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Negative Dimensions of Identity: A Research Agenda for Law and Public Policy

Avner Ben-Ner* & Claire A. Hill**

1. INTRODUCTION

Legal scholarship has long concerned itself with race, gender, and other core identities. Economics, and law and economics, is now turning its attention to other dimensions of identity.

What is identity? Identity is “a person’s sense of self.”¹ Identity has genetic, cultural and neural bases grounded in an evolutionary process.² Identity helps individuals make sense of themselves and provides a feeling of grounding or belonging.

There are many potential identity dimensions, including gender, facial features, and height, as well as religion, ethnicity, social-group affiliation, sports-team loyalty, family, profession, artistic preferences, culinary preferences, and place of origin.³ The significance of different dimensions varies across individuals; some people derive a stronger sense of identity from their religion, others from their sports team fanship, others from their occupation, and so on.⁴

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¹ . George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q. J. ECON. 715, 715 (2000). We should note that a rich literature exists as to identity, including notably in the humanities; see, for example, CHARLES TAYLOR, *SOURCES OF THE SELF* (1989). There is no consensus definition among scholars. For our purposes, the differences among accounts don’t matter: our proposals are for a research agenda; in such an agenda, relevant differences can more appropriately be addressed.

² . LUIGI LUCA CAVALLI-SFORZA & MARCUS W. FELDMAN, *CULTURAL TRANSMISSION AND EVOLUTION: A QUANTITATIVE APPROACH* (1981).

³ . See generally Avner Ben-Ner et al., *Identity and Self-Other Differentiation in Work and Giving Behaviors: Experimental Evidence* (Nov. 2007) (unpublished manuscript, on file with author).

⁴ . *Id.*

Some identity dimensions make the news daily. Race, ethnicity and religion are the fodder of conflict that sometimes turns into maiming, murdering and mass killing.⁵ Other identity dimensions sometimes give rise to violent clashes, such as soccer fans clashing with each other in and outside of stadiums,⁶ but often they do not. Why are outcomes associated with the former types of differences so much worse than outcomes associated with the latter types of differences? Is it because religion is more important than sports fanship? Is it because ethnic identity is more important than musical preferences? Or is it because it is easier to distinguish a Protestant from a Catholic, an ethnic Pole from a Jewish Pole, or a Hima from an Iru than it is to distinguish a fan of the Catania soccer team from a Palermo fan, or a fan of classical music from a punk music fan?

At the same time, identity is associated with the warmth of community feelings, mutual protection, comforts of familiarity, and many other desirable phenomena.⁷ While acknowledging the positive elements associated with actions motivated by favorable attitudes towards those who share a common identity, this paper focuses on the negative elements and asks the following question: can law encourage certain dimensions of identity so as to reduce the negative impact of other dimensions of identity? In this paper, we argue for and propose a research agenda exploring this question.⁸

⁵ . See generally AMARTYA SEN, *IDENTITY AND VIOLENCE* (2005).

⁶ . See, e.g., *Soccer Officials Threaten to Expel England from Championships*, N.Y. TIMES, June 19, 2000, at A6.

⁷ . See Ben-Ner et.al, *supra* note 3, at 2; SEN, *supra* note 5, at 1-2. On community, see also Anne. E. Brodsky & Christine M. Marx, *Layers of Identity: Multiple Psychological Senses of Community Within a Community Setting*, 29 J. COMMUNITY PSYCHOL. 161 (2001); on mutual protection, see also Marion Ryan Sinclair, *Community, Identity and Gender in Migrant Societies of Southern Africa: Emerging Epistemological Challenges*, 74 INT'L AFF. 339, 348 (2000); and on familiarity, see also Bernhard Peters, *A New Look at 'National Identity': How Should We Think About 'Collective' or 'National Identities'? Are There Two Types of National Identities? Does Germany Have an Ethnic Identity, and Is It Different?*, 43 EUR. J. SOC. 3, 15 (2002).

⁸ . Our analysis complements that of William Casebeer in *Identity, Culture and Stories: Empathy and the War on Terrorism*. Casebeer argues for a strategy to counter the "myths" of terrorism narratives; narratives are in an important sense stories about one's identity. William Casebeer, *Identity, Culture and Stories*, 9 MINN. J.L. SCI. & TECH.

2. DISCUSSION

Law already operates directly in addressing the negative effects of identity: it prohibits and punishes violence. Furthermore, law sometimes punishes violence more severely when a victim was apparently chosen because she is a member of a certain (in some sense disfavored) identity group. It requires actions intended to correct the consequences of discrimination against disfavored groups.

