

Bakke v. Regents of the University of California (1976)

553 P. 2d 1152

Allan Bakke earned a baccalaureate degree in engineering from the University of Minnesota in 1962, graduating with a 3.51 grade point average. He was employed as an engineer for a space-agency laboratory when he applied for admission to the 1973 entering class (and subsequently the 1974 entering class) of the Medical School of the University of California at Davis. In an effort to increase the number of minority students attending the medical school, UC Davis had established a two-track system for applicants: Of the one hundred places available each year, sixteen were set aside for minority students and were filled under a special admissions program. Bakke's grade point average and Medical College Admission Test (MCAT) scores were highly competitive with those of the regular admittees and much higher than those of the special admittees, as the following table indicates.

Nonetheless, Bakke was denied admission both years. He thereupon filed suit in California Superior Court. The trial court judge held for Bakke, ruling, among other things, that Bakke was discriminated against because of his race in violation of the Equal Protection Clause of the Fourteenth Amendment. The judge also determined, however, that Bakke was not entitled to an order for admission to the university, because although he was qualified to be admitted both years in which he applied, he had not shown that he would have been selected even if there had been no special program for minorities. Both parties appealed to the California Supreme Court—Bakke from that portion of the judgment which denied him admission and the university from the determination that its special admissions program was unconstitutional. Because of the importance of the issues involved, the California Supreme Court took the case without intermediate appeal and ruled, 6—1 for Bakke.

MR. JUSTICE MOSK delivered the opinion of the Court.

The issue to be determined ... [is] whether a racial classification which is intended to assist minorities, but which also has the effect of depriving those who are not so classified of benefits they would enjoy but for their race, violates the constitutional rights of the majority.

Two distinct inquiries emerge at this point; first, what test is to be used in determining whether the program violates the Equal Protection Clause; and second, does the program meet the requirements of the applicable test.

The general rule is that classifications made by government regulations are valid “if any state of facts reasonably may be conceived” in their justification. But in some circumstances a more stringent standard is imposed. Classification by race is subject to strict scrutiny, at least where the classification results in detriment to a person because of his race. In the case of such a racial classification, not only must the purpose of the classification serve a “compelling state interest,” but it must be demonstrated by rigid scrutiny that there are no reasonable ways to achieve the state’s goals by means which impose a lesser limitation on the rights of the group disadvantaged by the classification. The burden in both respects is upon the government....

The University asserts that the appropriate standard to be applied in determining the validity of the special admission program is the more lenient “rational basis” test. It contends that the “compelling interest” measure is applicable only to a classification which discriminates against a

minority, reasoning that racial classifications are suspect only if they result in invidious discrimination; and that invidious discrimination occurs only if the classification excludes, disadvantages, isolates, or stigmatizes a minority or is designed to segregate the races. The argument is that white applicants denied admission are not stigmatized in the sense of having cast about them an aura of inferiority; therefore, it is sufficient if the special admission program has a rational relation to the University's goals.

Class Entering in 1974

MCAT (Percentiles)

	Science GPA	Overall GPA	Verbal	Quantitative	Science	General Information
Bakke	3.44	3.51	96	94	97	72
Average of Regular Admittees	3.36	3.29	69	67	82	72
Average of Special Admittees	2.42	2.62	34	30	37	18

We cannot agree with the proposition that deprivation based upon race is subject to a less demanding standard of review under the Fourteenth Amendment if the race discriminated against is the majority rather than a minority. We have found no case so holding, and we do not hesitate to reject the notion that racial discrimination may be more easily justified against one race than another, nor can we permit the validity of such discrimination to be determined by a mere census count of the races.

That whites suffer a grievous disadvantage by reason of their exclusion from the University on racial grounds is abundantly clear. The fact that they are not also invidiously discriminated against in the sense that a stigma is cast upon them because of their race, as is often the circumstance when the discriminatory conduct is directed against a minority, does not justify the conclusion that race is a suspect classification only if the consequences of the classification are detrimental to minorities.

Regardless of its historical origin, the Equal Protection Clause by its literal terms applies to "any person," and its lofty purpose, to secure equality of treatment to all, is incompatible with the premise that some races may be afforded a higher degree of protection against unequal treatment than others.

We come, then, to the question whether the University has demonstrated that the special admission program is necessary to serve a compelling governmental interest and that the objectives of the program cannot reasonably be achieved by some means which would impose a lesser burden on the rights of the majority.

