

Reaction to: “Of Bias and Exclusion: An Empirical Study of Diversity Jurisdiction, its Amount-In-Controversy Requirement, and Black Alienation From U.S. Civil Courts”

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DeVito’s article is an empirical analysis that explores the impact of an ever-increasing amount-in-controversy requirement on the filing rate of Black claimants in U.S. civil courts. The results of DeVito’s study show that (1) increasing the amount-in-controversy requirement has had a negative impact on the rate of civil suits filed by Black Americans, and (2) Black claimants are underrepresented in diversity jurisdiction suits, while white claimants are overrepresented. Although DeVito’s analysis supports the foregoing findings, it is flawed in two critical respects. First, in assessing why Black Americans are underrepresented in civil suits, DeVito concludes that Black claimants feel alienated from the civil justice system. However, DeVito fails to provide any evidence to support his conclusion. Second, while DeVito demonstrates that Black Americans have low filing rates in federal courts in comparison to white Americans, he fails to convey the analytical significance of his finding to the reader, and thus leaves the reader to make the next inferential step(s) for themselves.

With respect to my first criticism, DeVito fails to provide any substantive evidence to support his conclusion that Black Americans feel alienated from the civil justice system. Instead, DeVito assumes early on in his article that distrust in the civil justice system is both a cause and effect of low filing rates among Black Americans. For example, DeVito asserts that Black Americans lack confidence in the civil justice system because of the mistreatment they have endured within the criminal justice system. To support his assertion, DeVito provides numerous examples and data points demonstrating the disparate treatment of Black Americans within the criminal justice system. However, DeVito fails to cite any studies or surveys that demonstrate Black Americans’ perceptions of the civil justice system. In spite of this lack of evidence, DeVito assumes that Black Americans feel alienated from the civil justice system throughout his analysis. DeVito takes for granted that the reader will accept his assumption despite his failure to provide any evidence in support of it, its critical use within the context of his analysis, and its importance within the larger conversation about access to the courts.

With respect to my second criticism, while DeVito demonstrates that Black Americans have low filing rates in federal courts compared to white Americans, he fails to convey the analytical significance of this finding to the reader, and thus leaves the reader to make the next inferential step(s) for themselves. For example, despite

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the fact that the focus of DeVito's article is racial bias and exclusion in the U.S. civil court system, DeVito never explicitly links the reduced number of filings among Black claimants to racial bias or exclusion. By failing to identify the link between the foregoing factors, DeVito consequently fails to connect his findings back to the theme of his article, which is Black alienation from U.S. civil courts. Ultimately, DeVito implies that a prohibitively high amount-in-controversy requirement is more likely to inhibit Black claimants' access to the courts in comparison to white claimants, thus creating an inequitable civil justice system. This is the racial bias and exclusion to which DeVito refers throughout his article. However, while DeVito alludes to this conclusion throughout his article, he fails to state it explicitly, and thus fails to fully convey why it is of such analytical significance that Black claimants are missing from the civil court system.

The findings set forth in DeVito's article are, for the most part, supported by empirical evidence. However, DeVito fails to (1) provide evidence to support his conclusion that Black Americans are underrepresented in civil suits because they feel alienated from the civil justice system, and (2) fully convey the analytical significance of his finding that, in comparison to white Americans, Black Americans have lower filing rates in U.S. civil courts, thus leaving the reader to make the next inferential step(s) for themselves. In view of these shortcomings, DeVito ultimately leaves the reader intrigued but uncertain of the actual impact of racial bias and exclusion in U.S. civil courts.