In this paper, we suggest an additional mechanism potentially available to law: law might encourage *dimensions of identity* that are associated with less grave consequences than other dimensions, and discourage those dimensions associated with more grave consequences. A first step, then, would be to systematically explore different dimensions of identity. How do these dimensions of identity influence views of others? If a person views herself as a fan of sports team X, how will holding such a view affect what she thinks of someone else who is a fan of the team as compared to someone who is a fan of team Y? Will her views be more strongly affected by another person sharing her nationality or sharing her fan status?

The table below provides suggestive evidence, based on a sample of students at a large public university, that some dimensions of identity are as important as other, more frequently considered dimensions such as religion and nationality. For example, similarities and differences in political views, sports team loyalty, and musical preferences⁹ elicit similar attitudes in the laboratory to similarities and differences in religion and nationality.¹⁰ The context in which attitudes are expressed matters. Attitudes differ, for instance, where the context is giving

653 (2008).

⁹ . Not all potentially significant dimensions of identity, such as occupation and sexual orientation, were included in the underlying experiment because of the composition of the subject pool.

¹⁰ . In another series of experiments, we characterized individuals along seven dimensions of identity, including race, religion, political views, musical preferences, gender, and socio-economic status, and found generally similar results in terms of the relative importance of individual dimensions as to those reported in Table 1. Race (black versus white) is less important than musical preferences and is similar to political views in regards to identity.

in the so-called dictator game (generally interpreted as willingness to cooperate),¹¹ willingness to work with another person on a project critical to one's career advancement, and willingness to commute with another person. But as Table 1 suggests, nationality and religion do not dominate the positive attitudes towards those who share them over other dimensions of identity.

TABLE 1. RANKS OF PREFERENCE FOR "SELF" OVER "OTHER" DIFFERENCES FOR GIVING, WILLINGNESS TO WORK WITH, AND WILLINGNESS TO COMMUTE WITH¹²

Variable	Give	Work	Commute
Family	1	1	1
Nationality	8	2	6
Political Views	3	3	3
Television Viewing	6	5	7
Religion	4	7	5
Music Preferences	5	4	2
Food Preferences	7	9	8
Sports Team Loyalty	2	8	4
Socio-economic Status	"Other" favored	6	9
Gender	No difference	"Other" favored	"Other" favored
Dress Type	No difference	No difference	No difference
Birth Order	No difference	No difference	No difference
Body Type	No difference	No difference	No difference

Note: The rankings are based on differences in the

¹¹ . Seminal early papers on the dictator game include Elizabeth Hoffman, Kevin McCabe & Vernon L. Smith, *Social Distance and Other-Regarding Behavior in Dictator Games*, 86 AM. ECON. REV. 653 (1996); Elizabeth Hoffman, Kevin A. McCabe & Vernon L. Smith, *On Expectations and the Monetary Stakes in Ultimatum Games*, 25 INT'L. J. GAME THEORY 289 (1996); Elizabeth Hoffman, Kevin McCabe & Vernon Smith, *Ultimatum and Dictator Games*, 9 J. ECON. PERSP. 236 (1995); Elizabeth Hoffman et al., *Preferences, Property Rights and Anonymity in Bargaining Games*, 7 GAMES & ECON. BEHAV. 346 (1994).

¹² See Ben-Ner et.al, *supra* note 3, at 39 tbl.2. Based on experiments with a sample of students at a large public university.

size of parameter estimates in regressions that evaluate the role of differences in behavior or attitudes towards self versus other in different identity dimensions. Some of the differences among parameters are not statistically significant. For example, the difference between rank 3 and 4 in giving is minuscule and does not affect our analysis.

Evolutionary theorists, psychologists, biologists and philosophers have argued that identity is an essential aspect of life. It is so perhaps because of the urge for protection by a group, honed in the ancestral environment and passed down through generations, or because of the “desire” of genes to favor genes like themselves, or because other mechanisms generate a strong desire to belong to a group.¹³ Whatever the source of the need for identity, its satisfaction by particular and specific dimensions is affected by historical, cultural and other contextual factors. For example, the satisfaction from belonging to a street gang could conceivably be replaced with satisfaction from belonging to a Good Samaritan group, perhaps in a different social, geographic or cultural context. The laboratory results suggest that diverse dimensions—religious, cultural, national—have approximately equivalent effects on laboratory-elicited behaviors although they are associated with vastly different degrees of violence and human misery.¹⁴ So the

¹³ . Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachment as a Fundamental Human Motivation*, 117 PSYCH. BULL. 497 (1995); CAVALLI-SFORZA & FELDMAN *supra* note 2; Naomi Ellemers Russell Spears & Bertjan Doosje, *Self and Social Identity*, 53 ANN. REV. PSYCH. 161 (2002); William D. Hamilton, *The Genetical Evolution of Social Behavior: I*, 7 J. THEO. BIO. 1 (1964); R. PAUL SHAW & YUWA WONG, GENETIC SEEDS OF WARFARE (1989).

