

Dave McKinnon

Bakke: an unimportant defeat for civil rights movement

I found myself on these pages about two months ago arguing for a decision from the Supreme Court in the Bakke case pretty much like the one that was handed down last week. Since then I've been questioned on those views a good deal, and I've been especially disturbed by the reception the decision has gotten from a lot of people in the national press.

The court's ruling has been called vague and confusing, and has been referred to as a stopgap compromise rather than a definitive landmark. And of course all this must be admitted. But a lot of Poli-Sci professors with large tastes for irony have taken genuine pleasure in pointing out that these are usually the greatest virtues of Supreme Court decisions. And this is probably true of Bakke.

opinion

But it does not have to be admitted that this decision marks any kind of serious reversal for the national civil rights movement. Obviously the Supreme Court itself hasn't retreated any, since it has never approved of quotas before. Nor does the decision mark a retreat for national policy in general. The Court made it clear that this was a ruling limited in application at least to university admissions policies.

No mention was made of a similar ruling for employment policy, and of the concern among minority groups that an effective ban on quotas in higher education will mean fewer places for their members, it can only be said that, as Justice Powell pointed out, alternative means of achieving the same ends exist. More importantly, the alternative methods are already in use in almost every case, as a number of university administrators have noted.

Beyond this, there is every indication that the Bakke rule — if there really is such a thing — will not be applied when the Court gets around to deciding on affirmative action in employment policy. Justice Powell's opinion clearly left open the possibility that quotas can be employed in certain circumstances, while four other justices saw no difference between



the quota system and other forms of affirmative action, and found them all constitutional. Justice Powell also indicated that quotas or their rigid specifications with Congressional sanction are likely to receive more respect from the Court than the voluntary policy of UC-Davis.

There is finally the question of the more abstract and long-term effects of the decision. According to one frequently-heard argument, the Bakke decision, by appearing to be a setback for the civil-rights movement, will in fact be a setback, through its general impact on public opinion. And there is probably something to this, but not as much as some would have us believe.

Above all, the simple fact of the tremendous progress of the movement for equality remains, and will remain. And no white

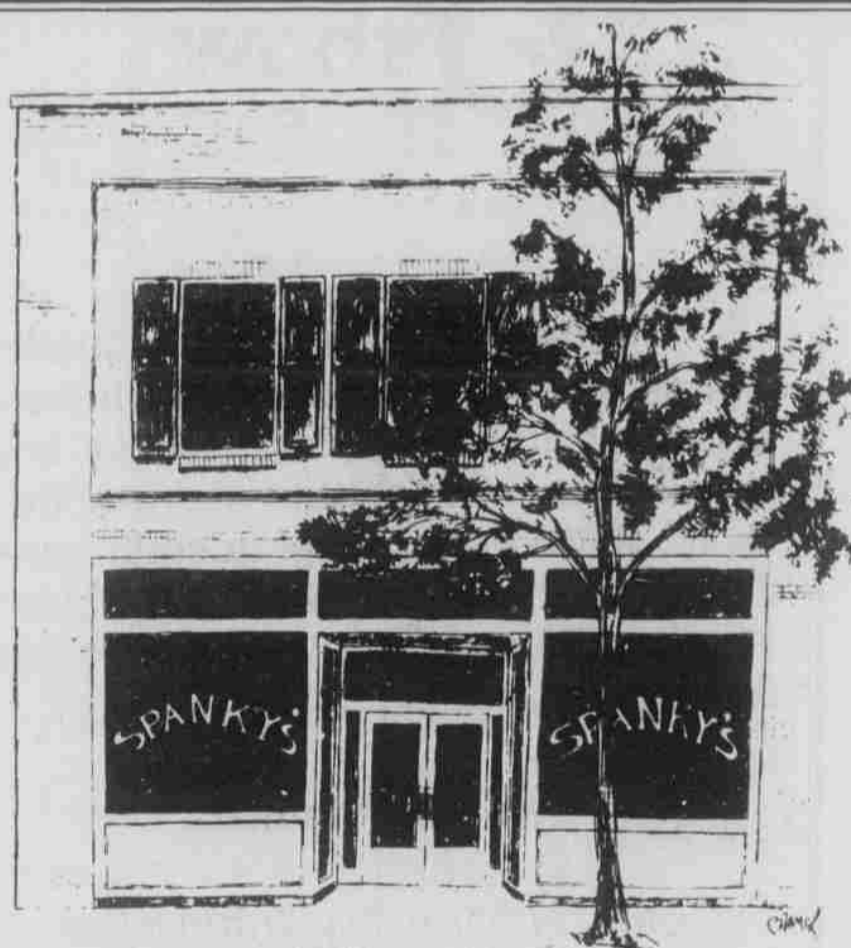
backlash prompted by Bakke can be conceived which would threaten those gains.

Nor does the decision in Bakke mean that this progress will cease, or even be slowed down. The drive for equality in this country has simply progressed beyond the point where a decision like Bakke can effect it seriously. It is no longer a movement dependent on the mood of a white electorate or the opinion of a white Supreme Court. On the contrary, it has become solidly entrenched in the nation's political ways, due not least of all to its own most significant result — the effective realization of political power by minorities. Under these circumstances, partial moral defeats become even more unimportant.

After only a week, then, the Bakke decision has already had too much wisdom pressed out of it. As many of its detractors have pointed out, it does have a certain symbolic

significance, in drawing a partial limit on the proper procedures for achieving equality in some very limited circumstances. Under normal circumstances this would go relatively unnoticed. It has happened before. But given the profoundly important possibilities signalled by Proposition 13, the dissatisfaction of minority groups with the present administration, and the general shifting of the battle for equal rights into less immediate, visible, and exciting areas in the last decade, Bakke begins to look like the judicial contribution to a very meaningful series of events. But Bakke itself is not very meaningful, and the proper means of countering the greater threat to the rights movement does not even lie in Bakke's direction.

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