EPISODE 13:

THE KEYS TO THE KINGDOM *(1974–1980)*

Episode 13 highlights attempts to remedy the historical disadvantages black Americans continued to endure after the major legal battles against segregation were won. In doing so, it moves from questions about the best way to secure equal rights to questions about the best way to guarantee equal opportunity for all Americans. Twenty years after the *Brown v. Board of Education* ruling that racially separate schools were both unconstitutional and unequal, educational institutions across America remained racially imbalanced.

1848-50	
	In *Roberts v. The City of Boston*, Chief Justice Lemuel Shaw rules that racially segregated schools are constitutional
1965	
Sep. 24	President Johnson signs Executive Order 11246 (later amended by Executive Order 11375), which sanctions affirmative action policies for federal employment
1972	
	In Boston, Massachusetts black parents enlist the Harvard Center for Law and Education to sue the city's school committee in the Federal District Court to contest school segregation
1973	
Oct.	In Atlanta, Georgia Maynard Jackson becomes the first black mayor of a major Southern city
1974	
Jun. 21	Federal Judge W. Arthur Garrity rules that the Boston school committee has knowingly thwarted desegregation in the public schools and authorizes busing as a means of integrating the Boston Public Schools
Sep. 9	White parents in Boston demonstrate at the federal building in outrage over what they call "forced busing"
Sep. 12	Conflicts between the predominantly black Roxbury community and predominantly white communities in Charlestown and South Boston community erupt when children are transported to schools outside of their neighborhoods Antibusing demonstrations and violence continue for months
1978	
Jun. 28	In *Regents of the University of California v. Bakke*, the US Supreme Court rules that racial quotas are unconstitutional and that race can be only one of many factors used for admissions decision
1980	
Sep.	Atlanta's Hartsfield airport is completed on time and on budget

Boston, Massachusetts, where neighborhoods were segregated along racial and ethnic lines, was a particular hotbed of racial conflicts and a focus of media attention. Black educators argued that the school system operated in a manner that amounted to de facto segregation and that the majority of students in "black" schools were squeezed into overcrowded classrooms where they received far fewer resources than schools with predominantly white student populations. The Boston School Committee, which was responsible for policy in the Boston Public Schools (BPS), refused to discuss de facto segregation and plans to remedy the situation. Their grievances ignored, black parents filed a complaint with the Federal District Court. They asked the presiding Judge W. Arthur Garrity, Jr. to compel the school committee to integrate the schools. Judge Garrity ruled in their favor, stating that the school committee was guilty of consciously maintaining two separate school systems. Without an alternative from the school committee, Judge Garrity ordered the implementation of a plan previously drafted by the State Board of Education. The plan called for busing of students, black and white, from Boston's poorest neighborhoods to public schools outside their neighborhoods.

The busing policy caused a crisis in Boston; groups of white Bostonians objected to what they considered an infringement of their rights and bemoaned the loss of their

neighborhood schools. When busing began in September 1974, white families in the target areas removed their children from school and started a citywide boycott. White residents of the close-knit community South Boston (known locally as Southie)—the majority of them working class and of Irish descent—violently protested the arrival of black students from Roxbury, regularly attacking school buses. The months of intimidation and racially motivated violence fueled growing tensions in the neighborhoods and schools, which culminated in December when a white boy was stabbed during a fight in South Boston High School. Although the overt violence ebbed over time, thirty years later neighborhood segregation continues to hamper achievement of meaningful school integration in Boston.

The second and third segments of Episode 13 introduce viewers to the era of affirmative action. Beginning with the Lyndon B. Johnson administration (1963-69), the government instituted policies and legislation designed to open educational and economic opportunities to blacks and other disadvantaged groups. In October 1973, Atlanta, Georgia, made history by electing its first black mayor, Maynard Jackson. In an atmosphere of exaggerated expectations and anxiety, Mayor Jackson was burdened with the task of integrating blacks into Atlanta's social and economic life. In a town evenly populated by blacks and whites, only 0.5 percent of city contracts went to black businesses. Plans to build a new airport forced Mayor Jackson to tackle what he called the "white power structure" that blocked competition from black businesses. He insisted on a plan that mandated a minimum of 20 percent black participation in every phase of the airport construction. Yet challenges came from every quarter, including a strike by the city's black sanitation workers. Despite the pressure from blacks and whites, the airport was completed on time and on budget and proved to many that affirmative action was a viable policy.

