

# REPARATIONS ARE JUSTIFIED FOR BLACKS

Jesse Jackson

**M**ANY LOOK at the Supreme Court's decision in *Regents of the University of California v. Bakke* and say that the Court found "middle ground"—that everybody won. I do not agree. The fact is that Allan Bakke won five-to-four, and black people and the country lost as a result. I argue my case under five headings: the climate surrounding Bakke and the *Bakke* decision, the myths and reality of Allan Bakke, black people as a special case, why blacks need affirmative action, and affirmative action and the national interest.

## **The Climate Surrounding Bakke and the *Bakke* Decision**

It is not enough just to be able to read, write, and compute. People, of whatever color, must also be able to analyze, think, and interpret. They cannot limit themselves to myopic or tunnel vision, but rather must have historical and peripheral vision. To put it another way, a text without a context is a pretext. Without the context, we may see the tree, but miss the forest. What, then, is the context—the moral, social, political, and economic climate—in which Allan Bakke filed his suit and the *Bakke* case was decided?

The U.S. economy is in crisis and, at the same time, there are rising expectations of vertical entry and upward mobility among blacks, *Jesse L. Jackson, an ordained Baptist minister who has been active in the civil rights movement since its earliest days, is the founder and national president of Operation PUSH.*

Latinos, women, and others who cannot find work or schooling. We are confronted with high and slowly rising unemployment, double-digit inflation, increased economic competition from Western Europe, Japan, and the Middle East, and more and more jobs and capital going to foreign cheap labor markets under the control, in many instances, of military juntas.

The fundamental economic problem facing the United States, therefore, is an expanding labor base and an economy unable to absorb all those who desire to work. The country refuses to ratify the Equal Rights Amendment because, basically, ratification would bring more women into the labor force. The Supreme Court ruled in favor of Bakke because to do otherwise would bring more trained blacks in the labor force. The Congress refused to pass even a weak and watered-down Humphrey-Hawkins "full employment" bill that would be a humane step toward easing social tension.

In a troubled economy with an expanding labor base, conflicts surrounding sex, age, and race are heightened, overshadowing and diverting attention away from the central economic crisis. With too many people looking for too few jobs, the Nazis are rallying against the Jews in Chicago and the Ku Klux Klan is marching on blacks in Florida and Mississippi. The right wing is exploiting the legitimate economic grievances of high taxes, inflation, and job insecurity by proposing "solutions" that will only exacerbate and complicate our problems. Rather than confronting its economic crisis, our country is being primed to create scapegoats.

And when this country needs scapegoats, it finds them among blacks and the poor. That is what Bakke and his advisors did.

It is necessary to look also at the social and educational context of *Bakke*. In California, it is Proposition Thirteen; in Ohio, rejection of bond referenda for education; in Washington, the Packwood-Moynihan bill designed to undercut the public educational system nationwide. A few weeks ago, it was ABC Television sending a message of fear through white America with its presentation, "Youth Violence: A View from behind the Gun."

The cumulative effect of all this is a national attitude of punishment and exclusion rather than redemption and inclusion. *Our struggle is for educational and economic equity and parity*—our fair share. But the stage is being set to turn back the clock—to keep us out or make it infinitely more difficult for us to achieve educational and economic development, jobs, and housing. We must stop the new "holocaust," the burning of our hard-won rights in the ovens of racism and economic exploitation.

The real danger today is that precisely when we need greater help and protection from economic insecurity, the nation is turning its back on us, leaving us less protected and more vulnerable. The threat of further erosion in our position is ominous.

### The Myths and Reality of Allan Bakke

Several myths surround Allan Bakke and the *Bakke* case. The first *myth* is that Allan Bakke was an exceptionally well-qualified student who would have gotten into the University of California's medical school at Davis had it not been for the task force's special admissions program.

