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Justice Thomas and the Malaysian meritocracy debate

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I RECENTLY browsed through a past issue of The Toastmaster, official magazine of the organisation by the same name, and chanced upon an article on US Supreme Court Justice Clarence Thomas, who was named one of the five most outstanding speakers in 2001.

I faintly recalled the ruckus that surrounded his appointment to the bench more than a decade ago and decided to refresh my memory by checking it up on the Internet.

As so often happens on the World Wide Web, one thing led to another and my attention was diverted to a phenomenon that I had not really thought much about until then: namely, the conservative African-American.

(Malaysians would perhaps be more familiar with Secretary of State Colin Powell, who visited the country recently, or the strangely named National Security Adviser, Condoleezza Rice.)

When Justice Thomas was appointed to this august body in 1991 by President George Bush Senior, he was only the second black to have ever held such high office. He was also the youngest and, by virtue of his appointee, of course a Republican.

The majority of African-Americans are Democrats and so it is no great surprise that his appointment was met with a great deal of hostility. (In this country, people would have been sued zillions of dollars for the defamatory statements made about him.)

Adding fuel to the fire of the Senate confirmation hearings were the timely allegations by one Anita Hill, of sexual improprieties. The resulting vote was the closest ever recorded by a Supreme Court nominee.

What is of relevance to social cohesion is not the confirmation hearings but more the man himself. What makes him different from the majority of his race, which is still widely recognised as the most underprivileged in America?

Clarence Thomas was brought up on a farm by his grandparents from whom he learned the value of hard honest work. Despite tight finances, a high priority was placed on education and he received his education in private schools. He earned a college degree in English and went on to Yale Law School.

For most people, black or white, gaining entry into such a celebrated institution would have been a tremendous source of pride. For Justice Thomas, however, it was one of shame.

Yale was at that time attempting to increase its black student population and he was merely one of the draftees. "You had to prove yourself everyday," he said. "The presumption was that you were dumb and didn't deserve to be there on merit."

Deserving and meritorious he was but this experience grated on him to such an extent that he now opposes affirmative action policies and advocates a "colour-blind" interpretation of the Constitution instead.

This has naturally not endeared him to blacks or liberals who view the history of white oppression as instrumental in the continued impoverishment of the blacks.

To Clarence Thomas and other black Republicans who have "made good", paternalistic policies and state mollycoddling are liabilities in advancing the cause of their race. For those who have been brought up and sustained on the latter, to do any less would be an abrogation of a sacred social responsibility.

The central question is whether this is because of too much affirmative action policies or too little of it? There is a prevalent tendency to weigh in on one side of the issue or the other because one happens to be a beneficiary or a victim.

This is simply vested interest. Listening to a "beneficiary" rationally argue the case against such policies, whether Clarence Thomas, Datuk Seri Dr Mahathir Mohamad or Datuk Abdullah Ahmad Badawi, however, is less intuitive and therefore deserving of a fair and careful hearing.

How would we do this? First, it would help if the areas in which these policies take effect were to be gradually depoliticised or else not so tightly wound around core political goals so as to give little room to manoeuvre. As it is, affirmative action policies are notoriously difficult to remove the world over, let alone when they form one of the main supports of a party's platform.

Politics has many pluses but giving one unclouded and impartial judgment is not one of them. Next, it would aid matters if one were to examine processes at least as closely as outcomes.

In Malaysia, we seem to have a number of fetishes owing to importance of quotas and other quantitative controls. The result of this overemphasis is to disconnect the results from their underlying reasons. When we state that a particular outcome is lebih adil (more just), we are pointing to more than a normatively superior product but also the sequence of cause-and-effects that gave rise to it.

Any fair and careful hearing should thus be supported with fresh, plentiful and transparent research. The temptation to ignore or discount facts, findings and rational arguments because they do not accord with one's political beliefs and interests is exceedingly strong. Thus, when studies show declining academic performance in universities or low trust levels in the police and civil service, these are taken as attempts at criticism rather than what they rightfully are.

Having heard the arguments one can make an informed decision. Justice Clarence Thomas, however, seems to have the last word when he said, "Finding the right answer is often the least difficult problem. Having the courage to assert that answer and stand firm in the face of the constant winds of protest and criticism is often much more difficult."

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