

# US Supreme Court ruling on affirmative action: the language of oligarchy

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1 July 2003

The *New York Times*, reflecting the general view of what passes for the liberal press in the US, hailed last week's Supreme Court ruling upholding affirmative action as "a historic stand for equality of opportunity." As the extraordinary decision handed down by Associate Justice Sandra Day O'Connor demonstrates, however, such claims are a gross distortion of the truth.

The most remarkable feature of the ruling upholding the University of Michigan Law School's admissions policy, which prevailed by a five-to-four vote, was its unabashed acknowledgment of the existence of a ruling elite in America and its defense of the political and economic interests of that elite. A Supreme Court scholar would be hard pressed to find a precedent in the previous history of the high court for the transparent manner in which O'Connor invoked the concerns of the corporate, military and political establishment in arguing for the expediency of racial preferences.

O'Connor, the swing vote on the divided court, felt little need to disguise the fact that "friend of the court" briefs from representatives of the military and major corporations urging the court to uphold racial preferences outweighed legal precedent or constitutional principles in the formulation of her ruling. An extraordinary number of such briefs—over a hundred—were filed with the court in the University of Michigan Law School case. These included filings supporting affirmative action from such corporate giants as 3M Corporation, Exxon Mobil and General Motors, and a brief from two dozen retired senior military officers and former commandants of the military service academies.

In defending the position (first laid down by Justice Lewis Powell in the 1978 *Bakke* case) that racial and ethnic diversity on college campuses is a "compelling state interest" which justifies the use of racial preferences, O'Connor gave short shrift to questions of democracy or equality. In the pivotal section of her decision, she argued as follows:

"These benefits are not theoretical, but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints. What is more, high-ranking retired officers and civilian leaders of the United States military assert that, '[b]ased on [their] decades of experience,' a 'highly qualified, racially diverse officer corps ... is essential to the military's ability to fulfill its principal mission to provide national security.'... At present, 'the military cannot achieve an officer corps that is both highly qualified and racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies.'... We agree that, '[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective.'

Here O'Connor declared that a racially diverse officer corps was not only a "compelling state interest," but a matter of "national security." She then argued that the use of racial preferences at elite law schools was no less crucial to the functioning of the political power structure in the US:

"Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges."

There followed a remarkable sentence revealing the essence of O'Connor's decision:

"In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

In other words, affirmative action is an important tool for bolstering the legitimacy of the ruling elite—and keeping the masses in their place. That this has nothing to do with democracy or equality in any serious sense of these words is self-evident. One can imagine similar prescriptions being laid down by defenders of the British Raj who calculated that admitting a visible layer of natives into the colonial administration would keep the Indian masses in check.

The elitist and fundamentally antidemocratic basis of the court's ruling was made even more explicit by Associate Justice Stephen Breyer, one of the four justices who joined O'Connor's decision, during last April's oral arguments. Breyer summed up the case made by affirmative action supporters as follows: "[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."

In his dissenting opinion, Clarence Thomas, a member of the high court's extreme right "troika" consisting of himself, Chief Justice William Rehnquist and Associate Justice Antonin Scalia, focused, for his own political purposes, on the elitist character of O'Connor's decision. He repeatedly referred to the University of Michigan Law School, one of a handful of highly selective public law schools in the US, as an elite institution. "The interest in remaining elite and exclusive that the majority thinks so obviously critical," he wrote, "requires the use of admissions 'standards' that, in turn, create the Law School's 'need' to discriminate on the basis of race."

Thomas added a barbed reference to the privileged status of the corporate and military leaders who intervened in the case on the side of affirmative action—as well as, by inference, those justices who supported the majority decision. He wrote: "Were this Court to have the courage to forbid the use of racial discrimination in admissions, legacy preferences (and similar practices) might quickly become less popular—a possibility not lost, I am certain, on the elites (both individual and institutional) supporting the Law School in this case." ("Legacy preferences" refer to the virtually universal practice of granting special status to the offspring of alumni who seek admission to American universities and colleges. Special

treatment is also given the sons and daughters of major financial donors.)

Thomas, himself a beneficiary of affirmative action, nevertheless speaks for a faction of the Republican right that opposes racial preferences out of hostility toward anything that remotely smacks of social reform. These forces include a hard core of segregationists who seek to cloak their racism with hypocritical invocations of legal equality. This faction—including the Christian right, anti-abortion fanatics, the pro-gun lobby and militia elements—exercises enormous influence within the Republican Party and the Bush administration.