The University seeks to justify the program on the ground that the admission of minority students is necessary in order to integrate the medical school and the profession. The presence of a substantial number of minority students will not only provide diversity in the student body, it is said, but will influence the students and the remainder of the profession so that they will become aware of the medical needs of the minority community and be encouraged to assist in meeting those demands. Minority doctors will, moreover, provide role models for younger persons in the

minority community, demonstrating to them that they can overcome the residual handicaps inherent from past discrimination.

Furthermore, the special admission program will assertedly increase the number of doctors willing to serve the minority community, which is desperately short of physicians. While the University concedes it cannot guarantee that all the applicants admitted under the special program will ultimately practice as doctors in disadvantaged communities, they have expressed an interest in serving those communities and there is a likelihood that many of them will thus fashion their careers.

Finally, it is urged, black physicians would have a greater rapport with patients of their own race and a greater interest in treating diseases which are especially prevalent among blacks, such as sickle-cell anemia, hypertension, and certain skin ailments.

We reject the University's assertion that the special admission program may be justified as compelling on the ground that minorities would have more rapport with doctors of their own race and that black doctors would have a greater interest in treating diseases prevalent among blacks. The record contains no evidence to justify the parochialism implicit in the latter assertion; and as to the former, we cite as eloquent refutation to racial exclusivity the comment of Justice Douglas in his dissenting opinion in *DeFunis*: "The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. The purpose of the University of Washington cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish. It should be to produce good lawyers for Americans.... " *DeFunis v. Odegaard* (1974).

We may assume *arguendo* that the remaining objectives which the University seeks to achieve by the special admission program meet the exacting standards required to uphold the validity of a racial classification insofar as they establish a compelling governmental interest. Nevertheless, we are not convinced that the University has met its burden of demonstrating that the basic goals of the program cannot be substantially achieved by means less detrimental to the rights of the majority.

The two major aims of the University are to integrate the student body and to improve medical care for minorities. In our view, the University has not established that a program which discriminates against white applicants because of their race is necessary to achieve either of these goals.

It is the University's claim that if special consideration is not afforded to disadvantaged minority applicants, almost none of them would gain admission because, no matter how large the pool of applicants, the grades and test scores of most minority applicants are lower than those of white applicants....

While minority applicants may have lower grade point averages and test scores than others, we are aware of no rule of law which requires the University to afford determinative weight in admissions to these quantitative factors. In practice, colleges and universities generally consider matters other than strict numerical ranking in admission decisions. The University is entitled to consider, as it does with respect to applicants in the special program, that low grades and test scores may not accurately reflect the abilities of some disadvantaged students; and it may reasonably conclude that although their academic scores are lower, their potential for success in

the school and the profession is equal to or greater than that of an applicant with higher grades who has not been similarly handicapped.

In addition, the University may properly as it in fact does, consider other factors in evaluating an applicant, such as the personal interview, recommendations, character, and matters relating to the needs of the profession and society, such as an applicant's professional goals. In short, the standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration, and no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race. We reiterate, in view of the dissent's misinterpretation, that we do not compel the University to utilize only "the highest objective academic credentials" as the criterion for admission.

... The University has not shown that the second major objective of the program—the need for more doctors to serve the minority community—will be appreciably impaired....

An applicant of whatever race who demonstrated his concern for disadvantaged minorities in the past and who declares that practice in such a community is his primary professional goal would be more likely to contribute to alleviation of the medical shortage than one who is chosen entirely on the basis of race and disadvantage. In short, there is no empirical data to demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive.

Moreover, while it may be true that the influence exerted by minorities upon the student body and the profession will persuade some nonminority doctors to assist in meeting these community medical needs, it is at best a circuitous and uncertain means to accomplish the University's objective. It would appear that more directly effective methods can be devised, such as academic and clinical courses directed to the medical needs of minorities, and emphasis upon the training of general practitioners to serve the basic needs of the poor....

While a program can be damned by semantics, it is difficult to avoid considering the University scheme as a form of an education quota system, benevolent in concept perhaps, but a revival of quotas nevertheless. No college admission policy in history has been so thoroughly discredited in contemporary times as the use of racial percentages. Originated as a means of exclusion of racial and religious minorities from higher education, a quota becomes no less offensive when it serves to exclude a racial majority. "No form of discrimination should be opposed more vigorously than the quota system."

To uphold the University would call for the sacrifice of principle for the sake of dubious expediency and would represent a retreat in the struggle to assure that each man and woman shall be judged on the basis of individual merit alone, a struggle which has only lately achieved success in removing legal barriers to racial equality. The safest course, the one most consistent with the fundamental interests of all races and with the design of the Constitution is to hold, as we do, that the special admission program is unconstitutional because it violates the rights guaranteed to the majority by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution....