From DEATH SENTENCE "Democrats" to BOOKATEE "Color-Blindness": Bari Weiss Against Affirmative Action

As I was posting the Tuesday avalanche of SHU items in the wake of the Trump Criminal Referrals, on which The Tikvah Fund machers continue to remain silent, I received the daily Bari Weiss e-mail newsletter, and was shocked for a moment:

https://www.thefp.com/p/actually-color-blindness-isnt-racist?utm_source=post-email-title&publication_id=260347&post_id=91684518&isFreemail=true&utm_medium=email

Not that it had anything to do with her heroes Trump and Musk!

The current website post is formatted a bit differently from what I originally saw, which had the author's name not placed on the by-line, and Weiss' opening and closing comments (in bold) conflated, to make it seem as if the Coleman Hughes article was some promotion of CRT.

This was the passage that confused me:

One of the things we believe in at The Free Press is listening to all sides of an argument. Perhaps you agreed with Coleman's view. Or maybe you didn't.

It was very early in the morning, and I was not then ready to prepare the article with my comments, so I am not exactly sure what I was seeing. For some reason I thought that Neo-Con up-and-comer Hughes was somehow praising CRT and the ideas of Kimberlé Crenshaw and Ibram X. Kendi!

Was it a sign that Bari Weiss was presenting different points of view, and opening the Neo-Con tent?

Hell no!

First impressions are often wrong.

The tendentious article is the perfect extension of the recent Tikvah Tablet attack on Nikole Hannah-Jones and The 1619 Project:

https://www.tabletmag.com/sections/news/articles/making-of-nikole-hannah-jones-waterloo-iowa-1619-project-new-york-times

Once I read the article carefully, it immediately became clear that it was one more Pornographer Thomas attack on Affirmative Action, which would be expected from Weiss the Rufo-ian:

https://www.city-journal.org/the-miseducation-of-americas-elites

I have already addressed the issue of Neo-Con Jews and Affirmative Action:

https://groups.google.com/g/davidshasha/c/pEsuhWgJYBQ/m/x3UZ9FF2BAAJ

I will once again be posting that article in a separate e-mail.

The Pornographer and his Trumpscum SCOTUS Catholic Fascist White Supremacist allies are ready to eliminate Affirmative Action, as Thomas claims not to know what "Diversity" is:

https://www.bloomberg.com/news/articles/2022-10-31/clarence-thomas-says-he-has-no-clue-what-diversity-means-in-admissions-case

Indeed, Tikvah Tablet has just deployed someone called Russell Jacoby to continue the Tikvah assault on Diversity and the New Racial Consciousness:

https://groups.google.com/g/Davidshasha/c/dC_NjgaEor8

As always, I needed to check out who Coleman Hughes was:

https://colemanhughes.org/

And I hit the jackpot!

Indeed, he is National Review, Rufo Institute City Journal, Wall Street Journal, and The Spectator.

Here is his illustrious Neo-Con Sowellian bio:

Coleman Hughes is a writer, podcaster and opinion columnist who specialises in issues related to race, public policy and applied ethics. Coleman's writing has been featured in the New York Times, the Wall Street Journal, National Review, Quillette, The City Journal and The Spectator. He has appeared on many TV shows and podcasts, including Real Time with Bill Maher, Making Sense with Sam Harris, and The Jordan B. Peterson Podcast.

In June 2019, he testified before the U.S. Congress. Born and raised in northern New Jersey, Coleman briefly attended the Juilliard School to study jazz trombone before dropping out to pursue a career as an independent jazz/hip-hop artist. Shortly thereafter, Coleman discovered a passion for applied ethics and public policy at Columbia University, where he graduated with a B.A. in philosophy.

