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EDITORS' COMMENTARY

Beyond *Bostock*: Implications for LGBTQ+ theory and practice

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ABSTRACT
The recent U.S. Supreme Court ruling in *Bostock v. Clayton County* is a landmark piece of case law that offers fundamental rights to LGBT persons. This essay reflects on how this case arrived at the Supreme Court and its implications for theory and praxis. The overall conclusion is that cautious optimism is warranted.

KEYWORDS
LGBTQ+; queer theory intersectionality theory; gender theory; workplace policy

The progression of LGBTQ+[1] (lesbian, gay, bisexual, transgender, queer, and more) rights in the United States has been a long and winding road, with many bumps along the way. From the progress seen in repealing "Don't Ask, Don't Tell" and instituting marriage equity, to the ongoing challenges from individuals whose values do not comport with LGBTQ + equal treatment (e.g., public restroom debates, individual business owners refusing same-sex wedding cakes, and bureaucrats refusing same-sex marriage licenses), the evolving nature of LGBTQ+ protections is complicated. Employment rights for LGBTQ + individuals are just now beginning to align with LGBTQ + civil rights gains, largely due to the United States Supreme Court case issued on June 15, 2020. The landmark ruling, *Bostock v. Clayton County*, 590 U.S. ____ (2020), held that Title VII's prohibition of sex-based discrimination applies to lesbian, gay, bisexual and transgender (LGBT) individuals in the workplace. Below we provide an overview of the foundational protections and legal precedent leading to *Bostock*. Then, we review the case details and rationale put forth in *Bostock's* majority opinion. Finally, we posit how this ruling will impact public administration theory and practice, particularly for human resources management within public workplaces.

Paving the way for *Bostock*

Federal government policy and case law dating back to the 1950s inform *Bostock*. The difficult history of LGBT employees involves discriminatory practices beginning in the 1950s known as "the Lavender Scare," where stereotyping and stigmatization gay and lesbian employees as public safety threats led to nearly 600 federal employees were fired as a result of their sexual orientation (Federman & Elias 2017). Then, in 1978, the

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Civil Service Reform Act (CSRA) was passed, defining prohibited personnel practices, including prohibiting discrimination against federal employees for conduct not directly related to job duties (CSRA, 1978); however, it was not until 1980 that the U.S. Office of Personnel Management found that this applied to sexual orientation, and that an individual who believed he or she was discriminated against based on his or her sexual orientation could file a complaint with the U.S. Office of Special Counsel (OSC; Hicks, 2014, cited in Elias, 2017).

The most significant legislative protection for LGBTQ + individuals in the United States is Title VII of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), where individuals are protected from discrimination based on sex, race, color, national origin, and religion (Guy & Fenley 2013 cited in Elias, 2020). Yet, prior to *Bostock* the interpretation of "sex" under Title VII was a gray area for both sexual orientation and gender identity, with lower courts offering competing interpretations of "sex" under Title VII. In *Bostock*, the Court offers three key points of clarity from previous caselaw and Title VII: first, making clear the application of "sex" and sex-based discrimination; second, recognizing sexual orientation as an identity category; and third, strengthening employment law by affirming EEOC findings.

First, the *Bostock* ruling depends upon understandings of "sex" and sex-based discrimination. In previous cases, courts have relied on biological definitions of sex. Historically, courts have examined questions of sex-based discrimination in different context, such as related to the hiring process of women with children (Phillips v. Martin Marietta Corp., 1971), pension discrimination related to women often living longer than men (Los Angeles Dept. of Water & Power v. Manhart, 1978). Sexual harassment and safe workplaces have particularly been focus areas for courts. For instance, in *Meritor Savings Bank v. Vinson* (1986), the Supreme Court of the United States (SCOTUS) found that under Title VII, sexual harassment constitutes discrimination. A later ruling in *Price Waterhouse v. Hopkins* (1989) held that gender stereotyping also constitutes discrimination as per Title VII:

> In the landmark case of *Price Waterhouse v. Hopkins* (1989), the Supreme Court determined that Title VII prohibits discrimination because an individual fails to conform to gender-based expectations. In that case, the Court found that discriminating against someone because he or she does not meet a traditional, gender-based stereo- type, including how a woman or man should act, dress, speak, or otherwise behave, is discrimination based on sex under Title VII. This case developed the "sex-stereotyping" theory of sex discrimination. Relying on *Price Waterhouse*, the U.S. Equal Employment Opportunity Commission ("the Commission" or "the EEOC") has found that discrimination against an individual because of his or her sexual orientation may state a claim under Title VII's sex discrimination prohibition because the discrimination is based on sex stereotypes. (Elias, 2017)

Later, in *Oncale v. Sundowner Offshore Services, Inc*. (1998), SCOTUS ruled that Title VII's protections against workplace discrimination as related to sex are applicable to same-sex harassment.

