**Regents of the U. of California v. Bakke (1978)**Affirmative Action, Equal Protection

**Background Summary**In the early 1970s, the medical school of the University of California at Davis admitted 100 students each year. The university used two admissions programs: a regular admissions program and a special admissions program. The purpose of the special admissions program was to increase the number of minority and "disadvantaged" students in the class. Applicants who were members of a minority group or who believed that they were disadvantaged could apply for the special admissions program.

In the regular admissions program, applicants had to have a grade point average of at least 2.5 on a scale of 4.0 or they were automatically rejected. In the special admissions program, however, applicants did not have to have a grade point average of 2.5. Sixteen of the 100 spaces in the medical program were reserved only for the disadvantaged students. This is known as a quota system.

From 1971 to 1974 the special program admitted 21 black students, 30 Mexican Americans, and 12 Asians, for a total of 63 minority students.\* The regular program admitted 1 black student, 6 Mexican Americans, and 37 Asians, for a total of 44 minority students. No disadvantaged white candidates were admitted through the special program.

Allan Bakke was a white male. He applied to and was rejected from the regular admissions program in 1973 and 1974. Minority applicants with lower scores than Bakke's were admitted under the special program.

After his second rejection, Bakke filed a lawsuit in the Superior Court of Yolo County, California. He wanted the Court to force the University of California at Davis to admit him to the medical school. He also claimed that the special admissions program violated the Fourteenth Amendment. The Fourteenth Amendment says, in part, "No State . . . shall deny to any person . . . the equal protection of the laws." Bakke said that the University, a state school, was treating him unequally because of his race. He thought that if he were a minority that he would have been admitted to the school.

The university argued that their system of admission preferences served several important purposes. It helped counter the effects of discrimination in society. Since historically, minors were discriminated against in medical school admissions and in the medical profession, their special admission program could help reverse that. The university also said that the special program increased the number of physicians who practice in underserved communities. Finally, the university reasoned that there are educational benefits to all students when the student body is ethnically and racially diverse.

The Superior Court of Yolo County, California agreed with Bakke. It said that the special admissions program violated the federal and state constitutions and was therefore illegal. The Court said that a person's race could not be considered when the University decides whom to admit.

The University of California and Bakke both appealed the case to the Supreme Court of California. This court also declared the special admissions policy unconstitutional and said that Bakke had to be admitted to the medical school. The Regents of the University of California then appealed the case to the Supreme Court of the United States.

**Classifying Arguments in the Case**

* The Equal Protection Clause of the Fourteenth Amendment of the Constitution states: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."
* The Fourteenth Amendment does not allow a state to impose distinctions based upon race. The belief that some forms of discrimination based on race might be "benign" is irrelevant to the demands of the Fourteenth Amendment.
* The Fourteenth Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need.
* "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy."
* The special admissions program at the University of California at Davis medical school did not consider only those of minority races, but (in 1973) also considered white students who had been educationally and/or economically disadvantaged.
* The Fourteenth Amendment gives the right to equal protection to individuals, not groups.
* "Benign" discrimination based on race is only valid where an individual can point to specific acts of discrimination that have disadvantaged that person.
* Benefits provided to individuals because of alleged group discrimination are not valid under the Fourteenth Amendment.
* "It is unnecessary in twentieth-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact."
* Some candidates admitted in the special admissions program at the University of California at Davis had lower GPAs than those who were rejected in the regular admissions program.
* Though there were white applicants who asked to be considered disadvantaged, none were actually admitted through the special admissions program.
* Three times as many Asians were admitted through the regular admissions program as were admitted in the special admissions program.

**Summary of the Decision**

Five members of the Court voted to require the University of California at Davis to admit Bakke to its medical school. Justice Powell wrote an opinion in two parts, each of which received the votes of four other justices. The Court determined that any racial quota system in a state supported university violated both the Civil Rights Act of 1964 and the Equal Protection clause of the Fourteenth Amendment. Justices Burger, Stewart, Rehnquist and Stevens joined this part of Powell’s opinion. The Court also ruled that the benign use of race as one of several criteria in admissions decisions did not violate either the Civil Rights Act or the Fourteenth Amendment. Justices Brennan, Marshall, Blackmun and White joined this part of Powell’s opinion.