The *reality* is that Allan Bakke had applied to eleven medical schools and was rejected by all of them. He was even rejected by his alma mater, the University of Minnesota—presumably the school that had reason to know him best and had the soundest basis for assessing his record and potential. In fact, Allan Bakke would not have been admitted to the Davis medical school, even had there been no task force program. In 1973, Bakke had a combined numerical rating of 468 out of a possible 500. But fifteen applicants who were *not* selected had scores of 469, and twenty more with that same

score were put on the alternate list. Thus there were thirty-five applicants who would have been considered ahead of Allan Bakke, even if the sixteen task force slots had not been set aside. In 1974, Allan Bakke's score was 549 out of a possible 600. In that year twelve applicants with higher scores were not admitted, and twenty others were on the alternate list. Again, in the absence of the task force program, there would have been thirty-two applicants ahead of Allan Bakke for the sixteen slots.

Furthermore, if Allan Bakke was discriminated against, it was because of his age, not his race. In a letter dated September 13, 1971, Allan Bakke, then thirty-one years old, wrote the Admissions Committee at the medical school to ask how his age would affect his chances of being admitted. On September 20, 1971, the associate dean for student affairs responded, "When an applicant is over 30, his age is a serious factor which must be seriously considered for one of the limited number of places in the entering class." It is clear that so long as age was a factor and this standard was applied, Allan Bakke would not have been accepted. He was just not "unusually highly qualified."

A second *myth* is that the program being challenged was one from which whites were arbitrarily excluded so that a rigid quota of racial minorities could be admitted, thus discriminating against whites on the basis of race.

The *reality* is that the task force program did not exclude whites from consideration. That program was designed and identified as a program for the economically and educationally disadvantaged. While race-related, this category was not race-specific. White students applied and were in fact considered and interviewed under the program in each year of its existence.

Emphasis on the fact that no white student was ever admitted under the program tends to ignore the fact that members of racial and ethnic minorities comprise a disproportionate number of the economically disadvantaged residents of California, as well as of other states. Moreover, it ignores the fact that the Californians who are most educationally disadvantaged are those members of minorities who attend inner-city schools. It should not be surprising that the overwhelming majority, if not all, of the admittees in any program for the economically and educationally disadvantaged would be minority group members.

The sixteen seats set aside did not constitute a ceiling, or a floor, for minority admissions to the Davis medical school and, therefore, cannot be considered a "quota." First, the task force allotment was not a ceiling on the number of minority students in the class: in 1973 and 1974, a total of fifty-six minority students were admitted to the Davis medical school, twenty-five of them being regular admittees. Second, the allotment was not a floor: in at least one year, a slot was returned to the "regular" committee, because the task force could not fill it with a qualified admittee. Beyond this, it should be noted that sixteen was not the magic number that would have ensured proportionate representation, because the minority population in California is far in excess of 16 percent.

A third *myth* is that the so-called regular admittees had far better credentials and had consistently out-performed the task force admittees in every aspect.

The *reality* is, as the record shows, that many of the task force admittees had better undergraduate grade-point averages than many of the regular admittees. Figures for the two years in which Allan Bakke applied illustrate my point. For the class admitted in 1973, regular admittees had overall grade-point averages as low as 2.81, while task force admittees had averages as high as 3.76. For 1974, regular admittees had undergraduate grade-point averages as low as 2.79, while task force admittees had averages as high as 3.45. In both years, the undergraduate performance of the task force admittees on the high side was markedly better than that of the majority of the regular admittees.

It is because the media have chosen to use the code words "reverse discrimination," "preferential treatment," and "quotas" that these myths have been communicated to the American people. The real issue of affirmative action is not "reverse discrimination" against whites, but "reversal of historic and present discrimination" against blacks.