Second, *Bostock* also relies on the growing recognition of and protections for persons based upon sexual orientation in particular. It is important to remember that for centuries, there was no legal recognition of sexual orientation and gender identity *as identities*. Rather, in many legal contexts, sexual orientation and gender identity were treated

as *behaviors*. For instance, in *Bowers v. Hardwick* (1986), SCOTUS focused on a Georgia law that classified homosexual sexual relations as illegal sodomy, finding that there was no constitutional right to engage in homosexual sex. As part of this ruling, SCOTUS asserted that homosexuality was akin to a *behavior*, not an *identity*. *Bowers* was overturned in 2003 in *Lawrence v. Texas*, which held that anti-sodomy laws are unconstitutional. Later, in *United States v. Windsor* (2012), SCOTUS overturned Section 3 of the Defense of Marriage Act. DOMA federally defined marriage as between one man and one woman as husband and wife. Finally, in *Obergefell v. Hodges* (2015), SCOTUS ruled that the right to get married is a fundamental right guaranteed to same-sex couples as per the due process clause and equal protection clause of the Fourteenth Amendment to the U.S. Constitution. Both the *Windsor* and *Obergefell* rulings build upon past court rulings establishing the right to marry as fundamental to constitutional protections (Cornell Law School, 2020).

Third, key rulings by the Equal Employment Opportunity Commission (EEOC) helped refine understandings of protections afforded to persons based upon transgender status and sexual orientation. The landmark 2012 ruling in *Macy v. Holder* held that discrimination against someone because he or she is transgender, falls under Title VII's "sex discrimination." Since the Commission issued *Macy*, other federal agencies have agreed that claims of transgender employment discrimination are claims of sex discrimination. For example, in 2014, the OSC, citing the Commission's decision in *Macy*, found that not allowing a transgender female to use the female restroom after she transitioned was sex discrimination (OSC, 2014, cited in Elias 2017). In a similar ruling in *Baldwin v. Foxx,* the EEOC found that discrimination based on sexual orientation is also prohibited by Title VII.

The EEOC rulings above were further qualified by two directives from the Department of Justice. In 2014 during the Obama administration, Attorney General Eric Holder issued a directive ordering the Department of Justice to treat "sex" as also referring to gender identity, meaning that the protections of Title VII were now extended to transgender persons. However, in 2017, Jeff Sessions, the Trump administration's first attorney general, revoked Holder's directive, noting that "sex" in Title VII referred solely to biological distinctions between male or female, thus meaning that gender-identity based discrimination was not banned by Title VII (Savage, 2017).

From this historical progression of legislation and case law, the *Bostock* ruling situates itself in growing LGBT protections. It also takes a clear stand on the competing executive-level directives on whether "sex" in Title VII also refers to gender identity. Thus, *Bostock* emerges as a clear affirmation by the Court of LGBT protections under Title VII.

Understanding the *Bostock* ruling

As is the case with several landmark SCOTUS rulings in the past, *Bostock v. Clayton County* was actually an amalgamation of several cases. These include *Altitude Express Inc. v Zarda, R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission,* and the Bostock case itself due to the cases being similar in question.

Gerald Bostock worked in Clayton County, Georgia's juvenile court system. Since he started his employment in 2003, Bostock was an employee with good performance records. In 2013, he joined a gay softball team and promoted it at work, highlighting it as a volunteer opportunity. During a 2013 work audit, Bostock was fired for conduct "unbecoming of a public employee" based on misspent funds. Bostock alleged that the claim of him misspending funds was a pretext for firing him for his sexual orientation. Bostock sought recourse in the U.S. District Court for the Northern District of Georgia. Clayton County representatives sought to dismiss claim, and the District Court agreed, noting that prior case law held that Title VII did not apply to discrimination based on sexual orientation. Bostock appealed to the 11th Circuit Court, which in 2018 affirmed the District Court's ruling. This 11th Circuit Court ruling presented conflicts in that in another case, the 7th Circuit found the previous year that discrimination in employment based upon sexual orientation *did* violate Title VII (see *Hively v. Ivy Tech Community College of Indiana*). Bostock filed a *writ of certiorari*, petitioning the Court to clarify whether Title VII covers sexual orientation, and SCOTUS agreed to hear in the case.

