

FOREWORD

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It is my pleasure to introduce Professor Marie Mercat-Bruns's work to an American audience in this translation. While the topic of antidiscrimination protections in employment law is of course of very great intrinsic interest, it has a much greater symbolic reach, and I hope that with this translation, Mercat-Bruns's brilliantly conceived project will find a global audience. For the idea of antidiscrimination is, as Yale Dean Robert Post says in this book, another face of the ideal of the citizen-worker and the attributes of that citizen-worker that are above or below the notice of the state. The conception of the citizen-worker is under tremendous pressure, both in Europe and the United States, arising from a new sentiment among citizens in all advanced democracies that salient aspects of one's identity and humanity need not be covered or closeted in public, nor are they appropriate bases for rejection or refusal. The law and philosophy of antidiscrimination is, in other words, the law and philosophy of the democratic citizen.

Mercat-Bruns makes this link herself in her introduction when she discusses the ways in which the *Charlie Hebdo* and Kacher market murders put racial and religious identity at the center of public debate, even more so, perhaps, than did the later debates about who precisely was Charlie and who was not. The republican ideal of the sexless, raceless, secular citizen has been fractured under the pressure of social and economic exclusion, religious targeting, and the surge of both National Front and cross-cultural politics.¹

1. As this volume moves into press, France, and its attendant conceptions of Frenchness, have been rocked even more radically by the Daech attacks on the café and club youth culture of Paris. Again the attackers included self-evidently alienated French citizens of the *banlieue*. The need to understand the social and economic pressures of difference in French life could not be more acute.

While the issue of home-grown Islamist extremism and flourishing anti-Semitism is by no means unique to France or the republican model—and it strikes this observer as curious that there is much less talk of the failure of the German, Belgian, or British “models” of the citizen—there is one aspect of French political and legal culture that really is peculiar among multicultural democracies, and that is the deep-seated commitment to formal over substantive equality in legal privileges and rights. The commitment to formal equality, which is considerably offset by France’s strong commitment to social solidarity and labor protection in economic terms, is a direct product of the republican ideal. And so the lessons of America, as it has struggled with an overly formalistic conception of equality, may be of great help to French scholars, judges, and lawmakers as they adjust a conception of citizenship that has worked best in the more demographically homogenous France. I have no doubt that *Discrimination at Work* has already been read profitably in France because of its reconstruction of a nuanced republicanism.

The really interesting feature of Mercat-Bruns’s project, however, is how much it has to show American lawyers, scholars, and judges. For just as the neutral republican citizen ideal is under pressure in France, the identitarian conception of citizenship in progressive American legal thought is under pressure in the United States through a rhetoric of “color-blindness” and anti-antidiscrimination that bears much in common with republican ideals. While the move to color-blindness at the Supreme Court and Court of Appeals level is largely deplored by the scholars Mercat-Bruns interviews, many of whom have played important roles in constructing and furthering American antidiscrimination legal doctrine and theory, the trend is unlikely to disappear. And so this book provides an opportunity for a fresh dialogue between two points of view on equality and antidiscrimination, which is of great and immediate interest on both sides of the Atlantic.

This brings me to the most distinctive feature of *Discrimination at Work*: its use of interviews with leading American legal scholars to illuminate the roots and trends of U.S. antidiscrimination law and their relevance for French law. Of course, collections of thematic interviews have been published before; however, such collections always pose a risk that the interviewees will end up scattering themselves across the pages with a range of disparate points and interests. In this book, however, Mercat-Bruns provides a structure to harmonize these voices by holding them tightly to the themes she has put forward in the volume. Mercat-Bruns presents her interlocutors as partners in a conversation about her specific topics, and the result is a fusion of their insights with her own conception of the law. The casualness of the interview format makes her book enjoyable as well as readable, providing a window into the relation between compassion and analysis in the work of Mercat-Bruns as well as that of her interlocutors. Bravo to all.