



Washington and Lee University School of Law
Washington and Lee University School of Law Scholarly Commons

Scholarly Articles


Faculty Scholarship

2008

Unconscious Bias and Outsider Interest Convergence

Catherine Smith

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlufac>

 Part of the [Civil Rights and Discrimination Commons](#), [Fourteenth Amendment Commons](#), and the [Law and Psychology Commons](#)

CONNECTICUT LAW REVIEW

VOLUME 40

MAY 2008

NUMBER 4

Article

Unconscious Bias and “Outsider” Interest Convergence

CATHERINE SMITH

In 1987, Charles Lawrence articulated an inherent flaw of the discriminatory intent requirement in equal protection jurisprudence by leveraging social science research to demonstrate that “the behavior that produces racial discrimination is influenced by unconscious racial motivation.” Twenty years later, the debate continues with increasing social science literature to support his position. Furthermore, other scholars and social scientists have demonstrated how unconscious bias may fuel discriminatory acts against others on the basis of gender, ethnicity and sexual orientation.

Appropriately, most of the unconscious bias research focuses on how such biases operate within the majority to oppress a minority group. They often analyze how white bias serves to stereotype or marginalize people of color or how male bias serves to stereotype or marginalize women. However, rarely does the literature explore how marginalized groups may engage in unconscious (and conscious) bias against one another, which this article argues blocks social justice efforts to combine resources and resource-coalescing coalitions that challenge oppression.

This Article does not seek to explore unconscious bias to conclude that all people in society discriminate, nor to offer some solace to well-meaning whites (or other members of majority groups) seeking to assuage their guilt. Instead, this Article explores biases within and among subordinated groups in an attempt to offer some clarity on how subordinated groups may build coalitions and uncover how their subordinations are interrelated and dependent upon one another to uphold the power and privilege. This Article turns to social science literature to explore how an appreciation of the operation of unconscious bias among and within subordinated groups, often driven by self-interest and group preservation, presents an opportunity to unify subordinated groups by identifying how such groups interests converge with one another. This Article will briefly use an example to demonstrate how “outsider” interests may converge by delineating how people of color, women, and LGBTs (and those at the intersections) have a common interest in challenging the legal construction of the concept of “family” under welfare legislation—legislation that serves to deny life-sustaining benefits to those who fail to conform to what is perceived to be a predominately white, heterosexual, middle-class family construction.

ARTICLE CONTENTS

I. INTRODUCTION	1079
II. UNCONSCIOUS BIAS.....	1080
A. THE ID, THE EGO, AND EQUAL PROTECTION	1080
B. THE SOCIAL IDENTITY THEORY.....	1084
III. “OUTSIDER” INTEREST CONVERGENCE	1087
A. INTEREST CONVERGENCE.....	1088
B. “OUTSIDER” INTEREST CONVERGENCE	1089
IV. CONCLUSION	1093



Unconscious Bias and “Outsider” Interest Convergence

CATHERINE SMITH*

I. INTRODUCTION

In 1987, Charles Lawrence leveraged social science research to demonstrate that “the behavior that produces racial discrimination is influenced by unconscious racial motivation.”¹ Twenty years later, the debate continues with increasing literature to support Lawrence’s position.² Appropriately, most of the unconscious bias research has focused on how such biases operate within the majority to oppress a minority group. And, yet, in the context of American social justice, another operator is at play: apathy, even animus, between marginalized groups for the plight of the “other outsider.”

Social justice advocates often question why marginalized groups so often fail to stand up for one another in formidable ways: “Why don’t more African Americans oppose racial profiling of Arabs or anti-immigrant policies?” “Where are members of the African-American, Asian-American and Latino communities in supporting gay rights?” “Why aren’t predominately white gay rights groups or women’s groups supporting race-based affirmative action programs more ardently?”

Are these seemingly disparate marginalized groups so bound up in their own persecutions that they cannot see the larger force of oppression bearing down on them collectively? Why can’t gay and lesbian organizations, racial justice organizations, gender-based organizations and other social justice groups overcome identity-based politics to advance a larger anti-subordination framework?

* Associate Professor, University of Denver, Sturm College of Law. J.D./M.P.A., University of South Carolina. Thanks to Charles Lawrence and Connecticut Law Review. The author offers a special thanks to Jennifer Holladay. The author also thanks the University of Denver, Sturm College of Law for research support and Meg Satrom, Kristin Kreitemeyer and Indra Lusero for their research assistance.

¹ Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987).

² Tristin K. Green, *Discrimination in Workplace Dynamics: Toward a Structural Account of Disparate Treatment Theory*, 38 HARV. C. R.-C.L. L. REV. 91, 95–99 (2003); Melissa Hart, *Subjective Decisionmaking and Unconscious Discrimination*, 56 ALA. L. REV. 741, 745–49 (2005); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1497–506 (2005); Linda Hamilton Krieger, *Civil Rights Perestroika: Intergroup Relations After Affirmative Action*, 86 CAL. L. REV. 1251, 1258–76 (1998) [hereinafter Krieger, *Civil Rights Perestroika*]; Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1203 (1995) [hereinafter Krieger, *Categories*]; Catherine E. Smith, *The Group Dangers of Race-Based Conspiracies*, 59 RUTGERS L. REV. 55 (2006)

This Article seeks to briefly explore how unconscious biases prevent marginalized groups from building meaningful coalitions with one another and suggests that overcoming the biases within and among subordinated groups offers a pathway to uncovering how the mutual marginalization of these groups upholds the privilege of a small number of power elite. This Article does not seek to explore unconscious bias to conclude that all people in society discriminate, nor to offer some solace to well-meaning whites (or other members of majority groups) seeking to assuage their guilt. Instead, this Article draws upon social science literature to re-frame the discussion towards a focus on mutual interest and cross-group, resource-coalescing, coalitions based on “outsider” interest convergence.

Part II of this Article summarizes Professor Lawrence’s article, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, and then explains the social identity theory as an additional source of unconscious motivation and behavior.

Part III argues that an appreciation of how unconscious bias operates among and within marginalized groups presents an opportunity to unify subordinated groups by exploring how their interests converge. This Part will provide a short explanation of how the social psychology literature supports re-framing Derrick Bell’s “interest convergence” theory to offer marginalized groups an avenue to build coalitions that challenge the status quo. Next, this Part will demonstrate how the interests of people of color, gays and lesbians (and those at the intersections) converge to challenge the legal construction of “family” under welfare legislation—legislation that serves to deny life-sustaining benefits to those who fail to conform to what is perceived to be a predominately white, heterosexual, middle-class family construction. Finally, Part III will conclude with some advantages of focusing on different groups’ common interests in order to reveal and challenge the maintenance of power and privilege.

II. UNCONSCIOUS BIAS

A. *The Id, the Ego, and Equal Protection*

In 1987, Professor Lawrence articulated an inherent flaw of the discriminatory intent requirement in equal protection jurisprudence by demonstrating that “the behavior that produces racial discrimination is influenced by unconscious racial motivation.”³ Lawrence explained that by requiring discriminatory purpose as the linchpin to challenge facially neutral government policies, despite their racially disparate impact, the Supreme Court erected a “false dichotomy”—facially neutral action is viewed as “intentional[] and unconstitutional[] or unintentional[] and

³ Lawrence, *supra* note 1, at 322.

constitutional[]]."⁴ The flaw in this analysis, however, is that:

[t]raditional notions of intent do not reflect the fact that decisions about racial matters are influenced in large part by factors that can be characterized as neither intentional—in the sense that certain outcomes are self-consciously sought—nor unintentional—in the sense that the outcomes are random, fortuitous, and uninfluenced by the decisionmaker's beliefs, desires, and wishes. . . . In short, requiring proof of conscious or intentional motivation as a prerequisite to constitutional recognition that a decision is race-dependent ignores much of what we understand about how the human mind works. It also disregards both the irrationality of racism and the profound effect that the history of American race relations has had on the individual and collective unconscious.⁵

To support his arguments, Lawrence offers two explanations from social science to demonstrate the unconscious nature of our racially discriminatory beliefs and ideas: Freudian theory and cognitive psychology.

According to Freudian psychoanalytic theory, the human mind protects itself from the discomfort of guilt by refusing to recognize those ideas that conflict with what the individual has learned are good or just. So when the individual "experiences conflict between racist ideas and the societal ethic that condemns those ideas, the mind excludes his racism from consciousness."⁶ The mind is divided into the primary process and the secondary process.

The primary process, or Id, occurs outside of our awareness. It consists of desires, wishes, and instincts that strive for gratification. It follows its own laws, of which the supreme one is pleasure. The secondary process, or Ego, happens under conscious control and is bound by logic and reason. We use this process to adapt to reality: The Ego is required to respect the demands of reality and to conform to ethical and moral laws.⁷

As the Id impulses pass through the Ego, they are criticized, rejected or modified as a defense measure on the part of the secondary process, which as a defense mechanism regulates and resolves conflict between the primary and secondary processes by disguising forbidden wishes and

⁴ *Id.*

⁵ *Id.* at 322–23 (footnotes omitted).

⁶ *Id.* at 323.

⁷ *Id.* at 331.

making them palatable. The Ego's defense mechanisms include "repression, denial, introjection, projection, reaction formation, sublimation, and reversal."⁸

Lawrence offers several observations in support of the idea that racial prejudice is often repressed and finds its source in the unconscious. For example, when people are asked to explain their racial antagonism they express an "instinctive, unexplained distaste at the thought of associating with the out-group as equals or they cite reasons that are not based on established fact and are often contradicted by personal experience."⁹ According to Lawrence, psychoanalytically, this irrational behavior means poor "reality-testing," which fulfills a psychological function of preserving the individual's attitude. The dislike of the out-group is rationalized based on socially acceptable reasons that disguise the racism underlying the individual's attitude.¹⁰

Another argument to support that unconscious bias is at play, according to Lawrence, is that racially discriminatory behavior often improves long before attitudes toward the out-group change.¹¹ As our society rejects racism as immoral and unproductive, hidden prejudice has become a more prevalent form of racism as "[t]he individual's Ego must adapt to a cultural order that views overtly racist attitudes and behaviors as unsophisticated, uninformed, and immoral. It must repress or disguise racist ideas when they seek expression."¹²

According to Lawrence, cognitive psychology offers a second

⁸ *Id.* at 331-32.