He was honored with the "Jazz Against Democracy" youth award by Tikvah ASF White Jewish Supremacist Aryeh Tepper:

https://www.newyorksocialdiary.com/the-omni-american-future-projects-second-annual-awards-ceremony-straight-ahead-an-omni-american-future-fighting-bigotry-together/

“Jazz Against Democracy” is here buttressed by “Jazz Against Affirmative Action”:

https://docs.google.com/document/d/1lHRy4s8XIPfPnDPNRLPOI2t1-YTdOc3vtMVgN90lFVY/edit

Indeed, it is all one big Intersectional Tikvah Fund WOKE world.

And please check out Hughes’ Podcasts, it is a Bari Weiss All-Star list:

David Sacks:

https://groups.google.com/g/davidshasha/c/xJwd9GeQcAk/m/WoFsCuO2AwAJ

Jonathan Haidt:

https://groups.google.com/g/Davidshasha/c/pYHOZXTUNkk

David Project Bernstein:

https://docs.google.com/document/d/1gZkhXF2Qrwo24nIGCsPJk0O3vWR--BQ4/edit

Freddie DeBoer:

https://groups.google.com/g/davidshasha/c/PP1qGbtRs2o/m/iv4t0VdvAwAJ

Shadi Hamid:

https://groups.google.com/g/davidshasha/c/iskIrdPlpnk/m/mEznGhKlCwAJ

https://groups.google.com/g/davidshasha/c/QEYE3IoetfI/m/zoiDFITqBgAJ

Roland Fryer:

https://groups.google.com/g/davidshasha/c/qYnTMjYXCQE/m/2rqoo3axAAAJ

https://groups.google.com/g/davidshasha/c/QpI_PaJVhvQ/m/m6wLZzqBCgAJ

And, of course, Tucker Carlson FOX News hero, Assange!

https://www.economist.com/democracy-in-america/2013/05/21/fox-news-and-julian-assange

In her final comment, Weiss links to the following article by former Harvard president Drew Gilpin Faust, a very proud Caucasian woman, which Weiss believes presents the "other side" of the White racist argument:

https://www.theatlantic.com/ideas/archive/2022/12/sffa-v-harvard-supreme-court-affirmative-action/672312/

The complete article follows this note.

The former Harvard president argues that Affirmative Action did more for women than for African-Americans, but it still believes it must remain the law and policy in our college admissions process.

We should note that Weiss, in her hermetic elitist echo-chamber, could not find an article from an actual African-American, which would provide a more authentic iteration of the issue.

But that is not how Weiss rolls.

The Hughes article is, as would be expected, the usual Neo-Con racist rubbish, which has the distinct advantage of coming from an African-American.

It is all about the Uncle Tom BOOKATEE, as Weiss' BFFs Glenn Loury and John McWhorter know well:

https://groups.google.com/g/davidshasha/c/ksPg-YHWG9E/m/-i2gbNatCAAJ

https://groups.google.com/g/davidshasha/c/o8DNT0cdxaE/m/zAcnBtmtCAAJ

This is the Neo-Con WOKE Intersectionality in its most granular form.

It is all in the Tikvah MISHPOCHEH!

David Shasha

Actually, Color-Blindness Isn't Racist
By: Coleman Hughes

To our veteran subscribers—and to our many newcomers—welcome, again, to The Free Press (formerly Common Sense). We're so excited you're here, and we hope you learn as much from the essay below, by Free Press contributor Coleman Hughes, as we did.

For more, please check out our new website. And thank you for making our work possible.

— BW

In a few months, the Supreme Court will strike down or reaffirm race-based affirmative action in college admissions. The anticipation surrounding the Court's decision—in two separate cases pitting Students for Fair Admissions against Harvard and the University of North Carolina—has reignited the long-running national debate over color-blindness.

The question is: Should universities be permitted to discriminate on the basis of race? Should they be permitted to "see race"?

Not seeing race is the surest way, these days, to signal that you aren't on the right side of this divide. Indeed, the term "color-blind" has become anathema to rightthink, and if you live in elite institutions—universities, corporate America, the mainstream media—the quickest way to demonstrate that you just don't get it is to say, "I don't see color" or "I was taught to treat everyone the same."

