

CULTURE IN PLACE OF RACE IS THE KEY TO ACHIEVING DIVERSITY

Stephen M. Sachs,* June 15, 2023

Now that the U.S. Supreme Court is likely to strike down any use of race as a factor in achieving diversity in education or other for other purposes,¹ it is time to focus on culture as the best means of achieving diversity. Differences in culture involve differences in experience, and different ways of seeing. That is precisely what diversity involves. It is necessary for providing well-rounded education, achieving a just society, and for realizing *E Pluribus Unum*: unity in diversity.

Culture should not be confused with race. Where race simply involves identifying people by skin color or an extremely broad general background, culture is particular to experience and way of seeing. People who are Black - of a general and often distant African origin - encompass persons of many distinct cultures. The child of parents from Nigeria, who are upper middle-class dwellers of New York City, are of a different culture from the African American of a poor family living on the South side of Chicago, and one of a low-income farm family in rural Mississippi, though there may be some experiences that they may all share to different degrees.

This point was made before the Supreme Court in the oral argument in *Brackeen v. Haaland*,² in which a strong majority of justices upheld the Indian Child Welfare Act (ICWA), in June 2023. Justice Kavanaugh had expressed concern that the act was racist in providing that if a family to take a removed Indian Child on its reservation could not be found, then the next choice was to find a foster parent or adopting family on another Indian reservation, saying, "Congress couldn't give a preference for white families for white children, for black families for black children, for Latino families for Latino children, for Asian families for Asian children."³ Counsel defending ICWA pointed out that the provision was not racial, but cultural, as there were numerous Indian reservations of what had been a single or closely related people. It allowed, for example, if a foster parent could not be found on one Lakota reservation, one could be found on one of the other Lakota reservations. To correct Kavanaugh, if one were dealing with a child who happened to be White, one would not attempt to place them with a White family as such, but rather with one of their own culture. An example, is trying to place a Ukrainian child now in the U.S., who had no relative available. One would first look for a good Ukrainian family. If one were not available, then it would be proper to look for a family of a similar culture, perhaps Belorussian.

Culture involves many factors. Some of these involve ethnic background or religion, but within these there are subcultures, family and individual variations. Socio-economic status and geography, among many others, are also factors to be considered. Ultimately, culture varies with the person - their experience and reaction to it - which can often be taken into account in a complex process of making diversity decisions.

The first purpose in making admission's and other decisions to achieve diversity is to broaden the understanding and thinking of each person involved, leading to better decision making, individually and collectively. The ultimate purpose is to achieve people understanding and respecting each other - despite differences of views - making effective democracy and a peaceful, harmonious, society a reality. This is something that we very much need in the current era.

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1. Students For Fair Admissions, Inc. V. President And Fellows Of Harvard College, October 2022 term No. 20-1199.
 2. in *Bracken v. Haaland*, U.S. Supreme Court No. 21-376 (2022)
 3. Both an audio recording and a transcript of the oral argument are available at: https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-376_k536.pdf, with the cited discussion on p. 32.

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