

The Bakke Case and Affirmative Action



by Robert L. Allen

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WHO IS THE NCOBD?

The National Committee to Overturn the Bakke Decision [NCOBD] was formed in April 1977 to assist in building the sustained, nationwide campaign required to overturn the Bakke decision. Presently we have chapters in New York, Washington, D.C., San Antonio, Seattle, the San Francisco Bay Area, Sacramento, and Los Angeles, and affiliated groups in Honolulu, Chicago, and Detroit which are doing education and organizing work in communities, schools, and workplaces. The Committee puts forth three basic demands:

- Overturn the Bakke Decision
- Implement, maintain, and expand special admissions and other essential services for minority students.
- Implement, maintain, and expand affirmative action programs in employment.

These demands were the focal point of the National Day of Protest Against the Bakke Decision on October 3 and 8, 1977. These protests sparked anti-Bakke activity throughout the country for the first time, as activities took place in some 20 cities involving more than 15,000 people.

Presently, the NCOBD is launching the National Week of Education and Action Against the Bakke Decision and Racism throughout the country from February 19-25. Protest demonstrations in many cities will follow on April 8, to be topped off with a massive, nationwide march on Washington, D.C. on April 15. We need your help. Our national office can be contacted at: NCOBD, P.O. Box 3026, Berkeley, CA 94703; [415] 549-3297.

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The Bakke Case and Affirmative Action

by Robert L. Allen

The past several years have been marked by a growing racist reaction in the United States, especially in the field of education. Public school desegregation programs in many cities have come under violent attacks by racist mobs. Compensatory education programs in elementary schools are being dismantled. Dozens of Black and Ethnic Studies Departments in colleges have been squeezed out of existence by budget cuts, and countless minority instructors in other departments find themselves facing the terminal year. Since 1974 the proportion of minority students enrolled in colleges and professional schools has declined as special admissions programs have been eliminated and financial aid has dried up. Even more ominously, layoffs and lawsuits are undermining the principle of affirmative action in education and employment.

Charges of "reverse racism" are being used to reverse the limited gains won during two decades of hard struggle. As economic and social problems multiply throughout the country, racism is used to force racial minorities to bear the brunt of the crisis. Moreover, the rhetoric of "reverse racism" attempts to make racial minorities scapegoats for the problems that have been fostered by the inherent social irresponsibility of the corporations and banks that dominate the society.

Now the U.S. Supreme Court has been handed the opportunity

Robert L. Allen is editor of the BLACK SCHOLAR and author of Black Awakening in Capitalist America. His latest book is Reluctant Reformers: Racism and Social Reform Movements in the United States. "The Bakke Case and Affirmative Action" is adapted from an article in the BLACK SCHOLAR, September 1977 and is printed by permission.

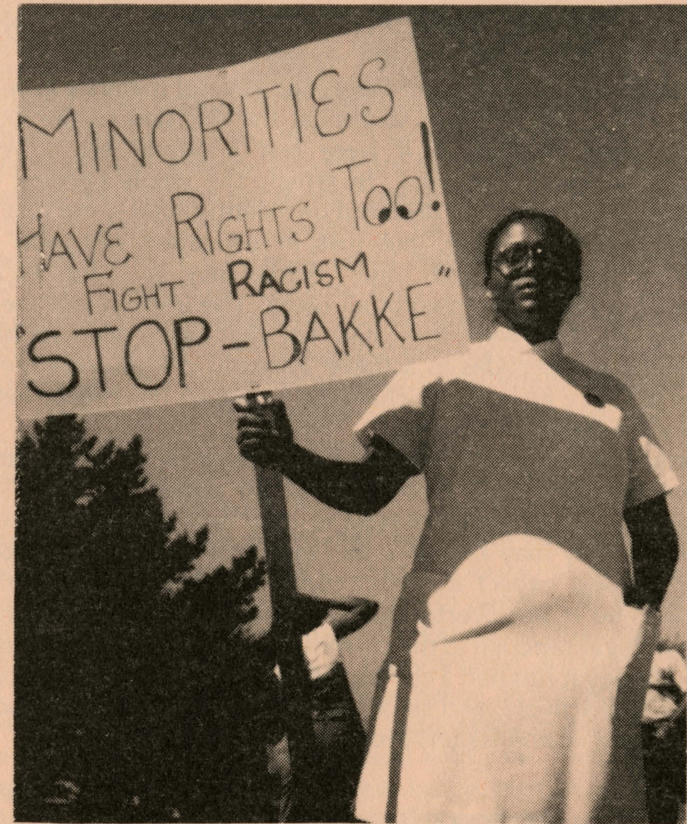
to sanction this process of reaction. The so-called Bakke case has given the Court the opportunity, if it chooses, to eliminate not only all racially based special admissions programs in education but also affirmative action programs in employment, housing and other fields. This would be a disastrous situation, amounting to the virtual nullification of the 1954 desegregation ruling. A campaign is being mounted to awaken public sentiment and mobilize protest actions before we find ourselves pushed back into the era of *Plessy v. Ferguson*.