The third segment discusses the first major challenge to affirmative action in higher education. In the early 1970s, after roughly ten years—during which time the number of black students in American colleges more than doubled—the principles of affirmative action came under attack. At the University of California at Davis (U.C. Davis), Allan Bakke, a twice-rejected medical school applicant, filed a complaint against the school. In it he argued that the school's affirmative action policy amounted to a racial quota, and infringed on his equal protection rights under the Fourteenth Amendment. The case reached the Supreme Court, inciting a national debate on the merits and limitations of the program. While some saw the program as a remedy for years of oppression and discrimination, others claimed that a racial quota system (or, as they called it, a program of "reverse discrimination") was as racist as the system it was designed to remedy. Finally, a divided US Supreme Court issued a decision that ordered U.C. Davis to admit Bakke. The ruling left a cloud of uncertainty over the issue since the court found affirmative action permissible but not mandatory. The battle over the constitutionality of race-based hiring and admission policies continues to this day.

KEY QUESTIONS

1. Why weren't some Northern schools integrated in the 1970s? How do you explain the resistance to school integration?
2. What underlying challenges made school integration hard to achieve in Boston?
3. What can a government do to guarantee equal opportunities for all its citizens?
4. What is the rationale for affirmative action? Why did many people resist the program in Atlanta and elsewhere?
5. What were the advantages and disadvantages of basing affirmative action on racial categories? Do you feel that affirmative action was justified? Why or why not?

Document 1: DE FACTO SEGREGATION

In the 1970s, Boston was divided into competing, hostile ethnic enclaves. "The real story of Boston," stated writer and journalist Alan Lupo, "is the story of two cities. It's a story of the traditional, alleged liberal, abolitionist Boston, the progressive Boston […]. But the other Boston is a very hidebound, distrustful, turf-conscious, class-conscious, parochial city."[1]

The first major challenge to racial segregation in the city's public schools had been *Roberts v. The City of Boston* in 1850, a case in which Benjamin Roberts, a black printer, sued the city school system for barring his daughter from attending the local white school. The Robert's family lost the lawsuit, however, and in his ruling, Chief Justice Lemuel Shaw asserted that racial prejudice "is not created by law, and probably cannot be changed by law."[2]

A century later, Ruth Batson, who served as the head of the National Association for the Advancement of Colored People's (NAACP) Public School Committee and whose children attended BPS, led the new struggle against segregation in Boston. At a freedom rally that featured the Reverend Dr. Martin Luther King, Jr., in April 1965, Batson highlighted the racial problems in Boston. She argued that "education represents our strongest hope of breaking out of the bond we have been placed in by discrimination and prejudice, we intend to fight with every means at our disposal to ensure the future of our children."[3] In an interview with the producers of *Eyes on the Prize*, Batson recalled her attempts to get the school committee to respond to the de facto segregation in Boston Public Schools:

> When we would go to white schools, we'd see these lovely classrooms, with a small number of children in each class. The teachers were permanent. We'd see wonderful materials. When we'd go to our schools, we would see overcrowded classrooms, children sitting out in the corridors, and so forth. And so then we decided that where there were a large number of white students, that's where the care went. That's where the books went. That's where the money went.
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> We formed a negotiating team. I was chair of the team. Paul Parks and Mel King, both men who had been deeply involved in public school educational concerns, joined me, and we sat down and we decided that we would bring these complaints to the Boston School Committee. This was in 1963.
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> We said to them that this condition that we were talking about was called de facto segregation, and that by that we didn't mean at all that anybody on the school committee or any official was deliberately segregating students, but this was caused by residential settings and so forth, but that we felt that this had to be acknowledged and that something had to be done to alleviate the situation.
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> We were naive. And when we got to the school committee room I was surprised to see all of the press around. We thought this is just an ordinary school committee meeting, and we made our presentation and everything broke loose. We were insulted. We were told our kids were stupid and this was why they didn't learn. We were completely rejected that night. We were there until all hours of the evening. And we left battle-scarred, because we found out that this was an issue that was going to give their political careers stability for a long time to come […].

