Articles

End of the Racial Age: Reflections on the Changing Racial and Ethnic Ancestry of Blacks on Affirmative Action

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Twenty years ago, I wrote an essay about the end of the career of a fictional African-American law professor at the University of Texas School of Law, Professor Marshall DuBois Douglass.[1] At that time, I had been a law professor for almost a decade. I set the discussion at the end of his legal career in 2036, forty years into the future.[2] The Fifth Circuit, in the 1996 opinion *Hopwood v. Texas*,[3] ruled that the law school could not take account of race or ethnicity in its admission process.[4] Having been a visiting professor at the law school in both 1993 and 1994 during the pendency of this litigation, I witnessed the impact of *Hopwood v. Texas* on the educational experiences of the Black and Mexican-American students, the legitimacy of whose inclusion was the subject of the litigation. Many minority students experience the environment of their law schools as hostile. However, nothing compares to the anxiety generated when during your three years the most significant legal issue debated is your very right to be there.

I decided to base that essay on the assumption that the Fifth Circuit opinion would remain the governing law for affirmative action at the law school until Professor Douglass retired. In writing that piece, I noted:

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[1] He was named after three of the most famous fighters against racial subordination: Thurgood Marshall, W.E.B. DuBois, and Frederick Douglass.

[2] You can see the reflections of Professor Douglass on the end of his career in Kevin Brown, *Hopwood: Was This the African-American Nightmare or the African-American Dream?*, 2 Tex. F. on C.L. & C.R. 97 (1996).

[3] 78 F.3d 932 (5th Cir.), *cert. denied*, 518 U.S. 1033 (1996).

[4] *Id.* at 962.

> Seeing into the future is like seeing around a corner. Such a venture is fraught with the difficulty of trying to perceive the causes of the future that may not even have begun to spin out their inevitable effect. Even the best of us have experienced how the future turns us from adroit prognosticators into doom-sayers and pessimistic fanatics.[5]

We now know that the law school reinstituted the consideration of race in the admission process after the Supreme Court's decision in *Grutter v Bollinger*.[6] True to my admonition twenty years ago, there was another important aspect of affirmative action that would come to change the essence of its very meaning, but one which could not be perceived in 1996: the changing racial and ethnic ancestry of blacks benefitting from affirmative action. I am going to follow the same path that I hued out twenty years ago, but discuss the last day of the academic career of Professor Douglass' twin brother. Only this time, in predicting the future of affirmative action, my remarks are grounded both in what has actually occurred with regard to affirmative action and how much more I have learned about affirmative action over the past two decades.

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"Today is the last graduation ceremony that I will ever attend." Thurgood Burghardt Douglas (Professor T.B.D., as the black students called him) awoke on this day in early May 2036 with this thought. As he awoke, he was in a contemplative mood. After all, this was the end of a fifty-year legal career. Professor T.B.D. joined the legal academy in 1986, four years after graduating from law school with his twin brother, who also joined the University of Texas School of Law faculty that year. Though they saw the issues from different vantage points, both concentrated their scholarship on the intersection of race, law, and education. Professor T.B.D.'s scholarship, however, focused more on what the changing racial and ethnic ancestry of blacks in the U.S. meant for affirmative action policies.

Professor T.B.D. thought about how much his own academic career was intertwined with major federal court decisions on affirmative action. With his twin brother, he had enrolled as an eighteen-year-old freshmen at Indiana University in Bloomington, Indiana in 1974. This was the same year the Supreme Court denied *certiorari* on an affirmative action case,

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[5] Brown, *supra* note 2, at 97–98.

[6] *See* 539 US 306, 327 (2003).

DeFunis v Odegaard.[7] Professor T.B.D. recalled that, while he decided to spend one year between graduating from college and starting law school, he sent out his law school applications early in the spring semester of his senior year. If he was accepted to the law school of his choice, he would ask for a year deferment. Professor T.B.D. did this because the Supreme Court had heard oral arguments in *Regents of the University of California v Bakke*[8] during the fall of his senior year. He figured it was best to hedge his bets in case the Court's opinion, which was expected in the summer of 1978, eliminated affirmative action.