BACKGROUND OF THE BAKKE CASE

The origins of the Bakke case go back to 1969 when, under intense pressure from third world students, the University of California Medical School at Davis established a special admissions program for minority students. Prior to that time less than 1% of the students admitted to the school were members of racial minorities although California has a minority population of better than 25%. Not surprisingly minority students were enraged at this discrimination. Not only did it limit their opportunities for entering the medical profession, it also contributed to the poor health of minority communities because of the lack of minority health professionals. For example, only about 6% of all doctors in the U.S. are black or Spanish-speaking. The students argued that special admissions — affirmative action — was the only equitable way to overcome generations of racial discrimination in higher education.

Under the special admissions program 16 of the 100 spaces for entering medical students at Davis were reserved for minority students. Between 1970 and 1974 some 74 minority students were admitted; a few also came in through the "regular" admissions program. Other professional schools in California and throughout the country — feeling the wrath of the student movement — set up similar programs. As a result, the enrollment of blacks climbed from 2.8% in 1969 to 6.3% in 1974, while that of Chicanos rose from 0.2% to 1.2%.¹ Affirmative action was beginning to change the complexion of the medical profession.

In 1973 and again in 1974 Allan Bakke, a white civil engineer, applied for admission to the Davis medical school; he was rejected both times. (He was also turned down at 12 other medical schools.) At the suggestion of a U.C. official, Bakke filed suit against the university charging that he was qualified for admission but that he was rejected because of his race, a violation of the equal protection clause of the 14th Amendment of the U.S. Constitution. The university then filed a countersuit requesting a



decision on the constitutionality of the entire special admissions program and not just on whether or not Bakke should be admitted. In effect, the university, which had never been enthusiastic about special admissions, was setting up a test case in which the university would appear as the defender of special admissions. If special admissions were thrown out the university could then claim its hands were clean.

The case wound its way up to the California Supreme Court which, in September, 1976, agreed with Bakke that indeed he had been discriminated against and declared the special admissions program at Davis unconstitutional. Importantly, the court noted that no evidence was presented by U.C. counsel of past discrimination at the university to warrant the creation of special programs giving preferential treatment in admissions to minority students. The university made no attempt to provide evidence of its past discrimination, although it is common legal knowledge that in previous cases where past discrimination by an employer

or institution has been shown then the courts have upheld special programs for racial minorities and women.

The case could have stopped there, and several minority groups urged the U.C. Regents not to appeal the decision to the U.S. Supreme Court because if it were lost it would set a very dangerous **national** precedent. In effect, the whole concept of affirmative action could be declared unconstitutional — not just in California but nationwide; not just in education but also in employment, housing and other fields; not just for racial minorities but also for women of all races. The implications were staggering. At stake were the gains that civil rights activists had struggled for two decades to achieve. Already in California there has been a flurry of lawsuits charging “reverse discrimination” and citing the Bakke rationale.