The primary finding of *Bostock* is that an employer violates Title VII of the 1964 Civil Rights Act if this employer fires someone solely for being gay or transgender. In a 6-3 ruling and in a majority opinion authored by Justice Neil Gorsuch, SCOTUS ruled in favor of Bostock. Several important quotations from the syllabus of the majority ruling are presented in Table 1, all of which help situate *Bostock* in the legal background discussed above.

In *Bostock,* two dissents were issued. The first, written by Justice Samuel Alito and joined by Justice Clarence Thomas, emphasized the intentions of the Congress in 1964 in passing the Civil Rights Act. In his dissent, Alito noted:

> Many will applaud today's decision because they agree on policy grounds with the Court's updating of Title VII. But the question in these cases is not whether discrimination because of sexual orientation or gender identity should be outlawed. The question is whether Congress did that in 1964. It indisputably did not. (p. 4)

In the second dissent, Justice Brett Kavanaugh emphasized constitutional separation of powers. He wrote, "[u]nder the Constitution's separation of powers, the responsibility to amend Title VII belongs to Congress and the President in the legislative process, not to this Court" (p. 2). Kavanaugh also argued that sex-based discrimination and sexual orientation discrimination are distinct: "To fire one employee because she is a woman and another employee because he is gay implicates two distinct societal concerns, reveals two distinct biases, imposes two distinct harms, and falls within two distinct statutory prohibitions" (p. 24).

Taken as a whole, the *Bostock* ruling has extensive implications for praxis and theory. The next two sections discuss these dimensions.

Implications for Praxis

Now that *Bostock* solidifies LGBTQ + protections in the workplace, the question becomes how these protections will impact workplace policy and practice. Of central importance is the organizational environment that fosters the knowledge and training on legal protections, anti-discrimination approaches, and ethical behavior. One of the

Table 1. Key quotations from the syllabus of *Bostock v. Clayton County*.

Majority opinion aim	Text from the majority opinion
On the importance of defining: "Sex," "Discriminate," and "Individual"	These terms generate the following rule: An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It makes no difference if other factors besides the plaintiff's sex contributed to the decision or that the employer treated women as a group the same when compared to men as a group. A statutory violation occurs if an employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee. Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII. There is no escaping the role intent plays: Just as sex is necessarily a but-for cause when an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably intends to rely on sex in its decisionmaking (p. 2).
On the employer firing Bostock	The employers do not dispute that they fired their employees for being homosexual or transgender. Rather, they contend that even intentional discrimination against employees based on their homosexual or transgender status is not a basis for Title VII liability. But their statutory text arguments have already been rejected by this Court's precedents. And none of their other contentions about what they think the law was meant to do, or should do, allow for ignoring the law as it is (p. 3).
On sex-based rules	An employer who discriminates against homosexual or transgender employees necessarily and intentionally applies sex-based rules. Nor does it make a difference that an employer could refuse to hire a gay or transgender individual without learning that person's sex. By intentionally setting out a rule that makes hiring turn on sex, the employer violates the law, whatever he might know or not know about individual applicants. The employers also stress that homosexuality and transgender status are distinct concepts from sex, and that if Congress wanted to address these matters in Title VII, it would have referenced them specifically. But when Congress chooses not to include any exceptions to a broad rule, this Court applies the broad rule. Finally, the employers suggest that because the policies at issue have the same adverse consequences for men and women, a stricter causation test should apply. That argument unavoidably comes down to a suggestion that sex must be the sole or primary cause of an adverse employment action under Title VII, a suggestion at odds with the statute (pp. 3–4).
On "Sex" as part of one's identity	There is no way for [any job] applicant to decide whether to check the homosexual or transgender box without considering sex. To see why, imagine an applicant doesn't know what the words homosexual or transgender mean. Then try writing out instructions for who should check the box without using the words man, woman, or sex (or some synonym). It can't be done. Likewise, there is no way an employer can discriminate against those who check the homosexual or transgender box without discriminating in part because of an applicant's sex. By discriminating against homosexuals, the employer intentionally penalizes men for being attracted to men and women for being attracted to women. By discriminating against transgender persons, the employer unavoidably discriminates against persons with one sex identified at birth and another today. Any way you slice it, the employer intentionally refuses to hire applicants in part because of the affected individuals' sex, even if it never learns any applicant's sex (pp. 18–19).
	Because homosexuality and transgender status can't be found on that list and because they are conceptually distinct from sex, the employers reason, they are implicitly excluded from Title VII's reach (p. 19).

