ECONOMIC SCENE

The Supreme Court finds the 'mushball middle' on affirmative action.

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"WHEN we see a complicated, seemingly intractable problem," the comedian Al Franken once remarked about affirmative action, "we have the only really genuine, authentic human reaction you can have: we're confused."

Supreme Court justices do not have the same luxury.

The justices were forced to take sides last month in the landmark cases involving admissions practices at the University of Michigan. Their rulings will likely satisfy Mr. Franken's quest to find the "mushball middle" when it comes to affirmative action.

By a 5-4 margin, the court permitted the "narrowly tailored" use of race-conscious admissions policies used by the university's law school. The justices expressly prohibited the use of numerical quotas but ruled that race may be considered along with other factors on an individual basis if "serious, good faith consideration" was given to race-neutral alternatives to achieve diversity. Although the court ruled that achieving "student body diversity is a compelling state interest," its support is not indefinite.

"We expect that, 25 years from now," Justice Sandra Day O'Connor wrote in the majority opinion in the law-school case, "the use of racial preferences will no longer be necessary to further the interest approved today." That expectation led the majority to conclude, "We see no reason to exempt race-conscious admissions programs from the requirement that all governmental use of race must have a logical end point."

How likely is it that racial gaps will be substantially eroded in 25 years, so that the use of racial preferences is no longer desirable? Is the year 2028 a logical endpoint for special efforts to ensure that underrepresented minority groups are given a fair chance in admissions or employment, or will the vestiges of past discrimination and unequal treatment still largely be with us then?

These are not the legal grounds on which the court ruled, but the question is not without interest, and it is undoubtedly tied to society's demand for diversity in institutions of higher education.

Although a definitive answer is impossible, estimates of the extent of income mobility from fathers to sons provide a rough forecast. Studies find that 40 to 60 percent of the gap in earnings between a particular individual and the average worker is closed from one generation to the next. Results specifically for blacks tend toward the lower end of this range but are not significantly different, according to research by Bhashkar Mazumder of the Federal Reserve Bank of Chicago.

In 1969, the average 30- to 39-year-old black male worker -- who had attended separate and unequal schools and entered the labor force before the Civil Rights Act of 1964 barred discrimination -- earned 37 percent less than the average white worker. This gap was mainly because of the legacy of discrimination.

If -- and it is only a hypothetical if -- the depressed income of black workers is not prevented from regressing to the mean because of subsequent discrimination, then the gap would be expected to close to 15 to 22 percent for the next generation, and to 6 to 13 percent when members of the third generation reach their 30's, around a quarter century from now. The actual earnings gap for men in their 30's in 1999 -- roughly the second generation -- was 19 percent, so the forecast appears on track.

Continuing discrimination or backsliding on civil rights enforcement would slow this convergence, so Justice

O'Connor's expectation is probably optimistic. Nevertheless, it is not unrealistic, at least when it comes to earnings, to think that the lingering effects of discrimination could be substantially reduced, though hardly eradicated, in the next quarter century or so.

For their part, many elite universities plan to continue using race-conscious admissions policies, according to the Chronicle of Higher Education.

In his bitter dissent in the law-school case, Justice Clarence Thomas made clear that he thought favorable treatment in admissions for minority students would prolong racial gaps in academic and economic achievement, not eradicate them: "These overmatched students take the bait, only to find that they cannot succeed in the cauldron of competition."

Beyond the alleged "harm" to students given favorable treatment in admissions, he went on to say that affirmative actions programs "stamp minorities with a badge of inferiority and may cause them to develop dependencies."

Instead of drawing on systematic evidence on the effect of affirmative action on students after they leave school, or on how the vast majority of minorities admitted to elite colleges actually viewed their college experience, Justice Thomas's opinion relied on introspection, selective anecdotes and the assertion that "no social science has disproved" his view that affirmative action is harmful.

"Somehow, someway, social scientists should say clearly to judges, even to Clarence Thomas, that evidence matters," said William G. Bowen, president of the Andrew W. Mellon Foundation and co-author of "The Shape of the River" (Princeton University Press, 1998). In that book, Mr. Bowen and his co-author, Derek Curtis Bok, a former president of Harvard University, found that the more selective the college that black students attended, the more likely they were to graduate and earn an advanced degree, the more satisfied they were with their college experience, and the more successful they were later in life.

Moreover, these findings held for black students at the lower end of the College Boards distribution as well as those at the higher end, which is significant because those at the lower end were more likely to have been admitted to the elite schools because race was taken into account as a background characteristic along with other factors.

Some people -- including me -- have questioned whether all the salutary outcomes associated with attending an elite school are because of the school. (Stacy Berg Dale, a researcher at Mathematica Police Research, and I have published a study that found the selectivity of the undergraduate college one attends does not materially affects one's earning power later in life.) But the evidence certainly does not suggest that attending top colleges harms minority students.

No one raises concerns that preference in admissions given to athletes, cheerleaders and children of wealthy alumni causes self-doubt or stigma. The fact that this concern only rises to prominence when it comes to considering race as one of many factors in admissions illustrates how difficult it will be to overcome the lingering discrimination in American society.

A quarter century from now, the Supreme Court will have a tougher call as to whether diversity is still a compelling state interest, but chances are it will wind up back in the mushball middle when it revisits the issue then.