Louise Day Hicks was chairperson of the school committee at that time. Some of the people on the NAACP general committee felt that she would meet our concerns favorably. She had been endorsed by the Citizens for Public Schools before. And so they thought that, Oh, Louise'll be fine. Well, Louise turned out to be not fine at all. She was an enemy from the minute that we stepped into that door. And this shocked a lot of people […]. At one point she [Louis Day Hicks] said, "The word that I'm objecting to is *segregation.* As long as you talk about segregation I won't discuss this." Well, remember now, we didn't get past the de facto segregation issue. And so, we would drop these little sentences saying, "Where there is a majority of black students, these students are not being given the education that other people are given," and so forth and so on. And she'd say, "Does that mean segregation?" And so the whole thing would be dropped. We went through all these routines with her. Mrs. Hicks's favorite statement was, "Do you think that sitting a white child beside a black child, by osmosis the black child will get better?" That was her favorite statement.

And then there were black people and a lot of our friends who said, "Ruth, why don't we get them to fix up the schools and make them better in our district?" And, of course, that repelled us because we came through the separate but equal theory. This was not something that we believed in. Even now, when I talk to a lot of people, they say we were wrong in pushing for desegregation. But there was a very practical reason to do it in those days. We knew that there was more money being spent in certain schools, white schools—not all of them, but in certain white schools—than there was being spent in black schools. So therefore, our theory was [to] move our kids into those schools where they're putting all of the resources so that they can get a better education. We never seemed to be able to get that point across. […]

It was a horrible time to live in Boston. All kinds of hate mail. Horrible stuff. I also got calls from black people in Boston. They would call up and they'd say, "Mrs. Batson, I know you think you're doing a good thing. And maybe where you came from there was segregation, but we don't have segregation in Boston." And I would say to them, "Well, where do I come from?" And invariably they would say South Carolina or North Carolina. Of course, now, I was born in Boston. So there were people who could not accept the fact that this horrible thing was happening to Boston, the city of culture.[4]

CONNECTIONS

1. Batson described the situation in the Boston Public Schools as de facto segregation. What is the difference between de facto segregation and legally sanctioned segregation? How did Batson account for the situation in Boston?
2. In Boston, what was the difference between integration and desegregation?
3. Why did Hicks and others object to Batson's description of the schools as segregated?

4. Why do you think Batson insisted that the schools needed to be desegregated? Why did she believe it wasn't enough to fix schools in their local communities?

5. In the 1990s, President Bill Clinton argued there was a public interest in sustaining integrated schools. What is it? Is there an educational value to school integration?

Document 2: DESEGREGATION: RESPONSES TO THE COURT ORDER

April 5, 1976. Joseph Rakes, then 17, swinging a flagpole bearing the American flag at Ted Landsmark during a protest against school integration in Boston. Whites reacted violently when Judge Garrity ruled that the BPS "intentionally brought about and maintained racial segregation."

In 1972, lawyers for the Harvard University Center for Law and Education argued before Hon. Judge W. Arthur Garrity of the Federal District Court that the city of Boston was in breach of the Supreme Court ruling against segregated schools. In June 1974, Judge Garrity ruled that the Boston Public Schools "intentionally brought about and maintained racial segregation."[5]

Facing resistance from the school committee and a September deadline, Judge Garrity was obliged to adopt a desegregation plan drafted by the Massachusetts Board of Education. The plan entailed integrating schools by busing students from nearby neighborhoods. Among the neighborhoods marked for busing were Roxbury, a working-class, black neighborhood, and South Boston, where the majority of the residents were blue collar Irish-Americans. A white, anti-busing group called Restore Our Alienated Rights (ROAR) formed and agitated against the court order. ROAR called for a citywide boycott of the schools and set up an alternative program of tutoring they defiantly compared to the "freedom schools" set up by civil rights advocates in Mississippi during the 1960s.

