

# Racial Preferences: This Is No Time to Let Up

by R. Lawrence Purdy

**D**uring a recent podcast conversation with colleague John McWhorter, distinguished Brown University Professor, Glenn Loury observed: “The fight for real equality is a long one, and I’ve been at it for a long time. Maybe the country’s mood is shifting in my direction. If so, this is no time to let up.”<sup>1</sup>

Listening to these two exceptional thinkers, it seemed Professor Loury’s “mood” and “direction” could be summed up as follows: while race remains important in terms of cultural differences (both positively and negatively), the left’s obsession with *racism* itself is wildly overblown and, in fact, counterproductive when it comes to the “fight for real equality.” If I am close to accurate in my assessment, I share both Professor Loury’s “mood” and “direction.”

In my opinion it also would have been accurate for Professor Loury to change the singular to the plural in his observation by substituting “we” and “our” for “I” and “my,” and defining “we” as a broad majority of American

men and women of all races, colors, and creeds who agree with his views. Had he done so, I believe Professor Loury would have landed on a truth most of our brethren acknowledge: (a) However one views our founding, America no longer is a systemically racist society; and (b) to the vast majority of our fellow citizens, the race of one’s friends, family members, neighbors, co-workers, political leaders, and teammates, simply no longer matters.

In fact, if we wish to ensure our *e pluribus unum* society remains firmly on the road to making real equality a reality (or as close as humans can possibly come to it), these are views I respectfully submit we must acknowledge.

## America’s Quest for Real Equality

The reason this fight has been a long one is not complicated. The stage was set nearly 250 years ago on July 4, 1776, beginning with the most famous phrase contained in our Declaration of Independence: “We hold these truths to be self-evident, that all men are created

equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.”

Yet, as our history makes clear, this Declaration was imperfectly implemented as evidenced by the fact that after its adoption, millions of black men, women, and children continued to suffer under the scourge of slavery. But on the positive side of the ledger, we should not fail to acknowledge that slavery was eventually ended by the sacrifice of hundreds of thousands of overwhelmingly white American soldiers in our Civil War. Indeed, it is the only instance in human history where a nation went to war against itself to eliminate slavery.

Over the five-year period following the end of our Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments were added to our Constitution.<sup>2</sup> These Amendments restored fundamental freedoms guaranteed by the Declaration of Independence, including the right to vote ... but again, imperfectly. Regrettably, in an example of three steps forward and two steps back, these amendments were followed by the adoption in 1896 of the “separate but equal”<sup>3</sup> doctrine which shamefully continued the practice of using skin color to divide Americans.

Then, nearly sixty years later came perhaps the greatest unanimous decision ever reached in our Supreme Court’s history: *Brown v. Board of Education*. While schools in many places throughout our nation had for decades

attempted to prohibit black children from attending all-white public schools, the Court reached this verdict: “[R]acial discrimination in public education is unconstitutional. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle.”<sup>4</sup>

While change did not happen overnight, it undeniably began to take place. Today, as has been true for at least the past half century, there is no public school district in America where a child is prohibited from attending public school based on his or her race.

*Brown* was followed a decade later by the passage of landmark federal legislation banning racial discrimination throughout much of our society. Title VI of the Civil Rights Act of 1964 reads as follows:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>5</sup>

This was followed shortly thereafter by Title VII which extended the prohibition against racial discrimination in federal employment and contracting.<sup>6</sup>

Despite the clear prohibition against racial discrimination contained in Titles VI and VII (buttressed by the interpretations of the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments), several modern Supreme Court decisions failed to abide by clear language prohibiting such dis-

crimination, particularly in the area of higher education.<sup>7</sup>

Throughout the late twentieth century and into the first quarter of the twenty-first century, even our nation's armed services succumbed to the overt use of racially discriminatory policies to affect accessions and advancements in our military, including the use of race as a factor in admissions to our nation's service academies.<sup>8</sup> All these deviations away from a colorblind meritocratic system became deeply embedded in our society through the actions of progressive judges and politicians, many under the rubric of so-called *Diversity, Equity, and Inclusion* ("DEI") programs, most of which have been largely abolished under the Trump administration.<sup>9</sup>

These recent dramatic changes were brought on by the voters' decision during the 2024 election. They are, in my view, aligned with Professor Loury's "mood" and "direction." Which leads to this question:

### Is There a Roadmap to 'Real Equality'?

I believe the answer is "yes," and there are four relatively painless (though far from easy) steps we can take to place us firmly on the road to achieving it.