⁹ *Id.* at 332 (footnote omitted).

¹⁰ *Id.*

¹¹ *Id.* at 334.

Behavior is more frequently under Ego control than is attitude. Attitude reflects, in large part, the less conscious part of the personality, a level at which change is more complex and difficult. It also seems reasonable for a change in behavior to stimulate a change in attitude, if for no other reason than that flagrant inconsistency between what one does and what one thinks is uncomfortable for most people.

Id. at 335.

¹² *Id.* at 335. Lawrence explains Joel Kovel's delineation of the "aversive racist" and the "dominative racist." *Id.* The dominative racist is a "true bigot" who seeks to keep blacks in a subordinate position. *Id.*

The aversive racist believes in white superiority, but her conscience seeks to repudiate this belief or, at least, to prevent her from acting on it. She often resolves this inner conflict by not acting at all. She tries to avoid the issue by ignoring the existence of blacks, avoiding contact with them, or at most being polite, correct, and cold whenever she must deal with them. Aversive racists range from individuals who lapse into demonstrative racism when threatened—as when blacks get "too close"—to those who consider themselves liberals and, despite their sense of aversion to blacks (of which they are often unaware), do their best within the confines of the existing societal structure to ameliorate blacks' condition.

Id. (footnote omitted).

explanation for our racially discriminatory beliefs and practices.¹³ Cognitive psychologists argue that culture transmits certain beliefs and preferences, and because they are not explicit messages, those beliefs become a part of the way the individual naturally orders her perceptions of the world.¹⁴ The individual is not aware that societal messages have influenced her view of the world.¹⁵ Cognitivists do not adhere to the Freudian philosophy that human attitudes and beliefs are driven by instinctive drives but, instead, "view human behavior, including racial prejudice, as growing out of an individual's attempt to understand his relationship with the world (in this case, relations between groups) while at the same time preserving his personal integrity."¹⁶ "Categorization" is a common source of racial and other stereotypes, and the content, the stereotypes or associations with these categories, particularly race, is "generated over a long period of time within a culture and transmitted to individual members of society by a process . . . call[ed] 'assimilation.'"¹⁷ Through the process of assimilation, individuals, very early in life, learn about racial-cultural attitudes and beliefs. At young ages, the source of these "tacit rather than explicit [lessons]" are, often, parents.¹⁸ These lessons are not questioned but are, instead, viewed as facts, rather than as opinions or viewpoints.¹⁹

As Lawrence explains, both the psychoanalytical process and the cognitive psychological approach occur outside the actor's consciousness and reinforce one another.²⁰ Most importantly, however, is that "the process that produces unconscious racism is the tacitly transmitted cultural stereotype" through role models, mass media and culture.²¹ Lawrence's work explains how the intent doctrine fails to remedy discriminatory behaviors that stem from unconscious bias.

Twenty years after Lawrence's ground-breaking contribution to equal protection discourse, the debate continues with increasing social science literature to support his argument.²² The literature includes the social psychologists' development of the social identity theory, a leading explanation for intra- and inter-group dynamics that offers additional insights into efforts to chart the unconscious bias landscape.

¹³ *Id.* at 322–23.

¹⁴ *Id.* at 323.

¹⁵ *Id.*

¹⁶ *Id.* at 336.

¹⁷ *Id.* at 337.

¹⁸ *Id.* at 338.

¹⁹ *Id.* at 337–38.

²⁰ *Id.* at 338–39.

²¹ *Id.* at 343.

²² See, e.g., Green, *supra* note 2, at 95–99; Hart, *supra* note 2, at 745–49; Kang, *supra* note 2, at 1497–506; Krieger, *Civil Rights Perestroika*, *supra* note 2, at 1257–60; Krieger, *Categories*, *supra* note 2, at 1203; Smith, *supra* note 2, at 58–60.

B. *The Social Identity Theory*

The social identity theory explains not just how individuals engage in discriminatory behavior, but how these processes fuel group behavior as well.²³ The social identity theory literature explains that unconscious (and conscious) biases do not operate simply through an individual's cognitive process alone, but are influenced by their group identity. Often these groups possess characteristics and behaviors that are distinct from those of an individual member of the group.²⁴ As Professor Michelle Adams explains, "social science scholarship has recognized that discriminatory behaviors are not just the result of personal, individual cognitive-process distortions, but are a problem of collective action."²⁵ The social identity theory explains how individuals, as self-identified members of groups, engage in group behaviors that lead to in-group favoritism and out-group derision.²⁶

Essentially, social identity theorists argue that individuals categorize each other into in-groups and out-groups, then attribute positive values to their in-group and to themselves as a member of the in-group, and then attribute corresponding negative values to out-group members. This entire process stems from a quest to bolster the individual's own self image.²⁷ "In this process, a person's self-esteem becomes linked to the group's successes and failures."²⁸ The social identification process may occur based on any social category and may shift depending on the situational context and environment; however, when it is operational, the social