Alan Lupo, then a *Boston Globe* journalist, wrote about the desegregation crisis in a book entitled *Liberties Chosen Home*. In an interview with the producers of *Eyes on the Prize*, Lupo recalled the furor of whites protesting Judge Garrity's decision:

> It was an ironic thing to watch and listen to the people actively opposing busing. A number of them said, essentially, "If Martin Luther King was a hero for sitting on the street, or blocking traffic, or picketing or demonstrating, how come we're not heroes? How come the media are treating us differently than it did the white college students who opposed Vietnam, or the blacks who had sit-ins?" Some people were very sincere when they raised that question. They felt there was no difference. They felt they were demonstrating for their homes, their neighborhoods, their children, their view of education. Their civil rights. Some people, I fear, were not so sincere—perhaps some of the leaders who thought they were being cute, and may or may not have seen any parallels, but decided to run that guilt trip on the media, and say, "Oh, so now you're discriminating against us." So you had both. You had those who honestly saw no difference and believed that their civil rights were in danger and they had a right to demonstrate. And you had those who were maybe playing it for all it was worth.

> We were going up a hill one day in South Boston. I think it was probably the second or third or fourth week of busing. And I was with Bob Kiley, who was essentially the deputy mayor, sitting in one of the mayor's cars, heading up the hill. There had just been yet another incident. Cops, white cops, dealing with their white neighbors, and police screaming, "Get out of the way!" and mothers and fathers screaming, "Police brutality!" Sort of a replay of the white college kids fighting with cops earlier, or blacks dealing with cops in the street. History was repeating itself in interesting ways, and a crowd of kids were moving up the hill, and our window was open. And we clearly heard one kid say to another, "No, that'll be too late to make the six o'clock, but it'll be on the eleven o'clock news." And Kiley turned to me and shook his head and said, "Don't tell me these people aren't aware." In other words, they're out there for a principle, bad or good, but folks also get out because they want to be on TV. There's no question about it. Now, I would argue that were there no television, there would still have been fighting in the street. There still would have been hatred; there still would have been moments of accommodation. But the presence of the camera is startling, and for a lot of people who will have their names in the newspaper only when they die, and there will be a little paid death notice, almost anything, any kind of access to becoming a star, even for thirty seconds, is quite important to them, white or black.[6]

Defying "forced busing" became a matter of pride and those who broke the boycott faced isolation. Kathy Downs Stapleton, a senior at South Boston High School, was one of the few white students who continued to go to school. In her interview with *Eyes on the Prize*, she explained why she refused to join the boycott:

> There was pressure from all sorts of people, from the media as well as the civic groups. Nobody said, "Don't do this. Don't act up. This isn't nice." People wanted to see a story. People encouraged it. Nobody said, "Don't do this." Political people said, "You children should boycott. You children should not do this. This is not right." "This is the mayor or this is the police. Don't do this." And so it put pressure on everybody. No one knew the right thing to do. […] I wanted to go to school. I was trying to go to school, but I resented people telling me I shouldn't be in the school. I resented people telling us where we should go to school. And I hated picking up the paper every day and seeing it in the paper. It was really kind of a disgrace. I'm very proud of my community, but I did not like what I saw on the media. I think it hurt us all. The attention was negative. The kids were the ones being hurt and being told what to do. I mean, kids will do what they're told, usually. These adults say we shouldn't go to school, let's not go to school today. Or we should do this, or we should fight, or we should stand up for ourselves. But it was not coming from the kids within. I think we were all being pulled in many different directions between what was right and what was wrong.[7]

Judge Garrity was compelled to oversee desegregation in Boston because the BPS refused to pursue his rulings in good faith. He issued his last ruling on the case in 1985 (the same year that Laval Wilson was appointed the first black superintendent of the BPS). In 1994, the U.S. Federal District Court of Massachusetts issued its final ruling in the case *Morgan v. Hennigan*, permanently barring the practice of racial discrimination in BPS. Despite the legal ruling, many teachers, parents, and scholars note that the legacy of segregation lingers in the schools.

