

The Harvard case on racial preferences and the antidemocratic character of affirmative action

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On Monday, the trial of the case *Students for Fair Admissions v. Harvard Corporation* began in the US Federal District Court for Massachusetts in Boston. The estimated three-week-long case is widely expected to end up in the Supreme Court of the United States, which would likely take the occasion to outlaw all racial preferences in college admissions.

Taking place in a media spotlight, the trial underscores the reactionary and antidemocratic character of affirmative action—a policy that seeks to conceal the class division in society while permitting the political right to pose as defenders of equal protection under the law. The trial also highlights the ultimately class-based admissions preferences of Harvard and other elite American universities.

Students for Fair Admissions, Inc. (SFFA) filed the lawsuit against Harvard in 2014. Right-wing legal activist Edward Blum, a fellow of the American Enterprise Institute, directs the litigation. Blum launched a similar lawsuit against the University of Texas for its racial preferences in admissions. He also brought about the infamous *Shelby County v. Holder* case, which the Supreme Court heard in 2013 and used to strike down the preclearance provisions of the Voting Rights Act in a ruling that facilitates the Republican priority of discrimination at voting precincts.

SFFA's complaint alleges that Harvard discriminates against students of Asian background. Documentation provided with the 120-page complaint shows a decades-long practice of racially allocating seats at the prestigious school. Despite an allegedly "holistic" admissions system—federal law bars the explicit use of racial quotas—Harvard retained an ethnic composition that cannot be explained in any race-neutral way. For several decades, the school maintained an ethnic composition that was 40-50 percent white, 17-20 percent Asian, 7-10 percent Hispanic, 7-10 percent African American, ten percent resident alien and less than 10 percent American Indian, mixed or unknown ethnicity.

This racial balancing act was remarkably rigid. Between 1994 and 2008, for example, African American enrollment averaged 7.8 percent, with a standard deviation of just 0.3 percent. For the same period Hispanic enrollment averaged 7.4 percent, with a standard deviation of 0.4 percent.

Between the years 2006 and 2014, African Americans made up between 10.2 and 11.9 percent of the admitted class, while Hispanics made up between 9.8 and 13 percent. This ongoing parity of the African American and Hispanic portions of the student body defies innocent explanation.

The complaint demonstrates that Asian applicants carry much of the burden of this racial quota system as a minority that is "overrepresented." While the proportion of Asians in the US population has more than doubled since the 1990s, the percentage of Asians in Harvard's entering class stayed the same, hovering around 17 percent. Asian applicants comprise over forty percent of the academically suitable students in Harvard's applicant pool (that is, those with the highest grades and test scores) and are regularly passed over for students of other races with weaker credentials.

Admissions personnel use "personal qualities" and other vague categories to discriminate against Asian applicants, a practice that mirrors Harvard's racist answer to its "Jewish problem" in the early and mid-20th century, whereby university administrators limited Jewish enrollment to 15 percent through evaluations of their "character" and "leadership" abilities.

Harvard consistently puts Asian-American candidates below white candidates in these intangible and specious metrics. Stereotypes of Asians "being quiet/shy, science/math oriented, and hard workers" emerge in notes on applicant files. One Harvard evaluator described an Asian applicant in racist terms: "He's quiet and, of course, wants to be a doctor."

If Harvard evaluated Asian and Caucasian applicants equally, the groups' enrollment rates would quickly equalize. Although this would *increase* Harvard's overall level of racial diversity, Harvard's admissions process keeps Caucasian enrollment more than twice as high as Asian-American enrollment.

Most of the trial so far has consisted of testimony by longtime Harvard Dean of Admissions and Financial Aid William Fitzsimmons, who has been at pains to defend the university's preferential treatment of wealthy applicants. His practice of regularly meeting with Development Office employees demonstrates the donation-driven admissions policy that Fitzsimmons said was "important for the long-term

strength of the institution.” Some of the money raised in this manner could be used for scholarships, he added.

Fitzsimmons claimed that he did not recall an internal review from 2013 that found that Harvard discriminated against Asian applicants. The university ceased publication of student body composition figures shortly after. “I see lots of documents,” he evasively replied to plaintiff’s counsel.

Legally speaking, Harvard is skating on very thin ice at best. The Supreme Court and major universities have played a cat-and-mouse game since the 1978 *Bakke* decision, which outlawed the overt use of racial quotas in admissions. Admissions offices found themselves reverse engineering application processes that would generate specific racial student body compositions without overtly using racial quotas. The 2003 *Grutter* decision further limited the use of race in admissions, though it upheld the “educational” benefit of a racially diverse student body.

American constitutional jurisprudence views all government actions based on race with suspicion. A university receiving federal funds—as Harvard does—has the burden to show that its use of race in admissions is “narrowly tailored” to further the educational benefits of a diverse student body. Typically, a policy is not “narrowly tailored” when other means exist to achieve the same end.

This may prove fatal for Harvard, as studies show that the best method for increasing minority enrollment—and meeting the purported educational goal of racial diversity—is the elimination of “legacy” admission preferences offered to children of alumni.

The acceptance rate for legacy applicants to Harvard is about 30 percent, or roughly five times the rate at which all other applicants are admitted to Harvard. Harvard alumni children are less likely to be racial minorities and are more likely to be wealthy than are other applicants.

A number of universities, including Texas A&M University, the University of Georgia, and the entire University of California system (which includes Berkeley and Cal-Tech), greatly increased their student bodies’ ethnic diversity by ending both legacy preferences as well as racial preferences.

Another race-neutral way to increase diversity would be to ban admissions preferences for the children of wealthy donors, who are much more likely to be Caucasian than to be a minority. They are also more likely to be legacy applicants.

Whatever its outcome, the Harvard trial exposes certain fundamental truths about higher education, wealth and politics in the United States. Most immediately, it shows that, in certain respects, Harvard University functions as an investment bank that dabbles in education. With its \$36.4 billion endowment—a sum exceeding the GDP of many countries—Harvard could offer free tuition and board to over 600,000 students for a year. Or, assuming an annual return of six percent on the endowment, it could provide a full scholarship to 36,000 students *every year*. The latter figure is almost six times

Harvard’s *total* undergraduate enrollment.

Trial testimony has revealed what was already widely understood: every effort is made to attract not the best and the brightest, but the wealthiest students with the best connections.

More broadly, the trial reveals once again that affirmative action serves as a mechanism of bourgeois class rule. The carefully maintained racial balances keep important institutions stocked with a critical mass of underrepresented minorities. As justice Stephen Breyer said during oral arguments for the 2003 *Grutter* case, “[W]e think from the point of view of business, the armed forces, law, etc., that this is an extraordinary need, to have diversity among elites throughout the country, that without it, the country will be much worse off.”

This policy—so tenaciously held by the faction of the ruling class expressing its interests through the Democratic Party—fans resentment that is easily manipulated by the most reactionary political forces. In the case of Blum, his organization advocates the further dismantling of public education through vouchers. His career in politics began with a bid to gerrymander the electoral map in Texas to disenfranchise likely Democratic voters. His allies in the Republican Party would gladly inter Asian students without a second thought in the event of a war with China. There is no progressive faction in this fight.

A progressive and socialist education policy is not selective admissions based on racial categories, but open admissions. Education must be a social right, not a scarce “opportunity” for a select and privileged few. There is no shortage of knowledge to go around, and no shortage of teachers and staff to share and enrich it. The broadest possible access to higher learning will be instrumental in realizing the longstanding socialist slogan: the free development of each is the condition for the free development of all.

The broad individual and social benefits of education face only one obstacle: the monopolization of all social resources by the financial aristocracy.

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