Name _____ Date _____ Class _____

Supreme Court Case Study 49

Limitation on Affirmative Action

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

★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★

In the 1960s many organizations established programs, called affirmative action, to improve opportunities for minorities and the disadvantaged. Objections to affirmative action arose when organizations, such as universities and colleges, set aside a certain number of places for minorities or disadvantaged persons. The question of the constitutionality of such practices came before the United States Supreme Court in the *Regents of the University of California* v. *Bakke* case.

In 1973 the Medical School of the University of California at Davis admitted 16 minority students through a special admissions process. This group of minority students collectively had substantially lower science grade point averages and Medical College Aptitude Test scores than those in the other group.

Alan Bakke, a white applicant, had a grade point average slightly below all the regular admission applicants, but his aptitude tests were substantially higher. When Bakke's 1973 and 1974 applications to the medical school were rejected, he sued the Regents, the university's governing board, for a place at the medical school. The California Superior Court found that the school's special admissions program violated the federal and state constitutions, Title VI, and the Civil Rights Act of 1964, but it declined to order Bakke admitted to the school, holding that Bakke had not proven that he "would have been admitted but for the existence of the special program."

Bakke appealed the decision to the California Supreme Court. Citing the equal protection clause of the Fourteenth Amendment, the court ordered him admitted to the medical school. The Regents then took their case to the United States Supreme Court.

Constitutional Issue ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

The Supreme Court had to resolve two questions. First, did the establishment of special admissions criteria for minority students violate the equal protection clause of the Fourteenth Amendment? Second, are racial preference considerations always unconstitutional?

★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★

The Court held that the university's special admissions program for minorities violated the equal protection clause of the Fourteenth Amendment, although Justice Powell indicated that a properly devised program might well be constitutionally valid. Justice Lewis F. Powell, Jr., wrote for each of the two different five-member lineups.

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Powell explained that it is "no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. . . . Although many of the Framers of the Fourteenth Amendment conceived of its primary function as bridging the vast distance between members of the Negro race and the white 'majority,' the Amendment itself was framed in universal terms, without reference to color, ethnic origins, or condition of prior servitude." He stated, "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. If both are not accorded the same protection, then it is not equal."

The Court refused to adopt the view that unless it could be shown that some proven constitutional or statutory violation existed, or that the government had some compelling justification in inflicting a burden on one individual in order to help another, the Court concluded, "the preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids."

The University program failed this test because it "imposes disadvantages upon persons like respondent [Bakke], who bear no responsibility for whatever harm the beneficiaries of the special program are thought to have suffered." On the other hand a university might well use racial criteria in an effort to insure diversity in its student body. Racial identity, however, could not be the sole criterion for admission. The University would still be free to devise an admissions program "involving the competitive consideration of race and ethnic origin" by making race one factor among others in the competition for all available places.

The Court concluded, "the fatal flaw in the petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. Such rights are not absolute. But when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of a person's skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest."

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. On what grounds did the Court reject the university's affirmative action program?
2. What did the Court suggest as a way for the university to use racial criteria and not violate the Constitution?
3. Was the Court ruling a victory for Bakke? Explain.
4. If you were an African American applying for admission to the university's medical school, would you stand a better chance for admission under the system that Bakke attacked or under the program suggested by the Court? Explain.
5. Some people complained that the Court's ruling in the *Bakke* case marked the end of affirmative action. Do you agree with this judgment? Give reasons for your answer.