

[Transcript] The Realignment / #360 | Renu Mukherjee: The End of Affirmative Action and the Future of Higher Education

Marshall here. Welcome back to The Re-alignment.

Before we dive into today's episode, I wanted to shout out The Re-alignment's Supercast one-year anniversary. Supercast is the main way we support The Re-alignment, aside from helping us pay the bills, subscribers get access to Saga and my Friday bi-weekly discussion Q&A episodes. I'm also putting out a special anniversary best of Q&A episode this Friday, so if you haven't subscribed yet, go to realignment.supercast.com where you can listen to that additional content but also submit your own questions onto today's episode. Over the past few years, The Re-alignment has done a bunch of episodes on the future of higher education and today's episode is all about the future of college relating to affirmative action. This June, the Supreme Court is expected to overturn the affirmative action status quo due to a case out of Harvard University focused on whether or not the current policy discriminates against Asian-American applicants. Today's guest, Rainu Mukherjee, is a conservative opponent of affirmative action who works at the Manhattan Institute. Our conversation is focused on what comes next and what she sees as the race-neutral alternatives to that status quo. And a quick note, I will of course have a supporter of the current policy on to discuss the post-affirmed action status quo at some point in the near future. If you check you to LinkedIn Network for supporting the podcast, hope you all enjoy the conversation.

Rainu Mukherjee, welcome to The Re-alignment. Thanks for having me.

Yeah, it's really great to speak with you. I haven't done an episode on affirmative action so you'll obviously be presenting a very specific viewpoint on this issue. I'll definitely find a good critic who supports the status quo to do a follow-up episode. So everyone who screams at not both siding things in one single episode, we will handle that later. I want to really get to Rainu's POV and then get the other side at a different time. So I want to just start by taking a step back before we even talk about affirmative action because it seems to me the affirmative action debate really fits into a broader conversation we're having about higher education in general, whether the status quo works or not, whether even the model we've embraced in this post-1960 meritocracy sense even makes sense for most people. So let's just start there. Very imprecise question. What are your broad thoughts on the state of higher education right now? The state of higher education right now to me is goes against what the original purpose for higher education at least construed in the United States was for in the sense of it was to inculcate knowledge to disperse knowledge widely. A lot of it was based on intellectual discovery and curiosity, whereas higher ed today seems to be more about inculcating a particular point of view in the form of a left-wing orthodoxy and that's largely been put out there by the DEI industry within a higher ed. So today higher ed wants to essentially put forth a left-wing point of view through its students and within professional aspects of higher ed as well, medical schools, law schools, when that was not ever really the case for higher ed. It was simply to foster curiosity and diversity, the pursuit of knowledge among students, whereas nowadays if you're a student and you want to say write a dissertation on racial preferences or you want to even figure out, for example, is affirmative action actually working? Is it helping its intended beneficiaries? That's looked down upon by many higher ed institutions. You know, I'm curious. So you went to Holy Cross for undergrad, you're getting your PhD at Boston College. I went to the University of Oregon and when I hear your articulation of the fact that

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higher ed has become way politicized, I'll definitely agree with you in the social sciences sense. But my University of Oregon side will just remind me that actually the most majority of people are getting business degrees in this country. I think your average just normie student is not experiencing politicization in the classroom beyond just whatever's happening and PS 101 or PS 200 at which point you just kind of separate. So I guess what I would love to hear from you is to what degree is the culture war aspect of higher education? It's an important story, but to what degree is that story about like a very specific minority of people like you and me who like focus on this stuff versus like the average everyday experience?

Sure. So I actually think two parts to your question. I think it's gotten much worse than from when I graduated from undergrad at Holy Cross. So I graduated in 2019 and my four years at Holy Cross, there was sort of a little bit you saw bubbling slightly below the surface of the wokeness and whatnot. Again, it's a Catholic institution. So it wasn't as pronounced as it would be perhaps at the University of Oregon or a state school in the social sciences. But I was a political science major in undergrad and I noticed in several of the classes that I was taking at that point that the professors specifically in the field, the subfields of international relations and comparative politics did put forth a pretty left-wing point of view. And if you wrote a paper that did not adhere to that point of view, you were sort of criticized. What's funny is I actually wrote my honors thesis on free speech and as a 22 year old, I said near absolute free speech, still feel that way. I'm quite libertarian on it. And many, not just political science professors, but biology professors, chemistry professors that came to my presentation were incredibly hostile to the fact that I was arguing that point of view. The response was, well, what about creating a safe space, allowing students to feel comfortable? Isn't that a point of higher education nowadays? And at that point, my response was, no, I believe that it was for the pursuit of knowledge and intellectual discovery. I think it's much worse nowadays. And even, for example, the health sciences, there are hearing stories pop up all around the country that different scholarships, for example, different shadowing opportunities at medical schools, law schools are only looking for students from underrepresented minority communities. So I agree with you that this might be much worse within the social sciences, within the humanities. But I think we're now moving to a point where, past our time, it's definitely percolating also within all aspects of higher education, even the STEM fields. Yeah. And you bringing up safe space discourse really takes me back to some Ben Shapiro videos from 2017. We're going to do a

bit of last in the past year. I don't know. When I'm thinking about this, I want to make this, not that you're not productive. I really enjoy your writing, but it feels as if we're almost at a stalemate, at a cultural level, where you will say safe spaces, that will get the right-wing part of the audience all jazzed up. And they'll say, yeah, that's exactly it. That's ridiculous if that's not the purpose of college, if they even believe in college at all. And then a more left-oriented part of the audience, they would say, well, no, I think that safe spaces are important. I think college actually should be a place where people could become comfortable with themselves.