### **Black People as a Special Case**

Why are we upset about *Bakke*? The first thing that can be said about the decision is that racism split the Court's logic. In its decision, the Court gave the illusion of a legal distinction

without really making one. As a matter of principle, race can be taken into account or it cannot. If it *cannot*, then both the Davis plan and the Harvard plan (or any other plan where race is taken into account) must be unacceptable. If it *can*, then any benign attempt to compensate and give reparations for historic and present discrimination where race may be an acceptable factor is simply a matter of degree—whether the attempt involves a "rigid quota" or a "flexible goal." But a distinction in degree is not a distinction in substance or principle. The Court engaged in a logical contradiction when it found racial considerations to be *acceptable*, but not in the *form* used at Davis.

Legally, *Bakke* represents the end of the Second Reconstruction and lays the cornerstone for another century of struggle around the issue of race. Some contend that the decision is a "narrow" one, applying only to graduate school admissions. Those who take this point of view need to look at the history of race relations in this country. They should recall *Plessy v. Ferguson* in 1896, which established the "separate but equal" legal principle—which itself perverted the Fourteenth Amendment provision of "equal protection under the law." That decision made things "separate" but never "equal." *Plessy v. Ferguson* was about transportation *only*—that blacks and whites could not sit together on public transportation. But its principle of "separate but equal" soon spread to lunch counters, schools, neighborhoods—to every facet of American life.

What the Court did in *Bakke* was set in motion a principle for eroding equality from the top down. The decision was a devastating, but not fatal, blow. It left us *less* protected, not *unprotected*. It was a strong left jab that weakened us considerably, but did not knock us out. We must remain alert so that in later rounds, in our weakened state, neither the Court nor anyone else can deliver the knock-out punch.

The legal principle which this Court further extended was that of shifting the burden of proof in racial discrimination cases from proving "effect" to proving "intent." Intent is obviously far more difficult to measure and far more costly to prove than effect. What the Court has done, in essence, is to say that now we not only must prove how people behave but also must analyze their hearts. It is like asking a basketball referee to blow the whistle not

when a foul is committed, but only when it is committed *intentionally*. Thus, we have gone from the protection of the *law* to a situation where we must depend upon the *will* of the American people, and history has taught us that, too often, that means ill will rather than good will. We need the protection of the law.

Some are arguing that we have been victorious because race now *may* be considered as a factor in college admissions. However, the Court did not say race *must* be considered. It is interesting how people play word games. Race was the *absolute* factor for slavery and discrimination, but now the Court says that race can be considered only as a *relative* factor to overcome historic and present discrimination. Yet race—not I.Q., character, or merit—was the entire basis of slavery and discrimination.

The Constitution itself, in Article I, Section 2, declared blacks to be three-fifths of a person solely on the basis of race. As Justice Brennan noted, the principles upon which this nation was founded were compromised from the outset by their antithesis—slavery. Only the Fourteenth Amendment, added in 1868, made us full citizens legally. Now that same Constitution and the nation want to pretend that they have been colorblind all the while. We were *guaranteed* slavery and discrimination *as a race*; now the Court proposes a *remedy* that *allows* us to catch up on *individual* merit. We need a comprehensive solution that is consistent with the problem and its origins.

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Historically, the Court and the country have said that race was a *must* for exclusion; now they want to make race a *may* for inclusion. This is unfair and unjust, and, in its long-range effects, potentially devastating. The attempt to be “race neutral” 360 years later is amnesia of the worst sort, historically ignorant and uncompassionate.

We are asked, Why do you resist being judged on merit? We do not resist being judged on merit, but white America resists judging us on merit. Being born black in the United States

is to be born with *demerits*. We were enslaved, and are discriminated against today, not because, individually or collectively, we have lacked merit. We were enslaved and are discriminated against because of race. It did not make any difference if a black was a Ph.D. or a No-D. If you were black, you sat in the back of the bus, used the drinking fountains and washrooms for “coloreds.” Jackie Robinson was capable of playing major league baseball before 1947, but race denied him the opportunity. We were capable of eating in the front of the restaurant before 1964, but race prohibited us. We did not lack merit—we lacked white skins.