²³ JIM SIDANIUS & FELICIA PRATTO, *SOCIAL DOMINANCE: AN INTERGROUP THEORY OF SOCIAL HIERARCHY AND OPPRESSION* 19 (1999) ("This general theory has now become the most influential theory of intergroup relations among social psychologists."); Margaret Wetherell, *Group Conflict and the Social Psychology of Racism*, in *SOCIAL PSYCHOLOGY: IDENTITIES, GROUPS AND SOCIAL ISSUES* 175, 216 (Margaret Wetherell ed., 1996) ("Social identity is perhaps the best known attempt to explain the social psychological basis of group conflict."); Kenneth L. Bettenhausen, *Five Years of Groups Research: What We've Learned and What Needs to be Addressed*, 17 *J. MGMT.* 345, 347 (1991) ("Social identity theory . . . provides the foundation for much of the newest and more innovative research dealing with group formation and group members' self-definition.") (citation omitted).

²⁴ Don Operario & Susan T. Fiske, *Integrating Social Identity and Social Cognition: A Framework for Bridging Diverse Perspectives*, in *SOCIAL IDENTITY AND SOCIAL COGNITION* 26, 29 (Dominic Abrams & Michael A. Hogg eds., 1999) ("In the United States in particular, researchers with a strong individual-level orientation emerged as the vanguard of social psychology's theory building. Their ideological focus on individuals resonated with North American cultural sentiment, and the cognitive approach predominated in North America social psychology laboratories and journals.")

²⁵ Michelle Adams, *Intergroup Rivalry, Anti-Competitive Conduct and Affirmative Action*, 82 *B.U. L. REV.* 1089, 1093 (2002).

²⁶ See Smith, *supra* note 2, at 71–75 ("The social identity process begins with social categorization Through social categorization, an individual forms his social identity."); John C. Turner, *Towards a Cognitive Redefinition of the Social Group*, in *ATTITUDES, BEHAVIOR, AND SOCIAL CONTEXT: THE ROLES OF NORMS AND GROUP MEMBERSHIP* 15, 21 (Deborah J. Terry & Michael A. Hogg eds., 1982) ("Social identity is the cognitive mechanism that makes group behavior possible.")

²⁷ Turner, *supra* note 26, at 18–19.

²⁸ Neal Kumar Katyal, *Conspiracy Theory*, 112 *YALE L.J.* 1307, 1316–17 (2003).

identification process leads to in-group favoritism and out-group derision. Importantly, while simply placing individuals in Group A and Group B can trigger social identification, it is highly prevalent among large-scale groups, like those of race, sex and sexual orientation.²⁹ Furthermore, "social, historical and political contexts have significant influence on a person's social identity"³⁰ because of "[t]he multitude of explicit and implicit messages [about groups] the individual has received over the course of a lifetime."³¹ Consistent with cognitive psychology, as Professor Lawrence explains in *The Id, the Ego and Equal Protection*, "the origin of unconscious racism [is found] in the presence of widely shared, tacitly transmitted cultural values."³² When an individual is engaged in "racial identification" or "cognitively places himself in a racial in-group and others in a racial out-group, drawing upon centuries of social meanings that only racial categories can invoke,"³³ the resulting behaviors and actions of the individual and/or those individuals identified as the in-group are potent and lead to racially biased beliefs and practices.

For example, in a study on college admissions decisions, white admissions decision makers were responsible for "evaluat[ing] poorly qualified, moderately qualified and highly qualified candidates."³⁴ Each application included a picture of the candidate, which clearly identified the applicants' races³⁵—at least as the admissions decision makers perceived them. The decision makers rated poorly qualified black and white applicants equally. When evaluating moderately qualified applicants, the decision makers showed some bias, rating the white applicant slightly higher than comparable blacks. The results as to the highly qualified applicants were telling: although the decision makers evaluated highly qualified black applicants positively, they judged white applicants with the same credentials even higher or more favorably. Analyzing this study via the process of racial identification, when the social identification process

²⁹ See Hedy Brown, *Themes in Experimental Research on Groups from the 1930s to the 1990s*, in *SOCIAL PSYCHOLOGY: IDENTITIES, GROUPS AND SOCIAL ISSUES*, *supra* note 23, at 9, 33–34 ("The transition from personal identity to social identity is clearest when considering large-scale groupings . . ."); Turner, *supra* note 26, at 19, 22 ("Research on intergroup relations . . . naturally tends to favour the Social Identification model, since its subject matter is large-scale social category memberships such as nationality, class, sex, race or religion.").

³⁰ See Smith, *supra* note 2, at 75; Wetherell, *supra* note 23, at 191 ("Tajfel argued that cognitively and perceptually, group labels like 'black,' 'white,' 'English,' 'Afro-Caribbean,' 'Australian' operate like the 'A' and 'B' attached to the lines except that in the social world, values and social histories are also attached.").

³¹ See Smith, *supra* note 2, at 75; Wetherell, *supra* note 23, at 207 ("Real life intergroup situations as those characteristic of racism involve . . . many more layers of complexity, including power, structural inequities in access to resources, and histories of contact and dominance.").