To what degree is someone like you, who I assume identifies as a conservative, just reckoning with the awkward fact that part of the polarization of our moment is that institutions of higher education are going to lean more to the left than they would during the 1980s, when, for example, a majority of college graduates voted for Ronald Reagan. So I guess what I'm really

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asking you is, what's the difference between a good faith critique of the higher ed status quo from a conservative like yourself and just cope for the fact that most people in those spaces are probably not going to be agreeing with the Manhattan Institute's point-by-point policy preferences? Yeah. So I think the difference is whether it depends on where you're coming from

from in the aspect of your critique and your debate. So some of my favorite professors in undergrad and also at Boston College are much more left of center and to the left than I am. And the reason I enjoy taking courses from them, having them provide feedback on my papers, I still have them. If I write an op-ed, I send them a draft. The reason I find it so helpful is that while they might disagree with me on a more meta level, at the end of the day, they're still interested in the conversation. They're still interested in having a debate. And that's why we see these stories pop up all around the country. Speakers are getting shot down. I agree. Obviously, it's a huge problem. And videos depicting that are really disheartening and sometimes even horrifying. But I think at least up until a year ago, I was at Boston College, I was a teaching assistant. And so I taught courses with faculty on immigration, introduction to American politics, fundamentals of political theory. And that actually gave me a great deal of hope. Of course, most college undergraduates are very much of the left. But even the students that I had that were quite left-wing, I of course never told them what my point of view was in teaching. But even when they wrote their term papers for me, when I spoke to other faculty members of the left, the arguments were brilliant. They were intellectual. And they did the work in the sense of finding evidence, developing a coherent thought and genuinely advocating for it, but also, and what's important, recognizing the other point of view. So I think the difference between just conservatives on the one hand saying, there's no hope. We should just completely ignore

all of higher education as it is today, these more legacy institutions like Harvard and Boston College. I don't know if I necessarily agree with that. I think that you're going to have your hostile professors and your hostile undergraduates and graduate students in these institutions. There are many, many people of the left also there that genuinely are interested in engaging in debate. And I saw that firsthand when I was teaching at Boston College as recently as a year ago. I guess what I'm curious about is when you're bringing up, you brought to mind diversity earlier in the conversation. And this gets a semi-awkward dynamic when conservatives talk about conservative representation on campus. Because if you actually read between the lines, it actually gets quite close to what many proponents of like racial affirmative action probably argue. They'd say, well, actually a campus should have a variety of perspectives and people and people have different experiences. And if you then go a little deeper, well, if you look at people's experiences, like those would lead people to different, different ideological perspectives. So how do you think as a conservative about like the intellectual diversity or just broader diversity on campus argument? I think that when you see the statistics, for example, Harvard Crimson until this past year, for the last several years, did an incoming freshman profile. And one aspect that they pulled incoming freshmen on. And also they had a high response rate. It's like 80, 85% are responding to this. So it's quite representative. They were saying that about 75% identified as politically liberal, only about eight or nine percent identified as conservative and only about 1% of incoming freshmen identified as very conservative.

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So when you see that, that's quite disheartening when I saw those statistics, I thought. One, this is heart and disheartening to this undermines the purpose of affirmative action, which was to create diversity at large from a variety of perspectives. But the other aspect of this is that I genuinely believe there are more conservative and also just moderate students or students that are apolitical, but they're scared of speaking out for fear of being shot down by certain faculty members or their peers. Even when I was an undergraduate at Holy Cross, what's so funny is so many people I went to college with, it's a very small school, even some of my friends say, we didn't know you were a conservative or you thought these things. And I said, oh, I was scared that this minority of students would yell at me at the time, you're 19, you don't want to deal with that. At least I didn't. So I think it is disheartening that there's based on the data from Harvard, very little intellectual diversity. So I think there might be more, it's just that students are scared to disclose what they think and what they identify as on an intellectual level for fear of kind of being, you know, shot down or ostracized on campus. I think what I'm curious about then is, do you think it would make sense for Harvard to preference or to prioritize admitting more conservatives in its admissions preferences? Given that disparity, you just articulated. That's interesting. I haven't thought about that before. I think that I'm not sure how they would go about doing that. I guess you could ask to indicate your political preferences when you're applying to a school like Harvard. They don't do that now. And then perhaps they could have some sort of affirmative action for conservatives or even moderate students. I think that's one way to do that, I guess, an admissions tip in that sort of form. I'm not sure how that would play out, but I do think that there should be a greater effort to have. And I think that even many people, you know, left of center would agree that those who are open to free speech and debate and intellectual curiosity that there definitely needs to be less of an echo chamber on campuses. And whether that's through, you know, again, I don't think an admissions tip for conservatives is something that could manifest. But, you know, even being open to allowing more right of center conservative speakers on college campuses, I think is a huge benefit. At least definitely cross when we would have more right of center speakers come and talk. Several of my friends at the time who were of the left said, you know, I didn't think about this idea in that way. And this argument was quite interesting. And then when we had, you know, left wing speakers come and talk that I did not personally agree with, I always attended those talks because it was interesting to see their arguments flush out, to see how these speakers would respond in Q&A settings. So I think a more realistic way would be if administrations were more open, you know, to having more diverse speakers and viewpoints on campus in that sense. Yeah, because obviously to a certain degree, Gen Z and likely Gen Alpha are going to lean left no matter what. So there's going to be a structural, not even biased, there's going to be like a structural just sort of balance towards center left and left thought on college campuses. I guess the reason I was just asking is, I want conservatives to think a little deeper around like the last caricatureable, caricatureable, if that's even a word, like aspects of like the higher education debate when it comes to campus environments. Because obviously, it's easy to say like, oh, like we should just have like an image meritorious system where we're looking at like tests and we're looking at GPA, I know the testing is somewhat complicated now too. But obviously, we're just purely saying like who's the best person like get them into the seat. But at the