most fundamental ways public administrators can promote an equitable culture is by using inclusive language. Language is essential in constructing identity, particularly LGBTQ + identity that is new to the collective consciousness and continuously evolving (Elias, 2020). Revising workplace policy, conducting training post-*Bostock*, and focusing on enforcement is a starting point for building equitable environments for LGBTQ + and other employees.

As a first step toward a more inclusive organizational culture, public agencies should closely examine their workplace policies, particularly human resources management policies. Many public agencies do not have stand-alone gender policies, vague gender policy is often part of a larger "diversity and inclusion policy," but after *Bostock*, agencies

should have an explicit, stand-alone gender policy. Such policy should include inclusive language throughout the policy that prohibits harassment and discrimination (i.e., emphasis on additions of sexual orientation and gender identity post-*Bostock)*, a detailed process for employee transitions, clear sex-based job assignment details if applicable, and explicit restroom and locker room use guidance.

Most agencies have not taken proactive steps to consider and develop a transition plan. In the absence of a comprehensive transgender and other gender non-conforming employee policy, agencies are unprepared for an individual to transition in the workplace (Elias, 2017). Post-*Bostock*, agencies should better prepare for transitions by assigning a designated point of contact, so employees who want to transition in the workplace know where to go to begin the process or find answers to their questions about workplace transitions. Additionally, a standard set of practices should be made clear along with a comprehensive list of records that need to be changed after a transition takes place. Having a comprehensive transgender and other gender non-conforming employee policy does not entail rigidity in practice; rather, the policy should give the transitioning employee the opportunity to develop the transition plan along with the agency's transition team or representative (Elias, 2017). The policy should make clear that it is up to the transgender employee to decide when, with whom, and how much to share private information. For example, the U.S. Postal Service has created a "standard talk" for managers to use when informing employees that a coworker is transitioning (Elias, 2017).

There are several benefits to individual employees and organizations from instituting a transgender-specific employee policy post-*Bostock*. Specifically, a formal policy provides the following: It gives transgender employees a sense of security; transgender employees, supervisors, and coworkers will know the protocol to follow when an employee transitions in the workplace; it encourages supervisors and coworkers to be comfortable with a workplace transition; it educates supervisors and coworkers about what to expect when someone transitions in the workplace; and it shows official support and structure for workplace transitions instead of transitions being handled on an ad hoc basis (Elias, 2017). The policy should serve as a tool to implement Bostock and inform transgender employees of their rights. In addition, the policy should educate cisgender employees on how to work appropriately within the agency's gender policy.

Beyond transitions in the workplace, restroom and locker room usage policy should be a central component of gender policy in all public workplaces. From *Bostock* and *Lusardi v. Department of the Army* (2015), in which the EEOC found that when an individual has transitioned to the gender that reflects his or her gender identity, denial of equal access to the restroom that corresponds with the individual's gender identity is discrimination under Title VII (Elias, 2017). *Lusardi* and *Bostock* make clear that an employer cannot condition an employee's access to a particular restroom based on their sex assigned at birth or the employee undergoing any particular medical procedure. Finally, policy should be clear that supervisory or coworker confusion or anxiety does not justify discriminatory terms and conditions of employment, including denial of access to particular restrooms or locker rooms. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort (Elias, 2017). Workplace gender policy should state clearly that employees

shall have access to restrooms and locker rooms corresponding to their current gender identity and that at no time will the agency require a transgender employee to have undergone any particular medical procedure, or provide proof that the employee underwent any medical procedure to have access to a restroom or locker room.

Furthermore, once policy is revised to include *Bostock* protections, all employees at all levels of the organization should be trained on the legal and ethical dimensions of LGBTQ + equity in the workplace. These trainings should be appropriate for the rank and position of the individual employees within the organization. As Federman and Elias (2017) suggest, for training to be meaningful and have a significant impact on the organizational culture, it should go beyond the basic legal protections. In addition, training should focus on the ethical rationale for equity and inclusion as well as the practical components of how to support transitioning coworkers, how to report gender harassment, and how to act as an ally in the workplace. The format of training matters, it should be participant-centered and encourage thoughtful consideration of the complexities of gender in the workplace.