The beginning of Professor T.B.D.'s career as a professor also coincided with a major federal affirmative action decision. Professor T.B.D. started to teach law in 1986, just three months after the Supreme Court in *Wygant v. Jackson*[9] rejected the notion that black students' need for black academic role models was a compelling state interest that justified taking into account the race of teachers in determining a public school faculty.[10]

Professor T.B.D became the first person of color to receive tenure at his law school in 1992, three months before Cheryl J. Hopwood filed a federal lawsuit against the University of Texas School of Law in the U.S. District Court for the Western District of Texas.[11] Then, in an example of watching history repeat itself, Professor T.B.D.'s daughter applied to law school in the spring of 2003 as the Supreme Court was deciding the fate of affirmative action in the University of Michigan cases: *Grutter v. Bollinger* and *Gratz v. Bollinger*.[12]

The Supreme Court reaffirmed its support of affirmative action in its 2003 decision in *Grutter v. Bollinger*.[13] However, Justice O'Connor's opinion for the Court included the following statement at the end: "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."[14] The precise implications of O'Connor's twenty-five-year period were always debatable. At one extreme, the period was an essential part of the holding of *Grutter—Grutter* mandated that affirmative action policies must end in

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7 416 U.S. 312, 315 (1974).

8 *See* 438 U.S. 265, 265 (1978).

9 476 U.S. 267 (1986).

10 *Id.* at 275–76.

11 The lawsuit was filed on September 29, 1992. *See* Hopwood v. State of Tex., 861 F. Supp. 551, 553 (W.D. Tex. 1994), rev'd, 78 F.3d 932 (5th Cir. 1996).

12 Grutter v. Bollinger, 539 U.S. 306, 306 (2003); Gratz v. Bollinger, 539 US 244, 244 (2003). The Supreme Court granted cert. in *Grutter* on December 2, 2002. *See* Grutter v. Bollinger, 537 U.S. 1043 (2002).

13 *Grutter*, 539 U.S. at 343.

14 *Id.*

twenty-five years.[15] At the other extreme, the end of the twenty-five year period was when society should reexamine the continued utility of affirmative action.[16] But regardless of how supporters and critics of affirmative action thought, the twenty-five-year period created an inevitable date with destiny for affirmative action programs.

In 2013, the Supreme Court delivered its decision *Fisher v. University of Texas*,[17] where it reaffirmed its support for affirmative action as articulated in *Grutter*.[18] A year later, Professor T.B.D. published his book subtitled *The Changing Racial and Ethnic Ancestry of Blacks on Affirmative Action*.[19] While many liberal civil rights scholars breathed a collective sigh of relief after *Fisher*, even at this juncture Professor T.B.D. knew something about African-Americans benefitting from affirmative action had already changed. He was writing his book as *Fisher* was working its way through the federal courts. In fact, Professor T.B.D. intentionally delayed completion of the manuscript until after the Court's *Fisher* ruling because he was concerned that what he would reveal might negatively impact support for affirmative action. His book pointed out a seldom-discussed phenomenon in educational circles at that time: that more and more of the blacks benefitting from affirmative action were either mixed-race (whom he referred to as "Black Multiracials")[20] or first- or second-generation immigrants (whom he referred to as "Black Immigrants"). What these two groups had in common was that at least one of their parent's ancestry did not derive from blacks who lived through the history of racial discrimination in the United States. Therefore, Professor T.B.D. argued, the reality that the sons and daughters of two American-born black parents (as determined by the application of the one-drop rule) were being eliminated from the campuses of selective higher education institutions. While others had referred to this racial/ethnic group of blacks as "third-generation" or "legacy" blacks,[21] in his

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[15] *See, e.g., id.* at 375 (Thomas, J., concurring in part and dissenting in part) ("The Court also holds that racial discrimination in admissions should be given another 25 years before it is deemed no longer narrowly tailored to the Law School's fabricated compelling state interest.").