Once considered a progressive attitude, color-blindness is now seen as backwards—a cheap surrender in the face of racism, at best; or a cover for deeply held racist beliefs, at worst.

But color-blindness is neither racist nor backwards. Properly understood, it is the belief that we should strive to treat people without regard to race in our personal lives and in our public policy.

Though it has roots in the Enlightenment, the color-blind principle was really developed during the fight against slavery and refined during the fight against segregation. It was not until *after* the Civil Rights Movement achieved its greatest victories that color-blindness was abandoned by progressives, embraced by conservatives, and memory-holed by activist-scholars.

These activist-scholars have written a false history of color-blindness meant to delegitimize it. According to this story, color-blindness was not the motivating principle behind the anti-racist activism of the 19th and 20th centuries. It was, instead, an idea concocted after the Civil Rights Movement by reactionaries who needed a way to oppose progressive policies without sounding racist.

Kimberlé Crenshaw has criticized the "color-blind view of civil rights" that she alleges "developed in the neoconservative 'think tanks' during the seventies." George Lipsitz, a Black Studies professor at UC Santa Barbara, writes in *Seeing Race Again: Countering Colorblindness across the Disciplines*, which he co-edited with Crenshaw, that color-blindness is part of a "long-standing historical whiteness protection program" associated with "indigenous dispossession, colonial conquest, slavery, segregation, and immigrant exclusion."

Although this public-relations campaign has been remarkably successful, it bears no relation to the truth.

The earliest mentions of color-blindness I am aware of come from Wendell Phillips, the President of the American Anti-Slavery Society and the man nicknamed "abolition's golden trumpet." In 1865, Phillips called for the creation of "a government color-blind," by which he meant the total elimination of all laws that mentioned race. (Phillips was white, but it's hard to see how his advocacy of color-blindness could have been a Trojan Horse for white supremacy, as today's anti-racist might frame things. Black contemporaries such as George Lewis Ruffin, America's first black judge, described Phillips as "wholly color-blind and free from race prejudice.")

In the decades that followed, the idea of color-blindness propelled the fight against Jim Crow. Exhibit A: The 1896 Supreme Court case *Plessy vs. Ferguson*, in which the Court—outrageously—ruled 7 to 1 that "separate-but-equal" was constitutional. The lone dissent in *Plessy*, the lone flicker of hope, which was written by Justice John Marshall Harlan, features the immortal sentence: "Our constitution is color-blind, and neither knows nor tolerates classes among its citizens."

Decades later, when NAACP lawyer Thurgood Marshall was battling segregation in the courts, an aide recalled that he considered the *Plessy* dissent his "bible" and would read aloud from it when he needed inspiration. "Our constitution is color-blind," his favorite sentence, became the "basic creed" of the NAACP.

Among the main goals of the Civil Rights Movement was the elimination of laws and policies that used the category of race in any way. In fact, that was the first demand made by the original March On Washington movement of the 1940s (which successfully pressured Franklin Roosevelt to integrate the defense industry). It was also the first argument made by the NAACP in their *Brown vs. Board* appellate brief. To paint color-blindness as a reactionary or racist idea—rather than a key goal of the Civil Rights Movement—requires ignoring the historical record.

Yet this is precisely what today's most celebrated public intellectuals have done.

Ibram X. Kendi, MacArthur Genius and bestselling author of *How to be an Anti-Racist*, argues that "the most threatening racist movement is not the alt right's unlikely drive for a White ethnostate but the regular American's drive for a 'race-neutral' one."

Critics of color-blindness argue it lacks teeth in the fight against racism. If we are blind to race, they say, how can we see racism? Robin DiAngelo, in her hugely successful 2018 book *White Fragility*, sums up the color-blind strategy like this: "pretend that we don't see race, and racism will end." But this argument is no more than a cheap language trick. It's true that we all see race. We can't help it. What's more, race *can* influence how we're treated and how we treat others. In that sense, no one is truly color-blind.