In the first part of the opinion, Justice Powell reasoned that admissions programs that rely on a quota system, in which a specified percentage of spaces in the class is reserved for a particular racial or ethnic group, were always unconstitutional, regardless of the justifications offered for them. Because a certain number of seats were reserved for applicants of a particular racial group, applicants not within that racial group could not compete for those seats, no matter how qualified they were. Justice Powell declared that “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 specific admissions system used by UC Davis was determined to be unconstitutional because it used racial quotas.

Justice Powell further concluded that even though admissions systems relying solely on racial quotas violate the Constitution, the Constitution does not prohibit any consideration of race in admissions decisions. He acknowledged that a state may have legitimate interests in considering the race of an applicant during the admissions process. These interests included increasing the racial diversity of the student body to increase the proportion of minorities in medical schools and in medical professions, to “counter the effects of societal discrimination,” to “increase the number of physicians who will practice in communities currently underserved,” and to “obtain the educational benefits that flow from an ethnically diverse student body.”

In order to use race as an element in making admissions decisions, a state university must be able to justify the use under the standard of strict scrutiny. This means that admissions programs that consider race must be narrowly tailored to advance a compelling government interest in order to be constitutional.

The Court found that UC Davis’s admissions policy was not narrowly tailored to a compelling government interest. Basing admissions decisions solely on race, as in UC Davis’s quota system, was not an effective way of furthering their interest in a diverse student body. The majority opinion said “the diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single … element.” Other elements include “exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, [and] a history of overcoming disadvantage,” among others. Race can only be considered a “plus factor” in a particular applicant’s file, along with these other factors. Only then would an admissions program be deemed narrowly tailored to the compelling state interest of achieving diversity in the admitted class.

Because UC Davis’s admissions program relied solely on racial quotas, a majority of the Court ruled that it violated both the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. A majority of the Court also agreed, however, that race could be considered in admissions decisions, but only as a “plus factor” among other factors, rather than as the determinative element. The Court thus ruled that Bakke must be admitted to medical school at UC Davis.

**Key Excerpts from the Majority Opinion**

(Writing for a divided Court, Justice Powell rendered a judgment. Four justices agreed with part of it and another four justices agreed with another part of his opinion. The lack of consensus among the justices has kept the Bakke case from having the impact on American law that it might have had otherwise. The issue is still a controversial one.)

Justice Powell delivered the opinion of the Court.

. . . The special admissions program is undeniably a classification based on race and ethnic background.

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." . . . 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.

....

Petitioner urges us to adopt . . . more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign."

....

. . . [T]here are serious problems of justice connected with the idea of preference. . . . First, it may not always be clear that a so-called preference is in fact benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order to advance the group's general interest. . . . Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. . . . Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

....

**Understanding the Decision**

Underline the sentences that explain the reasons the Supreme Court ruled against the university and for Baake.

Circle the standard the Court applied when deciding whether race could be used as part of the university’s admission process.

Put a star next to justifications (or purposes) the university gave for treating minority and disadvantaged students differently in the admissions process.

Fill in the blanks of these sentences:

In the 1978 Baakecase, the Supreme Court ruled that a university \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (can / cannot) consider race in its admissions process.

However, a system that uses \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to reserve a certain number of spots for applicants who are from racial or ethnic minority groups is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Write a paragraph to explain whether you agree or disagree with the Court’s decision. Be sure to write about the reasons you agree or disagree.

**Gideon v. Wainwright (1963)**Right to Counsel, Due Process

**Summary**On June 3, 1961, someone broke into the Bay Harbor Pool Room in Panama City, Florida. Some beer and wine were stolen. The cigarette machine and jukebox were smashed and money was missing. A witness said he saw Clarence Earl Gideon in the poolroom early that morning. The police found Gideon and arrested him. He had a lot of change in his pockets and was carrying a bottle of wine. They charged him with breaking and entering.

