



**AFFIRMATIVE ACTION AND RACIAL JUSTICE:  
REQUIEM, REAFFIRMATION AND STRUGGLE**

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It is clearly no accident or unintentional oversight that there has been no major marking or significant discussion, and in most cases not even minor mention, of the 30<sup>th</sup> anniversary of the Supreme Court Bakke Decision (1978) which saved affirmative action, though in modified form, leaving U.S. society some measure of public claim to be still dealing openly, if not altogether honestly, with its perversely persistent and structurally perpetuated problem of racial injustice. However, what is even more striking and worthy of note is how this official silence and media muffling parallel and coincide with a similar silence in the Black community. It is clearly a sign and tendency of the times to pretend a past of shared freedom we never had, a present of shared interests we still must agree on, and a future of shared possibilities we will not be able to pursue unless this racialized society undergoes radical social change.

Certainly, the established order's silence is first reflective of its traditional resistance to critical self-assessment and serious social change. Seeking cheap and quick solutions for a high-cost and long-standing problem, it harbors the hardly concealed hope that just nominating and running a Black presidential candidate, let alone electing one, will end arguments about the lack of access and opportunity for Blacks and other people of color in this country and therefore remove the need for real remedies and the struggle required to achieve them. Moreover, there is this belief, hope and on special days of doubt, this prayer that the oppressed, marginalized and disadvantaged will see concession and silence as a strategic necessity, not only to avoid suffering a similarly savage pillorying, punishment and public rejection as Rev. Jeremiah Wright, but also to avoid "messing

up" the chance to have one of their own in the highest office in the land.

Thus, it is actually argued in some quarters that too much is at stake to insist on justice sought, consistency pledged and change promised, and that we must sacrifice even things we once held sacred and central to our self-understanding and self-assertion as a moral and social vanguard in this country and the world. Indeed, it is argued we must avoid at all cost upsetting and unnerving White folks who would, practicing a reason-resistant racial protocol, judge us as arrogant, aggressive, unworthy and unwilling to face the facts and current balance of forces in this country. But this is a sign of how shaky and shallow the established order's self-congratulatory claim of racial maturity and the end of racism is, when we find ourselves boppin', bending' and bein' busy placating and pleasing people who allegedly have transcended the racial antipathy and moral immaturity that racism generates and justifies at the same time.

So, a serious discussion of Bakke and affirmative action is not advisable, not because it's not of historical and current relevance, but because in many places it is reasoned it would be counterproductive and we must wait for an imagined miracle to emerge in November without a struggle to produce it. Here Frederick Douglass' lecture on struggle, Martin King's letter from the Birmingham jail and Malcolm's lecture on history, especially his distinction between being responsible and respectable in the eyes of your people and those of the oppressor, seem appropriate. And thus, the discussion and struggle should proceed.

In the 60's it seemed clear in light of the heavy hand of history and struggle for freedom in this country and on the international level that White racism was

DR. MAULANA KARENGA

radically wrong and needed correction. Moreover, it was understood that you cannot correct racial injustice by denying the “race” of its victims and the effect racial oppression has had and has on their lives and future. It is in this context of the Black Freedom Movement that the concept and practice of affirmative action emerge. And although now in many, if not most, places it is hiding in disguise, hoping not to be discovered, it came into being as policies and practices directed toward expanding access and opportunities for peoples of color and women in education, employment and contracting.

In other words, it involved good faith efforts to recruit, admit, employ and advance underrepresented groups in *critical social space*—economic, political, educational and cultural, in the interest of their communities and society as a whole. The presidential executive orders and subsequent supportive legislation and judicial decisions which produced and promoted affirmative action represented both a political shift away from the assumption that racial inequality and injustice could be eliminated simply by ending legal discrimination and a move toward embrace of the insight that *positive*, i.e., affirmative, action toward inclusion and equality was necessary to overcome the cumulative effect of past discrimination. Moreover, it was discovered, lo and behold, that there was also continuing discrimination and thus a need for current correctives.

This shift in assumption and attitude was rooted in a clear and accepted claim of justice, something rightfully owed to a people who suffered the Holocaust of

enslavement and subsequent oppression and who were denied their rights as both human beings and citizens. However, since Bakke, which allowed “race” to be considered in the midst of other factors for university admission at UC Davis, the emphasis of the courts and society has been not so much on *justice* but on *diversity* as the compelling state interest, as expressed also in Grutter (2003) in a suit involving affirmative action at the University of Michigan.

This redefinition of affirmative action from one of achieving justice to achieving diversity as the compelling interest of society has several effects. It weakens the claim of the right to inclusion by denying its rootedness in concerns of justice and makes it less a right and more vulnerable to being miscast as an undeserved and unacceptable special interest of a people. No longer presented as a demand for justice of an oppressed and injured people, it becomes a legal concession by the powers-that-be, dependent on the political composition of the court rather than the ongoing demands of justice. Finally, by redefining affirmative action as an issue of diversity rather than justice, it hides the fact that in a multicultural society, the recognition and respect of diversity is indeed a justice issue. And this recognition and respect can only be expressed and reaffirmed in relations of shared wealth, power and status, and only achieved and sustained in the storm, thunder and whirlwind of struggle, regardless of reports of current and continuing social sunshine from the smiling weathermen and women of the established order and its allies.