

Folks, Guys, People:

the article below, which dates back to **1987**, provides us with the roots of the *ideological confusion* that plagues the thinking of the U.S. Supreme Court Justice Clarence Thomas on matters of race, class, gender, etc., and which has been the foundation of his judicial opinions on cases that have come up before the Court, to the great detriment of the civil rights and human rights of Black people *and* other racial minorities, not to mention women and the working class generally. On almost every issue the Court has dealt with—civil rights, voting rights, sexual harassment, women’s reproductive rights, climate change, environmental pollution, workers’ rights, consumer rights, affirmative action, corporate malfeasance, the Bill of Rights and corporations, student loans, health care, capital punishment, gun laws, prisoner rights, exploitation by businesses, corruption of the electoral process by the wealthy, and so on—he has stood *against* the interests of ordinary people by voting to deny them justice.

You will notice that an important element of his confusion is his *hypocrisy*. For example, he tells the author of this article that: “There is nothing you can do to get past black skin. I don’t care how educated you are, how good you are at what you do—you’ll never have the same contacts or opportunities, you’ll never be seen as equal to whites.” But then, he marries a white woman, and this on top of the fact that he is against interracial marriages; and he hangs out with white conservative billionaires who pay for his vacations (a form of corruption). He feels that *Brown v. Board of Education* was wrongly decided because he is against integration, yet he sent his kid to an expensive private white majority school. He is against affirmative action, yet he is where he is today—a Supreme Court justice—because of affirmative action. He laments that white people will never accept black people, but he fought tooth and nail, including attempting to destroy the reputation of a decent human being (a black woman by the name of Anita Hill), to become a member of the highest white-dominated court in the land. And he then proceeds to

relentlessly do everything he can to keep Black people (and other racial minorities) down by siding against them on almost every case they have brought to the Court. In fact, given the powerful impact of U.S. Supreme Court decisions on the lives of all in the U.S., it would be quite legitimate to argue that no black person in the post-civil rights era has done more than Clarence Thomas in helping to *strengthen* institutional racism in the U.S. (also referred to as systemic racism, structural racism, “color-blind” racism, etc.). It is not surprising that he is, today, among the heroes of racist right-wing extremist conservatives. (One may also note that his wife, a white woman—see below to comprehend why it is relevant to mention the race of his wife—has been an unflinching supporter of his ideological confusion). He became a Supreme Court Justice in 1991, thanks in part to Joe Biden, who was the chair of the Senate Judiciary Committee at the time of Thomas’s confirmation hearings. Regarding the latter point, Biden did redeem himself partially, when decades later he became the U.S. president and appointed a highly qualified Black woman to the Supreme Court, Ketanji Brown Jackson.

Thomas is the longest serving justice on the Court. What is surprising is that over a period of more than 30 years, he has written countless judicial opinions pertaining to cases that have come up before the Court, albeit often jurisprudentially poorly argued. For such a level of output belies the fact that, compared to Justice Thurgood Marshall (whom he was appointed to replace by George H. W. Bush), he is without a doubt an intellectual lightweight. However, tragically, one consistent thread running through all his opinions has been his toxic ideological confusion informing his legal arguments. For a comprehensive list of his opinions visit

<https://www.law.cornell.edu/supct/justices/thomas.dec.html>

Folks, one other point: skin color alone can never tell you everything about a person. Clarence Thomas may be black in skin color, but he is no friend of Black people in their unending quest for justice and democratic inclusion. Similarly, a person’s class position can never tell you everything

about the person. In other words, just because a person is of working class background (as Thomas is) does not mean they will be sympathetic to the working classes in their struggles for fairness in the capitalist system.

A Question of Fairness

Clarence Thomas, a black, is Ronald Reagan's chairman of the Equal Employment Opportunity Commission

By Juan Williams

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AS A CHILD IN THE 1950s, CLARENCE THOMAS WORE the ragged hand-me-downs familiar to many a poor black child in the segregated South. In the early 1960s, as the first black ever enrolled at St. John Vianney Minor Seminary, in Savannah, Georgia, he wore plain, neatly pressed shirts and slacks, along with an expression that bespoke a painful shyness. The goatee, the black leather jacket, and the solidarity with Malcolm X came at Holy Cross College, in Massachusetts, during the late 1960s. Yale Law School and corporate legal work in the 1970s finally brought Thomas a measure of real status and affluence. Now thirty-eight, and the chairman of the U.S. Equal Employment Opportunity Commission (EEOC), Clarence Thomas dresses in dark, elegant, conservative business suits. He earns \$71,000 a year and, when he is not being chauffeured in a government car, drives a Camaro IROC-Z. The desk in his Washington office is an impressive structure of polished oak. Behind his leather chair stand two flags, one the Stars and Stripes and the other bearing the legend "Don't Tread on Me." It is an apt motto for the head of an agency charged with ensuring that discrimination based on race, sex, age, religion, or national origin does not occur in the workplace, and that should it occur, appropriate steps are taken to seek redress.

The leaders of many civil-rights and women's groups wonder how seriously Clarence Thomas takes that motto. Indeed, some of them loathe Thomas. He is, after all, a member of the Reagan Administration--its second-highest-ranking black. He is the top federal official charged with curbing discrimination in the private sector. Every American company with more than fifteen employees must adhere to guidelines set by the EEOC on how to train, hire, and promote women, minorities, the elderly, and the handicapped. Thomas not only shapes and

enforces those guidelines but helps to define Reagan Administration policies with respect to black America generally, policies that most blacks and white liberals abhor. Hodding Carter III, an official in the Carter Administration and now a syndicated columnist, recently characterized Thomas's performance as similar to that of the "'chicken eating preachers' who gladly parroted the segregationists' line in exchange for a few crumbs from the white man's table.'