³² Lawrence, *supra* note 1, at 355.

³³ Smith, *supra* note 2, at 76.

³⁴ *Id.* at 83.

³⁵ *Id.*

and social construction of race coincide or intersect, we appreciate how this process leads to “racialized group dynamics.”³⁶ The white decision maker infuses his decision-making process with his own personal quest for positive self-image by virtue of group membership. He attributes more positive associations to members of his own race and more negative associations to members of the black candidates as members of the out-group, not simply based on the social construction of blacks as inferior, less qualified, less intelligent, less deserving, less hard-working, but there is also a reciprocal attribution of positive attributes accruing to the white individuals’ in-group and to himself. The decision maker is engaged in what I call a form of “racial loyalty” in which “he attributes the more positive stereotype of the white person” as superior, more qualified (despite the same credentials), more intelligent, more deserving and more hard-working in order “to avoid attributing negative characteristics to white people and himself.”³⁷ To avoid lowering his own self-image, the racially identifying decision-maker must elevate the white applicant over the black applicant. This loyalty to other white people occurs in order to fulfill the individual’s quest for a positive self-image.³⁸

“Depending on the degree of racial identification, the benefits can range from positive thoughts, feelings and emotions . . . to the allocation of resources” directed toward the racial in-group member, as we see in the study.³⁹ The pre-existing negative associations resulting from the social construction of race, fuel the process by serving up immediate identifiers such as skin color (it takes more time to determine if an individual we encounter is a runner, Republican, etc.), ready-made cues, beliefs and stereotypes that intensify the in-group racial loyalty. Furthermore, individuals engaged in social identification, generally, are not only more loyal to their in-group members; they are also more persuaded by in-group members and will conform to what they perceive to be an in-group norm.⁴⁰ As I have previously explained, when engaged in racial identification, in addition to racial loyalty, individuals (and groups) engage in the group dynamics of racial persuasion and racial conformity.⁴¹

³⁶ *Id.* at 79.

³⁷ *Id.* at 82.

³⁸ *Id.* at 83.

³⁹ *Id.*

⁴⁰ The social-identity process is one of the most comprehensive explanations for a wide range of dynamics that are unique to intra- and inter-group relations, such as group loyalty, group persuasion, group conformity and group polarization. See Michael A. Hogg & Dominic Abrams, *Social Identity and Social Cognition: Historical Background and Current Trends*, in *SOCIAL IDENTITY AND SOCIAL COGNITION*, *supra* note 24, at 1, 11; Katyal, *supra* note 27, at 1312 (“Advances in psychology over the past thirty years have demonstrated that groups cultivate a special social identity. This identity often encourages risky behavior, leads individuals to behave against their self-interest, solidifies loyalty, and facilitates harm against nonmembers.”).

⁴¹ Smith, *supra* note 2, at 84–87.

While the cognitive processes delineated by Lawrence and social psychology's social identity theory are crucial to mapping how unconscious bias fuels the discriminatory beliefs and conduct of the racial majority and warrants far more exploration and analysis,⁴² this social science is also important in exploring how marginalized groups engage in unconscious bias against one another as they adopt the cultural norms. In exploring unconscious bias and how it may influence the ways in which subordinated groups build coalitions, the first step is to embrace the reality, that on some level, all people, even members of subordinated groups, view themselves and others as members of groups, and formulate beliefs and behaviors based on those group memberships. For example, in an exchange between a black heterosexual woman and a white lesbian, both may engage in social identification along the lines of the social construction of race and the social construction of sexual orientation, respectively.⁴³ As a result, it may be difficult for each of them to empathize with one another or to identify how their individual marginalizations are linked.

This Article contends that these potential biases among subordinated groups create significant barriers to cross-subordinated group coalitions that are the pathway to identifying the pillars that hold the tangled webs of power and privilege in place.⁴⁴ The norms and values used as a tool or reference point to marginalize a single minority group are often the same norms and values that are the basis for the marginalization of another minority group. If minority groups can overcome their own internalization of these stereotypes of other groups to recognize that even if the ways in which their marginalizations occur are different, these different forms of marginalization are all harnessed to maintain the status quo.

III. "OUTSIDER" INTEREST CONVERGENCE

In 1958, social psychologists Carolyn and Muzafer Sherif, in an effort to reduce inter-group conflicts, introduced the concept of superordinate goals, or "goals which are compelling and highly appealing to members of two or more groups in conflict but which cannot be attained by the resources and energies of the groups separately. In effect, they are goals

⁴² Robert S. Chang & Neil Gotanda, *The Race Question in LatCrit Theory and Asian American Jurisprudence*, 7 NEV. L.J. 1012, 1018 (2007) (explaining the "first-order binary model" as focusing on a "majority-minority binary opposition" such as an analysis of Black-White duality as the primary racial opposition in the United States).

⁴³ See Catherine Smith, *Queer as Black Folk?*, 2007 WIS. L. REV. 379, 396-97 ("Social identification is most prevalent among large-scale groups based on characteristics such as race, sex, and sexual orientation.").