¹⁴ . In this brief paper we do not undertake to understand why there have been religious and ethnic wars but no soccer wars (despite the possible counter example of the 1969 war between El Salvador and Honduras), cultural wars (in the literal sense) or similar large-scale conflicts animated by some other identity dimensions. Civil wars springing from political differences go farthest in the direction of large-scale violence associated with identity dimensions of the kind we suggest in this paper that should be encouraged at the expense of identity differences grounded in ethnicity, race or religion. It is possible that geographic concentration of groups that share ethnic background, religion and of course nationality has emerged more organically and for much longer periods of time than that of groups that share other dimensions of identity such as musical preferences or sports team loyalty, which are historically more recent phenomena.

challenge for law and public policy is to identify means of channeling the need for identity and belonging to dimensions that entail less hurtful actions. Substitution may work not only between goods, such as butter and margarine, but also between dimensions of identity. It is a question of affecting the “price ratio” among various dimensions of identity.

There are various means available in law to affect the “price ratio” among certain dimensions of identity. First, lawmakers can *require* or *prohibit* displays or signals of an identity dimension. For instance, they can prohibit wearing clothing or jewelry that identifies a religion or gang; they can require or forbid speaking a certain language.¹⁵ Lawmakers are, of course, severely constrained in prohibiting the identity dimensions themselves; far more likely, efforts will focus on behaviors and actions representing those dimensions. Second, there is the possibility of *encouraging* certain dimensions of identity, such as by subsidizing sports teams in order to provide an outlet for people as sports fans rather than as Sunni or Shia partisans,¹⁶ emphasizing certain holidays or even encouraging political debates and identification, or *discouraging* other dimensions, such as by lifting the tax-exempt status of religious organizations. Third, scholars and policymakers can attempt to *reframe* perceptions so as to make certain identities (say, gang member) less

¹⁵ . For example, French law has done exactly that with respect to religious symbols. Law No. 2004-228 of Mar. 15, 2004, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Mar. 17, 2004, at 5190. Turkish law, now partially rescinded, prohibits certain forms of dress that are regarded as religious. See, *Turkey Moves to Lift Headscarf Ban*, CNN.COM, Feb. 9, 2008, <http://www.cnn.com/2008/WORLD/europe/02/09/turkey.headscarf/>. Many schools prohibit gang insignia. See Carol Motsinger, *Ironing Out Policies on School Uniforms*, USA TODAY, Aug. 6, 2007, at 3A.

¹⁶

This football team has given Iraqis happiness and everything which has been missing for them,” said Ayad Aziz Nader, a bare-chested Baghdadi sweating from the efforts of his celebrations. “What governments could not do, they did. We want to show the world there is no Sunni, no Shia. They are political blocs, they are fighting among each other. Now you see Sunni, Shia, Kurd, Christian, Yazidi, everyone. We are like brothers watching the television together.

Stephen Farrell, *Soccer Victory Gives Iraqis a Rare Cause for Joy*, INT’L HERALD TRIB., July 29, 2007, at <http://www.iht.com/articles/2007/07/29/news/baghdad.php>.

desirable and other identities (say, school nerd) more desirable. There are differences in the costs and benefits of each of these means, varying across dimensions of identity.

Our proposed research agenda would investigate the possibilities of using the means described above to raise the prominence of the more benign dimensions of identity. These dimensions may be effective in satisfying the need for identity and belonging but may not trigger conflict, or may trigger only limited conflict, between groups holding different or opposing identities. Our agenda would also investigate the possibilities of using these means to lower the prominence of the identity dimensions that are associated with large-scale violent and otherwise negative actions.¹⁷

One caveat: the problems associated with identity cannot be eliminated altogether. According to evolutionary biology and psychology, the sense of identity and of belonging to certain groups reflects the evolved tendency of individuals to favor (the reproductive ability of) those with whom they share more genes relative to others, and the need for protection by a group against dangers from other humans and nature.¹⁸ Identity needs

¹⁷ . One objection one of us has received to a related argument concerns the suitability of government for identity shaping. Articulating and addressing that argument, Hill said:

Another more fundamental objection must be considered: identity-shaping as mind control, to use a provocative turn of phrase. My response is that government implicitly shapes identity all the time; there seems to be no reason to believe that its express admitted efforts would be more successful or pernicious than implicit efforts, especially since its implicit efforts might proceed (or even succeed) without detection. And to ask or expect government to get out of the identity-shaping business altogether seems unrealistic.