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same time, like there's a world where if we went purely based off of like GPAs and SAT scores, like you would lean towards certain major preferences, you would lean towards certain aspects of like the college campus, like I think you would probably have fewer people writing for the Harvard lampoon than you'd have people writing for like the science journal. So I guess to what degree do you think about the tradeoffs between pure meritocracy? Oh, and then we add one other thing to like, you know, legacy admissions are also complicated. I think people dunk on legacy admissions, I think it's not entirely insane to say, hey, like we are an institution, we've existed for hundreds of years, we are going to like to a certain degree have a certain percentage of our student body be part of that tradition. I think that could go to a point of caricature, but I still think there's like a weird in between space that a lot of people feel and this is why the topics are comfortable. So yeah, what I'm really asking you is, how do you articulate the difference between pure meritocracy and the fact that you are going to have competing interests that you have to manage at a higher education level? Sure. So I, of course, pro meritocracy, and I think it's important, I think that principle is what makes the United States great and exceptional. At the same time, I'm not against the notion of diversity. And actually, when I talk about the issue of affirmative action, racial preferences, DEI, I point to Justice Lewis Powell's opinion in Regents of the University of California versus Bakke, which it's not technically the first higher ed challenge to affirmative action, but it's viewed as sort of what started this whole in this whole racial preferences industry. And in that opinion, he said that he favored diversity to be a compelling interest writ large. And when he spoke about diversity, he spoke about football players, pianists. It was not just diversity based on race and ethnicity, diversity solely skin deep. But the view that having students from different countries, from different portions of the United States, from different income levels, from different sports, maybe that's why I think athletics is wonderful because if you're spending several hours training for football across field hockey, maybe your grades aren't that great, but you've demonstrated merit and how you can contribute to the university culture in a different way. And so while I think meritocracy is important, your test scores and grades, especially if the end goal of your four years is you want to be successful, you want to return on your investment, there's great work done on the notion of academic mismatch by Professor Richard Stander showing that you should go to a school. If you want success in the terms of you get admitted to a professional school, you make a certain salary that matches up with your GPA and test score ability, that's important. So in that sense, I think of course, meritocracy is important. But at the same time, I am also very much pro-diversity. It's just that. And I think a lot of conservatives in fact are, I think those that say, we should only look at test scores and GPA and that's all that ever matters. I think that oftentimes they're the loudest and have a lot to say. But essentially a lot of the op-eds that I've written, it talks about intellectual diversity and the importance of socioeconomic diversity. Maybe there should be admissions tips, I've argued before, for students that come from lower income families because I do think diversity is important. And again, like you said, there are so many competing interests. There's different majors, obviously. You're probably going to have a higher GPA as a political science major than you are as a chemistry major. That's just the nature, I guess, of the subjects. And I'm open to saying that. But I do think that, yeah, like my chemistry friends always made fun of me when I complained about a political science final exam being difficult. But I think, of course, meritocracy is important. But diversity writ large, diversity properly

