

# EDITORIAL

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After the Bakke Decision: An Article-Editorial\*

William Van Til

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## ARTICLE

Allan Bakke, white, applied for admission to the medical school at the University of California at Davis. The medical school had allotted 16 places out of every 100 for disadvantaged minority students (blacks, Chicanos, native Americans, and Asian-Americans). Bakke was twice denied admission though his grades and test scores were higher than those of some minority students who were accepted. Bakke sued, claiming that he had been denied admission solely because of race and that he had been denied equal protection of the law. The California Supreme Court supported Bakke. The University appealed to the United States Supreme Court for a final ruling.

Prior to the Supreme Court's Bakke decision, a vigorous intellectual and a committed emotional debate raged in the United States. The two major contending lines of argument were powerful, and the surrounding feelings of participants were intense.

### One View

Those who supported Davis' action and opposed Bakke's case pointed to the long and ugly history of discrimination against blacks and other minorities in the United States. Centuries of black slavery had been ended only by a wartime Emancipation Proclamation and by constitutional amendments after a bloody Civil War. But racial discrimination persisted, based on later nineteenth-century legislation and a *Plessy vs. Ferguson* decision (1896) that supported racial segregation and denied human equality. Not until the mid-twentieth century did the high court rule in *Brown vs. Board of Education of Topeka* (1954) that "separate though equal" in public education was unconstitutional. Not until the 1960s did the United States Congress, spurred by an effective black-led civil rights movement, pass civil rights

laws and voting rights acts against racial discrimination. Not until recent years did colleges and employers introduce affirmative action programs. Now in 1978 would the United States Supreme Court stop affirmative action remedies for discrimination, and give the green light to strenuous resistance by affirmative action opponents? Or would the courts instead recognize the actuality of generalized discrimination and support the approach of allotting places to minorities?

In many discussions, people who supported affirmative action programs and opposed Bakke's

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case argued that to treat people equally we must treat them differently. Race must be taken into account if we are to achieve the American dream. Cultural diversity and pluralism must characterize admissions programs.

Supporters of this view also called attention to the tragic shortage of minority group doctors and the resultant deprivation of medical services experienced by residents of black ghettos. They cited tangible evidence of continuing discrimination by a laggard medical profession in a society with a heritage of racism.

### Another View

A different line of argument supported Bakke's admission and opposed the affirmative

\* At the invitation of former editor Robert R. Leeper, Dr. Van Til has prepared a report and an editorial on the Bakke decision.

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action allotment by the medical school at Davis. Proponents of this view argued that equal protection of the laws was violated in the case of Bakke's rejection for admission to Davis. They urged that equal protection should apply whether the person is black or white, since all, regardless of race, are entitled to equal protection of the laws. They particularly cited the Fourteenth Amendment, "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws," and Title VI of the Civil Rights Act of 1964, "No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in . . . any program or activity receiving Federal financial assistance,"—legislation that their opponents had frequently cited in earlier civil rights cases.

The University of California, they contended, had instituted a quota system for the admission procedure to the medical school at Davis. Thus Bakke, a white, was denied equal protection and was subjected to discrimination. Discrimination is discrimination, they argued, even though benignly intended to help compensate for past and present societal discrimination against blacks and other minorities. They pointed out that quotas are double-edged swords that have often been used to restrict Jews and other minorities. Some added that the U. S. Constitution is color-blind, and that affirmative action programs in general, through taking race into account, are a form of reverse discrimination that should be challenged. They contended that merit alone should determine admissions.

(Both of these two opposing views referred to legal and constitutional precedents, interpreted the history of the United States, and maintained their support of American democratic values. Still other arguments were heard in the national debate that preceded the Supreme Court decision; some of these employed clearly prejudicial arguments,

often hostile to black people and the concept of equality, and occasionally suspicious of the intentions of white people.)

### The Decision

So the nation awaited the Bakke decision. When it came in June 1978, it reflected a divided court. The Bakke decision gave some comfort and provided some grief for both contending views. For, in essence, the Supreme Court ruled by five to four that the "quota" system at Davis Medical School was not acceptable, and that Bakke was

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to be admitted. The court also ruled by five to four that race may be considered as a factor in a university's admission policy and thus supported the principle of affirmative action. Those who supported a positive decision for Bakke were pleased, though fearful that what they conceived as reverse discrimination might continue in guises other than quotas. Those who supported a negative decision on Bakke saw as the central meaning of the decision that the government might take race into account in affirmative action programs to remedy the disadvantages of minorities. However, they were disappointed that the University of California's particular class-based remedy for discrimination, initiated after centuries of class-based discrimination in the United States, had been ruled out.



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Still to come before the Supreme Court were decisions in the area of affirmative action in employment. A hint may have come from the Court itself. One week after the Bakke decision, the Court let stand a 1973 consent decree requiring a giant communications system, AT&T, to hire and promote more women and minorities and to pay back wages and salary increments to victims of past AT&T discrimination. Affirmative action proponents took heart.