[16] *See id.* at 346 (Ginsburg, J., concurring) ("From today's vantage point, one may hope, but not firmly forecast, that over the next generation's span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action.").

[17] 133 S. Ct. 2411 (2013).

[18] 539 U.S. 306. The Court also reaffirmed its *Grutter* holding in Schuette v. Coalition to Defend Affirmative Action, 134 S. Ct. 1623 (2014), and Fisher v. University of Texas, 136 S. Ct. 2198 (2016).

[19] *Cf.* KEVIN BROWN, BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL AND ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION (2014).

[20] To refer to those with some African ancestry as "Black Multiracials" is a somewhat of a misnomer. If mixed-race people with some black ancestry self-identify as multiracial, then they are not black, but simply multiracial.

[21] I wish to also specifically acknowledge the insightful article written by Angela Onwuachi-Willig. *See* Angela Onwuachi-Willig, *The Admission of Legacy Blacks*, 60 VAND. L. REV. 1141,

book, Professor T.B.D. referred to them as "Ascendant Blacks"[22] to capture the history of this group's ascendancy out of slavery and segregation. The ascendancy of this racial/ethnic group of blacks not only helped to bring about affirmative action, but also made possible the dramatic increases in interracial cohabitation, Black Multiracials, and Black Immigrants. In short, Professor T.B.D. focused on the fact that the Blacks who were being denied the benefits of affirmative action were the ones who had the greatest ancestral connection to the history of racial oppression in the United States that justified the program in the first place. His concern was also driven by the reality that these changes would not remain hidden forever. As 2028 approached he feared that these changes in the racial and ethnic ancestry of blacks affected by affirmative action could become a key factor in the decision by the Supreme Court to eliminate any consideration of race in the admission process. A fear that increased significantly when critical Supreme Court swing Justice Anthony Kennedy retired and was replaced by President Donald Trump's second appointee.

For most Americans concerned about racial diversity in selective higher education programs, the fact that the overwhelming majority of whites did not see much of a difference between Blacks based on any racial/ethnic distinctions obscured recognition of these differences for some time. In addition, the way that the federal government required educational institutions to collect and report racial and ethnic statistics about students and faculty further delayed the comprehension of the effect of changing racial and ethnic ancestry of Blacks affected by affirmative action. With regard to racial ancestry for Blacks, up until the entering class of 2010, applicants to selective higher education programs generally had to choose one and only one racial identification. As a result, it was not possible for those with some African ancestry to indicate that they viewed themselves as multiracial.

However, all this changed when new regulations promulgated by the Department of Education went into effect that changed the way that all educational institutions, including selective higher education pro-

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1149 n.27 (2007) (emphasizing the use of, by the author and others, the terms "descendants" and "legacy Blacks" to denote these blacks to make the connection between their ancestral lineage as descended from blacks who were enslaved and segregated).

[22] The term "Ascendants" is also used by African Americans who left America to repatriate in the Republic of Ghana. This term was first mentioned to me in the summer of 2007 by Seestah Imaakus and Brother El Shabazz, the owners and operators of Hotel One Africa located in the city of Cape Coast, Ghana. One Africa is a facility located between Cape Coast Castle (the main British administrative castle during the Tran-Atlantic Slave Trade) and Elmina Castle (the first permanent European structure built in Africa) on the Ghanaian coast. Their lifelong mission is to assist Ascendant Blacks as they go through the experience of going through those castles.