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understood how the Supreme Court originally intended it is important. And I think more conservatives should be saying that. So that's interesting. So when you say, as the court originally intended it, what is then your, to make this super technical, what's your beef with the current racially directed articulation of diversity? Because to be frank, if we're saying the original court's preferences towards they're talking about quarterbacks and pianists, and you're talking about people from like different class backgrounds, like I'm from Oregon, you know, it's super white state. So I could just say like when I moved to these coasts and I met people from just a far more white diverse like racial background, I could say, yeah, but that felt just as like diverse at an experiential level than a pianist or a quarterback was, you know, there are plenty of like white quarterbacks or plenty of white pianists adding in like different racial backgrounds would also seem useful. That's not to say that, you know, that has to be like the top, top, top, top, top, top thing. But it seems just as legitimate if we're going to talk about pianists and working class people to talk about race. So why would you separate those from one another? Because it seems that's what you're suggesting. So I will clarify what I said to that. I think race and ethnicity are like socioeconomic status, you know, just extracurricular background, important aspects of diversity. But race and ethnicity is not synonymous with diversity. It's like a part of diversity. It's a type of diversity. And Justice Powell, when he wrote his sort of infamous opinion in Bakke that he said, diversity is a compelling interest. And so institutions of higher ed can consider race in college admissions. He actually had a there's a paragraph in that opinion where he says, this is not to be confused solely in terms of race and ethnicity. He sort of anticipated what was going to happen. And higher education simply ignored that portion of his opinion. And of course, it was a plurality, meaning it was judicial dicta. So it didn't hold any weight. It didn't get a majority of votes. It got a majority of votes when Sandra Day O'Connor wrote basically endorsed it in her majority opinion in Ruder versus Vollinger in 2003. But even she said, in that opinion, race and ethnicity is one component of diversity. But diversity is a multifaceted concept, you know, whether a student is from Idaho or Massachusetts, whether a student, you know, is a pianist or, you know, a spelling bee champion is just as important as, you know, the color and perhaps even more important than what the color of their skin is. So I think I'm not saying that diverse race and ethnicity is not diverse or not a part or, you know, is not diversity. I think it's one part of diversity. And unfortunately, how higher education understands diversity is not multifaceted, but they view skin color as synonymous with the concept. And it's not. So this is where I'm going to force you to show the work behind your homework answers. I had the president of Johns Hopkins University on a few years back, and he actually basically articulated what you just articulated. He would, he said, the proudest thing that I've done, and by the way, this might not be an exact quote, this was a couple years ago, but he was talking about how like we are looking for that working class white kid from Mississippi. We are looking for a person who fits the broader articulation of diversity that you just articulated. And I would bet that if we took most, let's put aside, you know, Stanford, DEI officials who are getting reprimanded in papers across the country. I think if we took most like normal center left top 100 schools in the country, academic officials or admissions officials and asked them, radio just articulated what diversity means, they would probably

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on the face of it not disagree with you. They'd say, of course, we don't think that race is everything. So here's the show your homework part. You are alleging that the articulation of what they're trying to do is different than what we're actually seeing in practice. Why is that so? Sure. So what has come out not just with respect to the students for fair admissions versus Harvard and UNC trials evidence, you contextualize those trials real quick too. Sorry to interrupt. Of course. So just in students for fair admissions versus president and fellows of Harvard College and then the companion case to that students for fair admissions versus University of North Carolina are two cases that are challenging racial preferences or affirmative action in higher education admissions and they're before the court right now. So the court heard oral arguments on October 31. And the plan tips that are suing Harvard and UNC students for fair admissions, they're comprised primarily of Asian American students. And so the court is expected to release a decision in that case either upholding affirmative action or striking it down in terms of whether the policy in effect penalizes Asian American applicants. People are saying sometime in June. So at the trials happened, the trial in the Harvard case happened in 2018 in the district court in Massachusetts. And what came out during that trial and also during the trials of Greta versus Bollinger, another affirmative action case back from 2003 was that the officials that were running the admissions offices in those cases. And I think in the case of Greta versus Bollinger, the president of University of Michigan in that case basically said that we invoke diversity as a cover up for racial preferences. We're interested and many of these officials have been on the record saying we're interested in affirmative action and racial preferences for its original intent way back when, which was to remedy the effects of discrimination against underrepresented minorities in the United States, specifically black Americans. And the court said in Bakke and Frider in affirmative action cases after those do that that's not a compelling interest to discriminate on the basis of race, but diversity is. So officials will say that they'll want to I want to be very, I want to be very precise about this. So the listeners get this because I read I read your piece on the topic to understand the distinction. So originally, when you're looking at those 1970s post civil rights movement era cases, the argument for affirmative action was this is a form of like non monetary reparations, African Americans were discriminated against. So universities are going to offer racial preferences. Some schools have point systems, they have different ways of doing it, but you would get a preference for your racial background status that is overturned at the courts. And then what then happens is the admissions officials in universities then use the diversity argument because those court cases overturning the reparations argument said there's this diversity argument that could justify various aspects of racial preferences. Is that is that a good way of summing up the two distinctions of like what's different there? Yes, that's perfect. Something interesting though and worth mentioning is that in the court cases saying, you know, you can't use societal discrimination generally as a means for as a justification for affirmative action. The court has said and continued to say not just affirmative action within the context of higher education, but also within the context of employment under Title VII of the Civil Rights Act, for example, that if the employer or the institution of higher education can show a specific instance of discrimination against a specific individual within that institution, then affirmative action is okay in that sense. But you can't just have like this big society at one point discriminated against this particular group. So all members of this group going forward receive a sort of benefit, even, you know, more