And yet, as I discovered in a series of interviews spanning Thomas's nearly five years in office, Thomas does take seriously the stated responsibilities of his position. He simply wishes to change what the word discrimination means in the EEOC's official lexicon from what it has meant for more than two decades. And even though he is a committed supporter of President Reagan, Thomas brings to his job a view of race relations in the United States that Ronald Reagan probably does not suspect he harbors. The President's director of the EEOC is something of a black nationalist, as well as a sad, lonely, troubled, and deeply pessimistic public servant.

Ultimately, he said to me one day, turning away as if to avoid revealing some private hurt, it doesn't matter that black and white Americans are unlikely ever to see each other as anything but blacks and whites. It doesn't matter that a black man in America is only rarely judged on the basis of his character rather than that of his color. It does not really matter that the dream of racial integration--of uplift through education, of gradual absorption into the social and economic mainstream--has not worked for most black Americans, even for those who, like him, have leaped the boundaries of the ghetto and, it would seem, "made it' in a white world. For when you get right down to it, Thomas said, successful blacks don't particularly like the kind of integration that whites have crafted for them in the past thirty years. Increasing numbers of middle-class blacks see integration simply as window dressing; blacks may be present and visible, but only a few have any real power.

On this point Clarence Thomas accurately captures the frustration of many middle-class blacks: people who are educated, employed in challenging and high-paying positions, and yet somehow still angry. The anger is usually inexplicable to their white friends and colleagues. The reason for it, quite simply, is race. "There is nothing you can do to get past black skin,' Thomas said. "I don't care how educated you are, how good you are at what you do-- you'll never have the same contacts or opportunities, you'll never be seen as equal to whites.' In interviews and in polls middle-class blacks repeatedly come off as resentful about their lives in white America: angry at the pleasure some whites take in the progress made by blacks (even as black families continue to take in about fifty-nine cents for every dollar taken in by white families); angry, too, that blacks remain a negligible presence in the corporate world (where such blacks as there are feel shut out of the informal networks among whites that facilitate advancement).

But while Thomas may share the resentment of others middle-class blacks, he does not share much else. He has his own ideas about how to deal with racism and discrimination, and those

ideas have made him less a radical of the far right than ideologically sui generis. He does not, deep down, share the Reagan Administration's professed belief in a "colorblind" society, because he believes that such a society probably cannot be achieved. It is unlikely that whites will ever fully accept blacks as equals, in his opinion, and so blacks should prepare to do for themselves: by making black schools into rigorous training grounds, by investing in black businesses, by working for black corporations, and by living in black neighborhoods. Forget the traditional pressure tactics--demonstrations, boycotts, lobbying by civil-rights groups--that are meant to gain a share of power, wealth, and influence in white American institutions.

Thomas's ideas have come to Washington at a time when the United States is entering what might be called the post-Romantic period of the American civil-rights movement. Ronald Reagan has won two terms in the White House with little support from black voters. He owes nothing to the black electorate. He rarely speaks to black groups and never meets with civil-rights leaders. Yet Thomas's racial agenda suits the Reagan Administration's agenda just fine. Thomas is an opponent of busing, arguing that black children gain nothing from simply sitting next to whites and can do quite well in their own schools. He is a critic of the 1954 Supreme Court decision in *Brown v. Board of Education*, which declared the segregation of public schools to be illegal. Thomas thinks that the Court's ruling was based on the assumption that any all-black school had to be inferior to an integrated school. (Thomas, a single parent, sends his son to an integrated private school in the Washington suburbs but insists that whether the school is integrated, all-black, or virtually all-white is irrelevant, and that he chose the school he did only in the interest of obtaining the best education for his son.) Thomas is also against affirmative action to get more blacks into U.S. corporations, contending that affirmative action--meaning goals and timetables for employers who have hired few, or have never hired, blacks--not only is window dressing but also has failed to help the mass of poor black people get into the mainstream economy. Affirmative action, he believes, has primarily meant more money for a few qualified blacks, usually the scions of the already well-to-do. Thomas fights angrily against requirements that employers alter tests to allow as many blacks as whites to pass. These prescriptions strike him as "assuming that blacks lack intelligence" and that they "can't perform as well as whites." Lowering standards on tests, he says, may help a few blacks get a few good jobs, but it also puts the federal imprimatur on the idea that educated blacks can't compete, and therefore lends credence to it-- a loss that isn't worth the gain. Thomas wants to strengthen black colleges and universities rather than press white schools to admit more blacks. White liberals, who want to end "dual" school systems in the South, should "leave black people alone."

Thomas stands in the tradition of Booker T. Washington, who argued against integrationists like W.E.B. DuBois earlier in this century. Washington contended that freed black slaves should remain in their own southern communities, work hard, and develop their own farms and businesses. Thomas favors strengthening black businesses in which employers can amass capital and employees can make it on their own without the stigma of being labeled "one of the

blacks' in the firm. Thomas believes that the most significant progress made by the American civil-rights movement is due to the individual efforts of black men and women, standing firm in the face of overt racism and demanding their rights as Americans. Thomas puts little stock in rulings by the Supreme Court, decisions made in the White House, or even the good will of whites who support integration. Like Booker T. Washington, Thomas puts his faith in the ability of black people to use their minds and their muscles to do for themselves. He quotes from memory these words of Malcolm X: "The American black man should be focusing his every effort toward building his own businesses and decent homes for himself. As other ethnic groups have done, let the black people, wherever possible, however possible, patronize their own kind, hire their own kind, and start in those ways to build up the black race's ability to do for itself. That's the only way the American black man is ever going to get respect."