grams, collected and reported racial and ethnic data. The ability of applicants to self-identify with multiple racial categories was one of the most significant changes. Thus, from the fall of 2010 forward, Black Multiracials could self-identify with all of their racial categories. This generated the flow of more information about the changing racial ancestry of Blacks in educational institutions, especially to the admissions offices of each individual selective higher education program. For example, while varying each year, 42 percent of the black students enrolled as freshmen at Yale University in the falls of 2011–14 were multiracial (54 percent in 2014), at the University of Virginia for the same years it was 21.5 percent (with 22.4 percent in 2014), and at Indiana University-Bloomington, Black Multiracials made up 18.4 percent of all black undergraduate students on campus in the fall of 2013.[23] With regard to law school applications, 2013 figures from the Law School Admissions Council showed that 10.7 percent of Blacks who took the LSAT were Multiracials, a percentage that had increased by almost 60 percent in three years.[24] And, the Multiracials scored significantly higher on the LSAT than the single-race blacks.[25] Moreover, for black/white Multiracials, almost 40 percent of the Black Multiracials, their median LSAT scores during this time period *exceeded* the overall LSAT average.[26] In other words, unlike for single-race blacks, there was no noticeable racial gap in the LSAT scores of black/white Mulitracials and the median LSAT scores for all test-takers. This meant that in an admissions process that ignored the racial ancestry of those with some African ancestry, Black Multiracial applicants to law school had a distinct competitive advantage over single-race blacks.

New information about ethnic distinctions among blacks benefiting from affirmative action was slower to develop. Even as the ability to distinguish Black Multiracials from single-race blacks attending selective higher education institutions was increasing, distinguishing black immigrants from native blacks remained obscure. Some institutions involved in the admissions process of selective higher education institutions, like the Law School Admissions Council, continued their long-followed practices of denying blacks the ability to self-designate their ethnicity, even while granting this capacity to all the other major racial groups and Hispanic/Latinos. However, the Common Application form, which was being used as a college application form by hundreds of American colleges

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[23] Kevin Brown, *LSAC Data Reveals that Black/White Multiracials Outscore all Blacks on LSAT by Wide Margins*, 39 N.Y.U. REV. L. & SOC. CHANGE 381, 383–84 (2015).

[24] The percentage of Multiracials among blacks who took the LSAT was 6.7 percent in 2010. Brown, *supra* note 19, at 151 (2014).

[25] *Id.*

[26] *Id.*

and universities in all fifty states and the District of Columbia,[27] was changed in 2013 to allow blacks to self-identify their ethnic category by allowing students to select any combination of U.S./African American, African, Caribbean, or other.[28] Because of this and other changes, over the next dozen years more and more information started to trickle out about the percentages of Blacks enrolled in selective higher education programs who self-identified as something other than African-American.

Yet, there were enough studies and anecdotal evidence by the mid-point of the twenty-five-year *Grutter* timetable to indicate that American society was well on its way to virtually eliminating Ascendant Blacks from selective higher education programs by 2028, including from its law schools.[29] Professor T.B.D. recognized that Black Multiracials and Black Immigrants encountered racism in American society. He never had any objection to them benefiting from affirmative action. After all, historically, many of the most ardent fighters in the struggle against racial oppression throughout the history of American society included mixed-race individuals like Crispus Attucks, Josephine Baker, Frederick Douglass, Booker T. Washington, Walter White, and of course, Barack Obama. Also, many prominent figures of the Black-community were foreign-born or had at least one foreign-born black parent, including Stokley Carmichael (Kwame Ture), Shirley Chisholm, Marcus Garvey, James Weldon Johnson, Colin Powell, Malcolm X, and of course, Barak Obama. Instead, Professor T.B.D.'s concern was that the overrepresentation of Black Multiracials and Black Immigrants would continue to obscure the elimination of Ascendant Blacks from campuses of selective higher education institutions.

It wasn't just the changing racial and ethnic statistics that alarmed Professor T.B.D. When he first became aware of this phenomenon, he assumed that this was one of those colossal oversights in American history that, once brought to light, would be quickly addressed by admissions officers and university administrators. After all, who could deny that affirmative action was created to assist the descendants of those Blacks who had suffered through slavery and segregation in the United States? Surely, admissions officers and university administrators would

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[27] For a list of the over 700 institutions that accept the Common Application see Common Application—Members, see http://www.commonapp.org/search-colleges [https://perma.cc/7BGZ-7YDV].