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left of center justices that at the time that that's sort of counter to the view of the United States, you know, that you as an individual kind of can manifest your own destiny and path here. And so the court said, well, you can't have social, societal discrimination with large as a justification. Diversity is a compelling interest. Something else that I'll bring up is that not just have officials in these institutions said that, you know, diversity is in fact a mask. And of course, they're not saying this on the stand, you know, this is in correspondence that has been revealed at trial and whatnot. The diversity is kind of a cover up for reparations or rewriting past wrongs is a phrase that they'll in fact use. But the reason that Powell and Sandra Day O'Connor and Grutter said that diversity is a compelling interest is because the view was if you have racial and ethnic diversity, that's of course going to lead to a greater diversity of viewpoint on college campuses. And the point of college is to, you know, intermingle with individuals who you might not have met in your small town or where you grew up and just, you know, learn a great deal. And so the fact that there, these statistics have come out from higher ed that there's such little intellectual diversity is also evidence that the interest might not actually be racial and ethnic diversity leading to intellectual diversity, which is what the court has said makes affirmative action okay and legal, but just kind of an aesthetic interest in having a particular racial and ethnic composition of your incoming classes. I worry if that is a little too reductionist in terms of you're looking at 18 year olds, reducing everything to my and this isn't quite what you're doing, but I guess I'm just worried that measuring intellectual diversity by like what do you think on this conservative question or this liberal question kind of misses the point in that there's actually a huge set of intellectual interests and realities that just have nothing to do with politics. So what do you think about that? Yeah, that's a great point. When Harvard has done the Harvard Crimson, their student newspaper has done surveys of their incoming freshmen. It's really interesting because they don't just ask about politics or basic demographic questions, but they also ask, what do you think about the legalization of hard drugs? Do you think that students should get eight hours of sleep? What do you think about like what are you watching on Netflix? So they ask a lot of really interesting questions that I'm sure many people would say, oh, technically, if you're pro legalization of hard drugs, you're very libertarian or you're very much on the progressive left. But I don't think like to what you're getting at, a lot of these questions can be easily split into left and right. It's just kind of more what do students think at the time. And again, to your point, when you're 18, you don't really have a lot of your, maybe you have some of your thoughts and beliefs well formed, but I mean, I certainly think a lot differently now than I did when I was 18 years old. So I agree that it's really hard to say, you know, which like I have argued and I continue to argue that affirmative action has failed its purpose, not just in terms of has it helped its beneficiaries, but in terms of it has not led to greater intellectual diversity. I agree it can't act intellectual diversity can't be well captured in terms of political preferences. But I guess based on the data that we have, I'm looking at it and I guess a reductionist type of view that's sort of the best you can do, but I agree with you that there's a lot that can't even be split into left and right Republican Democrat. That's not not captured by this and that there might be intellectual diversity in other ways. I guess I'm interested in your claim that affirmative action has failed its purpose because it seems like the pretty straightforward center left adjacent pushback would just be like

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the purpose of affirmative action is to make Harvard and other schools such and I'm sorry to the audience that was talking about Harvard so much, but this is where the case is happening, so we're going to center it there. It's not just Cope from 2018 from from 2010 Marshall not getting into Harvard and talking about it too much. Basically, I guess what I'd ask though is if I'm just sort of defending the status quo, I would say no, renew affirmative action works because affirmative action means that these disproportionately powerful institutions in our life, let's just say like top 50 higher ed institutions that funnel people into various aspects of our late in our society, they are definitely much more reflective of the broader racial population than they would be if you remove this diversity interest. So yes, you could talk about polling around intellectual diversity and we could talk about those different things, but at a core level, what matters here is that Harvard is like blacker, it's more Hispanic, it's more representing different parts of the country in that way than it would if we just purely throughout this standard. I think that's what a strong, very straightforward, numerically based defense would offer. We'll be your response to that.

Sure. So what's really interesting is I agree with that defense and I think it says the quiet part out loud, which is that if you think the purpose of affirmative action is to have greater numbers of certain underrepresented minority groups and then use elite institutions that employ affirmative action to a higher degree than like public state state colleges that aren't viewed as as much being elite as to funnel the students that are now in these elite institutions through affirmative action into positions of power, whether in corporate America, medicine law, the academy, etc. Then if that's the purpose of affirmative action, which I think many on the left now openly say it is, then yes, affirmative action has succeeded. I guess my argument is that how affirmative action has been defended in the court system, what convinced the justices of the Supreme Court in 1978, in 2003, in 2013, and in 2016 to say we're going to allow discrimination on the basis of race because that is in fact what it is. It's preferences to some groups and not others. To continue is the notion of diversity with large viewpoint diversity. In that sense, the legal justification for affirmative action has failed, but the popular justification for affirmative action that when you articulated the sort of straightforward position of many on the left, which is we want more underrepresented minorities in seats in our classrooms on our campus. Then we want to use that as a channel to bring them into the upper echelon of American society. We have more bases of underrepresented groups in those segments of society than yes, affirmative action has succeeded. It's just that is not a legally permissible justification for affirmative action. I think that's what the court is largely considering now. What's interesting is in the oral arguments back in October, the representatives, the attorneys representing Harvard and University of North Carolina were saying, we need affirmative action because diversity of thought is important and we need more diversity of thought. Whether there was an example, a back and forth between the justices and these attorneys from Harvard and UNC of if you're a fencing student, if you're a pianist, that matters as much as race.

