

Is Hollywood, the Capital of Liberal America, Racist?

Let's take a brief break from politics and talk about something just as important as picking the next president of the United States. The Oscars.

By now you've probably heard that Jada Pinkett Smith, the wife of actor Will Smith, and director Spike Lee, will boycott the Academy Award ceremony because not a single black actor was nominated for an Oscar.

Ms. Smith issued a statement explaining her discontent. "At the Oscars ... people of color are always welcomed to give out awards ... even entertain, but we are rarely recognized for our artistic accomplishments. Should people of color refrain from participating all together? People can only treat us in the way in which we allow."

Maureen Dowd of the New York Times called it the Jim Crow Oscars. Chris Rock, who will be hosting the show on TV, sent out a tweet: "The #Oscars. The White BET Awards."

But what does the absence of black nominees in the acting categories really tell us? Are the people behind the Oscars racist – or simply clueless about black people and black culture?

We'll get to that shortly. But first we have to consider a concept in legal circles that goes by the name of "disparate impact." Here's what it pretty much means in everyday practical terms: If black people or other minorities are not represented in employment, housing, *or other matters*, in numbers that match their percentage of the population – regardless of intent – it's evidence of discrimination.

Note well: *regardless of intent*. So you don't have to be a

bigot to be guilty of discrimination. Results are what matter.

Let's say 50 people take the exam for lieutenant in the fire department. Let's also say that 10 of the applicants are black and 10 more Latino. The results show that of the 20 minority candidates only one earned a grade high enough to get the promotion.

Even if no one is alleging that the fire department set out to discriminate against minorities, the department may still be guilty of discrimination – because of disparate impact.

Now back to the Oscars. If we apply the theory of disparate impact it doesn't matter what motivated the Academy voters. All that would matter is that no black actors were nominated for an Oscar. The results came out all wrong. There wasn't the proper amount of diversity.

Will Smith was brilliant in "Concussion," the movie about head injuries in the NFL and how the league covered up evidence of the damage repeated hits to the head does to players in the league. But Mr. Smith was snubbed.

No actor in "Straight Outta Compton" was nominated.

Michael B. Jordan, who played opposite Sylvester Stallone's Rocky in "Creed" was also passed over. So were all the actors in "Beasts of No Nation," a horrific story about child soldiers in Africa.

Will Smith, who has joined his wife in refusing to attend the ceremony, says that, "We're part of this community. But at this current time, we're uncomfortable to stand there and say this is OK."

But are we really supposed to believe that Hollywood, a place populated by some of the most prominent liberals in our culture, is bigoted? If the Oscars were handed out by the White Skinheads of America Film Society, then yeah, there's an

excellent chance racism might be in play. But Hollywood, the capital of liberal glitterati in the United States of America?

Here's another explanation for the failure to nominate black actors. In 2012, the Los Angeles Times conducted a survey of the Academy of Motion Picture Arts and Sciences – the group of more than 6,000 members that runs the Oscars. Turns out that 94 percent of the members are white, 77 percent male, with a median age in the mid 60s.

In other words, older white guys are behind the culture curve. There are certain things about black culture and black movies that just don't resonate with them. Diversity isn't their highest priority.

Let's acknowledge that more than a few people, black and white, inside and outside of Hollywood, take this matter seriously. So forgive my detour into another area of American entertainment: professional basketball.

If disparate impact is a sign of potential racism, then why isn't the NBA potentially racist? Before you say, "Bernie, you jerk, the NBA is based on merit. The best players make the team. If blacks are better, then it only follows that there would be more blacks in the NBA than their percentage in the general population."

Nice try. But disparate impact suggests that if the test doesn't produce results that are acceptable, then something is probably amiss. Non-Hispanic whites make up 63 percent of the population; blacks make up a little over 12 percent.

Since 63 percent of the NBA isn't made up of white guys, there's a disparate impact – and you know what that means.

As for the Oscars, The Academy has just unveiled major changes in its structure and voting regulations in an effort to promote diversity. The goal is to double the number of women and diverse members of the Academy by 2020 so that women

comprise 48 percent of the organization and diverse groups make up 14 percent of total membership

That's a start. But there's another solution – one guaranteed to produce the proper results – that more than a few liberals would sign on to. The Academy could institute a rule that says 12-14 percent of all the nominations for best actor, best director, and best movie *must* go to African Americans and other minorities.

