

United States: Supreme Court outlaws affirmative action—falsely claiming the US is a ‘color blind’ society

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“With let-them-eat-cake obliviousness, today, the majority pulls the ripcord and announces ‘colorblindness for all’ by legal fiat. But deeming race irrelevant in law does not make it so in life,” Justice Ketanji Brown Jackson wrote in her dissenting opinion in *Students for Fair Admissions v. University of North Carolina*, one of two cases decided June 29 that centered on affirmative action. Brown is the first African American woman on the Court.

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In a ruling by the hard far right super majority on the Supreme Court, six out of the nine justices, falsely asserted that the United States is and has always been a “color blind” country.

While expected, the decision is a major blow to Black freedom and undermines equality for all.

The ruling only applies to public and private colleges and universities, but allows affirmative action in military academies, which is illogical.

It seems the Court recognizes the need for Black officers in the armed forces to avoid having just white officers ruling over enlisted men and women, many of whom are Black and other people of color, which would seriously erode morale (and discourage people of color from enlisting).

It would also be a most negative image internationally.

Robert’s twisted interpretation of 14th Amendment

Chief Justice John Roberts said the “Founders” (all white men) rejected race as a foundation of the newly independent country.

Of course, that is false. Like the British colonizers, the writers of the Constitution did not recognize nonwhites as citizens. Indigenous people were “savages” and slaves were property and less than human.

The ideology of white superiority was inherent in the Constitution and the three branches of government. The Southern slaveholders received special political and economic influence in the Constitution under “states’ rights” and because they were given extra representation for owning slaves.

Roberts and the majority know this history. Their decision was not based on added information or

analysis of the Constitution. It was a political decision.

However, the majority needs cover. It had to seek Constitutional justification. Roberts referenced the 14th Amendment's "equal protection" clause. (Clarence Thomas in a 58-page concurring brief gave a hard right rejection of affirmative action and civil rights advances, claiming "I am a Black man from the South" as his authority.)

There are three post-Civil War (Reconstruction) Amendments, the 13th, 14th, and 15th. All three stem from race, racism, and subjugation of Black people. They were written by abolitionists in Congress.

Those three amendments codified the defeat of the slaveholders and signified a Second American Revolution. The original Constitution without these changes codified slavery and the complete oppression of Black people.

There are three key clauses in the 14th Amendment. The Citizenship Clause granted freed slaves full citizenship. It should be noted that the abolitionists wanted to include that all citizens had the right to vote, but they were thwarted. To this day there is no right to vote for all citizens in the U.S. Each state decides who gets to vote and who doesn't.

The Due Process Clause granted fairness to former slaves and all citizens; and the Equal Protection Clause, which whites had but Blacks did not. The latter was especially important in former slave states.

Race was the underlying issue of the Reconstruction amendments to the Constitution.

The Supreme Court majority argument is made up. There is no mention of building a "color blind" society in the founding documents. The bedrock of the capitalist system in the U.S. has always been institutionalized racial discrimination, under various forms — slavery, segregation, and its forms today.

Black Justices duel

"In sharp rebuttals," according to a story in The New York Times (June 29), Bloomberg and other media sites, "Justices Clarence Thomas and Ketanji Brown Jackson harshly criticized each other's perspectives, reflecting the deep divisions and passions Americans have over race and affirmative action. Even as they appeared to agree over the policy's aim — remedying the longstanding discrimination and segregation of African Americans — they drew opposite conclusions on how and what to do."

Both Thomas, now the longest serving Justice (32 years), and Jackson, the newest member, were raised by Black families in the Jim Crow segregated South. Thomas attended Yale and Brown went to Harvard. Both were qualified but the policy of affirmative action got them admitted.

Thomas appears to say that affirmative action was good in his case, except it gave him a stigma from whites that he was not truly qualified to enter Yale. That's why he became a powerful opponent of affirmative action to remove the stigma on Black people entering the top schools.

In his concurring majority opinion, Justice Thomas called out Justice Jackson by name in a lengthy 7-page critique, singling out her supposed views on race and leveling broader criticisms of liberal support for affirmative action.

