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# It's Time for an Honest Conversation About Affirmative Action

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On Monday, the Supreme Court announced it would hear arguments in *Students for Fair Admissions v. President and Fellows of Harvard College*. In 2014, the group sued the university, accusing it of discriminating against Asian students during its admissions process. After years of court filings and an actual trial, S.F.F.A. ultimately lost its case but immediately appealed to the Supreme Court.

I spent much of 2018 and 2019 covering that trial and getting to know its main players. Edward Blum, the conservative legal activist pushing the lawsuit, was behind *Fisher v. University of Texas*, the last college admissions affirmative action case to reach the Supreme Court. In the 2010s, he also spearheaded *Shelby County v. Holder*, which effectively gutted the 1965 Voting Rights Act. He is a tireless activist who will now have his hearing in front of a 6-to-3 conservative majority on the Supreme Court. If the justices find in S.F.F.A.'s favor, Blum will have had a hand in both disenfranchising thousands of voters and ending affirmative action as we know it.

This work has turned Blum into a villain in progressive circles, and some have denounced the whole package as a right-wing program to end racial preferences and remediations in every corner of American life. I generally agree with this assessment and fear the world Blum might bring about.

But it's also important to assess the specifics of the Harvard case. When excised from the context of Blum's crusade, they reveal a profoundly broken system that relies on obfuscation and misdirection, especially when it comes to the treatment of Asian applicants.

## Did Harvard discriminate against Asian students?

This is a question with a both complicated and simple answer. On the one hand, proving that Harvard violated the legal standards set by earlier Supreme Court rulings on affirmative action is difficult, given both the amorphous nature of the admissions process and the intricacy and various contradictions in the law. As it stands now, colleges are allowed to consider the race of an applicant, but only to a limited extent and not in a way that resembles a quota system.

But when you apply the normative definition of discrimination, in which race hinders an applicant's acceptance into an institution, the case becomes much clearer. The evidence against Harvard on that front is, frankly, overwhelming. Asian applicants to Harvard routinely scored significantly lower than students of other races on their "personal scores," a metric cobbled together from alumni interviews, essays and teacher recommendations. During the trial, Harvard's attorneys did not really explain why this disparity existed, but only tried to prove that it did not come out of intentional or even implicit bias from anyone inside the admissions office. What seemed to be happening was that the people writing the appraisals were routinely downgrading Asian students, judgments that Harvard apparently accepted without any further investigation.

I don't really know why Asians got low personal scores, but I do know that if Harvard drapes itself in the mantle of diversity, inclusion and equity, it should probably also take a look at the way it uses evaluations that seem to reflect bias. Harvard continues to use recommendations today.

One of the clearest examples of Harvard's history of anti-Asian discrimination that was presented at the trial centered on "sparse country," a term Harvard uses to describe geographic regions that generally do not send a lot of students to the Ivy League. Sparse country students generally get a bump in the admissions process because the university seeks to have a student body that's geographically as well as racially diverse.

In the past, Harvard recruited students from sparse country after they took the Preliminary SAT exams. To receive an invitation to apply to Harvard — yes, some students receive invitations to apply to Harvard — a Black student in sparse country needed to score above 1100 on the exams, a white student needed 1310, an Asian female student needed 1350 and an Asian male student needed 1380.

This, by itself, seems like enough to prove that Harvard created a system for recruitment that certainly gives preference to one race over the other. The testimony given by William Fitzsimmons, the longtime dean of Harvard admissions, only made his office look worse. When asked to explain why Asian students from sparse country needed to score so much higher than white students, Fitzsimmons said, "There are people who, let's say, for example, have only lived in the sparse-country state for a year or two."

What he seems to be saying is that Harvard believes Asian students from sparse country are Asian before they are Arkansan or Nevadan or Alaskan and that whatever diversity benefit they might bring to the school will be based on their ethnicity, not from the state where they may have spent their whole lives. To Fitzsimmons, evidently, and by extension, the Harvard admissions office, Asian applicants are not citizens with legitimate ties to a community but are instead newcomers who should be thought of by their race.

Evidence of this type of reductive racial thinking could be found throughout the trial. Past documents brought to light showed that Harvard would consider your “ethnicity” a “plus” only if you wrote your personal essay about its significance in your life or if it led to extracurricular involvement in ethnic community groups. If you were a minority student who did not belong to an affinity group in high school and you did not share a moment of trauma or triumph with strangers on the admissions committee for the most prestigious university in the world, Harvard would withhold the “plus” on your application.