Finally, enforcement is critical to ensuring *Bostock* does not become a hollow win for LGBTQ + individuals who may encounter workplace discrimination. Writing nearly two months after the *Bostock* decision was issued, Sosin (2020) explains that "The Department of Justice traditionally enforces new laws by issuing non-binding guidance, aimed at alerting the public and other agencies to their rights and responsibilities … But so far, the DOJ has not withdrawn old guidance no longer in compliance with the law and issued a new one" (p. 1). Under the Trump administration, with a track record of hostility toward the LBGTQ + community, enforcement of *Bostock* remains questionable. Beyond the practical considerations of revising workplace policy, training, and enforcement, *Bostock* prompts a number of theoretical considerations for expanding and addressing identity and equity.

Implications for theory

Queer theory and intersectionality theory can help understand and parse the *Bostock* ruling. However, before delving into this discussion, we offer two points of caution.

First, we acknowledge different scholarly perspectives on what theories *are* and what they *should be*. Theories are often referred to as ways to make sense of the world, especially through providing answers to the question "*Why* does something work the way that it does?" Based upon one's philosophy of science—such as positivism, relativism, pragmatism, or realism—it is debatable: (a) whether (and how) theories can (and should) represent the world; (b) if theories can be objective (if there is such a thing) and the degree to which they are products of social construction; (c) what counts as evidence; and (d) whether empirical, truly objective observations of phenomena are possible. Second, if theories are ways of making sense of the world, then they can and do change to reflect changes in understandings of the world. Social theories, for instance, can and do change as social conditions change (Van de Ven, 2007). So, in the case of a major SCOTUS ruling, it will take time to understand how the *Bostock* ruling will change attitudes of people, groups, and workplace dynamics and the theories that describe and explain the interactions between these dimensions.

We provide these points of caution, because we acknowledge that there are numerous theories—both inside and outside of public administration—one could choose from to examine the *Bostock* ruling. We chose to emphasize queer theory and intersectionality theory not only because of the nature of the subject matter of *Bostock* (i.e., LGBTQ + rights) but also because these theories remind us of the potential of existing power structures to condition and define the meaning and effects of the ruling in numerous ways.

As explained below, we are cautiously optimistic that *Bostock* pushes the equity needle for both theory and practice. The ruling provides greater legal recognition of identities heretofore unrecognized, and it could create safe, more diverse, and more inclusive workplaces. Still, the theories help raise questions and concerns, especially whether LGBTQ + identities are now to be given "honorary status" to "fit into the norm," which are assimilationist goals that these theories' proponents reject. Representation of LGBTQ + individuals in public agencies may improve, but culture changes within those agencies will take much longer. Fundamental shifts in power in the public sector have yet to take place, and even with legal recognition, social constructions of identities remain in place and will likely affect multiple decisions—hiring, evaluations, promotions, and terminations—in subtler ways than before. What is required is to advance the *Bostock* ruling with anti-racist, anti-white supremacist, and anti-patriarchal changes to workplaces and society.

Queer theory

Queer theory is a type of critical theory that prompts examining how sex, gender, sexual orientation, and gender identity are socially constructed. Rooted in understandings of how "attitudes, behaviors, and pervasive and systematic social arrangements" exploit and subordinate groups (Bohmer & Briggs, 1991), queer theory notes that homophobia, transphobia, cis-genderism, and dominant notions of sex and gender are hierarchical, exclusionary, and violent tools to persecute those with LGBTQ + identities (Sedgwick, 2008). Further, queer theorists posit that identities themselves are not natural (i.e., they are not "givens" but are constructed), are performative, and are not inherently stable (but they are stable to the degree to which they become repetitive behaviors). Queer theorists encourage visibility of identity and nonconformity and critique notions that there are "normal" and "abnormal" identities (Dwyer, 2020; Taylor, 2013).