And to insure that's it's not just a way to appease those who feel alienated and dispossessed, 12-14 percent of the actual winners *must* then be made up of the minority film community.

Crazy? Sure! But it might actually work in Hollywood, where white liberal guilt knows no bounds. I'm guessing it wouldn't go over so well in the NBA since the theory of disparate impact only applies to people in a "protected class" – which, of course, eliminates white males.

Re-Defining Racial Discrimination in America

✘ Suppose you own a business and put out an ad for people who want a job. Many apply. You run background checks, including criminal checks, which are perfectly legal. You learn that some of the prospective employees have criminal records. And you decide you'd rather not have a convicted thief working the cash register at your business or you think it's better that you don't hire someone with a violent past, fearing he might hit a customer or fellow worker who looks at him the wrong way. Or maybe you figure, you just don't want convicted criminals in your company.

Question: If you choose not to hire ex-cons are you a bigot?
Before you answer, consider a case you probably have heard nothing about – the case of the Equal Employment Opportunity Commission, a federal agency, against BMW (USA) and Dollar General.

The EEOC is suing those companies for allegedly violating the 1964 Civil Rights Act. The EEOC has employed a strange new legal theory essentially arguing that criminal background checks are racist – or at least may be.

There is nothing in the 1964 Civil Rights Act that covers ex-cons. But it does, of course, cover matters involving racial discrimination. Here's where the strange legal theory comes in: Since blacks are convicted of crimes at much higher rates than whites, and since BMW and Dollar General rejected more blacks than whites for jobs because of their criminal convictions, the companies are, in the strange logic of the EEOC, guilty of racial discrimination.

Let's be clear: The EEOC found no memos showing racial bias by the companies. It found no incriminating e-mails. No voicemails. No current employee came forward and said he heard conversations among the managers indicating they didn't want to hire black people.

None of this mattered to the liberals at the EEOC. They were too busy playing a numbers game, a game that is part of the Obama administration's efforts to re-define the meaning of racism in America.

They even have a name for what they are doing: It's a theory called "disparate impact." Here's an example of how it works: If 20 whites and 20 blacks apply for a promotion in the police or fire department and none or "too few" of the blacks get high enough grades for the promotion, that, according to the theory, shows a disparate impact – and is proof of racial discrimination. That's the same thinking behind the lawsuits

against BMW and Dollar General.

It is true that BMW and Dollar General did discriminate. But anyone with an ounce of common sense would figure out that they discriminated *against convicted criminals*, regardless of race or anything else. Yes, some white workers with criminal records were also turned down.

This is not what Martin Luther King fought for. This is not why so many good Americans, black and white, marched from Selma, Alabama and were beaten – simply for demanding the same rights for black Americans that white Americans already had. None of them fought, and in some cases died, so that the federal government could force employers to hire convicted criminals – who happen to be black. This is not a lawsuit for civil rights. It's a perversion of the real meaning of civil rights.

In fairness, the EEOC makes a reasonable argument when it says employers need to treat all these cases individually. Not all convicted criminals are alike, after all. The ex-con should have the right to make his case to the boss, the EEOC says, and explain why, despite his criminal conviction, he'd be a good worker.

That sounds fair enough. We all deserve second and even third chances. And in some cases the companies probably did reject good people who paid their debt to society and have turned their lives around. But does this really constitute racial discrimination – especially when whites who may have also turned their lives around were also rejected? And what about the rights of the companies? Shouldn't BMW and Dollar General be the ones to decide if they want to take the risk and hire a convicted criminal – instead of the decision coming from a bunch of political appointees in Washington?

If the EEOC wins its case the new rules would apply to other companies in America. So what would happen then if an ex-con

hits a customer – after the company hired him knowing full well that he had a violent past? I'm not at all sure that "the EEOC made me do it" defense would spare that business massive damages.

While millions of Americans are focusing on the news about how the federal government is "data-mining" our phone and e-mail records, this case is flying below the radar. But this one is also about a massive federal government intruding into our lives.

Racial discrimination is already against the law, and that's how it should be. But this is not what they had in mind when they passed the 1964 Civil Rights Act. Not even close.