‘After Civil Rights’ explores ‘racial realism’ in the workplace

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SPECIAL TO THE COURIER

Over two decades ago, Harvard Law Professor Martha Minow described “the dilemma of difference.” When does treating people differently “stigmatize or hinder them on that basis,” she asked. “And when does treating people the same become insensitive to their difference and likely to stigmatize or hinder them on that basis?”

Title VII of the Civil Rights Act of 1964 provided one answer to these questions. An affirmation of classical liberalism, Title VII declared any action based on an individual’s race, color, religion, sex or national origin that adversely affects the terms and conditions of employment to be unlawful. Nor does Title VII permit racially motivated decisions driven by business concerns, including the preferences of clients or customers.

Less prominent in law, affirmative action infused race with significance in employment. Politically charged and controversial, it is tolerated, if at all, as a temporary fix that does not replace color-blind policies – and is confined to situations where imbalances in the composition of the workforce can be authoritatively attributed to past discriminatory practices.

Making assumptions

Both approaches, John Skrentny, a professor of sociology at the University of California, San Diego, points out, are out of sync with actual workplace practices. In “After Civil Rights,” Skrentny demonstrates that in many, many fields, ranging from media to marketing, meatpacking and medicine, employers use perceived or actual racial abilities in recruitment, hiring, and on the job assignments.

“Racial realism,” Skrentny argues, can open doors of opportunity; it can also “freeze in place” racial – and racist – assumptions. Too widespread to be rolled back, he emphasizes, race-conscious employment dynamics should not “run unchecked as it does today.”

Employment practices

“After Civil Rights” makes a compelling case for the pervasiveness of race-conscious employment practices. Presidents take race into account when making appointments. Patients express greater satisfaction with the quality of their health care when they are treated by physicians who share their racial or ethnic background.

News organizations hire African-American anchors to attract Black viewers – and assign Latino journalists to cover the Latino community (“the taco beat”). Retailers admit to race matching sales personnel to their client base. And many low-skilled jobs go to immigrants because employers deem them more likely to work hard, without complaints and for lower wages, than African-Americans or Whites.

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It is by no means clear, however, that "racial realism" in employment produces positive results. While police officers of different races vary in their knowledge of neighborhoods, Skrentny notes, studies have found little evidence of different behavior. And a nationwide study showed that the race of teachers did not have an impact on how much students learned.

**Mended, not ended**

Nonetheless, the advantages of policies based on market realities and employer discretion are obvious.

After all, some would argue, the Harlem Globetrotters and the producers of “Othello” should confine their searches to Blacks. And yet, as Skrentny observes, legitimizing race-based BFOQ (“bona fide occupational qualifications”) exceptions to anti-discrimination laws would not only be difficult to draft and expensive, but could be used to defend the preferences of racist customers.

What, then, should be done? Skrentny suggests that “racial realism” be mended, not ended. To start the conversation, he advocates multi-cultural training programs in areas where employers believe race is a qualification; interpreting laws to give “breathing room” to initiatives designed to benefit members of minority groups; requiring validation of practices predicated on “racial abilities” and “racial signaling;” and more responsible corporate behavior in locating firms, setting wages, employing immigrants, guaranteeing workplace safety, and taking responsibility for displaced workers.

"After Civil Rights" leaves no doubt that current workplace realities – and practices – have diverged from statutes and constitutional interpretations of them. The “strategic management of racial differences” may or may not always be necessary “to achieve a wide variety of goals in a wide array of contexts.”

But, as Skrentny urges, for now, and for the foreseeable future, we must do a better job of aligning workplace practices “with our values and our laws.”

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