I believe the first step is for all Americans to acknowledge the universal principle contained in the majority opinion delivered by the United States Supreme Court in 2023 in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* ("*SFFA*"). It reads:

Eliminating racial discrimination means eliminating all of it ... [T]he Equal Protection Clause [of the Fourteenth Amendment to the Constitution] ... applies without regard to any differences of race, of color, or of nationality—it is universal in its application.... [T]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.<sup>10</sup>

While the *SFFA* decision was rendered in the context of higher education, it is a near perfect encapsulation of the applicable constitutional, case law, and legislative precedents that should be applied to eliminate racial discrimination wherever, and in whatever context, it is found to exist.

The second step is for Americans, individually and collectively, to *acknowledge* that the majority of our brethren agree with, and live by, *SFFA*'s fundamental principle. To (very roughly) paraphrase President Barack Obama, when it comes to our laws: "there are no White Americans or Black Americans; there are only fellow Americans." It also happens to be a position that is articulated in several of the 47<sup>th</sup> president's early executive orders which call for the end of racially discriminatory and divisive DEI policies.

The third critical step is for every American to regain confidence that from this day forward our government will strictly follow *SFFA*'s principle in all it does (which means the burden is on the government to do precisely that).

And, finally, every American should commit to living by the truly univer-

sal precept that we should do unto our fellow men as we would have them do unto us.<sup>11</sup>

## Conclusion

When we boil it all down, it is conceptually a simple formula. Of course, being the imperfect creatures we are, the formula will remain difficult for us to follow because of our inherent human frailty. Nevertheless, the path lies in front of us should we choose to take it. It is why I agree with Professor Loury's counsel that "this is no time to let up."

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1. Glenn Loury (with Columbia University Professor John McWhorter), "Is That All There Is to a Black Guy?", Glenn Loury Substack (Feb 2, 2025).
2. The 13<sup>th</sup> Am. ended slavery (ratified on Dec. 6, 1865); the 14<sup>th</sup> Am. established "Equal Protection of the laws" (ratified on Jul. 9, 1868); and the 15<sup>th</sup> Am. guaranteed the right to vote (ratified on Feb. 3, 1870).
3. *Plessy v. Ferguson*, 163 U. S. 537 (1896).
4. *Brown v. Bd. of Educ.*, 349 U. S. 294, 298 (1955) ("*Brown II*") (emphasis added).
5. 42 U.S.C. §2000d (2006).
6. Title VII is codified at 42 U.S.C. §2000e and in subsequent sections. Importantly, Titles VI and VII were preceded by President John F. Kennedy's Executive Order No. 10925 (1961) which first mentioned "affirmative action" in terms of taking "affirmative action to ensure applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." It was intended to remove—not add—race as a factor in federal employment. Only later beginning in the Johnson and Nixon administrations did "affirmative action" metastasize into employment being awarded preferentially based on race.
7. *Grutter v. Bollinger*, 539 U. S. 206 (2003); and *Fisher v. Univ. of Texas-at Austin*, 576 U. S. 365 (2016).
8. *Students for Fair Admissions v. The United States Naval Academy*, *Academic Questions* 38, no. 1 (Spring 2025). The Naval Academy's (and by extension West Point's and the Air Force Academy's) use of race as a factor in admissions has been dealt a fatal blow by the Secretary of Defense Memorandum dated January 29, 2025.
9. Executive Order Ending Radical and Wasteful Government DEI Programs and Preferencing (Jan. 20, 2025) (<https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>).
10. *SFFA*, 600 U. S. 181, 206 (2023).
11. See, The Gospel According to St Matthew 7:12; The Gospel According to St Luke 6:31; and, among others, see, Hinduism's pre-Biblical "Rule of Dharma," contained in the Mahabharata, the ancient epic of India: "One should never do something to others that one would regard as an injury to one's own self."