

BOOK REVIEW

## Is Racial Equality Unconstitutional?

Golub, Mark. (2018) *Is Racial Equality Unconstitutional*. New York: Oxford University Press. 232 pp. Hardback, \$65.00. ISBN: 9780190683603

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Race is a primary factor in United States legal, political, and social history. It is race that has found its way into the minds of citizens, influencing and shaping their thoughts and beliefs through the cracking of a gavel in a courtroom. Mark Golub reflects on these challenges in his new book, *Is Racial Equality Unconstitutional?*, as he traces the argument of “colorblind constitutionalism” back to Justice Harlan’s famous dissent in *Plessy v. Ferguson* (1896) to current debates on affirmative action. This leads to a furthered discussion of the many Supreme Court cases that emphasize a hierarchy of racial non-existence, where a protection of whiteness pervades as the illicit mechanism of the Supreme Court’s decision making, rather than an equal racial society, under the problematic color-blind doctrine.

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Golub’s six chapters provide insight into the constitutional maneuvers made by the Court in *Plessy* that transitions to *Brown v. Board of Education* (1954). He assembles his argument to demonstrate how American politics and social relations are “marked by near-universal acceptance of antiracist norms...structured by relationships of racial domination and subordination” (Golub 2018, x). Golub is interested in upending the debates of “colorblind constitutionalism” and “color-conscious constitutionalism”, where colorblindness is essentially a forgetfulness of the draconian laws of the past and creates a racial hierarchy that color-conscious policy aims to eliminate by confronting “historical and present racial injustices” (Golub 2018, 5). The worry for Golub, and readers as well, is that color-conscious policy actually has not taken into account colorblind doctrine as race-conscious due to the prohibition against racial classifications. The important goal, then, for Golub is to demonstrate the need for racial awareness—in the face of racial hierarchy—in order to transform the system (Golub 2018, 6). Golub states, “My concern with colorblind constitutionalism is not that it prevents the adoption of necessary or valuable race-conscious remedies for existing inequality, but that it mobilizes its own form of white identity politics, which then is mistaken for an absence of race” (24). This work is intriguing because it engages with race not just at a social level, but at a political and legal one. Thus, it situates itself nicely in between race theory and legal jurisprudence. Attempting to banish the redemption narratives told by courts and advocates of colorblind and color-conscious, Golub positions his argument away from this dichotomy in order to have a discussion of “race that moves beyond colorblindness and color-consciousness” rhetoric (Golub 2018, 27). How he does such a thing is the feat of this work,

by enabling discussions of Justice Harlan's famous dissent in *Plessy*, "Our Constitution is colorblind", to further engrain the colorblind logic today, in hopes of demonstrating that these principles of America's redeemed and redeemable past only further racial supremacy "in the form of enforceable white rights" (Golub 2018, 168). Thus, racial equality is not a constitutional problem, but rather it is the premise of what a constitution should be. In order to accomplish this, we need "a decisive break from them (*American values*), and a re-founding upon principles of racial democracy" (Golub 2018, 168, *my addition*).

Golub's book situates this plea as an ongoing escape from the requiem of slavery and Jim Crow, away from debates of colorblind and color-conscious constitutionalism. This work wrestles with legal jurisprudence, racial transcendence, and national redemption throughout six chapters in both a legal and social manner. Chapter one illustrates the problems of colorblind constitutionalism and sets up the argument for the rest of the book. It focuses primarily on policies engaged in group disadvantage under colorblind legal code through the lenses of three understandings: anti-classification, antidiscrimination, and anti-subordination (Golub 2018, 7). Through this, Golub argues that liberals view equal protection as anti-discriminatory, placing race-consciousness as its prime belief, where harm occurs through injuries done by racial classification. Anti-classification is the conservative mantra that argues that race should not be acknowledged; this leads to practitioners of critical race theory (CRT) explaining why these general prohibitions "against discriminatory treatment on the basis of race - even if it were rigorously enforced - will fail to confront the kinds of subordinating racial practices typical of our society" (Golub 2018, 12). Thus, the first chapter is an indication of colorblind constitutionalism as a protection of white rights as opposed to minority rights. Race is prohibited, and whiteness is the legal precedent that is enforced legitimately causing "racial equality to be seen as a violation of white rights" (Golub 2018, 20). The concern with colorblind constitutionalism is that it advances this as an absence of race, and a normative framework of law formulated by whiteness.