[28] According to American Community Survey results from 2008-2009, a third of the almost 3.3 million foreign-born Blacks were from Africa and 52 percent were from the Caribbean. *See* Randy Capps, Kristen McCabe & Michael Fix, *Diverse Streams: Black African Migration to the United States*, MIGRATION POL'Y INST., Apr. 2012, at 3 tbl.1.

[29] For a discussion of the studies that verified this changing racial and ethnic ancestry of Blacks on affirmative action see Brown, *supra* note 19, at 150–53, 197–99 (2014).

quickly address this issue once someone brought it to their attention. Selective higher education programs didn't have to reduce the admissions prospects of Black Multiracials or Black Immigrants, rather they only had to provide a special focus in their processes to ensure a continued substantial presence of Ascendant Blacks. But Professor Douglass recollected discussions that he had with the appropriate officials of the American Bar Association, the American Association of Law Schools, and the Law School Admissions Council about the changing racial and ethnic ancestry of Blacks in the nation's law schools. He remembered his utter shock when all of these representatives agreed that these changes were occurring at an accelerating rate, such that the Ascendant Blacks might constitute less than 20 percent of blacks in the nation's law schools by as early as 2020, but were not prepared to address it for various reasons. One of these conversations stood out since it best encapsulated Professor T.B.D.'s greatest concern. He told an administrator who was an ardent supporter of affirmative action about the changing racial and ethnic ancestry of Blacks on affirmative action. After reflecting on this for a few days, the administrator replied, "You want us to tell the American people that the blacks benefitting from affirmative action are not the blacks that they think are benefitting? If we did that, American society would simply refuse to support affirmative action and we at least have until 2028 to live in this second best world." It was at this point that he understood a decision had already been made to watch Ascendant Blacks, like old soldiers, simply fade away from selective higher education programs. And fade away they did.

In the examinations of the current status of affirmative action leading up to 2028, several scholars published reports on the significant changes in the racial and ethnic ancestry of Blacks on affirmative action. As these reports came out, it was striking to see how low the percentages of Ascendant Blacks were among those with some African ancestry enrolled in the nation's most selective undergraduate institutions, law schools, medical schools, and elite business schools. In many places Ascendant Blacks constituted less than 10 percent of those with some black ancestry, and in some there were none at all.

The Supreme Court's decision in 2031 finally concluded that race and ethnicity could no longer be considered in the admissions processes of higher education institutions. In Justice Clarence Thomas's opinion for the Court, the final one he wrote to conclude his 40-year tenure on the highest court in the land, he prominently mentioned the changed racial and ethnic ancestry of blacks who benefitted from affirmative action:

> When affirmative action policies were first instituted, the racial and ethnic makeup of the United States was very different

from what it is today. According to the 1960 census, whites constituted 88.8 percent of all Americans, with an additional 10.6 percent classified as black.[30] The 1960 census categorized Hispanics/Latinos based on their race, not their ethnicity;[31] thus, blacks and whites comprised 99.4 percent of the American population.[32] Due to the application of the one-drop rule to determine a person's race, the concept of mixed-race blacks did not exist. In addition to the dual-racial nature of American society, dominant American cultural attitudes and social practices did not differentiate blacks who descended from those Africans brought to America in chains during the Transatlantic Slave Trade from who were recent arrivals from the Caribbean or Africa. With some justification, Americans did not recognize the existence of "black ethnicity." The principal reason was that in 1960, there were only 125,000 foreign-born blacks in the United States.[33] And they comprised only 0.7 percent of the black population.[34] As a result, the single most important assumption upon which selective higher education institutions developed affirmative action admissions policies and plans in the 1960s was that the predominant beneficiaries would be those blacks whose complete ancestry were victimized by the history of racial discrimination in the United States.

In continued recognition of the above noted assumption, our 2003 opinion in *Grutter v Bollinger* upheld the University of Michigan Law School's affirmative action policies that sought to enroll a *critical mass of students from groups that have historically been the object of discrimination* to ensure their ability to make their unique contributions to the character of the

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[30] *See* Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States*, 19 tbl.1 (U.S. Census Bureau, Population Division Working Paper Series No. 56, 2002).