We argue for special protection under the law because we face, in this society, a special problem—racism. Free citizens ought to be able to live without fear of loss of rights or life. Yet we needed federal troops in the South after the Emancipation Proclamation to protect us. And, after the troops were removed in 1877, the United States entered its most violent period domestically, with us the victims. We needed one amendment to the Constitution (the Thirteenth) to guarantee our citizenship, we needed another (the Fourteenth) to make it apply to the several states—and a hundred years have still not erased the past wrongs.

After education was made mandatory in this country, we needed a special decision (*Brown* in 1954) to guarantee our equal educational opportunity. Citizens have the right to use public facilities, but we needed a special law (the 1964 Civil Rights Act) to exercise that right. Citizens have the right to vote, but we needed a special law (the 1965 Voting Rights Act) to ensure that right for us—and even now, rather than being guaranteed our right to vote in perpetuity, it must be renewed in 1982. We needed the 1968 Open Housing Act, not because we lacked merit, but because of racism. We would like to be judged on merit, but the special problem of racism has given us demerits. Thus, we need the protection of special laws.

### **Why Blacks Need Affirmative Action**

Let me illustrate the point another way, using the familiar athletic example. “Runners to your mark, get set, go!” Two world-class distance runners begin the grueling human test of trying to run a sub-four-minute mile. Two minutes

into the race, officials observe that one runner, falling far behind, still has running weights on his ankles. They stop the race, and hold both runners in their tracks. The weights are removed from the runner far behind, the officials re-fire the starting gun, and both runners continue from the points where they were when the race was stopped. Not surprisingly, the runner who ran the entire race without the ankle weights comes in with a sizable lead.

The fundamental moral question one could ask about that theoretical race must be, Would anyone call it fair? Again, not surprisingly, the answer would certainly be a simple and resounding No. If one could devise some means of compensating the second runner (for example, comparing the runners' times for the last two laps and projecting them over the entire race), a more accurate appraisal of each runner's ability and performance could be made. And if a reasonable means of compensation could be devised, no one would say that such compensation constituted "reverse discrimination" against the first runner or "preferential treatment" for the second. All would agree that compensation was fair and just.

Everyone can follow this example and see the "reasonableness" and morality of the solution because racial attitudes are not involved. Yet this is similar to the position in which blacks find themselves in the United States. We have been running the race with weights on our ankles—weights not of our own choosing. Weights of "no rights that a white must respect," weights of slavery, of past and present discrimination in jobs, in education, housing, and health care, and more.

Some argue that there now are laws forbidding discrimination in education, in public accommodations and employment, in politics, and in housing. But these laws only amount to removing the weights after years of disadvantage. Too often, when analyzing the race question, the analysts start at the end rather than at the beginning. To return to the track-meet example, if one saw only the last part of the race (without knowing about the first part), then compensation might seem unreasonable, immoral, discriminatory, or a form of preferential treatment. Affirmative action programs (in light of the history and experience of black people in the United States) are an extremely reasonable, even conservative, way of compensating

us for past and present discrimination. According to a recent publication of the Equal Employment Opportunity Commission (*Black Experience and Black Expectations*, Melvin Humphrey), at the present rate of "progress" it will take forty-three years to end job discrimination—hardly a reasonable timetable.

If our goal is educational and economic equity and parity—and it is—then we need affirmative action to catch up. We are behind as a result of discrimination and denial of opportunity. There is one white attorney for every 680 whites, but only one black attorney for every 4,000 blacks; one white physician for every 649 whites, but only one black physician for every 5,000 blacks; and one white dentist for every 1,900 whites, but only one black dentist for every 8,400 blacks. Less than 1 percent of all engineers—or of all practicing chemists—is black. Cruel and uncompassionate injustice created gaps like these. We need creative justice and compassion to help us close them.

Actually, in the U.S. context, "reverse discrimination" is illogical and a contradiction in terms. Never in the history of mankind has a majority, with power, engaged in programs and written laws that discriminate against itself. The only thing whites are giving up because of affirmative action is unfair advantage—something that was unnecessary in the first place.

