Civil Rights After Brown

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Affirmative Action in Education

One of the most thorough legal explanations of this relationship between equal protection based on race and affirmative action is in the realm of education - namely - college admissions.

- Bakke v. Regents of the University of California (1978)
- Hopwood v. Texas (1996)
- Grutter v. Bollinger (2003)
- Fisher v. University of Texas (2013)

Bakke v. University of California

The facts of the case:

- Allen Bakke, 35 year old white male
- Rejected from Cal Davis Medical School (twice)
- Cal Davis' quota system to support racial diversity
- Exclusion based on race

Legal question: Does the University's policy violate the Equal Protection Clause of the 14th Amendment?

Bakke v. University of California

The answer? Yes and no.

- 8-1 decision
- Quota system is unconstitutional
- Bakke granted admission
- Race-as-a-factor is acceptable (race-consciousness)

Justice Lewis Powell

"Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions under some circumstances, petitioner's special admissions program, which forecloses consideration to persons like respondent, is unnecessary to the achievement of this compelling goal, and therefore invalid under the Equal Protection Clause."

Hopwood v. Texas (1996)

After the Bakke decision, states began to implement the Bakke standard, using race as a factor in college admissions decisions (including Texas).

- The UT law school utilized these race-conscious standards
- Cheryl Hopwood (and others) sued, alleging that race-as-a-factor was a violation of the Equal Protection Clause
- More specifically, the particular system used by the UT Law School was more significant than just a "factor," enough to approximate a quota
- The Court (5th Circuit) agreed:

"we hold that... [the Law School] may not use race as a factor in deciding which applicants to admit in order to achieve a diverse student body, to combat the perceived effects of a hostile environment at the law school, to alleviate the law school's poor reputation in the minority community, or to eliminate any present effects of past discrimination by actors other than the law school."

The Law School's use of race as a factor in admissions was ruled

After Hopwood

- A THECB report in 1998 (required by the legislature) saw immediate decreases in African-American and Hispanic enrollments.
- Then, a small group of faculty and legislators began to meet seeking a legislative remedy
- The plan to come out of these roundtable discussions was the Top Ten Percent Plan

The Top Ten Percent Plan

- Furthered primarily by David Montejano, a History professor at UT
- The plan was simple - provide automatic offers of admission to all students in the top 10% of their graduating class
- Estimates on effect surpassed (then) current enrollment at UT

It seemed to be an effective way at creating diversity, and preventing use of race as a factor in admissions decisions

From Idea to Law

The process of moving from an idea by a University professor was relatively... easy?

- Irma Rangel (Chair of the House Committee on Higher Education)
- Teel Bivens (Chair of the Senate Education Committee)
- Gonzalo Barrientos (Member of Senate Education Committee)

From Idea to Law

The process was made easier by the ripe political environment

- Irma Rangel & Teel Bivens (political “symbiosis”)
- George W. Bush’s agenda (Hispanic support)

The Aftermath

- Bakke v. Regents of the University of California (1978)
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The Aftermath

In Grutter:

- Race is one of many secondary factors in determining who should be admitted
- Because diversity is a compelling state interest and the policy is narrowly tailored (as a “plus” factor), race-consciousness is constitutional

In Fisher:

- Abigail Fisher sued UT for its race-conscious policy, saying race should not be permissible at all
- Court disagreed in favor of UT - race is “a factor of a factor of a factor”