Claire A. Hill, *The Law and Economics of Identity*, 32 *QUEEN'S L. J.* 389, 442 (2007). We should note as well that considerable literature exists on the role of government in shaping and influencing identity, sometimes labeled as such and sometimes under the rubric of a related concept, autonomy. See generally, e.g., JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986)

¹⁸ . See generally SHAW & WONG, *supra* note 13; see also Ernest S. Park & Verlin B. Hinsz, "Strength and Safety in Numbers": A Theoretical Perspective on Group Influences on Approach and Avoidance Motivation, 30 *MOTIVATION & EMOTION* 135, 137 (noting that people choose groups because of safety); J. Philippe Rushton & Trudy Ann Bons, *Mate Choice and Friendship in Twins: Evidence for Genetic Similarity*, 16 *PSYCHO. SCI.* 555 (2005) (noting that people prefer spouses and friends

to be satisfied, but evolution has not inscribed in us genetic preference for certain acquired religious beliefs or for specific countries of origin.¹⁹ All we have is likely a strong preference for those who may share our genes (particularly family members), for those who can be surmised to share genes on the basis of some clues that are culture, time and location dependent (for instance, appearance and skin color), such as members of a tribe or townfolk, and for those who can be trusted to be reciprocators in protection against predators and nature's vagaries, such as those who believe in the same myths or ideologies.²⁰ Beyond what is "hardwired," there is considerable malleability. Certainly, identity shifts are commonplace: the immigrant who assimilates into and adopts an identity associated with her new country, or the deeply religious person who has a crisis of faith and stops seeing herself as either a member of her previous religion or religious at all.

3. CONCLUSION

Law in its traditional role—imposing legal requirements that prohibit or encourage particular conduct—is one means available to address instances when identity dimensions create undesirable outcomes, such as violence directed against, or limited work, educational, or other opportunities for, members of disfavored groups. In this paper, we want to suggest other ways lawmakers and policymakers might be able to proceed to address negative consequences of identity. There is evidence that people have a need to have identities independent of what those identities are. It would seem, as well, that people might be malleable in what identities are most salient to them. Thus, we should consider how law could diminish the prominence of identity dimensions that lead to divisive conflicts, and

similar to themselves).

¹⁹ . See generally, CAVALLI-SFORZA & FELDMAN, *supra* note 2; see also Alberto Bisin & Thierry Verdier, "Beyond the Melting Pot": Cultural Transmission, Marriage, and the Evolution of Ethnic and Religious Traits, 115 Q. J. ECON. 955, 959 (2000).

²⁰ . For a discussion of the reasons why identity is central to human motivation and behavior, see Ben-Ner et al., *supra* note 3. For a discussion of the pervasiveness of identity considerations, see Hill, *supra* note 17.

raise the prominence of identities that do not do so.

Our agenda here is part of a greater exploration of the ways in which identity matters for law and policy. Many other inquiries can and should be made. For instance, our approach might address some of the less dramatic downsides of kinship-type identities.²¹ People may have a reluctance to deal with others they think of as having different identities; this reluctance carries with it various individual and social costs. The traditional identities at issue are national, ethnic, or religious: consider in this regard the traditional religious homogeneity of diamond dealers. The cutting and polishing business used to be dominated by Orthodox Jews,²² but that dominance has been supplanted by another homogenous and close-knit group, the Palanpuri Jains.²³ Perhaps the discouragements and encouragements we considered in the context of addressing extreme negative consequences might have a role in this context as well. Another application might be in the composition of identities themselves. Just as different identity dimensions might become salient to people over time, the composition of an identity itself can change.²⁴ Many other examples can be given. We hope here simply to make the case that identity analysis of the

²¹ . For a discussion of a related issue, see Claire A. Hill & Erin Ann O'Hara, *A Cognitive Theory of Trust*, 84 WASH. U. L. REV. 1717, 1739-40 (2006).

²² . See generally Lisa Bernstein, *Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL. STUD. 115 (1992).

²³ . Aravind Adiga, *Uncommon Brilliance*, TIME MAGAZINE, March 6, 2006, available at <http://www.time.com/time/magazine/article/0,9171,501040419-610100,00.html>. The article notes that:

[t]he Surat diamond trade was built by a dynamic and enterprising religious community, the Palanpuri Jains, followers of an ancient religion that emphasizes nonviolence and vegetarianism. Jains account for 0.4% of India's population. The Palanpuris, who hail from the town of Palanpur in the Indian state of Gujarat, form a close-knit community that thrives in the atmosphere of secrecy and informality that envelops the diamond trade; there are often no written contracts, many transactions occur in cash, and stones worth millions of dollars are transported with virtually no security. "It's an industry built on trust," says Biju Patnaik, a Bombay-based diamond-industry expert at Dutch bank ABN AMRO.

²⁴ . One of us has explored this issue in other work. See Hill, *supra* note 17.

sort we have described can and should be pursued.