Clarence Thomas, in sum, is a man who does not see integration as the panacea for the problems of black America. The familiar integrationist agitation of black civil-rights leaders leaves him cold. He agrees with Reagan's characterization of the civil-rights leaders as old men fomenting discontent to justify their own "rather good positions." "The issue is economics--not who likes you," Thomas has told me. "And when you have the economics, people do have a way of changing their attitudes toward you. I don't see how the civil-rights people today can claim Malcolm X as one of their own. Where does he say black people should go begging the Labor Department for jobs? He was hell on integrationists. Where does he say you should sacrifice your institutions to be next to white people?"

Above all--and perhaps this is the main reason why he is regarded with such disdain by so many blacks, and so many Hispanics and women as well--Thomas refuses to see civil rights as a matter of corporate struggle and group equity. Are blacks, Hispanics, and women, as groups, victims of discrimination on the job, as evidenced by group statistics on hiring, promotion, and pay? Thomas is not very much interested in this question. What about an individual who claims discrimination? Here, and here alone, a black or a woman might find Thomas to be a friend in court.

CLARENCE THOMAS WAS SENT TO LIVE WITH His grandfather, Myers Anderson, when he was seven years old. His father had long before left for Philadelphia; his mother had remarried, and her new husband didn't want children from the previous marriage around. Thomas, his mother, and brother had been living in a room off an alley in Savannah for about a year. Before that the children had lived in Pinpoint, a run-down town outside Savannah, with an aunt. Thomas remembers eating cornflakes several times a day, wandering the streets, playing hooky. Displayed prominently in Clarence Thomas's office is a photograph of Myers Anderson: a muscular older man in a white undershirt, standing ready to go to work. "When the civil-rights people indict me," Thomas said soon after his grandfather's death, in 1983, "the men they are indicting is that man. Let them call him from the grave and indict him."

When Thomas and his brother went to live with their grandfather in Savannah, in 1956, it was the first time that they had ever lived in a house with a bathroom. It was their first experience of three square meals a day. Their grandfather had built his own house, and, although he could barely read or write, he was a strong advocate of education. Clarence could no longer miss school. Anderson, a devout Catholic, paid \$30 a year for the Thomas boys to attend an all-black Catholic school, run by white nuns. Every afternoon at three it was straight home to change clothes and help Myers deliver ice and oil. In the evenings, after washing dishes, Thomas went, he remembers, to the library for blacks, which had been built by the Carnegies. (Blacks were barred from the Savannah Public Library.) "I used to run to the library to flip through the pages and dream. I just remember *The New Yorker*. You know, what did I know about New York? But I said, 'One day, I'm going to be able to read this, be sophisticated enough to deal with these kinds of things.' Although Myers Anderson was nearly illiterate, Clarence came to appreciate that his grandfather had not let segregation or a lack of schooling stand in the way of his living a decent life. His grandfather, a strong Democrat, had been involved in local efforts to get voting rights for blacks, and he voted religiously.

Clarence learned other lessons from his grandfather after a visit up North to see some relatives, who were now shelved in housing projects and living on welfare. "He'd say, 'Damn welfare, that relied!--Man ain't got no business on relief as long as he can work.'"

Southern society, both black and white, had another view of Clarence and his grandfather. Black Savannah society, Clarence Thomas recalls bitterly, knew him as ABC-- America's Blackest Child ("and you have to remember that for someone to call you black in the sixties, that meant serious business'). He was ridiculed not only for his extremely dark complexion but also for his hair--they called it "nigger naps"--and thick lips. Thomas's grandfather endured worse. "I remember this lady came up to the house--Miss Morgan,' Thomas told me one day. "Her husband was noted for being fairly mean. She drove up in one of those great big Buick Electras. Granddaddy was out in the field. You see a car driving up and you always wonder who it is, because we had a dirt road leading up to the house--you see all the dust and everything. She said, 'Myers, boy.' And you could see him seethe. He looked around and saw his little kids there. You could see him seethe. People say what kind of manhood does it take to yell back and get mad. But what must it have taken for him not only to take the insult but the stares from his kids seeing him being called a boy. The most significant things [in civil rights] were things that I saw day-to-day, not the protests downtown or in Washington.'

Integration touched Thomas's life for the first time in tenth grade. His grandfather decided that he wanted Clarence, a good student, to attend an all-white Catholic boarding school, St. John Vianney Minor Seminary. Thomas was admitted without incident. He got excellent grades and was a star quarterback on the school's football team. His grandfather bragged that his grandson would become a priest. To Anderson, Clarence became a racial symbol. On vacation his

grandfather would take him to the local NAACP meetings and have him read his grades aloud: "He thought I was living proof that black people were as good as white people.'

In his own mind, however, Thomas was in a state of crisis. He had never been around many whites. Now he was living with them. He saw how many more possessions they had, how the other boys commanded respect as seminarians in a town where he was at best ignored. (Thomas remembers a quote from Richard Wright's *Black Metropolis*: "But the American negro, child of the culture that crushes him, wants to be free in a way that white men are free. For him to wish otherwise would be unnatural, unthinkable.") Most devastating of all were the racist jokes and slights that Thomas's fellow seminarians made at his expense. Myers Anderson had held the church up as a moral and ethical model. But, Thomas told me, "After lights out someone would yell, 'Smile, Clarence, so we can see you.' The statement wasn't the bad part, it was no one saying "Shut up." On Thursday afternoons, when students went to town with their friends, Thomas was left alone. Movie theaters were still segregated; to eat at a restaurant with classmates would have caused a stir.

