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Affirmative Action for Whites

The Court affirms racial preferences in universities, so long as they work for white people

by Philip N. Cohen

The worst news about the Supreme Court's affirmative-action decisions last week was that it really was good news.

The justices had an easy opportunity to bury affirmative action once and for all, but didn't. In two split decisions–6-3 against the University of Michigan's undergraduate admissions program, with its fixed point system, and 5-4 in favor of its law school system–the court agreed that a vague, subjective and completely voluntary system that included some consideration of race is permissible. With typical post-civil rights reasoning, the court basically sanctioned affirmative action, but only when it's good for whites.

Many universities once vigorously opposed "introducing" race into the admissions process. They preferred to rely on such time-tested merit-based factors as alumni legacies, prep school attendance, athletics and standardized test scores.

But when the heat got too hot, some hit on a clever strategy, which came to be known as "diversity." Instead of recognizing the oppressions of the past (and their contemporary persistence) as cause for active redress to promote equality, they instead proposed that "diverse" learning environments were good for everyone (i.e., whites), and therefore a race-based admissions policy wasn't against the interests of whites. This policy effectively silenced critics on the left, while throwing down the gauntlet to the conservatives on the right.

In last week's ruling, the court finally put diversity to the test. Because of the 14th Amendment's "equal protection" guarantee, the court agreed that using race in university admissions is not fair to whites if the point is "to remedy disadvantages cast on minorities by past racial prejudice." This is the same 14th Amendment, remember, that was intended to remedy the "disadvantages" cast on the slaves and their descendents. However, apparently swayed by briefs from the likes of Microsoft and the military (an alliance that should give us all pause), Justice Sandra Day O'Connor wrote for the majority: "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

That's a pretty big step backward: from addressing historical and continuing wrongs–the old argument for affirmative action–to diversity as a salve for the "legitimacy" of our politicians. Still, it could have been much worse: Only four members of the court were adamant that race is not a legitimate basis for any consideration. Justice Clarence Thomas argued in his dissent that "diversity" is not a compelling state interest and a public law school is not a state necessity, so how could the "aesthetics" of the school ("from the shape of the desks and tables in its classrooms to the color of the students sitting at them") be of sufficient importance to justify state-sanctioned racism? Besides, Thomas argued, affirmative action hurts its supposed beneficiaries because their white classmates look down on them. But isn't it better to have to prove yourself to Harvard classmates who

doubt your abilities than to have Harvard students *know* you're not qualified because you never got in?

What's left is a lukewarm permission to consider race only on a case-by-case basis. There can be no specific target ("quota")–which is why Michigan brass steadfastly refused ever to define a "critical mass" of minority students. And the court put that permission on a time limit. Despite the fact that education gaps by race have stopped closing, and in some cases widened in recent years, the majority concluded: "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." In other words, if the University of Michigan were to decide tomorrow that diversity were no longer an issue, the justices would be delighted, and Michigan could return with constitutional impunity to giving preference to the children of alumni.

It's a sign of how far we've come that the justices concerned themselves primarily with whether admissions policies are fair to whites; indeed, there's nothing in these decisions that could be used to hold universities accountable if they *don't* pursue a policy that opens up their classes to minorities. Did I miss the part of American history where whites fell behind as a result of rampant racial "preferences"? (Maybe I should have paid more attention to that award-winning docudrama *Falling Down*, starring Michael Douglas as lead plaintiff for the oppressed white race.)

All of this may have limited ramifications for public universities in California, already prohibited by Proposition 209 from using race, ethnicity or gender in admissions decisions. But that doesn't mean the issue has been resolved. At UC Irvine, the student body is just 13 percent "underrepresented minority," according to university statistics. That includes 2 percent African Americans, 11 percent Chicano/Latino students, and 87 Native Americans. In the UC system as a whole, minority admissions haven't yet fully recovered from the Prop. 209 shock. Admitting students to public universities on the basis of race is certainly no solution for the problems of America's yawning inequalities.

("Race" itself is a very crude indicator. Note that "Asians" are not an "underrepresented minority," composing 44 percent of UCI students. However, if we look among Asian ethnicities, we can find some stark inequalities. Statewide, a third or so of Asian Indians, Filipinos, Koreans and Taiwanese have completed college. But among the poorer communities of Laotians, Hmong people and Cambodians, fewer than one in 12 have finished college.)

Critics are quite right to point out that much of the problem lies at lower levels in the public education system, where inequality in resources across U.S. schools and districts is an international scandal. However, because of America's historical–and contemporary–legacy of racial preferences on behalf of whites, real affirmative action remains an issue of justice and fairness, and public universities have an important role to play. In the wake of the court's decisions, it's still legal–if only just barely–to act on that moral impulse.

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