⁴⁴ See Chang & Gotanda, *supra* note 41, at 1018-19 (explaining the "[s]econd-order binary analysis" that explores the "relationship between minority A and minority B").

attained only when groups pull together.”⁴⁵ In order to motivate and inspire individuals engaged in social identification on the basis of a number of socially constructed categories, such as race, gender and sexual orientation, and the resulting in-group/out-group dynamics driven by self-interest, this Article argues that social justice advocates must re-frame the debate around the superordinate goals of subordinated groups. Outsiders must explore how their interests converge as a vehicle to expose the root of these groups’ often different but mutual marginalizations.

A. *Interest Convergence*

In 1980, Professor Derrick Bell responded to Professor Herbert Wechsler’s assertion that the Supreme Court’s *Brown v. Board of Education* decision could not be justified by neutral principles because the legal issue in *Brown* was not one of discrimination but associational rights.⁴⁶ Professor Bell noted Professor Wechsler’s challenge to legal scholars when discussing whether “the state must practically choose between denying the association to those [black] individuals who wish it or imposing it on those [whites] who would avoid it.”⁴⁷ The pitting of the associational rights of blacks and whites led Professor Wechsler to also ask whether there was “a basis in neutral principles for holding that the Constitution demands that the claims for association should prevail?”⁴⁸ In response Professor Bell explained that there was no tension or conflict of interest as articulated by Professor Wechsler because

the interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites. However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites.⁴⁹

Professor Bell proceeded to explain that the *Brown* decision was not contrary to whites’ interests, but consistent with the interests of middle and upper class whites by advancing the political and economic interests at home and abroad, including the struggle against Communism and the

⁴⁵ Muzafer Sherif, *Superordinate Goals in the Reduction of Intergroup Conflict*, 63 AM. J. SOC. 349, 349–50 (1958). Muzafer Sherif and Carolyn Sherif conducted a now famous study “The Summer Camp Experiments” that demonstrated how superordinate goals may reduce intergroup conflict and foster cooperation.

⁴⁶ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

⁴⁷ *Id.* at 521 (quoting Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 34 (1959)).

⁴⁸ *Id.* (quoting Wechsler, *supra* note 7, at 34).

⁴⁹ *Id.* at 523.

appeasement of black veterans returning to United States soil to discrimination and violence by the hands of their white countrymen and women.⁵⁰ Professor Bell stated, "Racial remedies may . . . be the outward manifestations of unspoken and perhaps subconscious judicial conclusions that the remedies, if granted, will secure, advance, or at least not harm societal interests deemed important by middle and upper class whites."⁵¹

B. "Outsider" Interest Convergence

Just as Professor Bell argued that blacks and other subordinated groups may make gains by advancing ways in which their interests are consistent with white power elite, subordinated groups must seek out how their interests converge with one another. In 2005, Professor Sheryll Cashin, in *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, used Professor Bell's theory to push progressives to focus on multi-racial, multi-class coalitions to bring about political reform.⁵² She argued, "Interest is the recognized tactical or strategic advantage that one racial group can gain by forming a coalition with another group."⁵³ Professor Cashin's arguments are compelling and offer positive examples of how the interests of subordinated groups, traditionally viewed as "outsiders," converge in order to transcend difference and allow for the building of progressive coalitions.⁵⁴ I argue that members of subordinated groups go even further and identify how what are perceived to be white middle class, heterosexual norms and the subordinated groups' respective group's failures to conform to those norms serve to marginalize each group and all groups in the coalition.⁵⁵ If one accepts that individuals are often driven to engage in social identification to bolster their own self-interest, to overcome their conscious and unconscious biases, members of subordinated groups must collectively explore how their interests converge, i.e., how they have common interests in challenging the current social, political and legal paradigms that use race, gender, sexual

⁵⁰ *Id.* at 523–26; see also Robert S. Chang and Peter Kwan, *When Interests Diverge*, 100 MICH. L. REV. 1532, 1537 (2002) (reviewing MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000)) ("Bell's Interest Convergence principle is a call to action on the part of those who desire progressive social change to raise awareness among white elites that their interests and the interests of minorities converge."). For a thorough overview of interest convergence scholars' use of the theory, see generally Cynthia Lee, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, 49 ARIZ. L. REV. 911 (2007).

⁵¹ Bell, *supra* note 45, at 523.

⁵² Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 ST. JOHN'S L. REV. 253 (2005).

⁵³ *Id.* at 278.

⁵⁴ See *id.* at 283–91 (discussing promising examples of organizations that have transcended differences through interest-convergence).

⁵⁵ See *id.* at 276 ("In the ordinary, day-to-day struggle of a political or policy battle, progressives would do better to be realistic about human nature and strategize accordingly.").

orientation and other categories as a way to allocate resources and maintain the power and privilege of the power elite.