But to interpret "color-blind" so literally is to misunderstand it—perhaps intentionally.

"Color-blind" is an expression like "warm-hearted": it uses a physical metaphor to encapsulate an abstract idea. To describe a person as warm-hearted is not to say

something about the temperature of that person's heart, but about the kindness of his or her spirit. Similarly, to advocate for color-blindness is not to pretend you don't notice color. It is to endorse a principle: we should strive to treat people without regard to race, in our public policy and our private lives.

Embracing color-blindness would mean an end to policies like race-based affirmative action in college admissions.

But wouldn't gutting these policies have terrible consequences for people of color?

The question need not be posed hypothetically. California actually did ban affirmative action in its state-funded colleges in 1996. And this ban did not hurt students of color. It didn't reduce college enrollment for black and Hispanic students; it simply re-shuffled them throughout both the University of California and Cal State systems. Many of them did end up at less prestigious schools, but those schools better matched their incoming academic credentials. That is a tradeoff I'm comfortable with. There's no reason to expect that a nationwide pivot away from race-based affirmative action would be any different.

What's more, eliminating race-based policies does not mean eliminating all policies aimed at reducing the gap between the haves and the have-nots. It simply means that such policies should be executed on the basis of class, not race. Not only is class a better proxy for true disadvantage, but class-based policies also avoid the core problem with race-based ones: to discriminate *in favor* of some races, you must discriminate *against* others. This discrimination creates an endless cycle of racial grievance and resentment in every direction. Income-based policies—such as progressive taxation, earned-income tax credit, and need-based financial aid—tend to be more popular and less controversial than race-based policies, in part, because they do not penalize anyone for immutable, biological traits.

Pivoting toward color-blindness would not only mean getting rid of bad policies. It would also mean embracing good ones. Take traffic cameras. A traffic cop's decision-making could be contaminated by racial bias. But a camera that catches you speeding or running a red light cannot. You might, therefore, expect that everyone interested in reducing racism would support traffic cameras.

Yet progressives have criticized such cameras on the grounds that they don't yield equal ticketing rates by race—that is, they don't yield racial equality of outcome. This is where the principle of color-blindness cuts through the confusion like a knife. True anti-racism means creating color-blind processes—processes where racial bias literally cannot enter—even if they do not yield results that mirror the Census.

Though it's a rather boutique example, blind orchestra auditions are another policy we should preserve. This example resonates with me not only because I'm a professional musician, but because it serves as a metaphor for the society we should want to create. Auditioning musicians behind a veil guarantees that racial and gender bias cannot contaminate the decision-making. Yet they have come under criticism by progressives

who adopt a paint-by-numbers approach to racial justice: top orchestras, they say, must be 13 percent black because America is 13 percent black—even if we must discriminate against musicians of other races to achieve that outcome.

How is it that progressives abandoned color-blindness?

In the early 1960s, there was an elite consensus that color-blindness was the goal of race politics. Then the race riots of the late 1960s led politicians and corporations to perform an about-face. They began implementing race-based policies as a hasty and pragmatic response to the riots—much like governments and corporations did in response to the riots of 2020. Today, you can scarcely find a professor in an elite institution who would defend color-blindness.

This is a grave mistake. Color-blindness is the best principle with which to govern a multiracial democracy. It is the best way to lower the temperature of racial conflict in the long run. It is the best way to fight the kind of racism that really matters. And it is the best way to orient your own attitude toward this nefarious concept we call race. We abandon color-blindness at our own peril.

CORRECTION: An earlier version of this piece attributed a quote to Supreme Court Justice John Marshall. The correct justice is John Marshall Harlan.

One of the things we believe in at The Free Press is listening to all sides of an argument. Perhaps you agreed with Coleman's view. Or maybe you didn't. For another perspective on the subject of color-blindness, check out this essay in The Atlantic by former Harvard President Drew Gilpin Faust.

