

## The Supreme Court Rules on Affirmative Action

Michael Sean Winters | Jun. 25, 2013 | Distinctly Catholic

Of all the many issues our nation faces, affirmative action remains one of the trickiest, especially when it comes to student admissions policies at universities. For better or worse -- and the "worse" side of the ledger has gotten longer as the modern university has become increasingly unmoored from its historic roots in liberal education -- a college degree is a ticket to a better life in America, an America that for centuries did not much care about improving the lot of racial minorities.

On Monday, the Supreme Court ruled 7-1 to send an affirmative action case, *Fisher v. University of Texas*, back to a lower court, asking said court to apply "strict scrutiny" to the university's consideration of race in admissions. The university must demonstrate not only that it is acting in good faith, but that the means it is using to increase diversity in its student body yields results that could not otherwise be achieved by a race-neutral standard. That seems to me to be a fair compromise on this contentious issue.

In 2007, Chief Justice John Roberts wrote, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." There is a commonsensical ring of truth to the chief justice's observation. As they will tell you at AA, no one stops drinking with one last drink. Yet I can't help thinking that the chief justice's words, precisely because they are so pithy, so easily said, so unencumbered by cautionary qualifications, strike me as obviously the words of a white man. Although neither man will appreciate the comparison, Roberts' words have the same ring of simplistic hopefulness as President Barack Obama's saying that we are going to end the war on terrorism, as if saying it would make it so, as if the Taliban and al-Qaida do not have something to say about when the war on terrorism will end.

In [his essay this morning](#) [1], Eugene Robinson concludes, "[The justices] chose reality over ideology." That is essentially true. The justices recognized, appropriately, that diversity in a student body is a worthwhile objective, not only for the school but for its students and for society as a whole. Ours is an increasingly multiracial country, and a student who attends a school where he or she does not interact with people from different backgrounds will be less able to make the post-graduation transition to a workplace or neighborhood where he or she will encounter, be required to work alongside, find ways to argue with and to collaborate with people from different backgrounds.

The principal means used by the University of Texas to achieve a diverse student body is to admit the top 10 percent of high school graduates from all Texas schools. Because high schools are based in localities and many neighborhoods remain racially unmixed, this yields a lot of diversity, especially in a state like Texas. Twenty-five percent of the students admitted to the University of Texas under the top 10 percent policy are Latinos. But for the rest of the student admissions, race is one of many factors the university considers. It is not a trump -- more like a side ace, putting a thumb on the scale of those who belong to a race that has historically been denied the opportunities afforded white folk, but no more than a thumb.

Affirmative action should grow less needed with every passing year. Are we there yet? I doubt it. If you have ever lived with someone of a different race, you will have seen their different reaction when, say, a policeman pulls you over. If you have ever served on a jury, you will hear horror stories of the dismissive way blacks are

often treated by law enforcement officials. If you have ever been walking down the street at night and you see a group of teenagers ahead of you, ask yourself, do you consider their race when deciding whether or not to cross the street? Look at the differing reactions to the murder of Trayvon Martin -- it appears you may not be able to look at much else for the next few weeks as that trial takes place. Anyone who thinks racism is a thing of the past is blind, ideologically blind, and I do not see how a person who is blind -- for example, Justice Clarence Thomas -- can ever help guide the rest of us to a truly colorblind society, which is what we all want.

Laws shape the culture, but they are not the only things that shape the culture. Affirmative action and its blessing by the highest court in the land has helped a generation of Americans, my generation, wrestle with the fact that ending Jim Crow did not end racism or the evil effects of racism. Affirmative action was one of many ways our culture has become more just. I suspect it has been overtaken by interracial marriage as the prime mover in changing racial attitudes: If it is harder to hate someone you sit next to in class, it is much harder to hate someone who is sitting across the table from you at breakfast.

I wish the court would someday turn its attention to another university admissions' policy: legacy admissions. My sense of justice is far less offended by the idea that a black woman got into Yale on the basis on her race than by the fact that George W. Bush got into Yale on the basis of his family name. Yet here, too, I understand that some families develop long-standing relationships with a particular school. In the climactic moment in the movie "The Blind Side," Michael Oher turns to the NCAA investigator and says he wants to go to Ole Miss because "that is where all my family goes to school." There is something to that tradition, but I am not sure that something should trump the equal protection clause either.

Race remains a complex and complicating issue in American life. It should be. The nation's treatment of its black citizens (and pre-citizens, before the Civil War) remains the ugliest stain on our national character. We are not that far removed from the civil rights movement that we can rest on our laurels. Yes, we have a black president and, whatever you think of the man and his politics, his election was a triumph for our nation. But if you think that means racism is dead, you are wrong. The court yesterday struck the right balance, allowing very narrowly tailored affirmative action programs to proceed. God willing, someday our progeny will look back on such policies the way we look back at a buggy whip. But we are not there yet.

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