Nevertheless, or perhaps because of these possibilities and developments, the U.C. Regents filed an appeal to the U.S. Supreme Court. The Court heard the case on October 12, 1977 and, though they may render a decision at any moment before June 1978, most expect a verdict sometime this Spring. If the Bakke decision is not overturned by the U.S. Supreme Court it would give legal sanction to the current resurgence of institutional racism. Already it has had a chilling effect on minority admissions to professional schools, and since 1974 half of the medical schools that set up special admissions programs have dismantled them.

INSTITUTIONAL RACISM AND “REVERSE RACISM”

The civil rights movement of the 1950s and the 1960s was successful in attacking *de jure* segregation and discrimination. However, what we observe today is that state intervention is no longer necessary to structure the subordination of racial minorities. On the one hand, the outlawed practices have simply been replaced by equally conscious and effective *de facto* racist methods. For example, job applicants are often screened by supposedly “objective” tests which in reality are racially biased and which usually have little relevance to the prospective job. Racial exclusion can also result if years of experience are required to enter positions — for example, the building trades — which minorities have been historically denied. There is little doubt that intentional racism has continued to thrive despite the demise of legalized discrimination.

On the other hand, it has become increasingly evident that the “normal” operation of institutional and capitalist market

mechanisms are sufficient to maintain a racially subordinated labor force. This is sometimes referred to as institutional racism or covert racism. Institutional racism exists when decisions or actions about education or employment are made not on overtly racial grounds yet their effect is to enhance racial subordination. For example, minority workers are today kept out of many better paying occupations not overtly because of race but because they “lack qualifications.” However, this “lack of qualifications” is the end result of a cycle of racial discrimination stretching back through the decades. Because their parents were discriminated against — denied good jobs and housing in neighborhoods with adequate schools — the present generation of third world workers largely lack the education and skills that would qualify them for the better paying jobs. Which means many of them will be forced to live in slums and send their kids to poor schools — and the cycle will repeat itself.

If one builds a wall of legal segregation and discrimination around a group of people so that they do not have access to decent jobs, education and housing, then this group of people will have no social mobility, it will not be able to upgrade its education and skills. After a few generations the **legal** wall is no longer necessary to keep the group isolated and subordinated. All that is necessary is for all economic decisions to be based on formal qualifications and skills and the group will be **automatically** excluded. Indeed, institutional racism can co-exist with the rhetoric of formal equality. Minority workers are today free to apply for any job — that’s what is meant by **equal opportunity** — but if they lack qualifications due to the cumulative effects of generations of past discrimination they will still be excluded from the better paying jobs and occupations. This is why affirmative action or preferential treatment is absolutely necessary in order to create the basis for actually **achieving** some degree of equality.

The racists have tried to label affirmative action as “reverse racism.” This is simply a crude attempt to portray the victims of racism as the perpetrators of racism. There is no such thing as “reverse racism.” Racism is a historically evolved structure of inequality aimed at stigmatizing, excluding and depriving certain groups; essentially racism is a social mechanism for fostering and maintaining a reservoir of subordinated labor within the framework of capitalism. Racial discrimination sets off a visibly identifiable pool of labor whose social mobility and access to jobs can be strictly controlled by the employer class, thereby making possible the superexploitation of this group of workers. Racism enables employers to fill jobs that white workers seek to avoid and

to fill these jobs with a work force whose wages can be kept at the lowest levels because this work force has no other options. This, of course, means increased profits for the capitalists.

Moreover, by racially walling off and isolating one group of workers and keeping their wages low, this accomplishes other things for the capitalist system:

1. In times of increasing labor demand these subordinated workers can be mobilized and brought into the active force in large numbers to meet immediate needs (e.g., during wartime). When the demand slacks off they can be demobilized and shuttled back into their labor camps (euphemistically called ghettos). Thus, the subordinated workers can be forced to absorb a disproportionate share of layoffs, thereby mitigating potential class conflict between white workers and their employers.