Using queer theory (and especially acknowledging its roots in post-structuralist and deconstructionist philosophical approaches), cautious optimism regarding the *Bostock* ruling might be warranted. Queer theory reminds us to query structured models of language, especially the claim that language is reflective of an objective reality. According to queer theory, there is not an "objective" reality pointed to by language; rather, language's representations of the world are socially constructed and dependent upon power dynamics. Thus, whenever presented with simple binary structures of identity, especially when such binaries are pitted against one another, we should be cautious, including regarding issues of how such dimensions manifest themselves in public administration (Dwyer, 2020; Lee et al., 2008).

These binaries are at the basis of the *Bostock* ruling. The ruling is grounded in an understanding of "sex," especially as rooted in biological understandings of "sex" present in statutes (Title VII) and case law. In the majority opinion, the following is noted: "The parties concede that the term 'sex' in 1964 referred to the biological distinctions between male and female" (p. 2). Later, the following is noted: "An employer who discriminates against homosexual or transgender employees necessarily and intentionally applies sex-based rules" (p. 3). From a legal perspective, this focus on sex is logical given the following noted in the ruling: "Title VII makes it 'unlawful … for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual … because of such individual's race, color, religion, sex, or national origin'" (p. 1).

While these notions are logical from a legal position given the need of the Courts to consider the question before it as related to Title VII discrimination, we can critique the gendered notions of self—especially simple binaries of "male *vs.* female" or "straight *vs.* gay"—reflected in the ruling. While definitions of biological sex are at the heart of the ruling of the case, "sex" is implicitly cis-gendered, heteronormative, homophobic, and transphobic, and language about sexual orientation and gender identity reflect dichotomous language choices in which one "preferred" and "normal" category is contrasted with "un-preferred" and "abnormal" categories. Thus, the *Bostock* ruling is based upon a social construction that queer theorists argue is privileged, not objectively valid, not fixed, and changed through discourse. Sex categorizations are not objective, valid representations of reality but, rather, are social constructions in which one privileged group (i.e., male) is pitted against and dominant over another group (i.e., female). Such constructions fail to acknowledge identities beyond male-female binaries (Elias & Colvin, 2020).

Thus, the *Bostock* ruling, from a queer theory perspective, could perpetuate existing power structures and identity views that ultimately "privilege the privileged" in that an understanding of equity is grounded in questionable ideas of biological sex. SCOTUS's ruling could represent the assimilationism that queer theorists warn against, namely defining categories and defining "new normals" in terms of existing, privileged power dynamics, in this case especially about biological definitions of "sex." The ruling does nothing to challenge essentialist notions of identity. Still, queer theory suggests we need to consider subtler ideas not just of *sex* but of the nature of gender and gender identity as performative acts, not essentialist qualities. Queer theory suggests that we must continue not only to *querry* the decision itself but also to *queer* the decision (see Lee et al., 2008). That is, we need to understand not only what the ruling changes about workplaces but, perhaps even more fundamentally, what it states about sexual orientation and gender identity in public service workplaces, particular this point: Sex-based binaries and protections rooted solely in such binaries fail to acknowledge the full complexity of human identity and that workplaces protections rooted in false binaries, even that provide positive interim effects regarding workplace protections, have further work to do to dismantle such binaries, which are ultimately rooted in unjust power structures normalizing cis-gendered, heterosexual, and male-centered perspectives.

Intersectionality theory

Relatedly, theories of intersectionality and related theories like black feminism and queer black feminism build upon and add new dimensions to queer theory (Crenshaw, 1989; Lourde, 2017). Intersectionality theory notes how people are never just one identity—multiple statuses can and do combine in every person, and it is possible to articulate the privileges and injustices one receives based upon the combination of statuses, especially race, color, gender identity, sexual orientation, and more (Blessett, 2020; Gaynor & Blessett, 2014). The experiences of someone identifying as a white, cis-gendered male will be vastly different even from a white, cis-gendered female. Compare and contrast these experiences with the experiences of, say, a black, transgender female, who will experience marginalization based upon prejudice against all of these identities individually *and* all of them in tandem. The experiences of one person even among these overlaps will differ enormously, especially when encountering public services, thus suggesting ethical needs for public administration to consider subtler, more diverse, and more inclusive notions of identity (De Vries, 2012; McCandless, 2018; McCandless & Ronquillo, 2020).