Gideon was poor. He could not afford a lawyer. At the trial, he asked the judge to appoint a lawyer for him. The judge said no. Gideon argued that the Sixth Amendment says he is entitled to a lawyer. The judge told Gideon that the state doesn't have to pay for a poor person's legal defense. This meant that Gideon had to defend himself. He tried hard but didn't do a very good job. For example, he called some witnesses who helped the other side more than they helped him.

Gideon was found guilty and was sentenced to five years in jail. He thought that this was unfair because he had not been given a lawyer. He asked the Supreme Court of Florida to release him but the court said no. Gideon kept trying. He wrote a petition and sent it to the Supreme Court of the United States. When it read what Gideon had written, the Court agreed to hear his case.

In an earlier case, Betts v. Brady, the Court had ruled that in state criminal trials, the state must supply a poor defendant with a lawyer only if there are "special circumstances". These special circumstances could be that the case is very complicated or that the person is illiterate or not competent to represent himself. Gideon did not claim any of these special circumstances. The Court needed to decide if it should get rid of this "special circumstances" rule. If it did so, then poor people like Gideon would be given a lawyer if charged with a felony in a state court.

**Summary of the Decision**

The Supreme Court ruled in favor of Gideon in a unanimous decision. Justice Black wrote the opinion for the Court, which ruled that the right to the assistance of counsel in felony criminal cases is a fundamental right, and thus must be required in state courts as well as federal courts. Justices Harlan and Clark wrote concurring opinions.

The Court rejected part of their prior decision in Betts v. Brady (1942). In that case, the justices had ruled that indigent defendants need only be provided with a lawyer under special circumstances. The decision accepted the portion of the Court’s ruling in Betts which stated that the parts of the Bill of Rights that are “fundamental and essential to a fair trial” are made binding on the states by the Due Process clause of the Fourteenth Amendment. They specifically noted, however, that “the Court in Betts was wrong … in concluding that the Sixth Amendment’s guarantee of counsel was not one of these fundamental rights.”

The Court said that the best proof that the right to counsel was fundamental and essential was that “[g]overnments … spend vast sums of money to … try defendants accused of crime … Similarly, there are few defendants charged with crime[s]… who fail to hire the best lawyers they can get to prepare and present their defenses.” This indicated that both the government and defendants considered the aid of a lawyer in criminal cases absolutely necessary. In addition, the opinion noted that the Constitution places great emphasis on procedural safeguards designed to guarantee that defendants get fair trials. According to the opinion, “this noble idea cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.” The Court concluded that the Sixth Amendment guarantee of a right to counsel was fundamental and essential to a fair trial in both state and federal criminal justice systems. In all felony criminal cases, states must provide lawyers for indigent defendants.

In his concurring opinion in Gideon, Justice Clark agreed that Betts v. Brady should be overturned, and that the Sixth Amendment must be interpreted to require states to provide counsel for criminal defendants. Under Betts, states were only required to provide lawyers for criminal defendants under special circumstances, which included capital cases. Justice Clark noted that the Constitution does not make any distinction between capital and noncapital cases, but requires procedural protections for defendants meeting the standard of due process of law in both situations. The procedural protections required therefore should not be different depending on whether the defendant was charged with a capital crime or a noncapital crime, according to Justice Clark.

In his concurring opinion, Justice Harlan also agreed that the right to counsel in criminal cases is a fundamental and essential right. He explained that Betts v. Brady mandated that there must be special circumstances present, such as complex charges, incompetence or illiteracy of defendants, or the possibility of the death penalty as a sentence, to require states to provide criminal defendants with counsel. He then argued that “the mere existence of a serious criminal charge constituted in itself special circumstances.” Since, according to Justice Harlan, all felony criminal trials involved special circumstances, states should be required to provide lawyers for indigent defendants.

**Key Excerpts from the Majority Opinion**

The decision was unanimous. Justice Black delivered the opinion of the Court.

Since 1942, when Betts v. Brady . . . was decided by a divided Court, the problem of a defendant's federal constitutional right to counsel has been a continuing [sic] source of controversy and litigation in both state and federal courts. To give this problem another review here, we granted certiorari . . . Since Gideon was proceeding in forma pauperis, we appointed counsel to represent him and requested both sides to discuss in their briefs and oral arguments the following: "Should this Court's holding in Betts v. Brady be reconsidered?