Thomas remembers a "self-hate" stage, where "you hate yourself for being part of a group that's gotten the hell kicked out of them.' He tried to fit in. He avoided every form of stereotypical behavior attributed to blacks. He took pains to speak perfectly--not in slang, not loudly. He stressed academic achievement. But acceptance did not come. When he left the seminary, he held a conviction he has carried since: there is nothing a black man can do to be accepted by whites. Consequently, despite his anger at segregation, he does not automatically grant that integration is good for black people. Thomas wants to know in every instance what integration means for blacks. If it means losing the alternative of going to their own schools, running their own businesses, then he doesn't like it. He has too many scars from episodes in which, in the name of integration, he was the only black. Today he says, "The whole push to assimilate simply does not make sense to me.'

Thomas's skepticism about integration was heightened in 1967, when he enrolled at Immaculate Conception Seminary in Missouri to continue his training for the priesthood. He stayed only eight months. Martin Luther King, Jr., was shot in April of 1968. As Thomas entered a room that day, he heard one white seminarian say, "Good, I hope the son of a bitch dies.' That was the end of the seminary. Alienated from whites, alienated from the kids in his neighborhood as a result of having been away at school, and alienated, finally, from his grandfather over leaving the seminary, Thomas worked for a while and then went north to Holy Cross. He paid his tuition with a combination of scholarships, work-study (washing dishes in the kitchen), and loans. His militancy became pronounced. He led the free-breakfast program for black schoolchildren in Worcester, Massachusetts, dallied with the Black Panthers, and urged a black walkout at the college over the issue of investment in South Africa. All the while he kept up a near perfect academic record. Eventually Thomas decided he wanted to be a lawyer, and he was accepted by Yale Law School.

At Yale, Thomas avoided his professors and sat in the back of the classroom. He did not want to be identified as a black student--one who perhaps had been admitted and must be coddled precisely because he was black. He shunned courses touching on civil rights, instead studying tax law, legal accounting, antitrust law, and property law. He remembers feeling the "monkey was on my back" because classmates believed that he and the dozen or so other blacks in his class were there to satisfy the school's social-policy goals, not because of their academic qualifications. Nevertheless, Thomas thrived academically. Sitting in the back of the classroom and working anonymously in the library, he earned good grades. He was less impressed by the hard-edged minutiae of the law than by the notion that he was competing successfully with the best white minds. Yale gave him renewed confidence even as he was, in effect, hiding his face to avoid calling attention to his race. Confusion and contradiction reigned in his life. He felt alienated from a system that was trying to open itself to him, and became more of a loner than he had been before.

Even as Thomas turned inward, he was being urged into a position of leadership by other black students, who were pressing Yale to accept more blacks. Thomas did not take the assignment. He saw that many of the blacks who started Yale Law School did not graduate. Most of those who did graduate were the sons and daughters of black lawyers, doctors, and teachers. Thomas could not justify leading protests to get more Yale law degrees for middle-class blacks. "If quotas help you, fine," he has told me. "If they make your life wonderful, fine. If they get you a BMW or Mercedes, say that is why you want quotas. Man, quotas are for the black middle class. But look at what's happening to the masses. Those are my people. They are just where they were before any of these policies."

At the end of law school Thomas felt no debt to whites at Yale for allowing a black man from a poor family to go to school there. The suggestion that his education is proof of the good done by affirmative-action policies, executed in good faith to end the harmful cycle of broken families, bad schools, and unemployment, angers him. "I don't think black people are indebted to anybody for anything. Nobody has done us any favors in this country, buddy. This thing about how they let me into Yale--that kind of stuff offends me. All they did was stop stopping us."

As Yale ended and job interviews began, Thomas found himself singled out again. Recruiters from top firms kept mentioning that their firms would allow him to do pro bono work. He bolted from some interviews in anger. White students told him pro bono work was not mentioned in their interviews. "I went to law school to be a lawyer, not a social worker. If I want to be a social worker, I'll do it on my own time." Thomas ultimately took a job with another Yale alumnus, John Danforth, now a U.S. senator but at the time Missouri's Republican attorney general. Danforth didn't mention pro bono work. He promised Thomas no special treatment because of his race. Thomas became counsel to the state department of revenue and the tax commission. He avoided work on any racial issues, insisting that he would

be judged a second-rate intellect by people who would assume that he was involved only because he was black. "Danforth was a good guy,' Thomas said once. "He ignored the hell out of me.'

Thomas worked for the State of Missouri for almost three years, and then went to work for Monsanto, the chemical company. In 1979 he rejoined Danforth, in the Senator's Washington office, again working on non-civil-rights issues, such as energy and the environment. And he became a Republican.

A MONTH BEFORE RONALD REAGAN'S FIRST Inauguration Clarence Thomas paid his way to San Francisco for a conference of black conservatives. Reagan's overwhelming election victory, won with almost no black support, had put the spotlight on the few blacks who counted themselves in his camp. Except for Thomas Sowell, the economist, most of the black conservatives were, like Thomas, relatively unknown. They took gleefully to the sudden attention from the press. I was then an editorial writer for The Washington Post, and I flew to San Francisco to hear the policy arguments being made by Ronald Reagan's black admirers.