[31] *See id.* at 1 (mentioning changes in census wording).

[32] *Id.* at 115.

[33] Race and Hispanic Origin of the Population by Nativity: 1850 to 1990, U.S. Bureau of the Census, https://www.census.gov/population/www/documentation/twps0029/tab08.html [https://perma.cc/9ZPC-2P5P]. The term foreign-born refers to any United States resident who was born outside the United States or its territories, except for people who were born abroad to parents who were United States citizens. Mary Mederios Kent, *Immigration and America's Black Population*, 62 POPULATION BULL. at 5 fig.1 (Dec. 2007).

[34] *See* Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850-1990*, at 41 tbl.8 (U.S. Bureau of the Census, Population Division Working Paper No. 29, 1999).

law school.[35] Thus, in our opinion in *Grutter* we authorized the use of racial classifications for the inclusion of *underrepresented* racial minorities who have *experiences* derived from our nation's struggle with racial inequality. These *experiences* are important to include in the student body because of their educational benefits. But as Justice O'Connor pointed out, they also explain why these *underrepresented* minorities are likely not to be admitted in meaningful numbers without the consideration of their racial/ethnic backgrounds. Thus, in *Grutter* we limited the consideration of race and ethnicity to individuals who were members of groups that had a history of discrimination in the United States and were underrepresented. After all, in *Grutter* we accepted, without comment, the exclusion of Jews and Asians in the affirmative action admission policies of the University of Michigan Law School. While such individuals were members of groups with a history of discrimination, they were already being admitted to the law school in significant numbers.[36]

But now, as the petitioner's statistics clearly indicate, the racial and ethnic ancestries of beneficiaries of affirmative action have fundamentally changed since the 1960s. And we must admit the obvious: to self-identify as multiracial means that one does not self-identify as black. In addition, to self-identify as Caribbean, African, or other black also means that one does not view one's ancestry as derived from the history of discrimination of blacks in the United States. Thus, among the racial and ethnic changes of the beneficiaries of affirmative action is that virtually none of those who were intended to benefit from such admissions policies when they were created do so today. In an ironic twist of fate, selective higher education institutions have virtually eliminated from their campuses the very group for whom they intended affirmative action to benefit in the first place. As the Court examines the operation of affirmative action today, we are not presented with the question we decided in *Grutter*—whether race or ethnicity can be considered for individuals who are full members of underrepresented minority groups with a history of discrimination in the United States. When almost all of those who benefit from affirmative action are disconnected, even partially, from the groups that

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[35] Grutter v. Bollinger, 539 U.S. 306, 308 (2003).

[36] *Id.* at 319.

> suffered in the past due to racial discrimination, the justification for the consideration of race and ethnicity in the admission process is significantly attenuated. These groups may not be underrepresented and do not have a historical claim to the negative effects of racial discrimination. Thus, when the petitioners propose the question, can the current implementation of affirmative action policies be deemed compelling enough to override the violation of the fundamental values that our society has long placed on treating everyone as an individual? Our answer must be an emphatic, no!

Professor T.B.D. had been contemplating retirement for the past few years and it was the day he read Justice Thomas' opinion that he decided it was time to make his plans to retire. Over the foregoing five years, he took two year-long sabbaticals and spent one year teaching at a law school at one the nation's Historically Black Universities. When Professor T.B.D. started teaching, he felt like he was on a mission. He reflected with pride on how his cutting-edge scholarship and teaching had purpose, direction, and meaning. Professor T.B.D. was one of a few committed radical law professors writing on race and attempting to fundamentally restructure American legal discourse. With his twin brother, he had attended the first three Critical Race Theory workshops starting in 1989. The goal of these young Critical Race Scholars was to open the legal discourse to multiple perspectives and provide alternative means in which to envision solutions to problems of racial and ethnic justice. This group of law professors felt that part of what they were doing in the classroom was training a generation of progressive lawyers that would be committed to righting the historical racial and ethnic evils of American society. The mission of Critical Race Theory was poised for success in 2016 when the unexpected death of Justice Scalia raised the possibility that a majority of justices on the Supreme Court would be supportive of minority rights for the first time since the early 1970s. But the election of Donald Trump as President in November of that year eliminated such a possibility.