. . . .

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. Betts argued that this right is extended to indigent defendants in state courts by the Fourteenth Amendment. In response, the Court stated that, while the Sixth Amendment laid down "no rule for the conduct of the States, the question recurs whether the constraint laid by the Amendment upon the national courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment." . . . In order to decide whether the Sixth Amendment's guarantee of counsel is of this fundamental nature, the Court in Betts set out and considered "[r]elevant data on the subject.

. . . .

On the basis of this historical data the Court concluded that "appointment of counsel is not a fundamental right, essential to a fair trial."

. . . .

Explicitly recognized to be of this "fundamental nature" and therefore made immune from state invasion by the Fourteenth . . . are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances . . . the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment.

**Key Excerpts from the Dissenting Opinion**

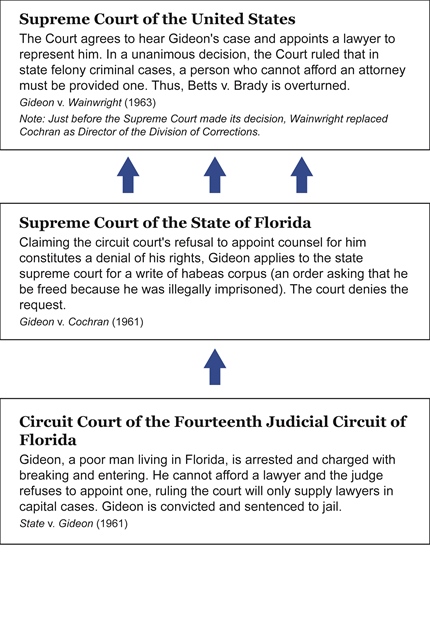
Justice McLean wrote the dissenting opinion,

. . . He [Scott] is averred to have had a negro ancestry, but this does not show that he is not a citizen of Missouri, within the meaning of the act of Congress authorizing him to sue in the Circuit Court. It has never been held necessary, to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federal courts, and so may any individual who has a permanent domicile in the State under whose laws his rights are protected, and to which he owes allegiance.

Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and appropriate definition of the term citizen is "a freeman." Being a freeman, and having his domicile in a State different from that of the defendant, he is a citizen within the act of Congress, and the courts of the Union are open to him.

In the discussion of the power of Congress to govern a Territory, in the case of the Atlantic Insurance Company v. Canter, (1 Peters, 511; 7 Curtis, 685,) Chief Justice Marshall, speaking for the court, said, " . . . the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory; whichever may be the source whence the power is derived, the possession of it is unquestioned."

**How the Case Moved through the Court System**



**Dred Scott *v.* Sandford, 1857**Slavery, Due Process, the Missouri Compromise

**Summary**In 1834, slave Dred Scott was purchased in Missouri and then brought to Illinois, a free (non-slave) state. His owner and he later moved to present-day Minnesota where slavery had been recently prohibited, and then back to Missouri. When his owner died, Scott sued the widow to whom he was left, claiming he was no longer a slave because he had become free after living in a free state. At a time when the country was in deep conflict over slavery, the Supreme Court decided that Dred Scott was not a “citizen of the state” so they had no jurisdiction in the matter, but the majority opinion also stated that he was not a free man.

**Classifying Arguments in the Case**

* The Missouri Compromise of 1820 outlawed slavery forever in certain areas. Dred Scott's owner took him to these free areas. Thus, Scott became free forever.
* Dred Scott is not a citizen because if he were he would be entitled to all of the privileges and immunities of a citizen, one of which is the right of free movement. It is clear that the laws governing slavery do not permit this, thus he cannot be a citizen.
* Even before the Constitution, some states allowed blacks to vote. The Constitution does not say explicitly that blacks cannot be citizens.
* The U.S. Constitution is the supreme law of the land. Neither Congress nor states can pass laws that conflict with the Constitution.
* It was law in many states and had been common law in Europe for centuries that a slave who legally traveled to a free area automatically became free.
* In the case of Strader v. Graham (1850), the Supreme Court of the United States heard the case of three slaves who had been taken from Kentucky to Indiana and Ohio and then back to Kentucky. The Court declared that the status of the slave depended on the laws of Kentucky, not Ohio.
* In 1865, the states ratified the Thirteenth Amendment to the Constitution making slavery illegal.
* The Constitution recognized the existence of slavery. Therefore, the men who framed and ratified the Constitution must have believed that slaves and their descendants were not to be citizens.
* The Missouri Compromise of 1820 that outlawed slavery in some future states was unconstitutional because Congress does not have the authority to deny property rights of law-abiding citizens. Thus, Scott was always a slave in areas that were free.
* At the time of the Dred Scott case, women and minors could sue in federal court even though they could not vote.