Outsider interest convergence requires those committed to a larger anti-subordination framework to chart how racism, homophobia, classism, ableism and sexism come together to marginalize many subordinated groups in order to preference some. Then it demands a collective attack on the underlying assumptions that are used to justify the ways in which these groups are denied (individually and collectively) full access to equality. While it is crucial to recognize the power differential between subordinated groups and the corresponding majorit(ies), the adoption of societal or cultural beliefs and stereotypes against the other outsider by members of subordinated groups blocks the respective groups' ability to chart how their mutual marginalizations may be related or linked to maintain the status quo.⁵⁶ It may also reveal how we each, even as members of subordinated groups, play a role in perpetuating the status quo. I will use a provision from welfare laws as an example.

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act denied AFDC benefits, food stamps and public housing to unmarried women under the age of twenty-five.⁵⁷ By linking life sustaining benefits to marriage, these policies marginalize poor single mothers and their children, while also disproportionately impacting Black and Latino women.⁵⁸ These laws also marginalize LGBT communities because they deny benefits to those who are not in households defined by a man and a woman.⁵⁹ Poor women, poor people of color, poor gays and lesbians and those at the varying intersections are harmed by family constructions that do not conform to the traditional heterosexual, middle-

⁵⁶ See *id.* at 282–83 (“I acknowledge that the chief obstacle to multiracial coalition building is the persistence of negative stereotypes held about certain groups. . . . Many immigrant groups have internalized racist or stereotypical views about blacks.”).

⁵⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105; see also CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY AND THE HOUSE REPUBLICANS TO CHANGE THE NATION 65–71, 85–90 (Ed Gillespie & Bob Schellhas eds., 1994) (outlining House Republicans' welfare reform policies, including welfare retrenchment for young single mothers); Parvin R. Huda, *Singled Out: A Critique of the Representation of Single Motherhood in Welfare Discourse*, 7 WM. & MARY J. WOMEN & L. 341, 342–50 (2001) (discussing the Act's negative effects on poor single mothers).

⁵⁸ See, e.g., Martha L. Fineman, *Images of Mothers in Poverty Discourse*, 1991 DUKE L.J. 274, 280–91 (discussing the stigmatization of single motherhood in our society and its effect on welfare policy); Judith E. Koons, *Motherhood, Marriage, and Morality: The Pro-Marriage Moral Discourse of American Welfare Policy*, 19 WIS. WOMEN'S L.J. 1, 38–41 (2004) (noting the role that race plays in the illegitimacy discourse of welfare reduction).

⁵⁹ See SEAN CAHILL & KENNETH T. JONES, NAT'L GAY AND LESBIAN TASK FORCE, LEAVING OUR CHILDREN BEHIND: WELFARE REFORM AND THE GAY, LESBIAN, BISEXUAL, AND TRANSGENDER COMMUNITY 3–4 (2001), available at <http://www.thetaskforce.org/downloads/reports/reports/LeavingOurChildrenBehind.pdf> (explaining how current welfare reform policy benefits married couples because gays and lesbians cannot marry).

class construction of the family.⁶⁰ It is in relation to this family norm that each subordinated group, and those at the intersections, finds the source of its respective marginalization.

Instead of tracing low wages to historical patterns of discrimination, lack of opportunity for adequate education and job training, limited work opportunities, inadequate transportation and dearth of housing, the legislature embedded in the law its vision of "family values" and penalizes those who fail to conform to those values. Single straight and lesbian women of all races are denied benefits because they fall short of the societal expectation that they marry men. These laws disproportionately impact women, people of color, gays and lesbians, and those at the multiple intersections of these categories because these individuals fail to conform to what is perceived as a white, heterosexual, middle or upper class concept of family.

These communities' interests converge to challenge the preferences that benefit one family form over another in doling out life-sustaining resources. For even basic necessities, like food and housing, American policies establish an arbitrary and unnecessary pecking order upon which neither the black woman and her two children, a white 17-year-old single mother, nor the gay Latino couple are sufficiently worthy. Even though the way in which each family is marginalized is different—some based on the failure to conform to a gender expectation (women who fail to marry men), others based on the failure to conform to gender and heterosexual expectation (women and men who fail to seek out opposite sex partners), others based on failure to conform to a race-based or cultural expectation (the failure of Black and Latino women to marry at the same rate of white women speaks to their substandard beliefs and practices)—they each serve to maintain the status quo to the detriment of those who deviate from the script. Each individual or identity group can opt to accept their relative positioning in the hierarchy of difference or refuse to divide resources and energies and recognize that each group's mutual subordinations are linked to maintain the status quo.⁶¹

Outsider interest convergence can be criticized for embracing self-interest as the primary motivator while offering merely short-term gains in

⁶⁰ Tyche Hendricks, *A New Family Portrait: Same-sex Partners Raising Children in California Less Likely to be White and Wealthy, Study Finds*, S.F. CHRON., Oct. 31, 2007, at A1, available at LEXIS, News Library, SFCHRN File (discussing "[a] study released by a group of Bay Area organizations serving lesbian, gay, bisexual and transgender families [which] found that same-sex couples raising children in California are more likely to be people of color and that their median household income is [seventeen] percent lower than the income of married couples with children").

