Elective Race: Recognizing Race Discrimination in the Era of Racial Self-Identification

My work posits that we are in a key moment of discursive and ideological transition, an era in which a model I call "elective race" is ascending and is poised to become one of the dominant frameworks for understanding race in the United States. Because we are in a period of transition, many Americans still are wedded to fairly traditional attitudes about race. For these Americans, race is still an objective, easily ascertainable fact determined by the process of involuntary racial ascription—how one’s physical traits are racially categorized by third parties. The elective-race framework will challenge these Americans to recognize other ways in which people experience race, including acts of voluntary affiliation as well as selective and conditional affiliations. Importantly, even if one concludes that most Americans still hold traditional, ascriptive-based understandings of race, there is evidence that elective race is steadily gaining influence in certain quarters, shaping government institutions’ formal procedures as well as certain Americans’ racial understandings.

To improve the clarity and precision of discussions about elective race, my work outlines the key premises and norms associated with this ideological framework. My primary goal is to help courts and scholars understand the basic tenets and tensions that are likely to be present in plaintiffs’ elective-race claims. Although some scholars have trivialized racial self-identification interests or represented them as a threat to antidiscrimination law, my project is to show that racial self-identification decisions matter in concrete ways because they can trigger serious race-based social sanctions that are a core antidiscrimination law concern. Indeed, as we will see, voluntary racial-affiliation decisions can and do trigger race-based resentment, rejection, and social sanction when race-based resentment, rejection, and social sanction when they do not match certain expected or established American understandings about the boundaries of racial categories. Moreover, I predict that, though the number of cases that sound in the nature of elective race may be small at present, we should expect to see more cases of this kind given both the increased focus Americans place on the interest in racial self-identification and the shift toward institutional protocols that are intended to accommodate this interest. The elective-race cases will challenge courts, forcing them to decide whether Title VII of the Civil Rights Act of 1964 (Title VII) should recognize the autonomy claims of individuals who are injured in the workplace by the social and formal processes of involuntary racialization. Courts will be asked to rule on cases that suggest that an employee’s dignity interests are unjustly frustrated when other fail to respect the employee’s right to racial self-definition.