

Diversity in Practice *the chaos of racial categories*

March 2008

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My mother — a first generation immigrant woman of color physician who raised her children in several countries before making America her home — finds it utterly amusing that her daughter chooses to grapple with diversity for a career.

When a Chinese Cuban associate joined her medical practice a few years ago, she challenged me with this “diversity” question: If a man, born in Cuba to a Chinese father and a Cuban-Chinese mother, grows up in Spain, immigrates to America and speaks English, Spanish, and Chinese (with a Spanish accent), is he considered a European, Hispanic, or Asian?

After a lengthy dialogue on race, ethnicity, nationality, and accent, she concluded by asking - *Do racial categories enable diversity or do they limit diversity’s full expression?*

Although my mother likes to engage me in such conversations to probe what I actually do for a living, the issue of defining, naming, and populating racial/ethnic categories is a very real and complex challenge facing legal workplaces striving for diversity and inclusion.

The Oxford English Dictionary defines race (partially) as: (1) each of the major divisions of humankind, having distinct physical characteristics; (2) racial origin or distinction; and (3) a group of people sharing the same culture, language, etc. such as an ethnic group.

The reference gurus, however, caution the reader that, in modern usage, “some people now feel that the word race should be avoided, because of its associations with the now discredited theories of 19th-century anthropologists and physiologists about supposed racial superiority. Terms such as people, community, or ethnic group are less emotionally charged.”

What the reference gurus fail to mention is that the constantly changing categories of race (and its various substitutes) create a semantic chaos in workplaces around which diversity and inclusion efforts are tenuously built. Whether diversity is about creating parity with national demographics or ensuring equal opportunity for all, legal workplaces struggle with the semantics in order to measure progress, and they look to three distinct definitions of diversity that sometimes overlap and often disagree with each other.

First, the [U.S. Census Bureau](#) categorizes race as American Indians/ Alaska Natives, Asians/Pacific Islanders, Black or African American, Native Hawaiian or Other Pacific Islander, White, and/or Some Other Race. Hispanics - now measured as an ethnicity instead of a race - have to select one of the racial categories above and then complete the Hispanic Origin section.

Next, the [U.S. Equal Employment Opportunity Commission](#) interprets race as “Whites, Blacks, Asians, Latinos, Arabs, Native Americans, Native Hawaiians and Pacific Islanders, multi-racial individuals, or persons of any other race, color, or ethnicity.”

Finally, the [National Association of Law Placement](#) — the main source of employment statistics in the legal profession - asks employers to report on the race of “minority” lawyers who are Black, Hispanic, American Indian/Alaskan, Asian/Pacific Islander, and Multi-Racial.

In spite of the multiple definitions, legal scholars like John Tehranian and Richard Thompson Ford argue that the existing categories do not yet fully cover or clarify racial minority groups. Tehranian argues for the creation of a “Middle Easterner” category that includes Arabs, Turks, Persians, and other ethnicities so that people from the Middle East are not forced to accept “compulsory whiteness.” Ford explores the debate on whether “African American” refers to just individuals who are descendants of slaves or all people with roots in Africa.

The research and dialogue add to employers’ agony over how to collect racial/ethnic data on employees and who to include in the NALP forms. Minority associations are in equal agony over how to represent the diversity of identities captured under such vast umbrellas as Asian (continental category spanning many ethnicities) and Hispanic (ethnic category spanning many continents.) Perhaps the Oxford linguists’ understanding of race as an “emotionally charged” concept sheds some light on why race endures as a critical yet indefinable signifier of difference.

Are racial differences (skin color, facial features, etc.) seen simply as “different than,” or are racial differences surrogates in helping us evaluate “better than” and “less than?” Do we focus on NALP forms because counting racial minorities is easier than talking about racial stereotypes, racial bias, racial prejudice, and racial privilege?

Maybe the reason we, as a nation and as a profession, have such difficulty defining race is because we have such difficulty talking about what race means and why that matters.

Definitions and categories may allow us to track our efforts in increasing the numbers of “racial/ethnic minorities,” but I question the merits of what we are measuring. The legal profession is rife with examples of how increasing numbers of minorities do not lead to more inclusive workplaces. If we stop trying to define race and actually talk about why race still matters, could we move toward a diversity where race no longer needs a definition?