Well, the evidence has shown that that's not in fact true. Even the representatives of Harvard and UNC in the Supreme Court have argued, no, that the justification you have to provide to have the

court uphold this policy is diversity generally, is diversity of thought, which is the purpose of the university and their mind. If they went up there and they argue, we just need more

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bases of underrepresented minorities in our seats so we can increase the numbers in the other upper echelon aspects of American society, the court would say that's not legally permissible.

Fascinating. So I guess the question then is, what actually is at stake with the decision?

Because a lot of the reporting has been pretty clear that the status quo is expected to be overturned in June. So what are the implications of that? So does that mean that come June, you can't use this broad diversity articulation or explain like that to us?

Sure. I think that the court will have to provide a period of time for, I'm sure my sense is that the justices, a majority of the justices will strike down affirmative action in higher education admissions. I'm sure that there will be like a certain amount of time, I'm not sure how many months or so, where universities and colleges will be given time to kind of change how they do admissions or whatever. Or maybe not. Maybe the court will just say, you know what, June 15, the decision dropped, June 16, you can't do this anymore. I think that this will be for those like myself who are against the use of racial preferences, not just in higher ed, but just in general, in the United States. I think a decision striking this policy down after almost 60 years will be exciting and an important step forward if you're a proponent of equality of opportunity of color blindness within the United States Constitution. At the same time, I don't actually think that it will solve all of the problems. Just in my own research, I've uncovered instances that I've found of ways in which, for example, if the opinion is more loosely worded, universities could potentially go around a strike down of affirmative action. And interestingly, this was one of the most central aspects of the oral arguments back in October. The justices were trying to differentiate between what they call check the box. Race and race as part of your broader life experience, your narrative, and even the conservative justices were saying, do you think it's problematic that if we strike down racial preferences, a student might not be able to in an essay describe whether he or she is the legacy of slaves or something like that. And the response from students for fair admissions as attorneys was, we think like the students can still talk about their background. It's just that the decision of either admitting or rejecting them can't turn on race. So I think what's at stake is, I think that it's an important step forward. What's at stake in the sense of, are we going to try to go back to the principle of color blindness and equality of opportunity as opposed to, you know, you mentioned

a few moments ago the word proportionality. That's another way these schools view racial and ethnic diversity as our numbers proportionate to the general United States population or for the state school, like the racial and ethnic population of the state. And so I think this will be an important step forward for equality of opportunity as opposed to outcomes. That being said, I think that it all depends on how the court writes this, because if it's kind of vaguely worded, there could be instances where admissions offices could say, you know, could ask certain questions and admissions essays. So I think this is an important first step, but I actually don't think that we're going to see the end of this fight over racial preferences just with this one decision.

And I was reading your New York Times op-ed that we'll link in the show notes. You talked about race, neutral preferences. So what kind of alternatives, the difference, say, it's in institutions that put forward, like, what are some of those? So because once again, it's not as if this is going to happen and we're just going to move forward. There's going to be alternatives proposed. Like, what are what are some race, neutral alternatives that you would

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support? Sure. So this is like to your one of your first questions when you were asking about the difference between meritocracy and diversity, because I think diversity is still important and I'm not the only conservative, of course, that thinks this, but there are numerous race, neutral alternatives that Harvard, University of North Carolina, all these institutions could utilize that would not just lead to, you know, racial and ethnic diversity, but socioeconomic diversity, diversity from various states, so geographic diversity, et cetera. And in fact, what's worth pointing out is that this is a bit technical legally, but based on the rationale that the courts use to evaluate cases that involve classifications based on race, ethnicity, or national origin, it's called strict scrutiny review. In order to employ the racial classification, before you do that, you as an institution have to show that race, neutral alternatives have failed. And what the district court found in the Harvard case was that Harvard didn't actually do that. So the district court still, and I mentioned this in that op-ed, but it's interesting, the district court still ruled in favor of Harvard, but conceded in that opinion, if you type it up, if you look it up, you can see it. The district court said, you know, Harvard said it was going to consider race, neutral alternatives, but it didn't actually do that until 2017, three years after the lawsuit was filed. So some race, neutral alternatives that students for fair admissions proposed, one was, you know, the argument is, oh, well, conservatives say no racial preferences, but they're pro-legacy admissions. Under the scheme that students for fair admissions put forward, they said, you know, we get rid of affirmative action. We also get rid of legacy admissions. We get rid of, you know, admissions tips that are provided to donors, to the children of faculty and staff. And instead, we provide an admissions tip to students that come from low-income families. And what that scheme showed when their expert, Peter Orsidiyakono, he's an economist at Duke, when he did the econometrics behind that, what it showed was that African-American and Hispanic combined student, the admittance rate combined would increase. Asian-Americans, the admittance rate would increase. And then the admittance rate for white Americans would decrease and socioeconomic diversity would skyrocket. So that's something that, you know, I propose in that op-ed, and I think there's great research behind, which is an admissions tip for socioeconomic diversity. And so what's funny is that people will say, you know, well, that could perhaps be used as a proxy for race. And Justice Clarence Thomas, in one of his dissenting opinions in these affirmative action cases, actually addressed that head-on. And his response to, you know, if you read his dissent, he's very funny. It was quite straightforward. He just said, the Constitution prohibits preferences based on race. It doesn't prohibit preferences based on socioeconomic status. So like, there's a very, that's like a very cut and dry legal defense of that. But I also think, you know, this will increase racial and ethnic diversity for those who are concerned about that, while also increasing other aspects of diversity. And I think, again, the New York Times did an analysis where they showed that 60 percent of Harvard students come from the top 20 percent, and only four and a half percent come from the bottom 20 percent. And the median family income of a student at Harvard is about \$168,000. So in high red in general, and especially in these elite institutions, socioeconomic diversity is lacking. And the last thing I'll say on this as, you know, perhaps that as a race-neutral alternative is way back when Barack Obama even said that, you know, he thought the poor white kid from Appalachia deserved some sort of an admissions preference over a, quote, racially or ethnically underrepresented minority that might come from a