⁶¹ See Lawrence, *supra* note 1, at 336–37 (discussing the "tension between the individual's desire for simplification and the complexity of the . . . conflict between an understanding of a situation that preserves the individual's self-image and one that jeopardizes a positive view of himself" and concluding that "[t]he more important [classifying] people into groups is to an individual, the more likely she is to distinguish sharply the characteristics of people who belong to different groups").

which groups come together around common issues, only to recede back to the same previous practices when those interests end.⁶² I do not suggest that approaching social justice work from an outsider interest convergence theory is the only avenue to challenging societal harms based on group identity; rather, embracing an “outsider” interest convergence theory offers several advantages.

First, it shifts the focus from pitting subordinated groups against one another to a collective attack on the ways in which subordinated groups are marginalized based on a cultural norm that is often obscured when groups view their interests as unrelated or even in competition. As in the welfare law example, one may view the situations of a black single mom, a white single mom, and a gay Latino couple with two children as completely unrelated, if they are focused on their respective identities and the social constructions in society on the basis of race, gender, sexual orientation, and class. However, if they focus on how their interests converge, they see that they are, in fact, being denied benefits because of their failure to conform to a particular family construction.

Second, outsider interest convergence gives subordinated groups agency in building a larger social justice framework. Instead of identifying how their interests coincide with whites’ interests, it flips the script to focus on how white values and norms serve as a reference point to allocate resources even though they are unrelated to the underlying purpose or overarching objective of the law or policy. The welfare law links life-sustaining benefits to family structure, but each of these individuals—the black mom, white mom and Latino gay couple and their children—are still poor and are no less deserving of assistance.

Third, outsider interest convergence allows any number of subordinated groups to come together to explore how their interests converge and opens the door to move beyond a Black-White paradigm.⁶³ It also allows us to move beyond any potential Latino-White or Asian-White paradigm.⁶⁴

Fourth, it permits movement beyond a race paradigm to a framework

⁶² Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373–74 (1992) (stating that “[b]lack people will never gain full equality in this country” and that “herculean efforts” to reduce racial inequalities will produce nothing more than “temporary . . . short-lived victories that slide into irrelevance as racial patterns adapt in ways that maintain white dominance”).

⁶³ See Robert Chang & Catherine Smith, *John Calmore’s America*, 86 N.C. L. REV. 739, 763 (2008) (“Creating a new social justice framework beyond the Black-White paradigm, yet inclusive of African Americans’ interests, means seeking out shared objectives across groups”); Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213, 1257–58 (1997) (concluding that “a true paradigm shift away from the Black/White paradigm” will occur only when scholarly literature regarding racism ceases to “[marginalize] all people of color by grouping them, without particularity, as somehow analogous to Blacks”).

⁶⁴ See Chang & Gotanda, *supra* note 41, at 1020–21 (discussing three examples of third-order multigroup analysis that serve to subordinate minority groups such as Asian-Americans and Latinos).

that allows other subordinated groups such as LGBTs, persons with disabilities, immigrants, and those targeted by economic injustice a space at the table. This focus allows us to evaluate how race, gender, sexual orientation, ability, and other categories are used to subordinate some groups in order to maintain the privileged status of others. It also allows room for individuals who may be in the majority on one axis but not on another to appreciate how they may be participating in subordinating others.⁶⁵ Perhaps, after the coalition's objectives have ended, they do not return to "business as usual."⁶⁶

Fifth, related to broadening the coalition base, when reframing the discussion around outsider interest conversion, we find that many whites, for example, white poor folks, white gays and lesbians, and white women are also subordinated in order to serve small power elite.⁶⁷ While we must address the dynamic of white privilege in building coalitions, a focus on outsider interest convergence may be of value in so doing.⁶⁸

IV. CONCLUSION

While they differ in manifestation, form, and method, the failure to recognize the mutual marginalization of subordinated groups prevents efforts to combine resources and challenge the arbitrary maintenance of power and privilege based on the tangled webs of racism, sexism, and homophobia. People of color, women and LGBTs must explore how their respective interests converge in order to reveal and challenge the maintenance of power and privilege of the majority. Such an approach may move us away from conscious and unconscious biases of one another toward a framework that sheds light on the beneficiaries of our mutual marginalization.

⁶⁵ See Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251, 280 (2002) (explaining the ways in which systems of subordination support each other); Darren Lenard Hutchinson, "Gay Rights" for "Gay Whites"?: *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358, 1362–68 (2000) (advancing multidimensionality as "multilayered subordination and identity as universal phenomena").

⁶⁶ See Richard Delgado, *Recasting the American Race Problem*, 79 CAL. L. REV. 1389, 1394 (1991) (reviewing ROY L. BROOKS, *RETHINKING THE AMERICAN RACE PROBLEM* (1990)) (emphasizing that people of color confront racism every day and consider it "business-as-usual" that accounts for "much of [their] subordination, poverty, and despair").

⁶⁷ See Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1114–15 (2006) (noting that the "interests of white battered women and battered women of color have converged" and that "multi-cultural domestic violence discourse produces 'symbiosis' between white battered women and battered women of color").

⁶⁸ See Chang & Smith, *supra* note 63, at 763 ("The goals serve to reduce inter-group conflict and permit groups that may be perceived to have different identities or purposes to build consensus and coalitions.").