Professor T.B.D. noted that, over the preceding five years, only about two or three Ascendant Blacks enrolled in the first year class of his law school. His course on *Race, American Society and the Law* was still popular with the students. But he had significantly changed the material in the class over the years. When he first started teaching the course, it focused primarily on the experiences of African-Americans. Now, the course included large sections on Latinos, Black Immigrants, Multiracials, and Asians. It was obvious that many, but not all, of the Black Multiracial students viewed themselves as more multiracial than black.

They didn't seem to have the same passion for addressing the continued oppression of African-Americans that the Ascendant Blacks almost always displayed. But as Professor T.B.D. often thought, why should they? After all, logic dictated that for multiracials to embrace all of their racial heritages they must, by necessity, place less emphasis on the struggles of black people in the United States. He also knew that the first loyalty of many of the Black Immigrant students, though not all, was to their native homeland. And, once again, Professor T.B.D. thought, why shouldn't it be? How could they not be concerned with the conditions of those family and friends still in distant lands? Professor T.B.D. continued to serve as the faculty advisor for the Black Law Students Association, but its numbers had dwindled significantly over the years. Many of the students with some black ancestry now joined the Caribbean Law Students Association or the Multiracial Law Students Association.

But there was one thought that occurred to him while rereading Justice Thomas' opinion on this, the day of the last graduation that he would ever attend, that made him realize now was the time for him to retire. Professor T.B.D. grew up at a time when a person's racial identity was socially ascribed, not a matter of choice. This was true for him for his entire life. He never experienced others mistaking him for Latino, Italian, Middle Easterner, or South Asian as those with some African ancestry who are racially ambiguous often do. He never experienced the need to correct someone who assumed he was African-American and tell them that his family was from Jamaica, Haiti, Nigeria, Ghana or Somalia. But he understood the impulse of those black immigrants who did. When Professor T.B.D. visited South Africa, he often found himself pointing out with great pride to blacks, coloreds, and whites there that he was African-American, not native South African. In other words, Professor T.B.D.'s life experience was that of being a socially ascribed African-American. And for him, not only was his race not a matter of choice, but his racial group was as permanent in the United States as democracy. The first Africans disembarked off the first slave ship in Jamestown in 1619, the same year that the first legislative assembly of elected representatives in North America, the House of Burgesses, was established in Virginia.

For much of his academic career, Professor T.B.D. had always assumed that the African-American community was permanent. However, he had witnessed not only the steady increase in Black Multiracials and Black Immigrants in selective higher education programs, but also their percentages among blacks in American society in general. Soon they would constitute a majority of blacks in the country. The thought that first crept into his mind five years before, when he initially read Justice

Thomas' opinion (and since reading it he could not escape its implication), was derived from one of his favorite movies from so long ago: "Everything that has a beginning has an end and I see the end coming."[37] Thus, the thought that proved to be the deciding factor in Professor T.B.D.'s decision to retire five years before was that for the first time in his life he realized that African-Americans were a socially constructed people who would not exist forever. As a group of people, they had a beginning forged in the cauldron of slavery and hardened in the fires of segregation. But over time, race became more and more a matter of personal preference as opposed to social ascription. And the ancestral ties of fewer and fewer people of African ancestry in the United States harkened back to the blacks who were brought to the United States on slave ships. What all of this meant was that African-Americans as a group were in a process of dissolution. Like the Ancient Egyptians, Romans, and Greeks, African-Americans would one day be confined to the dust bin of history.

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[37] THE MATRIX REVOLUTIONS (Warner Bros. 2003).