From The "Free" Press, December 20, 2022

The Blindness of 'Color-Blindness'
By: Drew Gilpin Faust

I needed to be in the room. I wanted to witness the next chapter in a story that mattered to me, one that I had even been a part of. And as a historian, I wanted to be there as it happened—I had to see and hear firsthand what I once thought was unimaginable.

Affirmative action has been implemented in its various forms for well over half a century, for 75 percent of my existence, for nearly 40 percent of the years since the Emancipation Proclamation. The policy has changed the human landscape of our country, and especially that of higher education, where I have spent most of my life. But now it was being challenged before a Supreme Court that every pundit predicted would overturn it. In spite of two lower-court decisions affirming that Harvard's admissions policies in support of student diversity were not discriminatory and were consistent with the established principles of *Grutter v. Bollinger* (2003) and *University of California v. Bakke* (1978), an organization called Students for Fair Admissions (SFFA) was petitioning to have these precedents overturned and affirmative action prohibited. The case, or really

two cases—*SFFA v. President and Fellows of Harvard College* and *SFFA v. University of North Carolina at Chapel Hill*—were assuming their place in the constellation of Supreme Court decisions that have shaped our nation's long and troubled history of slavery and persisting racial injustice, decisions that have sometimes advanced but more often impeded or even reversed our progress. When the case against Harvard was originally filed, in 2014, I was the president in its title. I testified in the initial district-court trial. Now I was anxious to be there for the Supreme Court oral arguments that represented its culmination.

I wonder if lawyers who appear regularly before the Court, or the staff and security personnel who work there every day, or the justices themselves, who usually serve for decades, ever lose the sense of awe the building was designed to instill. To enter, you need to climb two sets of marble stairs, elevating you well above the ordinariness of the street below. Inside, a Great Hall lined with 36 marble columns leads to the courtroom. Heavy red-velvet drapes shield the entry. I thought of a theater as the curtains opened to reveal the bench, high above us, directly ahead.

The Supreme Court building has existed only since 1935, but its sculptures and friezes and portraits, its classical columns and pediments, are intended to make it appear timeless. The literal weightiness of its marble and stone reinforces the visitor's appreciation of consequence: of what has happened, and will happen, in this chamber. The courtroom holds more than 400 observers with a surprising intimacy. We sat on what seemed to me the equivalent of pews, our silence enforced by Court officials even before the justices entered. The building and its rituals demand deference.

But awe was not the only emotion the building stirred. Walking through the Great Hall to the courtroom, I had passed a bust of Chief Justice Roger Taney, whose 1857 *Dred Scott* opinion declared that Black people could not be citizens and had "no rights which the white man was bound to respect." It is impossible to forget how imperfect, particularly in relation to race, our judicial system has often proved.

We rose to our feet as the nine justices entered and took their seats on the dais. Four women, five men, two Black Americans, one Hispanic American—the Court itself is the product of commitments to diversity made by presidents from George H. W. Bush to Joe Biden. At the invitation of the chief justice, the petitioner for Students for Fair Admissions, Patrick Strawbridge, began his argument. The business of the day was immediately clear. "Racial classifications are wrong," Strawbridge began. *Grutter*, the 2003 case, is "grievously wrong … This court should overrule" it. Affirmative action was in the crosshairs.

In 1965, President Lyndon B. Johnson issued Executive Order 11246, declaring that any entity receiving significant federal funding had to take "affirmative action" to ensure equal opportunity for racial minorities in all aspects of employment. Two years later, gender was added to the scope of the measure. Detailed regulations for compliance were not issued until 1969, when the Nixon administration undertook the first implementation of affirmative-action policy.