Chapter two identifies the problematic legal structure of redemption narratives within colorblind constitutionalism, ultimately leading to a discussion of society becoming less conscious about race even through adopting a racial-conscious approach. This is in part due to the structure of redemption in law as appealing to a transcendence beyond race. The impossibility lies in the legal doctrine of colorblindness, as "what supplies much of colorblindness's appeal, is the belief that government classifications by race will introduce or intensify racial consciousness, thus undermining the redemptive dream of moving 'beyond' race" (Golub 2018, 58). Moreover, the narrative authored by Justice Harlan in *Plessy v. Ferguson* assures that the colorblind doctrine makes its impact by not discussing race. The counterintuitive nature of this discussion is what becomes alarming for the reader, as one begins to grapple with the process of how policy is created and whether the U.S. constitution is flawed by this resistance to protect minorities. Racial priority is only given to white citizens, according to Golub: is this not inherently racist? Golub suggests we must move on from the cases of *Plessy v. Ferguson*, *Brown v. Board of Education*, and other decisions that adhere to these colorblind tendencies. Chapter three situates itself within the *Plessy v. Ferguson* ruling in an attempt to illuminate how powerful law is at producing racial institutions while at the same time demonstrating the racial indeterminacy evident in the case. The discussion of *Plessy*, the man, is of concern as well. As illustrated, *Plessy* was more about passing as white, as opposed to gaining a legal recognition of racial discrimination, race was treated as a property, and whiteness was the only acceptable property (Golub 2018, 77). *Plessy* was able to define how the law constituted race, "but also the case informs contemporary thinking about racialized identity and legal rights" (Golub 2018, 93).

This leads to chapter four and Golub's discussion of the slow transition, legally, of southern white supremacy to resist integration. Ultimately, this chapter supplies more evidence of colorblind constitutionalism creating the very principles the court labored to avoid. *Brown v. Board* was done in a manner that promoted white hierarchy and a support of white rights in terms of segregation and a colorblind doctrine. Again, Golub demonstrates his theoretical legal knowledge by demonstrating how the Court used the law to establish "white political interests as enforceable legal rights" through conservative leanings and indirect discrimination (Golub 2018, 128). Chapter five provides insight into today's legal climate. Golub argues that throughout history race has been forgotten, and affirmative action provides a deviation from race-neutral colorblindness. Thus, affirmative action provides evidence that colorblind constitutionalism is racially conscious. But also, through the *Civil Rights Cases*, judicial liberalism holds affirmative action to be necessary in a racially inequitable society. One of the book's most poignant revelations happens when affirmative action does dismiss the "underlying narrative of 'special favorites' and 'mere citizens'" issued by former Justice Bradley (Golub 2018, 133). Consequently, while affirmative action critics are met with the fact that "special protections" are necessary, there is a failure to develop a counterpoint to the claims

of reverse-discrimination which creates a formidable, if not insurmountable, white judicial solitude (Golub 2018, 133). Thus, Golub's work provides as a witness to the centrality of whiteness in the Court's goal of racial solidarity.

Through numerous court cases, such as *Ricci v. DeStefano* and *Parents Involved in Community Schools v. Seattle School District*, chilling evidence is provided of Justice Harlan's famous dissent. Race-neutral is the new manifestation of the Court, dismissing colorblindness as a failure rather than racial dominance. Moreover, recent court decisions have moved away from equality per se to a more nuanced protection of white rights under these color-conscious policies. The question the reader is moved to confront is whether this racial equality is constitutional? This poignant chapter reveals the troubling, conservative, and suspect nature of judicial precedent in the Court, while also critiquing those who support affirmative action and racial-conscious doctrine.

Golub provides a legal and theoretically rich argument that operates like a kaleidoscope, where the foundations are aligned as a symmetrical outline of white hierarchical structures. Golub's work deserves to be read in this era, as it outlines an everlasting problem that is always in the background of Court rulings and leanings of the Supreme Court Justices. *Is Racial Equality Unconstitutional?* is a brilliant thought-provoking book that thoroughly engages with landmark Supreme Court cases, as well as post-Civil Rights cases. This very detailed case analysis provides the reader with a pondering reflection of our country and our whiteness. This book is ideal for those interested in critical race theory, civil law, constitutional law, political science, American history, and judicial history. Ultimately, this book is a must read for those interested in current domestic problems in the United States and would provide a graduate class with riveting discussions of legal perceptions and domination through white legal immunity. How fitting are the last lines of this work, which call to "end the racial nightmare, and achieve our country, and change the history of the world" (Golub 2018, quoting James Baldwin, 168).

## Competing Interests

The author has no competing interests to declare.

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