These theories emphasize the extent to which social constructions are ever-present in societies, and they can and do affect everything from personal internalization of identities, relations between people, and power dynamics, especially when encountering the public sector. These theories remind that socially constructed identities—especially in terms of race, gender and gender identity, sexual orientation, class, and more—are laden with narratives that privilege white, cis-gendered, male identifying perspectives, thus leading to systems that are racist, white supremacist, and patriarchal (Alkadry & Blessett, 2010). Further, these theories critique white feminism and white-centered queer theories for excluding racial experience both within so-called traditional structures of power but also within queer liberatory movements. Thus, LGBTQ + liberation must have intersectional dimensions (Daum 2020; De Vries, 2012; Murib, 2020).

Societal relations become ones of dominance and enslavement in which many outside of privileged identities are made under-privileged through the entrenched power structures that create and enforce fundamental differences in positions people and groups occupy. In short, systems of domination will privilege the privileged, and everything about them are meant to continue this dominance (Lourde, 2017).

The need to examine the *Bostock* ruling through intersectional lenses is evident in that the rulings centers on "sex" and through "sex," allegedly, sexual orientation and gender identity. "Race" is referenced in the decision most often through the language of Title VII and in language like the following in the majority opinion: "By intentionally setting out a rule that makes hiring turn on race or religion, the employer violates the law, whatever he might know or not know about individual applicants" (p. 18). "Race" also is referenced in Justice Kavanaugh's dissent when referring to an *amicus* brief supporting the plaintiff, which notes how the case of *Brown v. Board of Education* was ruled on "as a matter of original public meaning," one of which concerned "equal protection" in which "[t]he Court determined that black Americans—like all Americans—have an *individual* equal protection right against state discrimination on the basis of race" (p. 24). Further, "race" features in Justice Alito's dissent to emphasize how race is explicitly mentioned and intended by anti-discrimination legislation and court cases (see pp. 20–21).

Of course, from a basic legal perspective, distinguishing between categories of race and sex, especially regarding discrimination, "makes sense" because the Court must consider the question at hand and the language of applicable statutes and precedent. Yet, taking a broader view informed by intersectionality theory, it is possible to see how limited such a view is and that societal and legal understandings of race, sex, gender identity, and more must be subtler. Intersectionalities can and do manifest in workplace dynamics in ways that go beyond cis-gendered, white, gay male identities (which were, in reality, central to the case). Workplaces, especially in the public sector, have a long way to go to protect people in any historically marginalized group. We must understand the unique, lived experiences of people and how they can do and do differ. In workplace dynamics especially, we need to understand *all* of these dimensions, yet public administration struggles with considering let alone understanding intersectionalities. Additionally, anyone identifying outside of simple gender binaries not captured by simple (cis)male-(cis)female identities will face unique issues (Elias & Colvin, 2020; McCandless, 2018). Within any workplace, even in the public sector, dynamics of racism, genderism, cis-genderism, white supremacy, patriarchy, and more manifest in and affect workplaces everyday (Breslin et al., 2017; Nelson & Piatak, 2019; Smith et al., 2020), so it is reasonable to be cautious about the effects of *Bostock*. Race is and will remain a nervous area of government, and without querying the causes and effects of racial injustices and recognizing that such injustices undergird all aspects of public sector work (Gooden, 2014), the effects of even positive rulings like *Bostock* may remain limited.

Further, inequitable workplace dynamics are themselves microcosms of societal dynamics. While we write this essay, the dynamics of societal prejudices are fully on display. Several persons have noted that we are currently living in a "double pandemic" of COVID-19 and racism (see Gooden, 2020 for one example). Obviously, the inequities of COVID-19 and racism overlap. As COVID-19 has demonstrated the limitations of "honorary statutes" given to so-called "model minorities" (Zavattaro & McCandless, 2020) In the United States, Asian Americans were often seen as "the model group" (Nguyen, 2020). Yet as COVID-19 was called terms like "a Chinese virus" or the "fault of Asian people," we see this honorary status revoked, harkening to the realities of how U.S. society is deeply racialized and run for the benefit of cis-gendered white persons, especially men (Kambhampaty & Sakaguchi, 2020). Recent police killings of Black persons are manifestations of centuries of persecution against Black, Indigenous, and People of Color. Protests against these killings are often meant to highlight how deeply inequitable and unjust structures run throughout U.S. society (Heaney, 2020). All of these realities can and do manifest in public sector workplaces, ranging from inequitable policies to aggressions and microaggressions at all levels (Heckler, 2017).

