On Affirmative Action

written by Reginald Wilson | February 20, 2010

THE FIRST THING THAT STRIKES ME about this book is the irony of the title: *When was affirmative action not white?* As Mark Nathan Cohen states in his book, *Culture of Intolerence* (Yale University Press, 1998), "Affluent white males themselves have always received the most affirmative action, some by law, some by custom and practice, and some by factors so subtle and so deeply ingrained in our cultural training that we generally don't consciously recognize them." He goes on to say, "Critics tend to find affirmative action reprehensible only if the government mandates it and even then only if it benefits women and minority groups." This is not a small matter. Katznelson begins his book with Lyndon Johnson's 1965 Howard University speech, with some digressions into the 30s and 40s. He could just as easily have begun in 1641 when three indentured servants, two white and one black, ran away and were later captured (according to the late Judge Leon Higginbotham in *In The Matter of Color*, 1978). The whites were sentenced to an additional year of servitude but the black was sentenced "to serve for the time of his natural life." The point needs to be made emphatically that differential treatment for blacks began in 1619 when "there came to Virginia a Dutchman of Warre that sold us twenty Negers." Reinhold Niebuhr said in 1932: "What appears to be progress toward racial justice is, in fact, a cyclical process. Barriers are lowered in one era only to reveal a new set of often more sophisticated but no less effective policies that maintain blacks in a subordinate status" (quoted by Derrick Bell in his *Race, Racism and American Law,* 1980). We will return to this point later.

Nevertheless, Katznelson takes as his starting point, Lyndon Johnson's historic 1965 speech at Howard University: "To Fulfill These Rights" (the speech is reprinted in full in an appendix). Johnson spoke forcefully that " . . . freedom is not enough . . . it is not enough just to open the gates of opportunity . . . we seek . . . equality as a fact and equality as a result." Katznelson then asks: "How shall we understand the missed chance to fashion black mobility and create a robust African-American middle class in the two decades after the Second World War?" Katznelson answers by describing at length a litany of deliberately constraining policies and laws.

The Selective Service Readjustment Act (GI Bill of Rights) was passed in 1944 with great fanfare. It was intended to provide training, education, and housing for returning veterans. Katznelson describes how Southern Democrats, whose seniority controlled committees, insisted that local control rather than Federal be required in implementing the benefits, assuring that blacks would be denied rights to education (except at already crowded and inadequate black colleges); and would be denied training opportunities except for the lowest skilled jobs. Access to housing would also be blocked by not approving loans to blacks. Here, I would disagree slightly with Katznelson. As a black WW II GI from Detroit, I have previously written that I, and many others in the North, took advantage of the GI educational benefits and obtained housing loans as well. Katznelson's tendency is to lump all black experience together, North and South, and proclaim it all bad; however, his writing is a major corrective to mine and tends to prove that experience with the GI Bill was nearly a disaster for most blacks.

Similarly with Social Security, Katznelson demonstrates that it too was at the mercy of Southern Congressmen who insisted that it not cover domestics and farm laborers, occupations of most blacks in the South. Thus, most blacks were not covered until the 1960s, leaving them without benefits at a vulnerable time of their existence.

Although Katznelson makes much of the fact that "no black college had a doctoral program," it

was the custom of Southern states to pay the tuition of blacks to attend Northern universities for their doctoral study. This is not to let white Southern universities off the hook for their reprehensible practices, but to note that the scene was not totally bleak.

KATZNELSON CONCLUDES by saying, "By the time of Johnson's Howard University address, the problems of black America, not only in the South but also in the growing urban settlements in the North, were growing worse after more than two decades of fiercely discriminatory public policy." Well, not quite. By the decade ending in 1970, covering the most effective period of affirmative action, and coupled with a robust economy, overall jobless rates for blacks declined from 10.9 percent to 6.4 percent. Black married males unemployment rate dropped from 7.9 percent to 2.3 percent. The percentage of the black labor force classified as white-collar workers, nearly doubled from 13 percent to 24 percent (U.S. Census Bureau, 1970). I mention this to say that when affirmative action was sincerely implemented, after the Civil Rights Act of 1965 and the Executive Order 11246 of 1965, it was successful, it worked. But with fierce opposition of mostly white males, increasing attacks of conservative legal organizations, and state petition drives that restricted minority access to higher education and other positions, its success was ultimately greatly diminished.

Katznelson concludes with a curious chapter in which he evokes Justice Powell's dicta in the *Bakke* case (1978) as offering the best possibility for present day affirmative action to "guide a more extensive program closer to President Johnson's original intentions." Allan Bakke, a white applicant, was challenging a University of California-Davis regulation that set aside ten spaces in its medical school for minority applicants. The Court was split 4 to 4 on whether to allow this. Justice Powell's ruling was the controlling and deciding vote. He ruled that quotas were forbidden but that minority status must be taken into consideration in admission decisions. Katznelson considers the strict scrutiny and non-class-based remedy of Powell to be a more persuasive argument to get affirmative action back on track in today's climate. And he admits that: "In truth, the brutal harms inflicted by slavery and Jim Crow are far too substantial ever to be properly remedied." Thus, he promotes Justice Powell's ruling as the most pragmatic solution to the continuing dilemma.

Analyzing Katznelson's conclusion requires a return to my original ruminations. Affirmative action is a short hand response to the condition of blacks in American society. But the problem has gotten considerably more complicated since its original and official pronouncement in 1965. Hispanics are now the largest minority group and quite rightly clamor for rights and recognition. White women have been the greatest beneficiaries of affirmative action, but they have attributed it simply to superior qualifications and by and large see no need to join with others in demanding rights. White liberals are experiencing "civil rights fatigue" and feel minorities should just get on with it. The left does not place affirmative action on its agenda for struggle; they are preoccupied with Iraq. The Congressional Black Caucus cannot help: they are occupied with fantasies such as reparations. The black poor and working class, in all their disarray, are left to address their condition alone. In that sense, Katznelson is right, but not that rephrasing Justice Powell will save minorities.

Powell's narrow reasoning could no more appeal to the current power elites than Justice Thurgood Marshall's thundering denunciation in the same case: "that after several hundred years of class-based discrimination against Negroes, the Court is unwilling to hold that a class-based remedy for that discrimination is permissible."

Neither argument is persuasive to America's ruling class. Their interest is power, empire, and the subjugation of non-white people. We must return to Reinhold Neibhur's statement in 1932: "The

white race in America will not admit the Negro to equal rights if they are not forced to do so. Upon that point one may speak with a dogmatism which all history justifies."

THAT DOES NOT MEAN that blacks should give up the fight. That means they must fight with even more ferocity for affirmative action. There are 37 million people in poverty in the United States. That is 12.7 percent of the population. That is the highest percentage of poor in the developed world. Twenty-five percent of blacks are in poverty and 22 percent of Hispanics. The poorest place in the United States is the Pine Ridge Indian Reservation. The only place poorer in the Western hemisphere is Haiti. These people are all Americans. They are all part of a gathering storm. They are the silent brothers and sisters whom no one talks about but who will not go away. They are the ultimate focus of affirmative action. They pose the question that was proposed in 1776: "What are we prepared to do to achieve democracy?"