Does anyone really believe in a version of “equity” and “diversity” that forces minority students to, in essence, perform their ethnicity for Harvard, of all places?

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### **So, if all this is done in the name of diversity, what exactly does it look like at places like Harvard?**

I am an alumni of Bowdoin College, which at the time I attended, in the late '90s and early 2000s, had a very small percentage of Black, Latino and Asian students. The school has changed quite a bit since then, thanks to strong diversity initiatives. On the occasions I've returned to campus, I've come across students of all sorts of ethnic backgrounds who simply would not have been at Bowdoin in my era. This more inclusive atmosphere made me feel excited to be on campus, even as an adult, and undoubtedly would have improved my undergraduate experience. When you read the case law of affirmative action cases or diversity statements from exclusive colleges, they largely speak of the need to make all students feel comfortable and represented on campus. I do not dispute the importance of this.

But while the percentage of “students of color” at Bowdoin has gone up to 35.1 percent in 2021 from an abysmal 7.5 percent in 1988, there has been little meaningful change in socio-economic backgrounds. Twenty percent of Bowdoin students come from families who make \$630,000 or more a year. Sixty-nine percent come from families in the top 20 percent of income earners in the country. Only 3.8 percent come from the bottom 20 percent. Increased racial diversity has not changed the fact that exclusive schools cater almost entirely to a wealthy population.

Bowdoin is far from being an outlier. A full 15 percent of Harvard students come from families who make \$630,000 or more a year, and only 4.5 percent from the bottom fifth of income earners. Elite state institutions aren't much better. Two-thirds of students at the University of Virginia, for example, hail from the top fifth; only 2.8 percent come from the bottom 20 percent.

What do “diversity” and “equity” really mean, then, at an institution that has more than three times as many kids from the top 1 percent as from the bottom 20?

The browning of these elite institutions should be seen as progress on its own, and it would be harmful if these trends were suddenly reversed. But to what extent is all this just window dressing? Elite schools in liberal cities, whether they are private elementary schools or the Ivy League schools, do not populate their websites with all kinds of faces out of some heartfelt desire to contribute to an equitable society. Rather, they push diversity because they know their customers — the students and their parents — want it. Plus, they couldn't get away with being majority white or even white and Asian without attracting a great deal of scrutiny.

The impending Supreme Court decision will change none of this. Schools like Harvard that can fill their incoming freshman class many times over with top-tier applicants of every race are likely to maintain their diversity levels, more or less.

Over the past two decades, there's also been a quiet but fierce argument over who, exactly, constitutes the Black and Latino student populations at elite colleges. At a Harvard Black alumni gathering in 2004, Henry Louis Gates Jr. and Lani Guinier, professors at the school, noted that perhaps as many as two-thirds of Harvard's Black students were first- or second-generation immigrants from Africa or the Caribbean or the children of biracial couples.

This is an extremely fraught conversation to have because it asks a person to rank Black people in terms of oppression and could encourage schools to enact an even more specific and potentially xenophobic set of hierarchies. Black immigrants appear to be overrepresented at elite colleges when compared with African Americans who have descended from slavery. This, of course, is not the fault of Black immigrants who attend these schools, but rather the schools themselves, who have turned college admissions into a brutal, zero-sum game in which each minority applicant must also double as a racial statistic.

“I just want people to be honest enough to talk about it,” Gates said in 2004. “What are the implications of this?”

For me, the implications are as follows: At elite schools, affirmative action mostly serves an increasingly ethnically varied group of wealthy students and their families. As a result, the narrative around diversity in these places has been reduced to pure racial representation, which, while important enough, does not exactly fulfill the social mission that most people think is inherent to any affirmative action program — helping students whose families have suffered under generations of white supremacy. Anti-Asian discrimination, which I believe to be as clear as day, is one of the byproducts of all this balancing and weighting and obfuscation.

Schools like Harvard have no one to blame but themselves. Their flimsy approach to “diversity” and their desire to stay as academically exclusive as possible have created an indefensible system of racial nonsense that demeans not only its Asian and Black applicants, but everyone else who has to play this absurd game.

This, I believe, would be the honest starting point for conversations about affirmative action at elite schools.

On Monday, I will write about what an alternative might look like.

Have feedback? Send a note to [kang-newsletter@nytimes.com](mailto:kang-newsletter@nytimes.com).

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