2. In periods of class conflict when workers are organizing unions or demanding wage increases the employers can mobilize and hire unorganized, subordinated workers to break up the organizing drive and lower the general wage level. If the subordinated workers are virtually all racial minorities this also has an effect of intensifying racial hostility between third world and white workers, and transforms a worker-employer class conflict into a racial conflict among the workers.

To speak of "reverse racism" would imply that white workers as a group were being victimized by this kind of social dynamic, which simply is not true. The truth of the matter is that white workers are indirectly victimized by racism insofar as racism is used to lower the general wage level and hinder organizing activities. However, the ideology of white supremacy obscures this social fact and makes many whites willing supporters of the racist system.

The specific mechanisms by which the structure of racial inequality is maintained can be summed up in three differentials:

1. Occupational differential: the exclusion of racial minority workers from the better paying occupations.

2. Wage differential: where minority workers do the same work as whites the former are paid lower wages.

3. Unemployment differential: minority workers are saddled with higher unemployment than whites, meaning that the former are compelled to take whatever jobs are available at whatever wages they can get.

Has affirmative action had any impact on these mechanisms?

AFFIRMATIVE ACTION AND RACIAL INEQUALITY

The legal basis for affirmative action was provided by Title VII

of the 1964 Civil Rights Act (updated by the 1972 Equal Employment Opportunity Act) prohibiting employment discrimination on the basis of race, color, religion, sex or national origin.

A second legal basis for affirmative action was provided by Executive Order 11246 issued in 1965 which prohibits racial discrimination by all employers who have contracts with the federal government. The scope of this order can be seen in the fact that federal contractors employ 20 million workers or about $\frac{1}{4}$ of the national workforce.

Significantly, it was not until 1968 — when the protest against racism was at a peak — that guidelines for implementing affirmative action were drawn up. Employers were required to assure equal opportunity not only in hiring but in upgrading as well. In 1971 the guidelines were modified to require employers to explain situations where minorities or women were being underutilized in any job classification. In effect, affirmative action came to mean that employers were to develop programs for achieving proportional representation of minorities and women in their workforces, calculated on the basis of census figures.

Has affirmative action been effective? Has it had any impact on the structure of racial inequality? To answer this, let us look at the three mechanisms of inequality in employment: occupational differential, wage differential, and unemployment differential.

OCCUPATIONAL DIFFERENTIAL

Has there been any shift of minority workers into the "better" occupations from which historically they have been excluded? Based on employment statistics we can say that especially since 1960, there has been a definite improvement in the share of better jobs held by third world workers, although we are still far from parity (that is, proportional share of occupations based on participation in the labor force). Third World workers have been moving into the white collar job categories, which includes professional and technical workers, managers, clerical and sales workers. The rate of occupational change towards parity was the greatest between 1965 and 1970, which coincided with the initial enactment of anti-discrimination legislation and the adoption of affirmative action guidelines.² This period also coincided with a peak in the mass struggles against racism in education, employment, and housing.

Between 1970-1974, the rate of occupational gains declined considerably, and recent figures suggest that the rate continued to decline between 1974 and 1977.³

Why this decline? The 1970s have been a period of relative quiescence for mass movements against racial discrimination, which means there has been less pressure on employers to hire and upgrade minority workers and less pressure on the government to enforce affirmative action guidelines.

The 1970s have also been a period of economic stagnation and recession, meaning that unemployment has risen for all categories of workers and gains that were made in the late 1960s are being undermined in the 1970s.

Thus, affirmative action contributed to advances in the 1960s but was at best a holding action in the 1970s, meaning that minority workers may have suffered an even greater decline in occupational gains had there been no affirmative action programs.

However, a shift in the racial composition of certain occupations may be the employer's way of holding down wages. For example, in the textile industry there has been a four-fold increase in the number of black workers between 1960 and 1970. But wages for black textile workers are about 1/5 lower than wages for white textile workers.⁴

What this implies is that an occupational shift brings a relative gain but so long as there is a wage differential between minority and white workers in the occupation, then the employer can use this to keep his overall labor costs down. This, therefore, acts to **limit** the potential income gains to be made when third world workers shift to new occupations.