"As she sees things," Thomas wrote, "we are all inexorably trapped in a fundamentally racist society, with the original sin of slavery and the historical subjugation of Black Americans still determining our lives today."

In her dissent, Justice Jackson pointedly denounced his remarks as a "prolonged attack" that responded, "to a dissent I did not write in order to assail an admissions program that is not the one U.N.C. [University of North Carolina] has crafted."

As the Times noted, "Jackson agreed that the pair agreed on the history or facts about racial disparities in the United States. They had simply reached totally different conclusions."

"Justice Thomas," Jackson continued, "is somehow persuaded that these realities have no bearing on a fair assessment of individual achievement" and adding that he "ignites too many more straw men to list, or fully extinguish."

"Justice Thomas responded, reports the Times, "by castigating Justice Jackson's backing of affirmative action, describing it as a panacea where society would 'unquestioningly accede to the view of elite experts and reallocate society's riches by racial means as necessary to 'even the playing field.'"

In his lengthy concurring opinion Thomas repeated a recurring theme in his writings and speeches over the years, his anger at Black people being portrayed as victims. (Some African Americans refer to this as Thomas's own self-loathing.)

Thomas wrote that Justice Jackson was drawing on "race-based stereotypes, when, in reality, all racial groups are heterogeneous, and Blacks are no exception — encompassing Northerners and Southerners, rich and poor, and recent immigrants and descendants of slaves."

"By articulating her black-and-white world (literally)," he added, "Justice Jackson ignored the experiences of other groups, including Chinese immigrants, descendants of Holocaust survivors and those who came to the United States from Ireland, fleeing famine."

Justice Jackson pushed back sharply accusing Thomas of falsifying her viewpoint and misunderstanding the underpinnings of her support for the policy of affirmative action.

"Gulf-sized race-based gaps exist with respect to the health, wealth and well-being of American citizens," she wrote. "Although those disparities emerged years ago, ignoring that history would be foolish because those inequities have indisputably been passed down to the present day through the generations."

"Despite these barriers," she added, "Black people persisted."

Of course, the rollback of affirmative action programs at colleges began years ago. California passed a resolution in 2009 that denied using affirmative action by race and gender in deciding who was admitted in the state's public university system, the first state to do so.

The first year after it was adopted, Black and Latino enrollment in the top universities like UCLA and UC-Berkeley dropped by 40 percent and never recovered.

What next

It is likely that employers will follow the lead of the Court's ruling that is narrowly aimed at college admissions. Already, many employers are reviewing their "diversity" programs. But the reality is the

changing demographics here and abroad requires a more educated and diverse workplace including in top management positions to compete in the global market.

The main lesson of history for supporters of equality of opportunities is that Black people and their supporters have to go back to mass action in the streets to bring about change.

It took a revolution, the Civil War, to make former slaves citizens and weaken white supremacy for a decade before white resistance eliminated most of the freedoms won after that revolution for Black people.

It took another 100 years of uprisings and resistance to bring fundamental change that culminated in the 1960s end to Jim Crow. It's when President Johnson signed an Executive Order in 1965 for affirmative action.

The far right led by Ronald Reagan opposed those changes. He called affirmative action "reverse discrimination" against whites.

When the Supreme Court decision was announced, President and CEO Derrick Johnson of the National Association for the Advancement of Colored People (NAACP, founded in 1909) said:

"Today the Supreme Court has bowed to the personally held beliefs of an extremist minority. We will not allow hate-inspired people in power to turn back the clock and undermine our hard-won victories. The tricks of America's dark past will not be tolerated. Let me be clear - affirmative action exists because we cannot rely on colleges, universities, and employers to enact admissions and hiring practices that embrace diversity, equity, and inclusion. Race plays an undeniable role in shaping the identities of and quality of life for Black Americans. In a society still scarred by the wounds of racial disparities, the Supreme Court has displayed a willful ignorance of our reality. The NAACP will not be deterred nor silenced in our fight to hold leaders and institutions accountable for their role in embracing diversity no matter what."

The challenge is to follow in the footsteps of previous generations—back to the slave revolts up to the mass civil rights struggles of the 20th century. The battle must be engaged, and it will.

Malik Miah
