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Seniority Rights vs. Racial Quotas

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OPINION

Seniority rights vs. racial quotas

By Neal Devins

COURT-ordered racial quotas are fast becoming a thing of the past. On June 12, the United States Supreme Court upheld Memphis's last-hired, first-fired seniority system, ruling that a court may not order an employer to protect the jobs of recently hired black employees at the expense of white workers with more seniority. This court decision signals a new era in America's struggle to eliminate the vestiges of past racial discrimination.

Before the Memphis ruling, lower federal courts unanimously approved race-conscious affirmative relief. These courts sought to justify the use of such devices by pointing to pervasive societal discrimination, claiming that "one must look at race to get beyond racism." The fact that whites were now being purposefully discriminated against to benefit minority group members who were not proven victims of discrimination was viewed by these courts as a justifiable cost of eradicating earlier unlawful discrimination.

The Supreme Court flatly rejected this argument in the Memphis case. Pointing to the Civil Rights Act of 1964, the court held that Congress intended to "provide make-whole relief only to those who had been the actual victims of discrimination." The court thus adopted the view that Congress sought to better the lot of minority groups by guaranteeing fair treatment to individuals.

This conflict between individual rights and group benefits has been the subject of fierce public debate and inconclusive judicial action for the past decade. Our economy is grounded in the principle of individual competition in a free market. Under this system, government should do no more than ensure that artificial barriers, such as racial discrimination, should not limit free-market competition. Alternatively, our government has also recognized that the vestiges of past discrimination necessarily limit the ability of minorities and women to compete in the marketplace. Under this view, government may act to ensure equality of results.

Racial quotas stand at the center of the conflict between equality of opportunity and equality of results. In practice, quotas take away opportunities from individuals who otherwise would have succeeded in the marketplace in order to provide these same opportunities to minorities who otherwise would not have been represented in the marketplace. In its Memphis decision, the Supreme Court has ruled that such quotas constitute improper interference with an individual's right to fair treatment.

The court contended that court-ordered Title VII relief only guaranteed equal-employment opportunities by providing compensatory relief such as back pay, seniority, and hiring preference to victims of discrimination. Seizing upon this ruling, William Bradford Reynolds, the assistant attorney general for civil rights, contends that "[with Memphis], [t]he era of the racial quota has run its course." To prove his point, Mr. Reynolds has directed Justice Department lawyers to review existing affirmative-action plans to determine if they are legal. Also, Mr. Reynolds has advised other government agencies not to pursue quota-like remedies in their civil rights enforcement efforts.

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These Justice Department policies have already begun to take their toll on court-ordered affirmative action. During the past month, federal district courts in Newark, N.J., and Cincinnati have modified orders that required racially preferential layoffs in derogation of a seniority system. Also, the Justice Department, on July 13, argued before a federal court of appeals in Atlanta that the Memphis decision applies to all court-ordered quotas — not just quotas that interfere with seniority rights.

Surprisingly, this opposition to racial quotas by the Reagan Justice Department is not being counterbalanced by other political forces. Congress has not sought to amend the 1964 act to allow courts to use quotas. Similarly, the Democrats refused to endorse the use of racial quotas at their San Francisco convention. It thus appears unlikely that the 1964 Civil Rights Act will be amended to allow the sort of quota-like relief that the Supreme Court rejected in the Memphis case.

Without a moving force that can act in support of racial quotas, "beneficial" intentional discrimination will fade from public view. The question now is whether society will search for less offensive means to deal with the problem of past intentional discrimination.

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