It is often noted that affirmative action has achieved greater success in changing women's lives and prospects than those of people of color. I am one of those women. I entered graduate school at the University of Pennsylvania in the fall of 1970. At that time, the arts-and-sciences faculty numbered more than 400 but included only two tenured women. I never had a female professor during my doctoral training. But the same fall I entered, the U.S. Department of Health, Education and Welfare (the forerunner of today's Department of Health and Human Services) told Penn to submit an affirmative-action plan showing how the university would achieve a faculty that reflected the numbers of women and people of color in the broad pool of qualified scholars. Under pressure from Washington and from women already at the university, Penn developed a program that included preferential hiring of women and people of color whose qualifications were approximately equal to those of white male applicants. Progress would require direct intervention. As one female faculty member explained, a policy of "benign neutrality" would "perpetuate the status quo indefinitely."

During my graduate-school years, federal policy emboldened women at Penn. A woman denied tenure in the English Department sued and won in a case that exposed the sordid machinations of the old-boy network. A sit-in prompted by the brutal gang rape of two nursing students led not only to improved security on campus but also to the establishment of a women's center and a women's-studies program. At the national level, Title IX in 1972 (which resulted in a revolution in women's athletics) and *Roe v. Wade* in 1973 (which legalized abortion) represented further advances. I emerged from my graduate program into a different university and a different world.

Affirmative action opened a door I would walk through. My department had no women and was authorized by the dean to add a position as part of Penn's compliance efforts. My professors, soon to be my colleagues, could imagine me among them because the very notion of women faculty had been given a legitimacy and a thinkability. I spent 25 years on the faculty at Penn.

I am a product of gender-based affirmative action. It has changed the landscape of opportunity for women in higher education and beyond, although glass ceilings, glass cliffs, and other barriers remain. During her remarks to the Court in the *North Carolina* case, the U.S. solicitor general, Elizabeth Prelogar, offered a pointed reminder of continuing disparities. The Court, she noted, would hear from 27 lawyers serving as advocates in the course of the current sitting of the oral-argument calendar. Only two of them would be women.

She did not say whether any would be Black, and I saw no Black advocates during the day I spent at the Court listening to arguments in two cases about race. In nearly every dimension of American life, disparities are greater in the realm of race than of gender. But affirmative action has increased the representation of people of color in business, government, the military, and the professions, in no small part because of the changes it has introduced into the pipeline of talent generated by higher education. Harvard's entering class this fall is majority-minority. The place does not look like the Harvard of 1970. We have almost come to take this mix of students for granted, but the Supreme

Court case has warned us that we dare not. The diversity we regard as fundamental depends on extensive outreach and recruiting as well as substantial financial aid—*and* on the consideration of race as one factor among many in admissions decisions. Two amicus briefs submitted to the Court, from Michigan and California, described precipitous drops in the enrollment of members of underrepresented groups after those states made affirmative action illegal. Black enrollment at the University of Michigan fell by 44 percent. Enrollment of underrepresented groups at UCLA and Berkeley fell by 50 percent. Black enrollment at Berkeley is down to about 3 percent.

As the result of a series of rulings, including *Grutter* and *Bakke*, affirmative action has moved away from outright preferences or programs premised on remedying past injustices. Those approaches are now prohibited. Affirmative action currently rests on the principle of diversity: the proposition that a heterogeneous student body representing different belief systems, geographic origins, family backgrounds, and racial identities creates a learning environment that enhances everyone's educational experience and produces citizens ready to contribute to a pluralistic society. Ironically and paradoxically, ever since the *Bakke* ruling, affirmative action cannot legally be justified in terms of its aid to the individual to whom it offers an opportunity. Rather, it can meet the test of strict scrutiny to which it is constitutionally subjected only if it is seen as benefiting the privileged as well as the disadvantaged, the white as well as the Black or brown. In other words, diversity is accepted as a permissible rationale because it helps white people as well as groups defined as underrepresented or disadvantaged.