Thomas was the most interesting of a very self-important crowd, because he was so brutally candid. In discussing welfare policy he explained that his opposition to public assistance was an outgrowth of his sister's experience on welfare in Georgia. "She gets mad when the mailman is late with her welfare check,' he said. "That is how dependent she is. What's worse is that now her kids feel entitled to the check too. They have no motivation for doing better or getting out of that situation.' His frankness in reflecting on his own position as a black conservative is, in retrospect, touched by irony. "If I ever went to work for the EEOC or did anything directly connected with blacks, my career would be irreparably ruined. The monkey would be on my back to prove that I didn't have the job because I'm black. People meeting me for the first time would automatically dismiss my thinking as second-rate.'

I wrote a column for the Post about Thomas that drew the attention of the Reagan transition team. Various jobs in the Administration were discussed. Thomas, however, was reluctant to move to the executive branch. The column had attracted as much criticism from the left as interest from the right. Thomas was uncomfortable. Finally, though, in May of 1981, despite his misgivings, he joined the Administration as the Department of Education's assistant secretary for civil rights. He kept a low profile and generally avoided the press. But he stirred controversy among civil-rights activists from the start. For example, he set out rather quickly to overturn the government's policy of pressing southern states to unify their separate white and black college systems, arguing that an end to the so-called dual system would mean an end to the historically black colleges that had educated a majority of the nation's black professionals. Civil-rights groups saw him as playing into the hands of southern white separatists. Thomas did not have time to ride out the storm. Eight months after he began his job at the Department of Education, the President nominated him to head the EEOC. He became the only black with any real power in the Reagan Administration on matters involving civil rights. (Clarence

Pendleton, the chairman of the U.S. Civil Rights Commission, is empowered only to conduct studies and make recommendations.)

Soon after Thomas's nomination he and I began meeting regularly for informal conversations, most of them on the record. I was by then a White House correspondent, and Thomas thought that the conversations would be advantageous to him. Eventually we began to talk easily and at length. He was outspoken and frank in discussing his shifting thoughts on civil rights, his frustrations, and his worries about his status within the Administration.

The Equal Employment Opportunity Commission was created by the Civil Rights Act of 1964, as a means to enforce statutory prohibitions against job discrimination on the basis of race, sex, color, religion, or national origin. The Commission has five members, who review every case recommended by the EEOC's general counsel as possible material for a lawsuit. All the members are political appointees. As the chairman, Thomas oversees the agency's lawyers and regulators--a significant source of influence. The EEOC's power is limited to investigating a charge and seeking a settlement with the employer. The agency can subpoena evidence, take testimony, and file suit on behalf of a defendant or a class of defendants. The EEOC cannot itself fine or penalize the employer any other way. The agency also has a congressional mandate to deal with employer discrimination on the basis of age, as well as to investigate violations of the Equal Pay Act (which requires that equal pay be given to persons doing the same job).

Should General Motors be prodded to train more women welders? Should companies, reasoning that older workers have pension income to make up for a loss of salary, be allowed to lay off the elderly first? Are secretaries being paid less than janitors because secretarial work is a traditionally female occupation? Should a business be permitted to promote blacks who don't pass qualifying tests, on the grounds that five times as many blacks as whites fail such tests? These are the kinds of questions that come before the EEOC. For more than two decades an established part of American corporate life has consisted in trying to keep the EEOC at bay. Last year the commission processed 66,000 complaints. Whether the EEOC files a lawsuit in any particular case depends largely on Clarence Thomas's conception of fairness.

Thomas told me a story from his boyhood to illustrate what fairness means to him. He was on the back porch, playing blackjack for pennies with some other boys. As the game went on, one boy kept winning. Thomas finally saw how: the cards were marked. The game was stopped. There were angry words. Cards were thrown. From all sides fast fists snatched back lost money. There could be no equitable redistribution of the pot. The strongest, fastest hands, including those of the boy who had been cheating, got most of the pile of pennies. Some of the boys didn't get their money back. The cheater was threatened. The boys who snatched pennies that they had not lost were also threatened. But no one really wanted to fight-- they wanted to keep playing cards. So a different deck was brought out and shuffled, and the game resumed with a simple promise of no more cheating.

That story, Thomas said, is a lot like the story of race relations in America. Whites had an unfair advantage. But in 1964, with the passage of the Civil Rights Act, the government stopped the cheating. The question now is, Should the government return the ill-gotten gains to the losers-- the blacks, the Hispanics, and the women who were cheated by racism and sexism? Does fairness mean reaching back into the nation's past to undo the damage? Is the son entitled to recompense if the mother was a brilliant businesswoman who could not find a bank that would lend her money? How about the grandson of a black doctor who never earned as much as white practitioners but lived the life of the elite among blacks? Should American businesses have to compensate for the legacy of slavery--the poor, undereducated blacks living in dreary, stultifying ghettos that perpetuate perverse values? How would society, especially the society of government and business, make amends, even if making amends were its fervent goal?

Thomas believes that government simply cannot make amends, and therefore should not try. The best it can do is to deal a clean deck and let the game resume, enforcing the rules as they have now come to be understood. "There is no governmental solution," Thomas said. "It hasn't been used on any group. And I will ask those who proffer a governmental solution to show me which group in the history of this country was pulled up and put into the mainstream of the economy with governmental programs. The Irish weren't. The Jews weren't. Use what was used to get others into the economy. Show us the precedent for all this experimentation on our race.'