Blacks are not making progress at the expense of whites, as news accounts make it seem. There are 49 percent more whites in medical school today and 64 percent more whites in law school than there were when affirmative action programs began some eight years ago.

In a recent column, William Raspberry raised an interesting question. Commenting on the *Bakke* case, he asked, "What if, instead of setting aside 16 of 100 slots, we added 16 slots to the 100?" That, he suggested, would allow blacks to make progress and would not interfere with what whites already have. He then went on to point out that this, in fact, is exactly what has happened in law and medical schools. In 1968, the year before affirmative action programs began to get under way, 9,571 whites and 282 members of minority groups entered U.S. medical schools. In 1976, the figures were 14,213 and 1,400 respectively. Thus, under affirmative action, the number of "white places" actually rose by 49 percent: white access to medical training was not diminished, but sub-

stantially increased. The trend was even more marked in law schools. In 1969, the first year for which reliable figures are available, 2,933 minority-group members were enrolled; in 1976, the number was up to 8,484. But during the same period, law school enrollment for whites rose from 65,453 to 107,064—an increase of 64 percent. In short, it is a myth that blacks are making progress at white expense.

Allan Bakke did not really challenge preferential treatment in general, for he made no challenge to the preferential treatment accorded to the children of the rich, the alumni and the faculty, or to athletes or the very talented—only to minorities.

### **Affirmative Action and the National Interest**

Racial reparations should be seen as in the national interest. Exclusion is both morally and economically more costly than inclusion. If a young man or woman goes to any state university in this country for four years, it will cost less than \$20,000. If he or she goes to any state penitentiary for four years, it will cost anywhere from \$50,000 to \$100,000. Education and employment cost less than ignorance and incarceration.

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Welfare and dependency cost more than employment and economic independence. The less education we get in the short run, the more rehabilitation we will need in the long run. The less constructive recreation we have now, the more destructive socialization there will be in the future. I must be honest here: The future is not free. The task of educating and employing people, of making them productive, *is not free*. But leaving people ignorant, unemployed, dependent, and destructive will cost much more. The inclusion of all of our people in the American system is in the national interest. If this country could give aid to Germany after World War II, can now sell military weapons to Israel and prop up that country's economy through grants and loans at below-market rates, it can

give reparations to black Americans in the United States.

Bakke has won a round against us, but this fight is a fifteen-rounder. We must continue to struggle for equity and parity and, for that struggle, we have several weapons which, used effectively, represent a remedy.

(1) We must continue to argue our case before the courts of the land.

(2) We must use the political process. There are 16 million eligible black voters, but only 9 million are registered. We must register the other 7 million and then leverage the 16 million votes within and between the political parties. We must use all our political options. We cannot allow one party to take us for granted and the other to write us off. Those politicians who support affirmative action should be rewarded with our votes and those who do not should be punished by not receiving our support.

(3) Economically, we must make our \$90 billion in personal disposable income work for us. Those companies that refuse to hire and promote us should feel the effects in their profit margins, through an economic withdrawal campaign.

(4) Just as we dramatized our grievances by engaging in demonstrations, picketing, sit-ins, and by going to jail *en masse* during the 1960s when we were denied food for our bodies, so we should engage in direct action against educational institutions that deny us food for our minds and companies that deny us jobs and promotions.

What is needed now, to minimize the conflict potentially just ahead for this society, is strong moral leadership. If that leadership is courageous and vigorous, justice can overcome—and this society can be made one in which, finally, people judge one another by the content of their characters rather than the colors of their skin. Failing this, Dr. King's admonition is as true for today as it was when he said it. "If we refuse to live together as brothers and sisters, we shall surely die apart as fools."

This country is not there yet, and it may even have to become color-conscious before it can become colorblind. The mountain of race still must be conquered if the United States is to become the kind of society it should be—and can be. That is the challenge, a challenge made stronger by our setback in *Bakke*. ■