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very affluent background and would have certain means that the poor white student would not have. So that's why I think this is a, this would be a helpful alternative.

I guess the last question for this section would basically come down to what, I guess, I guess sort of here's what everyone I know.

What I want to know is how much was our entire 40 minutes of conversation just skewed by that over-focus on Harvard? Because A, to my point about how business majors are the most popular majors, to the point that actually most students like are commuting to schools, they're actually not even attending competitive universities in the sense that like admissions are usually higher than like 70 percent of total applicants. Where does this entire discussion leave the rest of the country? And by definition, just like 99.9 percent of actual students. So I guess what I'm really curious about is like, how does this affect a commuter school in East Texas? Or how does this affect a commuter school? Or how does this affect a like state, a, you know, second-tier state university which doesn't have the dynamic apply?

Yeah, that's a great question. That of course that I think the conversation when we just talk about Harvard, which we're doing because that's the school at issue here, is very skewed. I think conservatives would perhaps say that affirmative action and racial preferences affect even, you know, lower-tier schools and how they're ranked or just state schools or community colleges or commuter schools and that many see affirmative action as kind of the feeder to the broader DEI bureaucracy and the notion of diversity, equity and inclusion in a larger sense.

Because putting that aside, I would say that it does not really have much to do with, you know, some of these state schools, commuter schools like you said, community colleges and just lower-tier schools. This is really a problem at the most elite level. It's not, you know, and that's why when you look at, for example, different college counseling firms, you know, this is a thing now, I didn't know about this when I was applying, but now especially for Asian Americans, I've found that many get assistance of a private college admissions advisor. They're encouraging some of these families, you know, you can still go to a quote-unquote elite school, but it doesn't have to be an Ivy League and your kid, even though he or she is classified as Asian, is probably going to get in based on extracurriculars test scores because affirmative action is not as much a problem in that sense. And certainly, if you're going to, you know, a state school, of course, it's like you have unique cases, you have UC Berkeley, you have UCLA, you have UMichigan, like these are considered more of like the elite schools. You're going to go to the University of Texas at Austin, I'm coming from Austin, so I have to show you that obviously. Yeah, yeah, I mean, they were on the hot seat not that long ago with respect to affirmative action. But yeah, like UT Austin considered an elite school. At that point, it matters, but you know, the examples you've provided of just like a computer school, you know, the average student just, you know, not even living on campus, it doesn't have an effect there. And the response is often, we should be encouraging more students to go to those schools because there's less academic mismatch, you know, there's less in terms of finishing your degree in terms of, you know, more minority students get STEM degrees from institutions of that sort. It's often easier to get financial aid and scholarships. So yeah, to your point, this is limited to a very minuscule specific segment of schools in the population, like the ideally the top top schools for the average person. It's probably insignificant in terms of if you or your child is going to one of these institutions, I think it's significant though for everybody in the broader sense of historically the United