### EDITORIAL

The debate that surrounded the Bakke case forced many Americans to think hard about their basic convictions. Though the case is now history, the problem of how best to achieve human rights, including educational and civil rights for all Americans regardless of race, ethnic backgrounds, religion, or sex, remains with us in the United States. Now is an appropriate time for all of us to review, assess, renew enduring commitments, and explore new approaches to achieving democratic human relations.

As Association for Supervision and Curriculum Development members review, assess, renew, and explore in this crucial area, they might well take into account positions taken by ASCD as an organization. For ASCD, with a record of many successes and some failures, cared and cares about human rights.

Beliefs, resolutions, and positions of ASCD in the 20-year span from 1947 to 1967 were once well summarized in the following ASCD distillation:

The decision of May 17, 1954 by the Supreme Court of the United States regarding the illegality of the principle of segregated schools was right and just. We pledge our effort to develop respect for and implementation of this decision (1955). Furthermore, every teacher, supervisor, and administrator at every level of education should dedicate his efforts to the

development of the concept of the brotherhood of man, to confirmation of the inalienable rights with which we are endowed (1956), and to improvement of community relations in regard to Americans of varied nationality backgrounds, races, religions, and social economic status (1957).

Equalized educational opportunities should be provided for all children. Those needing special attention include the children of migratory workers, deprived children, and all those suffering from social and educational segregation. Moreover, school leaders should plan and develop effective intergroup understanding emphases at all academic levels and in all appropriate subject fields. Teacher education institutions should seek additional effective ways in infusing intergroup concepts, insights, and skills into their existing pre-service and in-service programs (1959).<sup>1</sup>

Though no comparable document exists for recent years, resolutions adopted at the annual conferences of ASCD may be summarized as follows:

Qualified teachers dislocated through desegregation programs should be employed and assimilated into school systems, and fair employment practices legislation should be supported (1966). ASCD should intensify its efforts to seek black and other minority group membership, identify such leadership, and foster their assignment at all levels on all committees, commissions, and councils (1969). Support for recruitment can be achieved by soliciting the assistance of educational agencies directly serving or representing minority groups (1977).

We reaffirm that the achievement of full integration of minority groups into every facet of American life is a major task of education. We oppose public funds for private schools organized

<sup>1</sup> See Resolutions: 1947\*, 48, 50, 52, 54\*, 55\*, 56\*, 57, 58, 60, 61, 62, 63; Position Paper No. 4. (\* indicates multiple resolutions in particular years; position papers substituted for resolutions in 1964 and 1965). *Beliefs, Resolutions, and Positions of ASCD 1947-1967*. Washington, D.C.: Association for Supervision and Curriculum Development, 1967, mimeographed.

to maintain racial segregation; we oppose black separatism and every other form of separatism; we support utilization of professional competence in leadership positions, regardless of race, creed, or class (1970). We support desegregation, including the use of two-way busing, if necessary (1972), and we encourage options that support integration and urge continued vigorous expansion of busing programs to achieving equal, quality, integrated education (1976).

We support elimination of racial bias in curriculum and materials (1970). Educators should be held professionally accountable for racism, sexism, and nationalism in materials (1972). ASCD should appoint a committee to study and report on bias in instructional materials (1973). Specific criteria for evaluating the treatment of minority groups and women in textbooks and other learning materials should be used by members (1974, reaffirmed 1976).

We support the Equal Rights Amendment in connection with overcoming discrimination against women (1972), and ask affiliates and members to work for its passage (1973). We reaffirm belief in affirmative action (1975). We should recognize the goals of International Women's Year in our activities (1975). All future ASCD annual conferences should be held in states that have formally ratified the Equal Rights Amendment (1978).

The involvement and participation of native Americans should be supported (1974). Full funding of Indian education is necessary (1975).

Any assessment program should value and maintain the diversity of our people (1967). Multilingual and multicultural legislation to enable all students to have the opportunity to study a multicultural curriculum should be supported. We maintain our advocacy of multicultural education (1975, reaffirmed 1976). We support endorsement for bilingual educators, assistance to children of limited

English-speaking ability, and free public education and equal educational opportunity for children of illegal immigrants (1978).<sup>2</sup>

In the years ahead, we should affirm and expand our earlier commitments to desegregation, inalienable rights, equal educational opportunities, and intergroup education, and our recent commitments to expanded roles for minority group members, full integration, elimination of bias in materials and curriculum, women's rights, legislation favorable to native Americans, and multilingual and multicultural education. Simultaneously, we must be ingenious in creating new ways of achieving human equality and establishing human rights.

Let us as educators develop effective pioneering ways to achieve the goals of affirmative action programs and to establish human rights firmly in our land. We must cultivate the will to right wrongs. Shakespeare's King Richard II said after a battle: "Let us sit upon the ground and tell sad stories of the death of kings." Edmund Burke's advice is surely preferable to King Richard's. Burke once perceptively pointed out that the only thing necessary for the triumph of evil is for good people to do nothing. [E]

<sup>2</sup> See Resolutions: 1966\*, 1967, 1969, 1970\*, 1972\*, 1973\*, 1974\*, 1975\*, 1976\*, 1977, 1978\*. (\* indicates multiple resolutions in particular years.)



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