It is unquestionably true that we are better because of what we learn from our differences—that diversity helps us all. But the rejection of any remedial rationale for the policy is chillingly reminiscent of post–Civil War arguments and assumptions about how we might as a nation overcome the impact of centuries of slavery and racial oppression. Nineteenth-century political leaders insisted that the freedpeople should not be provided with land or resources even after 250 years of unrequited toil because it would present an unjust benefit, a giveaway. Affirmative action's opponents are still worried about that free lunch.

Affirmative action has withstood legal challenges for five decades. But this is a different Supreme Court, with the strongest conservative majority in decades, including several committed affirmative-action skeptics. "I've heard the word *diversity* quite a few times," Justice Clarence Thomas remarked an hour and a half into the oral arguments, "and I don't have a clue what it means." Justice Samuel Alito challenged North Carolina's solicitor general: "Your brief repeatedly refers to certain students as members of underrepresented minorities, right? What does that mean? Why is that significant?" Justice Neil Gorsuch, hearing his first affirmative-action case as a member of the Court, charged that "diversity" was just a cloak for quotas, prohibited since *Bakke*.

Several paragraphs in Justice Sandra Day O'Connor's majority opinion in *Grutter* attracted repeated attention from the justices during the *North Carolina* and *Harvard* arguments. O'Connor accepted the use of race as one factor in admissions decisions, but she also maintained that "race-conscious admissions policies must be limited in time."

Specifically, she wrote, “the Court expects that 25 years from now the use of racial preferences will no longer be necessary to further the interest approved today.” Was that sentence, as several justices seemed to presume, meant to offer a clear and firm cutoff date? Or was it an aspiration? Was it a provision that justices such as Thomas—who dissented in *Grutter*—needed to wait out while they were in the minority, but could now discard? O’Connor clearly made assumptions that have proved unfounded about the pace and trajectory of change in America. Since 2003, income inequality between Black and white Americans has widened. The deaths of George Floyd and others have drawn attention to how racial injustice permeates the policing and judicial systems. Black men’s life expectancy has not increased, and the gap with whites has actually grown. The condition of American society is not making diverse student populations—“the interest approved today”—any easier to achieve.

How does the Court understand the place of race in the United States of 2022? Does race matter? Should it? Justice Elena Kagan pressed Strawbridge, SFFA’s lawyer, on this point. Given SFFA’s assumption that, as he stated in his opening words before the Court, “racial classifications are wrong,” did the group care, Kagan asked, if Black representation in universities “fell through the floor”? Strawbridge seemed taken aback as Kagan exposed the ultimate logic of his position. If race truly doesn’t matter—if we are genuinely color-blind—why should we be concerned if there are no Black students at Harvard or North Carolina at all? SSFA has consistently maintained that the abandonment of affirmative action and the adoption of race-neutral policies would yield student populations just as diverse as the current ones—even though this assertion has been disproved by both statistical analysis and the experience of Michigan and California. SSFA celebrated Texas’s “race neutral” “Top Ten Percent” plan to admit the top 10 percent of students from every high school in the state. Yet that plan provided what SSFA regarded as an acceptable level of diversity only because so many school districts were overwhelmingly segregated. SFFA was arguing that race at once mattered and didn’t matter.

Chief Justice John Roberts became caught up in the fallacies of color-blindness as well, asking why a Black applicant from a privileged family in Grosse Pointe, Michigan, should be eligible for an admissions tip. What distinctive experiences of racial identity could such a candidate bring to a university community? But race helps define the lives of Black Americans no matter where they fall on the income scale. The hypothetical Black student from Grosse Pointe is likely at some time in his life to have been followed through a store by a security guard, or to have been underestimated in a class, or to have seen someone cross to the other side of the street when encountering him at night. Professor Henry Louis Gates, of Harvard, was arrested as an intruder in his own home. Wynton Marsalis was stopped by police while driving with members of his band after a gig in Virginia and held at gunpoint on suspicion of bank robbery. White people may have the luxury of thinking race doesn’t matter. Others are not permitted to forget that it does. And yet the SSFA brief insists that “race says nothing about who you are.” One of the group’s lawyers put it this way: Race, he said, is simply “cosmetic.”

