A Multiplicity of Interests

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This principle of “interest convergence” provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.¹

Derrick Bell’s interest convergence theory, introduced in a Harvard Law Review article in 1980, is a dominant mode of analysis for many legal scholars who focus on race as well as a presumed truth by many racial justice advocates. As articulated by one of its primary proponents, Richard Delgado, “interest-convergence” stands for the view that American society will allow Blacks or other disenfranchised racial or ethnic groups to obtain some sort of advancement only when such advancement also serves the interest of white elites. “Interests” in this view are defined as “material factors, including competition for jobs, social and pecuniary advantage, and the class interest of elite groups.”² Proponents of this argument also posit that racism is unlikely ever meaningfully to recede because it operates “to reinforce material or psychic advantages for groups in a position to command them.”³

Professor Bell developed the concept of interest convergence largely as a critique of liberal legal theory and also as an attempt to dissuade disenfranchised groups from relying upon the likelihood of court-based change to protect their interests. Professor Bell’s view of the role of the courts has surely been vindicated; however, the basis of the critique, the presumption of self-interest as the basis for decision-making, requires rethinking.

Perhaps surprisingly, interest convergence as interpreted by Delgado and others shares with law and economics proponents a fairly narrow view of human nature in which people are presumed to act selfishly, to advance their own material interests. Interest convergence—like law and economics—does not accept the possibility of a more transformative politics in which people are motivated by altruism, ideals, or a broader sense of community.

In this brief essay, I hope to complicate Professor Bell’s original theory, and to critique the many current versions of it, on the ground that they all presume a too-narrow construction of “interests.” I would argue that interest theory also has significant risk for political progress—because it can be seen as justifying a self-interested, individualistic politics, rather than inviting people to be their best selves.

I. DEFINING “INTERESTS”

Politics is often seen as a function of people seeking to advance their own interests. Translating this simple axiom into a descriptive or prescriptive account of how people behave, however, requires an accurate definition of how people define their “interests.” In most other fields, the paradigm of interest theory has been rejected as too reductive to cope with the interaction among “social, psychological, and cultural factors” that make up people’s conception of their own interests.

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Anthropologist Clifford Geertz proclaims that the problem with interest theory is that “its psychology is too anemic and its sociology too muscular . . . [I]t has been constantly forced to oscillate between a narrow and superficial utilitarianism that sees men as impelled by rational calculation of their consciously recognized personal advantage and a broader, but no less superficial, historicism that speaks with a studied vagueness of men’s ideas as somehow ‘reflecting,’ ‘expressing,’ ‘corresponding to,’ ‘emerging from,’ or ‘conditioned by’ their social commitments.” Interest theory—and the interest convergence argument that flows from it—also fails to account for the role of ideology and the possibility of non-static group definitions.

Political history clearly does not support the conclusion that political actors—either leaders or citizens/participants—are always motivated by their personal advantage. While it is possible to construct a story in which actions that appear to be contrary to people’s obvious personal advantage actually serve their interests in some other way, the story becomes tautological: people act in their own interest; therefore, whatever a person does, serves his interest in some way, even if superficially it appears to be contrary to the person’s interest.

Social psychologists tell a more complicated story. On the one hand, social identity theory supports the idea that people categorize themselves and others into social groups and then “strive for positive distinctiveness for their social groups” which translates into favoring their own group over others. However, whether this notion supports interest convergence first depends upon whether racial group identification is sufficiently salient. Interest convergence by definition presumes a high premium on racial group identification over other forms of group identification (American, Christian or Jewish, Mets fan, etc.); “whites” will only support increased equality for “Blacks” if it converges with “white” interests.

Our social environment tends to determine the degree to which we identify as group members as opposed to individuals, and the particular social group that forms our primary identity. While our country’s past and present support the idea that race is a primary source of group identification, its salience is neither static nor the same among all Americans.

Why would the significance of racial identity differ? The process of creating categories or groups is universal. Categorization (or category formation) is essential to our cognition, allowing us to process the otherwise overwhelming stimuli that surround us. However, “race,” as we now understand it, is a social category that emerged not merely as a cognitive device, but rather to rationalize subordination of people into slavery. The use of racial categories continued after abolition as those deemed “white” sought to maintain racial hierarchies through law and custom. White supremacy went relatively unchecked until the period after World War II and culminating in the Civil Rights Movement, during which the doctrine of racial superiority became deeply delegitimized. In the present, the value of racial

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6 Id.


8 Id. at 58.


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equality is shared throughout most of the population; for example, in 1933, seventy-five percent of whites described blacks as “lazy” while in the mid-1990’s, this figure declined to five percent.\(^{10}\)

The vast majority of Americans continue to ascribe to the general idea that individuals can be categorized as members of different racial groups. However, most Americans also reject the idea that members of racial minorities should be excluded or subject to differential treatment. So how is race salient and how does it affect people’s perceptions of their “interests”?

II. THE ROLE OF IDEOLOGY AND VALUES

If people do often seek to advance the interests of their group, and if race continues to be a determinant of group identity, then interest convergence would seem to be consistent with the social psychological literature. However, these premises ignore the role of ideology and values on people’s behavior. While the definition of ideology is somewhat contested, one useful construct is that ideology “helps to interpret the social world, and that it normatively specifies good and proper ways of addressing life’s problems.”\(^{11}\) Tropp and Molina conclude that ideology provides a “moral compass” for navigating the world.

The ideal of racial equality has become a deeply-shared value. What constitutes racial equality and how to achieve it are certainly contested, but the basic ideal is held by all but a tiny percentage of Americans. Indeed, to be “racist” is to be immoral. Accordingly, the explicit assertion of “interest convergence” will be contrary to the goals of racial justice because it will suggest to its audience that they are racist and hence, immoral. In other words, suggesting to whites that they should support a particular policy position that will promote racial equality not for its own sake—but because it converges with their interests as whites—is highly counter-productive.