CONNECTIONS

1. What rights did the "forced busing" protesters think they had lost? What were the similarities and dissimilarities between the campaign against desegregation and the civil rights struggle?
2. Do you think that the white majority had a moral and legal responsibility to help blacks in Boston's impoverished neighborhoods? Do civic responsibilities cross community boundaries or is each community responsible for only itself?
3. How do you think young students would have reacted to the busing without pressure from their parents and the presence of the media?
4. In *Milliken v. Bradley*, a case involving school desegregation in Detroit, Michigan, in 1974, the US Supreme Court ruled that busing procedures were confined to school districts within the city. In Boston, desegregation busing had also involved only city schools. What do you think would have happened if suburban communities had been affected by court-ordered busing?

Document 3: TO FULFILL THESE RIGHTS

Less than three months after he sent a comprehensive voting rights bill to the legislature in response to the violence in Selma, Alabama (see Episode 6), President Lyndon B. Johnson announced another groundbreaking initiative. On June 4, 1965, in a commencement address at Howard University, President Johnson introduced a new approach to America's racial problems, an approach known as "affirmative action."

President Johnson recounted the progress made in previous years: black enrollment in universities had almost doubled, as had the number of nonwhite professionals, and similar progress had been made in the area of public offices. "But," he insisted, "for the great majority of Negro Americans—the poor, the unemployed, the uprooted, and the dispossessed—there is a much grimmer story. They still, as we meet here tonight, are another nation." For these people, "the walls are rising and the gulf is widening."[8] The passage of voting rights and other legislation, he announced, was just the beginning:

> That beginning is freedom; and the barriers to that freedom are tumbling down […]. But freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please. You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe that you have been completely fair.
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> Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates. This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and

equality as a result. For the task is to give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental and spiritual, and to pursue their individual happiness. To this end equal opportunity is essential, but not enough, not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with, and the neighborhood you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man. […]

THE CAUSES OF INEQUALITY

We are not completely sure why this is. We know the causes are complex and subtle. But we do know the two broad basic reasons. And we do know that we have to act. First, Negroes are trapped—as many whites are trapped—in inherited, gateless poverty. They lack training and skills. They are shut in, in slums, without decent medical care. Private and public poverty combine to cripple their capacities. […]

But there is a second cause—much more difficult to explain, more deeply grounded, more desperate in its force. It is the devastating heritage of long years of slavery; and a century of oppression, hatred, and injustice.

SPECIAL NATURE OF NEGRO POVERTY

For Negro poverty is not white poverty. Many of its causes and many of its cures are the same. But there are differences—deep, corrosive, obstinate differences—radiating painful roots into the community, and into the family, and the nature of the individual. These differences are not [biological] racial differences. They are solely and simply the consequence of ancient brutality, past injustice, and present prejudice. They are anguishing to observe. For the Negro they are a constant reminder of oppression. […] Nor can we find a complete answer in the experience of other American minorities. They made a valiant and a largely successful effort to emerge from poverty and prejudice. The Negro, like these others, will have to rely mostly upon his own efforts. But he just can not do it alone. For [other minorities] did not have the heritage of centuries to overcome, and they did not have a cultural tradition which had been twisted and battered by endless years of hatred and hopelessness, nor were they excluded—these others—because of race or color […].

