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Chapter 21: Close Up on the Supreme Court

Regents of the University of California v. *Bakke*, 1978

Case Summary

May public universities use admissions quotas?

Allan Bakke filed suit after learning that minority candidates with lower qualifications had been admitted to medical school under a program that reserved spaces for "disadvantaged" applicants. The California Supreme Court ordered the school, the State-run University of California, to admit Bakke. The university then appealed to the United States Supreme Court.

The Court's Decision

A splintered Supreme Court affirmed the judgment ordering Bakke's admission to the medical school of the University of California at Davis and invalidating the school's special admissions program. However, the Court did not prohibit the school from considering race as a factor in future admissions decisions. Justice Lewis Powell, Jr., announced the Court's judgment. Four justices agreed with his conclusions as to Bakke individually, and four other justices agreed with the ruling as to use of race information in the future.

Justice Powell wrote that "the guarantee of Equal Protection cannot mean one thing when applied to one individual and something else when applied to a person of another color." He did not, however, prohibit schools from considering race as one factor in the admissions process.

Justice Thurgood Marshall argued that race could properly be considered in an affirmative action program, a policy of taking positive steps to remedy the effects of past discrimination. "In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society. I do not believe that the Fourteenth Amendment requires us to accept that fate."

More on the Case

The legal impact of *Bakke* was reduced by the disagreement among the justices. Because the Court had no single majority position, the case could not give clear guidance on the extent to which colleges could consider race as part of an affirmative action program.

In *Texas* v. *Hopwood*, 1996, a federal appeals court found that a University of Texas affirmative action program violated the rights of white applicants. The law school was trying to boost enrollment of African Americans and Mexican Americans. The court assumed that the *Bakke* decision was no longer legally sound, and explicitly ruled that "the law school may not use race as a factor in law school admissions." The court continued: "A university may properly favor one applicant over another because of…whether an applicant's parents attended college or the applicant's economic and social background.…But the key is that race itself cannot be taken into account." The Supreme Court refused to review the appeals court decision.

Affirmative action remains a controversial issue in California. In 1996, voters passed the California Civil Rights Initiative, generally known as "Proposition 209," which prohibited all government agencies and institutions from giving preferential treatment to individuals based on their race or gender. The Supreme Court also refused to hear an appeal from a decision upholding the constitutionality of the law.

Questions for Discussion

1. To what extent did Justice Marshall disagree with Justice Powell?
2. Would *Bakke* allow a public university to set aside spaces for economically-disadvantaged applicants? Applicants whose parents had not attended college? Applicants from single-parent families?