He returned to the idea of the cheater on the porch: "I would be lying to you if I said that I didn't want sometimes to be able to cheat in favor of those of us who were cheated. But you have to ask yourself whether, in doing that, you do violence to the safe harbor, and that is the Constitution, which says you are to protect an individual's rights no matter what. Once you say that we can violate somebody else's rights in order to make up for what happened to blacks or other races or other groups in history, then are you setting a precedent for having certain circumstances in which you can overlook another person's rights?'

Individuals who are proven victims of discrimination have Clarence Thomas's EEOC on their side in the fight. But people who argue that they are victimized in corporate life as part of historical, across-the-board discrimination against a group find little sympathy at his agency. It could be, Thomas says, that blacks and women are generally unprepared to do certain kinds of work by their own choice. It could be that blacks choose not to study chemical engineering and that women choose to have babies instead of going to medical school.

If an employer over the years denies jobs to hundreds of qualified women or blacks because he does not want women or blacks working for him, Thomas is not prepared to see a "pattern and practice" of discrimination. He sees hundreds of local, individual acts of discrimination. Thomas would require every woman or black whom that employer had discriminated against to come to the government and prove his or her allegation. The burden is on the individual.

The remedy is back pay and a job. "Anyone asking the government to do more is barking up the wrong tree," Thomas says.

Thomas has made it EEOC policy to shy away from class-action suits. He doesn't want to see blacks treated as numbers. So he favors aggressive attacks on employers only when they are proved to have discriminated against particular persons. "My view is that the most vulnerable unit in our society is the individual. And blacks, in my opinion being one of the most vulnerable groups, should fight like hell to preserve individual freedoms so people can't gang up on us. Blacks are the least favored group in this society. Suppose we did band together, group against group--which group do you think would win? We're breaking down everything, ten percent for the blacks, twenty-five percent for the women, two percent for the aged, everything broken out according to groups. Which group always winds up with the least? Which group always seems to get the hell kicked out of it? Blacks, and maybe American Indians.

"Playing the group game builds up racial conflict. That's what segregation was all about. But now blacks are out here raising all this Cain for group rights, and the ones who benefit the most, I think, would probably be white females, because they are the best-prepared group."

Clarence Thomas has resolved to play by the rules. Once again one sees the boy on the porch, the respect for method and procedure. Thomas is consistent. Because the courts in the past have mandated goals, timetables, and quotas, and because these are therefore the law of the land, Thomas's EEOC continues to enforce (though it may occasionally challenge) such decisions. This stance has sometimes left Thomas isolated within the Reagan Administration. But when it comes to new business before the commission, there is little in Clarence Thomas's record with which a right-wing Administration could find fault.

In "fiscal year" 1980 (October 1, 1979, to September 30, 1980) the EEOC was settling 32.1 percent of the cases that it closed, whereas the rate was 13.6 percent in the first half of 1986. The proportion of cases in which the EEOC finding was "no cause" (for a lawsuit) increased from 28.5 percent to 56.6 percent over the same period. A total of 22.3 percent fewer cases were filed in court in 1985 than in 1981. The decline in the number of cases pleased Thomas. He had turned the agency's attention away from cases based on statistical evidence of discrimination. Thomas was sensitive to reports that white managers often feel they cannot find enough qualified minority candidates. Perhaps an employer in the Southwest fires more Hispanics and women simply because he made an effort to hire them in the first place; the women and Hispanics who make the most of the open door will have a job. Those who can't do the job will be fired. To sue an employer because he keeps the door open to people who may be less educated and have little work experience would be to discourage him from giving those people a chance.

THOMAS'S TENURE AT THE EEOC HAS ALWAYS BEEN rocky, but it has been rocky for different reasons at different times. His first task was simply getting a hold on an agency with

3,100 employees and forty-eight local offices. By all accounts the agency Thomas inherited was administratively disheveled, with a long backlog of discrimination cases. Thomas seems to have been happy with unpublicized bureaucratic chores, happy to be left to himself. On his way into work every day he would have his driver stop at a Catholic church, where he would spend a few minutes alone in prayer. He does not attend church on Sundays. ("God is all right," he says. "It's the people I don't like.") Thomas rarely spoke with the press. He worked privately, almost anonymously, letting the Justice Department and the White House make political pronouncements on civil-rights policy. In the Administration, Thomas was often referred to as "the other Clarence," distinguishing him from the more visible Clarence Pendleton, at the Civil Rights Commission. As one of the very few prominent blacks in the Reagan Administration, he was criticized internally for his initial lack of a public role.

Once, during lunch at the White House mess, William Bradford Reynolds, the assistant attorney general for civil rights, was loudly urging him to be more aggressive. Thomas snapped back, "Don't tell me what to do, Brad. All I have to do is die and stay black."

If Thomas hoped to sit out the war of words between the Reagan Administration and the nation's leading civil-rights groups, he was only partially successful. Criticized by black leaders as an Uncle Tom, Thomas from time to time struck back. He publicly castigated civil-rights leaders who "bitch, bitch, bitch, moan and moan and whine" about the Reagan Administration. He characterized protests against apartheid in South Africa and against the Administration's policy of "constructive engagement" as less important than efforts at home to improve education for blacks and end poverty and drug abuse among them.