TO FULFILL THESE RIGHTS

There is no single easy answer to all of these problems. Jobs are part of the answer. They bring the income which permits a man to provide for his family. Decent homes in decent surroundings and a chance to learn—an equal chance to learn—are part of the answer. Welfare and social programs better designed to hold families together are part of the answer. Care for the sick is part of the answer. An understanding heart by all Americans is another big part of the answer. And to all of these fronts—and a dozen more—I will dedi-

> cate the expanding efforts of the Johnson administration. But there are other answers that are still to be found. Nor do we fully understand even all of the problems. Therefore, I want to announce tonight that this fall I intend to call a White House conference of scholars, and experts, and outstanding Negro leaders—men of both races—and officials of Government at every level. […]. Its object will be to help the American Negro fulfill the rights which, after the long time of injustice, he is finally about to secure. To move beyond opportunity to achievement. To shatter forever not only the barriers of law and public practice, but the walls which bound the condition of many by the color of his skin.[9]

In the now famous Executive Order No. 11246 (September 1965, later amended by Executive Order 11375), President Johnson signed his revolutionary approach into formal law. Among other things, the Order stipulated:

> The [federal] contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.[10]

CONNECTIONS

1. How did President Johnson use his administration to assert moral leadership on issues of race and equity?
2. Why did Johnson claim that the poor blacks of America constituted "another nation"? What contributed to their being socially and economically isolated from the rest of America's ethnic and racial groups?
3. Why did Johnson claim that freedom was just the beginning? How were his ideas about "opportunity" meant to complement freedom?
4. Why did President Johnson believe that all citizens must enjoy equal rights? What kinds of equality did he believe in? Why did he think that formal, legal equality was insufficient?
5. Why did Johnson think that black Americans suffered greater disadvantages than other minorities? What does the term "affirmative action" mean? What other groups have benefited from affirmative action?

Document 4: AFFIRMATIVE ACTION IN ATLANTA

In January 1974, Maynard Jackson was sworn in as mayor of Atlanta, Georgia. As the first African American mayor of a major Southern city, his election inspired high hopes among blacks and deep anxiety among whites. While blacks sought new social and economic opportunities, white businessmen

feared that the mayor's progressive policies would hurt their interests. In his inaugural address, Mayor Jackson laid out his vision for the city's future. In an appeal for mutual respect and understanding, he asked Atlantans to work together to create new opportunities for all:

October 17, 1973. Maynard and Bunie Jackson celebrate the victory after Jackson was elected the first black mayor of Atlanta. As a mayor, Jackson successfully used the federal government's affirmative action principles to build the city's airport.

> We [Atlantans] use the […] slogan, "A City too busy to hate," but equally as important, we must ask during the difficult days ahead, are we a City too busy to love? That is no mere rhetorical question. For if we are to make this evening a meaningful beginning, we must make a conscious decision to start to change the way we live. We must do more than *say* we are concerned and that we care. We must begin to translate that concern into action, because we know that injustice and inequality are not vague and shadowy concepts that have no tangible dimensions. Behind every unjust act and behind all unequal treatment there are conscious decisions made by conscious men and women who choose not to care.
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> So, we must be a City of *love* and our definition of love must be a definition of *action*. Love must be strong economic growth and prosperity for *all*. Love must be giving the young a voice in City Government and restoring their faith in the electoral process. Love must be concern for the welfare of our senior citizens and a renewed commitment to make their years productive and rewarding for all of us. Love must be a balanced diet for all of our children. Love must be decent, safe and sanitary housing for all Atlantans. Love must be working to rid a community of the rats that attack babies while they sleep. Love must be a good education available to all who wish to learn. Love must be an open door to opportunity instead of a closed door of despair. Love must be good jobs, equal treatment and fair wages for all working people. Love must be safe streets and homes where our families can be secure from the threat of violence. Love must be a decision to care for the sick, the infirm and the handicapped. Love must be a city filled with people working together to improve the quality of all our lives. Love must be the absence of racism and sexism. Love must be a chance for everybody to be *somebody*.
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> To insure a clear reflection of this essential ethic, this administration must place priority upon serving the needs of the masses as well as the classes. The pending reorganization of our City Government will be designed to open wide the doors of City Hall to all Atlantans and make our City Government more responsive to "people needs" and "people problems."[11]

