

Title: Regents of University of California v. Bakke 438 U.S. 265 (1978)

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REGENTS OF UNIVERSITY OF CALIFORNIA v. BAKKE 438 U.S. 265 (1978)

Perhaps the Supreme Court's majority in *DEFUNIS V. ODEGAARD* (1974) thought a delay in deciding on the constitutionality of racial preferences in state university admissions would give time for development of a political consensus on the issue. The result was just the opposite; by the time *Bakke* was decided, the question of RACIAL QUOTAS and preferences had become bitterly divisive. Bakke, a nonminority applicant, had been denied admission to the university's medical school at Davis. His state court suit had challenged the school's program setting aside for minority applicants sixteen places in an entering class of 100. Bakke's test scores and grades exceeded those of most minority admittees. The California Supreme Court held that the racial preference denied Bakke the EQUAL PROTECTION OF THE LAWS guaranteed by the FOURTEENTH AMENDMENT.

A fragmented United States Supreme Court agreed, 5–4, that Bakke was entitled to admission, but concluded, in a different 5–4 alignment, that race could be taken into account in a state university's admissions. Four Justices thought the Davis quota violated Title VI of the CIVIL RIGHTS ACT OF 1964, which forbids the exclusion of anyone on account of race from any program aided by federal funds. This position was rejected, 5–4. Four other Justices argued that the Davis quota was constitutionally valid as a reasonable, nonstigmatizing remedy for past societal discrimination against racial and ethnic minorities. This view was rejected by Justice LEWIS F. POWELL, who concluded that the Davis quota was a denial of equal protection. His vote, along with the votes of the four Justices who found a Title VI violation, placed Bakke in Davis's 1978 entering class.

Justice Powell's opinion on the constitutional question began by rejecting the notion of a "BENIGN" RACIAL CLASSIFICATION. He concluded that the burden of remedying past societal discrimination could not constitutionally be placed on individuals who had no part in that discrimination—absent the sort of constitutional violation that had been found in school DESEGREGATION cases such as *SWANN V. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION* (1971), where color-conscious remedies had been approved. While rejecting quotas, Justice Powell approved the use of race as one factor in a state university's admissions policy for the purpose of promoting diversity in its student body.

Race is relevant to "diversity," of course, mainly because past societal discrimination has made race relevant to a student's attitudes and experiences. And if one's membership in a racial group may be a factor in the admissions process, it may be the decisive factor in a particular case. The Powell opinion thus anticipates a preference for minority applicants; how much of a preference will depend, as he says, on "some attention to numbers"—that is, the number of minority students already admitted. The difference between such a system and a racial quota is mostly symbolic.

The press hailed Justice Powell's opinion as a judgment of Solomon. As a contribution to principled argument about equal protection doctrine, it failed. As a political solution, however, it was a triumph. The borders of preference - became Page 2147 | [Top of Article](#) blurred, so that no future applicant could blame her rejection on the preference. At the same time, a university following a "diversity" approach to admissions was made safe from constitutional attack. AFFIRMATIVE ACTION was thus saved, even as Bakke was ushered into medical school and racial quotas ringingly denounced. Almost miraculously, the issue of racial preferences in higher education virtually disappeared from the political scene, and legislative proposals to abolish affirmative action were shelved. Solomon, it will be recalled, succeeded in saving the baby.

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(1986)

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