAWS REINFORCE INEQUALITY

Schacter. Prof. of Law Univ. of Wisconsin. 1997 (Jane. 110 Harv. L. Rev. 684. p. Lexis)

In sum, without a more particularized, complex, and fluid mechanism for defining and describing identity, existing categories will be unable to capture the forms and dimensions of subordination that equality law should pursue. Thus, the law can reinforce existing inequalities among groups and subgroups because, as Martha Minow has argued, the use of singular concepts of identity can "obscure the complexity of lived experiences while imposing the force of the state behind the selected notion of identity." n84

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() CODIFYING STATIC NOTION OF HOMOSEXUALITY VIA CIVIL RIGHTS LAW INCREASES SUBJUGATION

Currah. Prof. Political Science Brooklyn College. 1997 (Paisley. 48 Hastings L.J. 1363. p. Lexis)

Queer theorists have rightly shown that identity-based political claims ultimately fail to undermine the very categories-homosexuality and heterosexuality, in this case-upon which such subjection is based. Lisa Bower, for example, calls this identity-based civil rights project the "politics of official recognition" and characterizes it as an attempt to "fit the 'queer other' within some space [*1363] already acknowledged by the liberal nation-state." n4 In opposition to such reformist "we're just like you" goals, queer theorists have focused their attention on identity's contingency, fluidity, and constructedness, and suggested that it is in the destabilization of identity categories that effective political practice is to be found. Accompanying this dismissal of identity-based politics has been the abandonment of the state as "the site of privileged political action." n5 Instead, "cultural contestations" have become the locus of effective political intervention. n6

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