**Summary of the Decision**

In a 7-2 opinion, a majority of the Supreme Court ruled in favor of Sanford.\* Chief Justice Taney wrote the opinion for the Court. The Court first decided that African Americans were not citizens as defined by the Constitution. They then considered the merits of the case, ruling that slaves did not become free simply by entering a free state or a territory that had not yet become a state. This overturned the ruling of the lower federal court, but affirmed the ruling of the Missouri Supreme Court.

The Supreme Court first concluded that African Americans were not citizens as defined by the Constitution, and therefore, the Supreme Court and lower federal courts had no jurisdiction to hear this case. The decision cited Article III, Section 2 of the Constitution which gives federal courts the power to hear cases “between Citizens of different States.” To determine the definition of “citizens,” the justices considered the intent of the framers of the Constitution. They noted that at the time the Constitution was written, people of African descent, both slave and free, were “regarded as beings of an inferior order” and were “so far inferior that they had no rights which the white man was bound to respect.” Believing that the Court should not “give to the words of the Constitution a more liberal construction …than they were intended to bear when the instrument was framed and adopted,” the Court concluded that people of African descent were not citizens, and could therefore “claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.” This included the ability to bring suit in federal court.

Even though the Court determined that it did not have jurisdiction to hear this case because it did not involve “Citizens of different States,” the justices ruled on the merits of case anyway. They first argued that the power of Congress to regulate the internal workings of the territories that had not yet become states was limited. They concluded that an act of Congress prohibiting citizens from “owning [slaves] in the territor[ies] … is not warranted by the Constitution, and is therefore void.” The Court thereby struck down the Missouri Compromise as unconstitutional because Congress did not have the power under the Constitution to determine whether slavery was allowed in the territories, even those these were not states.

In addition, the Court concluded that slaves could not be made free simply by entering a free state or territory. This would deprive slave owners of their property without giving them due process of law as required by the Fifth Amendment. Accordingly, “an act of Congress which deprives a citizen of the United States of his …property, merely because he … brought his property into a particular Territory of the United States” was unconstitutional. The Court held, therefore, that Dred Scott and his family were “property” and were not made free simply by virtue of the fact that they were brought into a free territory.

**Key Excerpts from the Majority Opinion**

The decision was **7 to 2**. Chief Justice Roger B. Taney delivered the opinion of the Court.

. . . Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

We think they [people of African ancestry] are not [citizens], and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.

. . . [T]he legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

**Key Excerpts from the Dissenting Opinion**

Justice McLean wrote the dissenting opinion,

. . . He [Scott] is averred to have had a negro ancestry, but this does not show that he is not a citizen of Missouri, within the meaning of the act of Congress authorizing him to sue in the Circuit Court. It has never been held necessary, to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federal courts, and so may any individual who has a permanent domicile in the State under whose laws his rights are protected, and to which he owes allegiance.

Being born under our Constitution and laws, no naturalization is required, as one of foreign birth, to make him a citizen. The most general and appropriate definition of the term citizen is "a freeman." Being a freeman, and having his domicile in a State different from that of the defendant, he is a citizen within the act of Congress, and the courts of the Union are open to him.

In the discussion of the power of Congress to govern a Territory, in the case of the Atlantic Insurance Company v. Canter, (1 Peters, 511; 7 Curtis, 685,) Chief Justice Marshall, speaking for the court, said, " . . . the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory; whichever may be the source whence the power is derived, the possession of it is unquestioned."

**How the Case Moved through the Court System**