WAGE DIFFERENTIAL

According to a recent EEOC report, the median weekly earnings wage differential between full-time black and white workers decreased steadily at a rate of about 1.6% points per year between 1967 and 1974, or about double the rate of decrease for the previous decade.⁵ This would seem to suggest that anti-discrimination measures are having some effect in closing the wage gap. Minorities who have a college education and are in professional and technical occupations are better off, earning about 95% of what whites in the same occupation earn. The wage differential is worse in the lowest educational and occupational categories.

However, if we look at **family income**, as opposed to individual wages, the situation is altogether different. In 1965, the annual income of minority families averaged 55% of white family income. By 1970 this ratio had increased to 64%. But between 1971 and 1973 the trend reversed itself with third world family income dropping to only 60% of white family income in 1973.⁶ Between



1974 and 1976 the trend again reversed itself with the average black family's income climbing to about 62% of white family income.⁷

These fluctuations seem to be related to the differential in unemployment.

UNEMPLOYMENT DIFFERENTIAL

For several decades now the official third world unemployment ratio has averaged between one and one-half to two times as large as the white unemployment rate. However, the ratio of minority to white unemployment fluctuates from year to year and can affect the average family income; in years when minority unemployment is increasing relative to white unemployment, the average income of minority families tends to decline relative to white families — even if the wage differential were eliminated — simply because relatively more third world workers are unemployed. Indeed, government figures indicate that between 1970 and 1973 third world unemployment increased relative to white unemployment (corresponding with a decrease in the relative incomes of racial minority families); and between 1973 and 1976 the trend reversed itself and minority unemployment decreased relative to white unemployment (corresponding with an increase in minority family income relative to whites).⁸ Affirmative action has had no appreciable impact on these fluctuations.

It should be emphasized that these are **relative** unemployment figures under discussion here; the **absolute** unemployment rates for both racial minorities and whites have increased greatly since 1969. This discussion is also based on government statistics which don't include what the National Urban League refers to as the "hidden unemployment rate" — workers who are discouraged and no longer actively seeking work so that they are not even counted in the official government unemployment figures.

AFFIRMATIVE ACTION NOT ENOUGH

This brief review suggests that anti-discrimination and affirmative action programs have had some progressive impact on the unemployment differential because affirmative action does not increase the total number of jobs available; nor does affirmative action alone change the seniority systems that help maintain the unemployment differential.

Desegregating the available jobs is not enough. Another crucial factor is the need for expansion of employment and educational opportunities. It is reprehensible that medical schools, for example, under the domination of the American Medical Association, continue to **restrict** the total number of new students at a time when more health professionals are urgently needed in rural and minority communities. Expansion of jobs, especially, is the only way to deal with the increasing unemployment and declining family incomes. Such programs must be greatly expanded and, at the same time, coupled with changes in the seniority system so that new workers are not locked into deadend jobs from which they will be the first fired if layoffs come.

Finally, it is clear from the data that the greatest education and employment gains were made during periods when mass movements against racism were strongest and most militant, compelling employers and institutions to open their doors and moving the government to enforce anti-discrimination measures.

REBUILDING THE MASS MOVEMENT

Affirmative action programs on the books are not enough. What is needed is to rebuild the mass struggle against racism and the Bakke case provides a strategic focal point. The Bakke case and affirmative action are now national issues that potentially affect minority people of all social and economic classes and women of every race. The potential for mobilizing a wide spectrum of people on a national basis is great. In California there have already been numerous protest actions, some involving thousands of people.



Author Robert L. Allen addresses rally in opposition to Bakke decision.

People in other states must become aware of the threat posed to them by the Bakke decision.

One of the groups taking the lead in this struggle is the National Committee to Overturn the Bakke Decision (P.O. Box 3026, Berkeley, CA 94703. Tel. (415) 549-3297). Formed in April, 1977, to create a national movement to reverse the Bakke decision, the group has focused on three demands:

1. Overturn the Bakke decision.
2. Maintain, implement and expand special admissions and other essential services for minority students.
3. Maintain, implement and expand affirmative action programs in employment.