For the broad masses of minority workers and youth, however, the other side in the long-simmering controversy over affirmative action within the corporate and political establishment in no way represents a progressive alternative. As last week's ruling by the Supreme Court majority makes clear, its perspective is fundamentally reactionary.

Ultimately the decision will have the salutary benefit of helping strip away the democratic trappings in which the policy of racial preferences has been decked out over the past several decades. It is no accident that affirmative action was first given official sanction by the Democratic administration of Lyndon Johnson in the midst of the urban riots and the political radicalization that arose with the protest movement against the Vietnam War. This policy was expanded and institutionalized by Richard Nixon, in line with his promotion of "black capitalism."

It was a response by the ruling elite to the volatile and irresolvable social contradictions of American capitalist society that were so explosively revealed in the 1960s. Affirmative action was adopted by the federal government precisely at the point when it became clear that the elimination of poverty and the provision of such social necessities as universal health care, decent and affordable housing, quality education for all and full employment were incompatible with the defense of the profit system and the economic interests of the ruling class. It took only a few short years for Johnson's "War on Poverty" and "Great Society" programs to be revealed as more chimera than reality, and then essentially wound up.

At the same time, the US debacle in Vietnam exposed the dangerous implications for American imperialism of a military consisting of a working class soldiery, disproportionately African-American, led by a virtually all-white officer corps.

Hence the adoption of a policy aimed at fostering a privileged stratum within the minority populations that would assist in the administration of the cities—still wracked with poverty and social decay—help in the policing of the working class, and play a larger role in supervising American military operations around the world. Affirmative action created a political framework in which questions of race and ethnicity were placed at the forefront, so that the working class public could be diverted from the more fundamental social and class questions underlying the crisis of American society, and divisions within the working class on the basis of race and national origin could be stoked up.

That racial preferences were conceived of and debated within ruling circles as a means of diversifying the "elite," rather than creating conditions of broad social equality, was already made clear by Thurgood Marshall, a liberal Democrat and the first African-American Supreme Court justice. Marshall wrote at the time of the 1978 *Bakke* case: "[W]e must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence and prestige in America."

What is new in the current ruling is the naked way in which these considerations are articulated and defended. Traditionally, the Supreme Court has been careful to speak in the language of legal precedent, constitutional jurisprudence and overarching principles. It has felt constrained by democratic opinion, within the population at large and, to a lesser extent, within the political establishment itself, to conceal the class essence of even the most reactionary rulings.

That the high court no longer feels itself bound by such constraints—and issues rulings openly in the name of the elite and its interests—reflects a profound change in the outlook and political orientation of the corporate and political establishment. It has largely shed any identification with the democratic norms and methods of the past.

This shift in consciousness must, in turn, reflect profound changes in the underlying social structure of the country. Of the many complex and far-reaching socioeconomic developments of recent decades, the most important is the enormous growth of social inequality.

The United States has become the most economically polarized of all the major industrialized countries. Just two days after the June 23 high court ruling upholding racial preferences, the Internal Revenue Service (IRS) released a report documenting the colossal enrichment of the wealthiest Americans and the ongoing concentration of income in the hands of a privileged few. The IRS reported that the 400 wealthiest taxpayers accounted for over 1 percent of all income in the US in the year 2000, more than double their share just eight years earlier. At the same time, their tax burden fell sharply.

The average income of these 400 was nearly \$174 million, almost quadruple the \$46.8 million average in 1992.

These figures—and those contained in dozens of similar studies of American society—expose the existence of a financial oligarchy—one which controls the political system lock, stock and barrel. Under such conditions, democratic forms of rule can only become increasingly empty shells, destined to be dispensed with altogether as the inevitable social upheavals fueled by these disparities of wealth erupt and assume a political form.

The corollary of the growing social chasm is the political disenfranchisement of the working class, as the entire political system and both bourgeois parties lurch to the right and openly serve the further enrichment of the elite. No section of the political establishment and no institution of political rule—whether the presidency, Congress or the courts—retains any serious commitment to democratic principles.

Far from a victory for democratic rights, last week's Supreme Court ruling reflects the irreversible decay of American democracy. It underscores the futility of any perspective that seeks to defend basic rights while accepting the existing capitalist system and relying on its political institutions. It demonstrates, moreover, the fundamentally reactionary role of racial politics, which cuts across the critical struggle to unite working people on the basis of a genuinely democratic and egalitarian program through the building of a socialist party of the working class.



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