The Future of LGBTQ+ Protections Post-*Bostock*

In *Bostock,* the Court makes clear that sex discrimination under Title VII applies to LGBT employees. The majority opinion in this case highlights the complexities of addressing gender in the workplace, where the multiple, and at times competing, layers of one's identity coupled with the workplace norms, culture, and policy, make gender in

the workplace incredibly challenging to reconcile. For public administration theory and practice, the question becomes how can we be inclusive and embrace expansive theories of identity that do not fit neatly into traditional human resources boxes, while at the same "getting something done" in administrative behavior terms. The Court makes an effort to provide greater clarity and stronger protections for LGBT employees.

In this sense, the *Bostock* ruling is a positive step forward. Still, as is the case with many SCOTUS rulings, we are likely to see numerous, more specific issues arise related to the enforcement or lack of enforcement of the ruling. For one, as cautioned by Gaynor and Blessett (2014) in their analysis of the 2012 *Windsor* ruling:

> Although the LGBT community is far from advantaged, those leading the cause are oftentimes white men who can choose when to "reveal" their disadvantaged status, a privilege not available to people of color. When and where they choose not to make this revelation, they operate according to the privileges afforded white men in heteronormative American society. The ability to navigate society in an advantaged group gives the white men (and women) at the forefront of the movement power and relevance. (p. 265)

Thus, the potential for landmark rulings like *Windsor, Obergefell,* and *Bostock* are to make advancements in one area while doing little, if anything, to improve the circumstances of black persons, indigenous persons, and persons of color who also identify as LGBTQ+. In other words, even positives such as greater LGBTQ + freedoms can and are still couched in language of racism and white supremacy. Thus, "it is a fact that white privilege affords these individuals the discretion to reveal or not reveal their member- ship in a disadvantaged group. However, ethnic and racial minorities, due to their complexion, are immediately associated with historical social constructs that suggest inferiority" (Gaynor & Blessett, 2014, p. 265).

In terms of implications for *praxis*, we do not yet know how the ruling will affect workplace dynamics and if it will help lead to substantive improvements for the safety of LGBTQ + employees, especially given reluctance by the Trump administration to enact protections established in *Bostock* (Sosin, 2020). Further, *theories* suggest an even further need for caution, especially considering how the ruling is grounded in static, assimilationist understandings of "sex" and how the ruling does little to acknowledge the realities of intersectional prejudice. As is often the case with legal advancements—whether in terms of abolishing slavery, or extending enfranchisement, or offering workplace protections—the potential is there for discrimination to move from being more overt to being more covert. Public institutions in particular—whether executive agencies, courts, or legislatures—will need to be on their guard to look ever more *sub rosa* to understand and root out the dynamics and durabilities of prejudice. Thus, cautious optimism is warranted for the continued advancement and expansion of acceptance of and workplace safety for LGBTQ + persons.

In order to further solidify these protections, we should think beyond *Bostock* and the case law that got us to *Bostock*. Federal legislation is needed to make LGBTQ + protections widespread and permanent. The U.S. Congress has already done significant work in making these goals a reality. For instance, the Equality Act, *116th Congress: H.R. 5, S. 788,* was introduced in the U.S. House of Representatives in 2019 and would provide "consistent and explicit nondiscrimination protections for LGBTQ people across key areas of life, including employment, housing, credit, education, public

spaces and services, federally funded programs, and jury service" (Human Rights Campaign [HRC], 2020). This legislation would amend existing civil rights and employment law, particularly the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Jury Selection and Services Act, and other legislation dealing with federal government employment to explicitly include sexual orientation and gender identity as protected identity categories. The Act passed the House in a bipartisan vote of 236-173 and as of May 20, 2019 was read twice and referred to the Senate Committee on the Judiciary (United States Congress, 2020). This progress coupled with *Bostock* shows a shift in public opinion in favor of establishing LGBTQ + equal rights. The Act has broad support across political parties, states, sectors, and professional associations (HRC, 2020). Looking ahead in 2020, ideal steps forward would include the full enforcement of the *Bostock* decision, adopting workplace policies that go beyond nondiscrimination to promote greater LGBTQ + inclusion, and finally, passing the Equality Act. These are no small tasks, but as the highest purpose of public service is to improve quality of life, there is no time like the present to continue progress toward LGBTQ+ equity.

Note

1. Throughout this piece, we use both "LGBT" and "LGBTQ+". We use the former when referring to specific policies or cases that adopt the "LGBT" acronym. When telescoping to the future, we use "LGBTQ+" to extend these identities and highlight broader implications.

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