The group is presently working on mass education among groups and individuals in order to mobilize for nationwide protest in the fall when the Supreme Court hears the case.

Some say that the struggle for affirmative action divides the working class, but history shows that it is racism that divides the working class. So long as racism exists white workers can be deluded into thinking it is in their interest to maintain racial inequality rather than uniting with third world workers to struggle against an oppressive capitalist social order that exploits all.

Special admissions and affirmative action are certainly worth defending, but the effectiveness and value of these reforms depends on the existence of a powerful movement for social change. The struggle against racism is the key to the struggle for

a new social order in the United States, and now it is especially urgent to re-energize the struggle against racism and to place this struggle in the context of building toward a new social order in which labor is not a commodity to be exploited but is the essence of human growth and creativity.

FOOTNOTES:

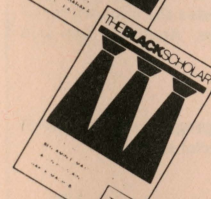
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2. Charles S. Bullock, III, "Expanding Black Economic Rights," in Harrell R. Rodgers, Jr., (ed.), *Racism and Inequality: The Policy Alternatives*. San Francisco: W.H. Freeman & Co., 1975, p. 89; Victor Perlo, *Economics of Racism USA: Roots of Black Inequality*. New York: International Publishers, 1975, p. 77.
3. Bureau of Labor Statistics, U.S. Department of Labor. *Monthly Labor Review*. February 1977.
4. Perlo, op. cit., pp. 74-76.
5. Equal Employment Opportunity Commission, *Equal Employment Opportunity Report 1974*. Research Report #50, Washington: 1976; Raymond S. Franklin and Solomon Resnik, *The Political Economy of Racism*, New York: Holt, Rinehart and Winston, 1973, p. 38.
6. U.S. Commission on Civil Rights, *Last Hired; First Fired: Layoffs and Civil Rights*. Washington, D.C., 1976, p. 81. See also Perlo, op. cit., p. 53.
7. National Urban League, *The State of Black America 1977*. New York: 1977, pp. 4-5.
8. *Monthly Labor Review*, p. 8.

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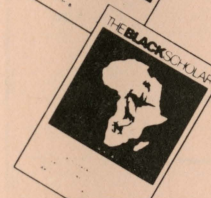
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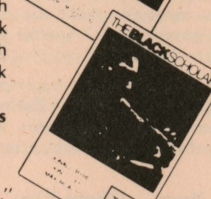
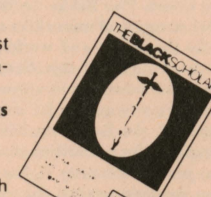


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Petition to the U.S. Supreme Court

Fight Racism! Overturn the Bakke Decision!

We, the undersigned, demand a full overturn of the **Bakke** decision presently on appeal to the U.S. Supreme Court. The **Bakke** decision and its arguments alleging "reverse discrimination" are an insult to the real struggle of minorities against racial discrimination in this country over the last 200 years.

While the living and working conditions of minority communities in the U.S. continue to suffer obvious inequality and injustice, the **Bakke** decision infers that such discrimination has ended. The **Bakke** decision attempts to argue that efforts to actively remedy this inequality by special programs to ensure equal participation for minorities are some form of "discrimination" themselves.

If upheld, the **Bakke** decision threatens to dismantle every affirmative action and special admissions program for minorities across the country. We will not stand by and allow even these limited programs to protect minority rights to be dismantled in the resurgence of racism surrounding the **Bakke** case. The struggle against the continuing racial discrimination in the U.S. mandates the expansion and full implementation of special programs to ensure equal minority participation. Anything less is a betrayal to the cause of racial equality and justice in the U.S.

We demand that the Supreme Court:

- 1) Completely overturn the **Bakke** Decision
- 2) Support the implementation, maintenance, and expansion of existing special programs to guarantee and enforce equal participation of minorities in employment, education, and social services.

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