Meanwhile, Thomas found himself in occasional disagreements with other members of the Administration. Thomas freely blamed the Justice Department for setting a "negative agenda" on civil rights during the President's first term. He conceded to me that the Administration "blew it" by supporting tax-exempt status for a segregationist school, Bob Jones University. He stated frankly that he was working with racists, though he claimed that this hardly mattered, since, he said, there are some racists in every Administration. ("Yes, there are a lot of racists in the Administration. So what? There may be more here now, they may be more out front. I don't care. I prefer dealing with an out-and-out racist anyway to one who is racist behind your back.") He opposed Attorney General William French Smith when Smith refused to comply with a twelve-year-old federal law requiring federal agencies to submit annual statistical analyses of the number of minority-group members working in the executive branch. And, with mixed success, he has set himself against Justice Department attempts to overturn certain existing local quota plans for hiring and promotion. At one point in 1984 there was talk within the Administration of forcing Thomas's resignation, or at the very least of nominating a replacement when Thomas's term expired in 1985.

Though it was at first only dimly perceived, however, Thomas was transforming the nature of the EEOC--moving it firmly toward the Reagan right. The fundamental change was in the type

of lawsuit that the commission was likely to bring. In the past the EEOC had brought a number of celebrated class-action cases against such major companies as AT&T and General Electric. The agency had alleged historical and widespread discrimination and sought changes in hiring practices, along with back pay for the victims. Those cases ended with multimillion-dollar settlements, and goals and timetables to govern future hiring. Now the EEOC focused on simply enforcing the law in cases brought by individuals who sought to prove specific acts of discrimination. The shift in emphasis fit Administration policy. Fewer class-action suits inevitably meant far less use of goals, timetables, and quotas to remedy findings of discrimination. It also meant fewer attempts to stop employers from giving tests, setting standards, or recruiting in a manner that caused disproportionately low numbers of blacks, women, and other minorities to get jobs.

Thomas held to his version of fairness: individual victims of discrimination should be helped by the government, but classes of people who theoretically were victimized by the nation's history of racism or sexism should not be helped. Indeed, Thomas viewed with deep misgivings any finding of discrimination based on broad statistics-- once the most effective weapon wielded by the EEOC. The commission had for many years used statistics to put employers on the defensive for not hiring minorities or women in proportion to their numbers in the pool of qualified applicants. Statistics shifted the burden of proof from the individual, who was charging discrimination, to the company, which had to prove that it was not discriminating. Statistics had been employed vigorously by the EEOC ever since a favorable 1971 Supreme Court ruling in *Griggs v. Duke Power Co.*

Soon Thomas began to look at the use of statistics in the EEOC's own Uniform Guidelines on Employee Selection Procedure, which has been used by the courts as an authoritative interpretation of the Civil Rights Act of 1964. In September of 1984 Thomas led the five EEOC commissioners in a vote to review the guidelines, because, in his view, they had become too "rigid." The decision, in favor of review, shook the civil-rights community, which regarded the guidelines as a landmark in equal-opportunity law. It also had reverberations in the corporate world. Lawyers had become accustomed to the Uniform Guidelines as the one and only set of rules for playing the affirmative-action game--for avoiding race- and sex-bias lawsuits brought by the government. The guidelines require that any prerequisite for employment--a test, an interview, a physical standard, or a performance evaluation--result in a selection rate for any race, sex, or ethnic group within 20 percent of the selection rate for the group with the highest rate. If a hundred whites apply for a job and sixty are selected, that is a 60 percent hiring rate for qualified white applicants. An employer with forty qualified black applicants would have to hire twenty--a 50 percent hiring rate--to come up with a hiring rate for blacks that is within 20 percent of the hiring rate for whites.

In justifying the review of the guidelines, Thomas wrote that they were founded on the premise "that but for unlawful discrimination by an employer, there would not be variations in the rates

of hire or promotion of people of different races, sexes, or national origins. . . . [The guidelines] also seem to assume some inherent inferiority of blacks, Hispanics, other minorities, and women, by suggesting that they should not be held to the same standards as other people, even if those standards are race and sex neutral.' Last year the EEOC completed an internal review of the guidelines, but it has not yet acted on this report.

Thomas was roundly criticized by civil-rights groups for subjecting the guidelines to scrutiny. He cited the all-black basketball team at Georgetown University, a school with an overwhelmingly white student body, as an example of how statistics could mislead. Would anyone, he asked at a congressional hearing, charge that Georgetown was discriminating against white basketball players?

In newspaper interviews Thomas spoke freely of his disdain for the statistical basis of an ongoing EEOC suit, begun before Thomas joined the commission, against Sears, Roebuck & Co. The class-action suit claimed that Sears discriminated against women because it hired a far higher proportion of men than women for sales jobs, even though more women applied for the jobs. Sears, the EEOC claimed, also promoted fewer women than men to lucrative commissioned sales jobs. The government's suit did not have a single named plaintiff; it relied solely on statistics. Thomas told The New York Times that the statistics didn't prove Sears guilty of discrimination. The disparity in hiring figures between men and women could, he said, be due to cultural differences between men and women, educational levels, commuting patterns, and other "previous events." Lawyers for Sears actually tried to have Thomas testify in their behalf, hoping he would damage his agency's case. However, the judge refused the motion to take his deposition, ruling that what Thomas believed, even as the head of the EEOC, was irrelevant. In February of 1985, to Thomas's satisfaction, the EEOC lost the case. But Thomas has agreed to have his agency file an appeal on the basis of what his lawyers have told him are mistakes made by the trial judge. Thomas told me that he decided to go along with the appeal because if he didn't, "the liberals would be all over me." He does not want it said that he didn't give the case every chance to succeed.