When Jackson became mayor, Atlanta was in the midst of an economic recession. Many Atlantans were unemployed and reliant on government assistance. Mayor Jackson decided to use the federal government's affirmative action principles in an attempt to "open wide the doors of city hall." Mayor Jackson explained:

> When I became mayor, zero-point-five percent of all the contracts of the city of Atlanta went to Afro-Americans, in a city which at that time was fifty-fifty. There were no women department heads. This was not only a question of race; it was a question also of sexual discrimination and, you know, all the typical "isms." If there's one, normally there's a whole bunch of them, and they were all there. We had to change dramatically how the appointments to jobs went, normal hiring practices in city government went, the contracting process—not to reduce the quality, by the way, ever. We never ever, ever set up a lower standard. And those who say, "Well, affirmative action means you've got to lower the standard"—that's a real insult, in my opinion, to African-Americans and other minority Americans. We never did it, didn't have to do it.[12]

Dillard Munford, like many other white Atlanta businessmen, believed that the affirmative action program was racist. He explained: "I didn't accept the affirmative action program at all, because it was unfair to white people—to white contractors." Munford argued that affirmative action "was very abusive to white contractors who saw jobs going at higher prices than they were bidding, because they were black."[13] The stakes over affirmative action were raised with the announcement for a major airport expansion project of Atlanta's airport. Mayor Jackson resisted pressure and insisted that without black participation there would be no new airport.

Despite vocal concerns the airport was completed on September 21, 1980—on time and under budget. Even with the success of the airport, however, challenges to affirmative action in Atlanta and across the country continue to this day.

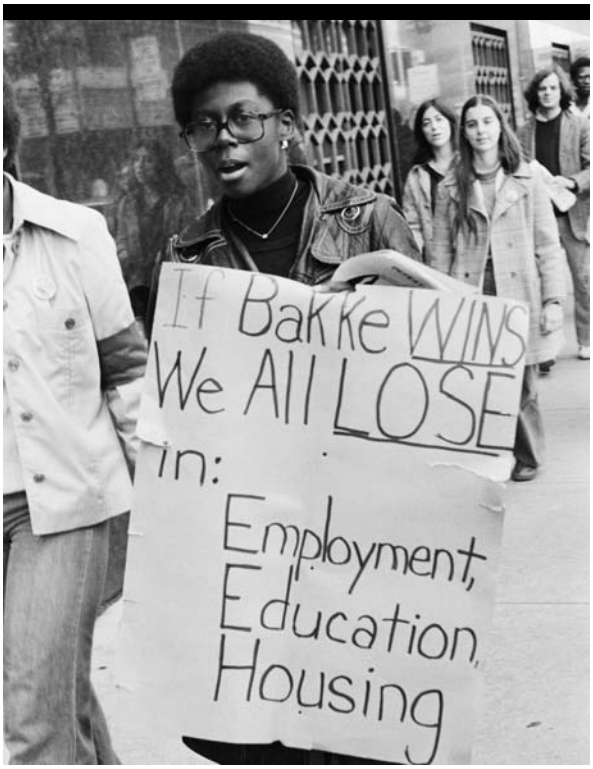
CONNECTIONS

1. Mayor Jackson talked about the need for Atlanta to go beyond being "a city too busy to hate" and become a "city of love." What did a "city of love" look like to him?
2. Mayor Jackson believed that "behind every unjust act and behind all unequal treatment there are conscious decisions made by conscious men and women who choose not to care." What is he suggesting about the way that ordinary people are responsible for discrimination?
3. What tools does a mayor have to translate "concern into action"? What remedies did Mayor Jackson propose? What power do ordinary citizens have?
4. What did Mayor Jackson hope to accomplish with his affirmative action program? Whose opportunities did he believe the program would promote?
5. What arguments did Mayor Jackson make to support his decision to implement affirmative action in Atlanta? What arguments did Munford make against the policy? How do you think Mayor Jackson would have responded to Munford's comments? What do you believe?
6. What reasoning did Munford give for his belief that affirmative action was racist?

