

EDITORIAL

Why put off till tomorrow, what one should decide today? The Supreme Court's non-decision leaves the fundamental issues raised by *DeFunis v. Odegaard* unsettled. Was Marco DeFunis' 14th Amendment right to "equal protection of the laws" violated by giving preferential treatment to minority students in admission to law school? The *DeFunis* case generated widespread public interest across the nation. Thirty *amicus curiae* briefs representing sixty-four organizations were filed before the Supreme Court. While not meaning to second guess the Court, its decision concerning mootness is somewhat strained. Justice Douglas' dissent on the merits is good as far as it goes, though his opinion is ambiguous in several parts. The opinion is particularly insightful in the examination of the LSAT. We would extend and expand the reasoning of the opinion, however. The question of community need is essential because of the under representation of minorities in the legal profession. The way the Supreme Court ultimately decides the fundamental issue of "reverse discrimination" will have a profound effect on the course of American society during the last quarter of the twentieth century. Our position is that the theory of "reverse discrimination" is a complete sham. A holding for the *DeFunis* line of reasoning would amount to a repeal of *Brown v. Board of Education*, in effect, if not in theory. Such a decision could mark a turning point as far as the Court's commitment to the social policy of integration i.e., equal access to the resources and opportunities of American society. If preferential admission is discriminatory, it would follow logically that all "affirmative action" programs designed to benefit racial minorities are discriminatory. The effect on the Black community would be disastrous.

The theories of "reverse discrimination", "benign neglect", and the Jensen/Shockley theory of genetic inferiority of Blacks reflect the *continuing* racism that exists in this society. Similar theories were advanced in the last century as the federal government abandoned the process of Reconstruction in the South. The "separate but equal" doctrine was merely a euphemism for an American form of apartheid. The purpose of the "Jim Crow" laws was to perpetuate the racial caste system in America. Finally, the Supreme Court struck down these laws in 1954. However, *de facto* racism is still engrained in American institutions today. The "affirmative action" programs are testing the viability and flexibility of American institutions in their ability to adjust to needed social change. The analogy between the quota systems of the past and the affirmative action programs of today is misleading. The quotas were used to limit the number of various ethnic groups in institutions of higher learning, while the affirmative action programs have a completely different purpose, which is the inclusion of those who have been excluded by various methods, legal and extra-legal, from full participation in American society. Of course, we are aware that pro rata distribution is not possible nor necessarily desirable. We recognize, also, that *perfect* equality of opportunity is not possible either.

The natural laws governing the physical universe such as the law of gravity are different from the social laws that govern society. The old American saying that “this is a nation of laws, and not of men” is somewhat misleading in that it suggests that such social laws have *independent* existence apart from men. Actually, social laws only have existence in the actions of men. Social laws are created, interpreted, and enforced by men, and do not have independent existence. Ninety-nine percent of the lawyers in the country are white. The white majority controls all or practically all of the economic resources in the country. The ability to discriminate implies power. This is why reverse discrimination is really a fantasy, unless we are willing to imagine that racism has vanished and the majority has become self destructive. Lawyers play a central role in American society. The country was founded, in large part, by lawyers. The Constitution is a creation of lawyers and lawyers dominate all levels of the government. Legal representation is vitally important. The Black community is grossly underrepresented in the legal profession.