In June of 1985 Thomas removed another potential source of controversy between employers and the government by leading the commissioners to reject the validity of the notion of "comparable worth": the idea that people who are doing different jobs should nevertheless be paid equally if their jobs require comparable effort, responsibility, skill, and training. Traditionally female occupations, such as teaching, could be made to pay the same wage as traditionally male occupations, such as construction. Women's groups have contended that jobs that usually go to men pay more because of the old-fashioned idea that a man is supporting a family while a woman is merely working for pin money, or supplemental income. Thomas countered that Title VII of the Civil Rights Act outlawed disparities in pay only when an employer paid men and women different wages for doing the identical job. The agency's

decision closed a potential avenue of redress for women for the remainder of the Reagan Administration.

In July of 1985 five congressmen and three senators, including Senator Edward Kennedy, the ranking Democrat on the Senate's Committee on Labor and Human Resources, asked the General Accounting Office to investigate the EEOC. They were "deeply concerned that the EEOC's ability to effectively attack discrimination in the workplace [had] been diminished by a recent shift in policy which may run counter to the intent of Congress in enacting these remedial statutes.' They insisted that Congress "required an extensive and sustained' effort from the EEOC against the practices that led to discrimination. They complained that their mandate was "being flouted by the commission.'

With the arguments between Thomas and his critics growing louder, the EEOC chairman suddenly found himself warmly received at the Justice Department and the White House. He worked closely with Attorney General Edwin Meese in pushing for a change in an executive order that requires federal contractors to show that they have made efforts to hire minorities and women. Meese and Thomas argued that the order amounted to quotas, because contractors who failed to hire minorities and women were given goals and timetables that had to be met under pain of losing government contracts. For the time being the executive order remains in effect, however, because Republican political strategists have judged that deleting all suggestion of quotas from the executive order carries too high a political price.

LAST SUMMER PRESIDENT REAGAN NOMINATED Clarence Thomas to a second term as chairman of the EEOC. On August 12, 1986, Thomas won Senate confirmation. The Senate's unanimous vote came a week after a 14-2 vote by the Labor and Human Resources Committee to recommend Thomas for a second term. The two senators who voted against Thomas in committee were Howard Metzenbaum, of Ohio, and Paul Simon, of Illinois. Metzenbaum said he opposed Thomas because "he has not brought [to the EEOC] a vigorous determination to enforce the law. . . . He has failed to show the kind of leadership which the civil-rights community is entitled to.' The NAACP and the League of United Latin American Citizens said that Thomas was the key to a Reagan Administration plan to "roll back civil rights.'

But the opposition lacked passion. In joint testimony representatives of other major civil-rights and women's-rights groups, ranging from the National Urban League to the NOW Legal Defense and Education Fund, said they did not know of any group involved with civil liberties that wanted Thomas reappointed. However, they said, "given this administration's record [we] have no illusions that a nominee committed to strong enforcement would replace [Thomas]. This Hobson's choice dilemma does nothing to quiet our concerns about the management and policy of the EEOC for the past five years.' The civil-rights groups seemed reluctant to demand that Thomas be replaced even as they listed his faults. Their hesitancy carried the day and helped to assure Thomas's confirmation. And at the hearings, which were held in July, Thomas

stole his opponents' thunder by telling the committee that he had reversed his earlier position and ordered the EEOC's lawyers to resume using goals and timetables against employers found guilty of discrimination. "That's the law of the land, whether I like it or not," he said. When Metzenbaum asked about his personal view of affirmative action, Thomas replied, "Whatever reservations I have are purely personal. They're subversive literature now." When some Democrats suggested that Thomas might be merely saying expedient things on the record while off the record instructing his lawyers not to return to goals and timetables, Thomas privately promised, according to committee members, to send reports twice a year to the Senate on the number and types of cases in which EEOC makes use of hiring and promotion goals and timetables. Despite such concessions, Thomas retains considerable power to push his agenda at the EEOC--an agenda that amounts to curbing federal intervention.

In mid-September, Attorney General Edwin Meese, Assistant Attorney General for Civil Rights Bradford Reynolds, and Senator Strom Thurmond, the former segregationist from South Carolina, came to the EEOC's offices to swear in Clarence Thomas. It was an unlikely sight--the three white men shaking hands and slapping backs with Thomas. Reynolds had days earlier attacked Supreme Court Associate Justice William Brennan as a man seeking "unlimited judicial power to further a personalized egalitarian vision of society" through racial preferences and a "liberal social agenda." Meese was about to give a speech encouraging politicians to disregard Supreme Court rulings if they felt the rulings were wrong. Clarence Thomas, in his moment of triumph, stood shoulder-to-shoulder with his Administration colleagues. None of the three stayed more than a few minutes at Thomas's celebration. But before he left, Reynolds raised his glass. "It's a proud moment for me to stand here," he said, "because Clarence Thomas is the epitome of the right kind of affirmative action working the right way."

Clarence Thomas flinched. Some of his aides looked down and shook their heads. After all Thomas had been through in defense of the Administration position on civil rights, Reynolds had implicitly dismissed him as an affirmative-action hire. And, worse, Reynolds had thought it a compliment. Thomas showed a look of cold hurt--a look of disgust. He folded his arms across his chest and looked away from Reynolds. By the time Meese had said a few words and Thurmond had sworn him in, an uneasy smile had returned to Thomas's face. A few days later, when I asked about his reaction to Reynolds's comment, Thomas waved his hand, as if swatting away the memory. "I can't pay no attention to Brad," he said.