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States being founded on the principle of equality of opportunity and, you know, the principle of colorblindness that's enshrined in the Constitution. So in that sense, I think this matters for all of us. But in the sense of, you know, do you have a personal stake in this? I think it's a very small portion of the population. So in these last few minutes, I just want to just zoom out and kind of ask about you in the sense that you've also done some writing about Asian American voters and insert statement that Asian American voters is probably one of the more incomprehensible from a zooming out perspective ones that we could actually think about in the sense that you're cutting everything from like among voters to like technically I'm pretty sure we're separating like Middle Eastern North Africans like out from that but like still technically it's there. But yeah, like where where it is, you know, the show is called the realignment. We're talking about affirmative action and Asian Asian students. There's been a lot of talk about like how Asian voters, especially in New York are being driven by crime issues. Like where does and then obviously like Nikki Haley, Vivek Ramaswamy, you know, had just had Vivek on the show, where do Asians find themselves in the realignment? I think that I can think for everybody. I so unfairly open by saying this is an incomprehensible question, but I'm gonna ask you the question anyway. It's it's honestly, it's a fair question, though. I think in the past few years or so, we're seeing more and more scholars, politicians, just in people who speak on politics, disaggregating the Asian American group into various Asian ethnicities. So in the case of New York City, like you brought up where I am right now, we see Chinese Americans really leading the effort against, you know, the progressive Democrats's attacks on merit based schools, you know, progressive prosecution attacks on small landlords. And so Chinese Americans specifically have been leading the right word shift within New York City. And this was also the case, you know, in San Francisco with respect to a school board recall that happened back in 2021, which shocked the city. And also with respect to the recall of the D.A. Chase about and he was who was quite progressive. So Chinese Americans are kind of, I think at the forefront of the right word shift of Asian American voters, Indian Americans, South Asians, for example, you mentioned Nikki Haley and Vivek, of course, they're running for the GOP nomination on the right. But, you know, generally within the South Asian population, it's still pretty left of center. So that's why I think it's important for conservatives to recognize that it's not like, Oh, all Asian Americans are Republicans now, that's not the case. Though you see, again, different Indian American voters in Virginia, for example, many first generation Indian Americans, parents have led fights against the attacks on merit based admissions at Thomas Jefferson High School in Fairfax County, Virginia. So that's really exciting. And Vietnamese Americans in 2020, actually a majority voted for Donald Trump over Joe Biden, which is interesting. But to be fair, to be fair to, you know, Joe Biden, having the Vietnamese Americans are always in for a variety of like pretty apparent reasons post 1975, pretty consistently, the more conservative that would not be a realignment. That would be the continuance of a trend. Here's the question that comes to mind. I wonder, hearing your articulation of the Chinese American and Indian American context in New York, Northern Virginia and San Francisco, I feel like this is a real test of the question of to what degree is politics, local versus national, because I entirely understand a Chinese American voter, maybe like in flushing, you know, in Queens, like voting against a New York City progressive Democrat, because they don't like the changes to the admission system and, you know, these merit based top tier, like public schools and high school. But that doesn't lead me to conclude that they were going to vote for Donald Trump.

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Same thing goes for I know a variety of, you know, I work adjacent to the tech industry. So I know all these like Asian American voters who are up in arms about San Francisco and everything from like the schools to crime issues, they're not going to be voting for Donald Trump or Ron DeSantis in 2024. So I guess to what degree do you think this is a local versus national dynamic?

That's a great point. And I think it definitely differentiates, like you say, at the local versus the national level. So one thing that I have recently been reading about that I think is quite interesting on why that might be the case specifically with like Chinese American voters, for example, Indian American voters is because more research, this is more academic political science research, it's coming out showing that more so the common notion in American politics as a field is that everybody nowadays, we're so polarized is going to vote based on partisanship. But what some studies have shown is that Asian, the question is like, but is this true on the racial and ethnic group level? And what some research has shown is that Asian American voters more so than white Americans, black Americans, Spanish Latino Americans, vote based on issue and policy preference as opposed to partisanship. So that's why you could see perhaps at the local level, Chinese Americans, you know, we are pro Stuyvesant, we're pro Bronx science, we're anti crime or a small landlord. So we're going to vote for Lee Zeldin or we're going to vote for our local, you know, disruptor council person who aligns with those issues, but we're not going to vote for Donald Trump. If I think largely has to do with like issue based voting as opposed to partisanship and another piece of evidence for that is that many Asian American voters, like, of course, they, they historically have leaned left, but there is a large portion also as recently as like according to data from 2021, that there's a large about 40% independent block there. So if you combine research showing that Asian Americans vote largely in accordance with their issue and policy preferences, and that there are many like, of course, certain like there's a lot of those that lean left and are on the left, but you do still have at the end of the day a substantial amount of independence. That's why you could see them voting one way at the local level and then another way at the national level. And I think to get more Asian Americans on the right in more national elections is just going to be a matter of outreach of, you know, the GOP making a concerted effort that, you know, there are aspects of our national party platform that could be really interesting to an Asian American voter that votes, you know, red or for a moderate dem at the local level. And you see people like Vivek, for example, really pushing this, but it hasn't been a strategy that many in the GOP have employed yet. And I think that's something like we should be trying to do more of.

Well said. Thank you for joining me on the realignment renew. Is there any work you've done that folks should check out beyond obviously going to your Manhattan Institute policy analyst page? Sure. So I'll actually I'll flag this is on my page, but it's not like an op-ed. It's kind of more of an academic style report that came out about a month and a half ago in which I analyzed affirmative action polling historically within the United States, and then also specifically with respect to Asian American views. And what I found, which was interesting is that it's kind of obvious, but that when you, especially for Asian Americans, when you act, the view is that a majority favor affirmative action. But when you tell them what affirmative action is, which is just a de facto quota system or increase in certain minorities, they largely oppose the policy. And it's kind of debunking a popular statistic that's been cited by more mainstream media that Asians and Americans favor this policy when they don't. So that's a report from February. It's a bit

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more academic, but I think it's interesting. Yeah, if you're looking to dive deeper into this issue, about as a great place to start, once again, thank you for joining me on The Realignment. Thanks for having me.

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