This phenomenon was in evidence in the 2008 presidential campaign, and had exactly the effect I suggest. Polling shows that a significant majority of Americans felt “proud” to be Americans directly as a result of Barack Obama’s nomination for president.\(^{12}\) Nonetheless, in the early fall of 2008, there were signs of racial anxiety in the midwestern states. The rumors that then-candidate Barack Obama was a Muslim and not American were gaining traction and raising concern among his supporters. In reaction, those supporting the candidate sought to speak directly to the “interests” of anxious whites. Union leader Richard Trumka was blunt:

> Our kids are moving away because there’s no future here,” Trumka said in the United Steelworkers convention address. “And here’s a man, Barack Obama, who’s going to fight for people like us, and you won’t vote for him because of the color of his skin? Are you out of your ever-loving mind?\(^{13}\)

Trumka had reason to raise the issue; he had been told directly by some union members that race was affecting their thinking about the presidential election. However, such an approach may well have backfired for many others, because it amounted to a claim that, in general, the union members were

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11 Tropp & Molina, supra note 5.


racist. In response, many came up with other non-racial reasons to oppose Barack Obama, including Obama’s perceived position on abortion and gun rights.\textsuperscript{14}

Social psychology suggests that, for many, their anxiety about candidate Obama was not a result of consciously-held animus. Rather, it was based on their implicit biases and stereotypes.\textsuperscript{15} Accordingly, accusing people of “racism” will be genuinely surprising and upsetting to them. And research suggests that if people are made aware that race may be salient, but not accused directly of being racist, they often correct for the role of race in an attempt to conform to their consciously-held egalitarian attitudes.\textsuperscript{16} In other words, we are more likely to alter behavior by inviting people to behave according to their values, rather than suggesting a negotiation in which their self-interest is maximized.

During the campaign, law professor John Powell brought together an inter-disciplinary group of social scientists, racial justice activists, and law professors (myself included) to test whether implicit bias insights could be translated into messages that would quell the role racial anxiety was playing in voters’ political thought processes. This consortium, named Americans for American Values (and later the American Values Institute), which included social psychologist Drew Westen (author of The Political Brain), devised two sets of television-ready clips and tested their effect on a range of people living in the Midwest and industrial Northeast.\textsuperscript{17}

One public service announcement (PSA) sought to remind people of our similarities despite racial difference by inter-cutting a Black and white family with the father reading “The Little Engine that Could” to his two daughters, ending with the line, “We are all God’s Children.” A second directly addressed the source of racial anxiety, by showing a middle-aged white women talking directly into the camera about her general agreement with then-candidate Obama’s policy goals, but prefacing her remarks with, “I am not prejudiced,” but discussing her concern that he may not care as much about people like her, that she had seen emails that he might be Muslim, and that she is just not sure she knows enough about him. She concludes by remembering that her grandmother felt similarly when considering whether to vote for John Kennedy, because he was Catholic; and deciding that, like her grandmother, she could put her anxiety behind her and vote according to her policy preferences.

When asked expressly, viewers preferred the first PSA by wide margins, finding the second too partisan. However, while both tested well using “implicit measures,” the second was far more effective. People may not have liked the express message of the second ad, but it was able to address directly the roots of their anxiety.

\textbf{III. REMAINING ROLE FOR INTEREST CONVERGENCE}

The values now held by most Americans have not translated into a truly-egalitarian society. Progress has occurred. Prominent examples of “firsts,” such as the election of a Black president, the selection of a Black female secretary of state, the appointment of a Latina as a justice of the U.S.

\textsuperscript{14} Id.

\textsuperscript{15} See, e.g., Jerry Kang, Trojan Horses of Race, 118 Harv. L. Rev. 1489 (2005).

\textsuperscript{16} See, e.g., Samuel R. Sommers & Phoebe C. Ellsworth, White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom, 7 Psych., Pub. Pol’y, & L. 201, 203 (2001) (finding that “many Whites embrace an egalitarian value system and a desire to appear non-prejudiced.”); Alexander R. Green et al., Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients, 22 J. Gen. Internal Med. 1231 (2007) (finding that “those physicians who were aware that the study had to do with racial bias, and who had higher levels of implicit pro-white bias, were more likely to recommend thrombolysis to black patients than physicians with low bias . . .”).

Supreme Court, and the significant rise of the Black and Latino middle class, are legion. Yet significant economic disparities remain and racialized tragedies, such as the murder of Trayvon Martin, continue to occur. Our prisons house a shockingly large number of Black and Latino men; Black and Latino children are three times as likely to live in poverty and twenty percent less likely to graduate from high school than white children.\textsuperscript{18} The challenge we now face is how to move toward remedies in a political climate in which directly addressing race is suspect.

The norm against being racist has been interpreted by the Right as a norm against acknowledging that race matters. However, race continues to have salience in the lived experience of both people of color and whites. For people of color, structural barriers, continued stereotypes, and constant micro-aggressions continue to pose stark obstacles to full inclusion. For many whites, the anxiety that they will be perceived as racist creates challenges in their inter-racial interactions and prevents them from living up to the egalitarian norms to which they aspire. While it may be surprising, social psychologists have found that many whites have significant concerns that they will be “rejected by outgroup members.”\textsuperscript{19}

This dissonance actually translates into an opportunity for a true interest convergence between whites and people of color. It is in the interests of both groups to reach a point where race ceases to function as a barrier to economic and physical well-being, access to our society’s important institutions, and individual interaction.