The oral arguments began at 10:03 a.m.; they ended at 2:55 p.m. Throughout the nearly five hours of debate, I felt the specter of another day in this same courtroom, almost 70 years ago. *Brown v. Board of Education* was unanimously decided here in the spring of 1954, declaring segregation to be an unconstitutional "denial of the equal protection of the laws." The case was a first step toward overturning segregation in every area of American life.

Brown led to my own first awareness of race. I was in elementary school in rural Virginia and lived in the home county of Senator Harry Byrd, who led the South's opposition to the ruling. His plan for "massive resistance" pressed Virginians to close their schools rather than integrate them, and in several counties, including one adjacent to my own, they did. Even as a young child, I became aware of the flurry of concern among my family and neighbors about what they saw as the Supreme Court's overreach and its challenge to the so-called southern way of life. But for me, the controversy over *Brown* had a different meaning. I had not yet understood the unspoken rules of my Virginia world; I had not yet realized that Black children were purposefully excluded from my school. Now, because of the Court's decision, race was being explicitly talked about. If I painted my face, I asked a Black man who worked for my parents, would I not be allowed to go to my school? Suddenly I recognized myself as white and understood that this accident of racial identity came with privileges others were denied. I was not yet 10 years old, but I saw that race, in fact, said a great deal about who I was and who I was allowed to be.

In 1896, the Supreme Court's decision in *Plessy v. Ferguson* had affirmed the doctrine of "separate but equal," enshrining Jim Crow in American law. Fifty-eight years later, *Brown* overturned *Plessy*. Separate could not be equal. The impact of racial segregation on Black children threatened the very foundation of the American creed. Yet Students for Fair Admissions, in what the Supreme Court journalist Linda Greenhouse has called a startling "double bank shot," seeks to claim the aura of *Brown*, a revered civil-rights landmark, to support an interpretation of *color-blindness* that would serve as an instrument for racial exclusion. Patrick Strawbridge opened his argument by insisting that "*Brown* finally and firmly rejected the view that racial classifications have any role to play in providing equal opportunities." Affirmative action, SFFA claimed, was antithetical to *Brown*.

The aspirations of diversity have their roots in the integrationist promise—and racial awareness—of *Brown*. Chief Justice Earl Warren pressured his fellow justices to render a unanimous decision, because he wanted the case to mark a powerful departure, an unchallenged commitment to equity and inclusion for Black Americans. For 50 years, affirmative action has been advancing *Brown*'s fundamental purpose and promise: to eliminate the racial separation and degradation that had so long poisoned American life. But in recent decades, the Court has invoked "color-blindness" to strike down efforts to integrate public schools. The number of children attending largely segregated schools has increased dramatically since 2000. The decisions in the *Harvard* and *North Carolina* cases threaten to result in similar levels of exclusion in colleges and universities. We are in danger of reinstalling Jim Crow in the American educational system. To equate *Brown*

and current anti–affirmative action arguments, Solicitor General Prelogar emphasized, "trivializes the grievous moral and legal wrongs of state-sponsored segregation and the enormous harms that millions of Americans suffered under it." And it's not just about the past. We are far from a "color-blind" or "postracial" society.

In midafternoon, as Chief Justice Roberts declared the "case submitted" and brought the proceedings to a close, I rose to leave the chamber, wondering how the Court's ruling, whatever it turned out to be, would be seen in the eyes of history. It will be months before the Court issues a decision. As we wait, I will be reflecting on how the world has changed and not changed since *Brown*. I will be thinking as well about other cases whose names have resonated for me during a lifetime studying the history of slavery and race. I can hope that the Court might find a way forward that preserves the opportunities affirmative action has brought to so many. But perhaps I was just an eyewitness to the 21st century's *Plessy v. Ferguson.*

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