Document 5: AFFIRMATIVE ACTION OR "REVERSE DISCRIMINATION"?

By 1978, the debate over affirmative action finally reached the Supreme Court. While proponents of the policy lauded it as a just measure to counteract the effects of racism and discrimination, others contested it as a form of "reverse discrimination." The dispute attained unprecedented media coverage when Allan Bakke, a young white man, challenged the affirmative action policy of the U.C. Davis Medical School.

The U.C. Davis Medical School had implemented an affirmative action policy that designated 16 out of 100 seats for minorities under a "special program." Through this program, 63 minority applicants had been admitted.* Allan Bakke had applied twice to the U.C. Davis Medical School but had been rejected both times. In 1978, Bakke sued the school, contending that the special program was a "racial quota" that violated his rights, since it admitted students based on their skin color rather than their grades (Bakke's grades and test scores were higher than those of other applicants admitted through the special program). When the California Supreme Court ruled in favor of Bakke, U.C. Davis appealed the case to the US Supreme Court.



October 1977. Protests against the admission of Allan Bakke to the University of California Medical School at Davis. Bakke, whose application was rejected twice, claimed that the school's affirmative action policies were discriminatory.

The Supreme Court's decision was unusually fractured: the nine Supreme Court Justices issued six different opinions, none of which represented a majority. Four justices opposed the program as a racial quota, while four others supported it as a legitimate application of affirmative action. Justice Lewis Powell took the middle ground, and announced the Supreme Court's complicated decision on June 28, 1978:

REGENTS OF THE UNIVERSITY OF CALIFORNIA V. ALLAN BAKKE
(The Supreme Court Judgment) June 28, 1978

The special admissions program [at U.C. Davis] is undeniably a classification based on race and ethnic background. To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete for only 84 seats in the entering class, rather than the 100 open to minority applicants. Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status. […]

There are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is in fact benign. […] Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second,

* Other minority members had been admitted through the general applicant pool.

preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making […].

The special admissions program purports to serve the purposes of: (i) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession"; (ii) countering the effects of societal discrimination; (iii) increasing the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body. It is necessary to decide which, if any, of these purposes is substantial enough to support the use of a suspect classification. […]

The experience of other university admissions programs, which take race into account in achieving the educational diversity valued by the First Amendment, demonstrates that the assignment of a fixed number of places to a minority group is not a necessary means toward that end. An illuminating example is found in the Harvard College program. […]

In such an admissions program, race or ethnic background may be deemed a "plus" in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. […] In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. Indeed, the weight attributed to a particular quality may vary from year to year depending upon the "mix" both of the student body and the applicants for the incoming class. […]

It has been suggested that an admissions program which considers race only as one factor is simply a subtle and more sophisticated—but no less effective—means of according racial preference than the Davis program. A facial intent to discriminate, however, is evident in petitioner's preference program and not denied in this case. No such facial infirmity exists in an admissions program where race or ethnic background is simply one element—to be weighed fairly against other elements—in the selection process. […] And a Court would not assume that a university, professing to employ a facially nondiscriminatory admissions policy, would operate it as a cover for the functional equivalent of a quota system.[14]

The Supreme Court ruled that the U.C. Davis program was unconstitutional, but did not invalidate affirmative action altogether. Its decision stipulated that race could feature in admissions decisions, but only as one of many other factors. This subtle distinction allowed the affirmative action debate to continue for years to come.

CONNECTIONS

1. In its description of the special program at U.C. Davis, the Court said that whether this program is "a quota or a goal, it is a line drawn on the basis of race and ethnic status." What is a "quota system"? Why did the Court describe the program at U.C. Davis as racist? Do you think it was right to call such programs "discriminatory"?
2. The Court argued that "there is a measure of inequity in forcing innocent persons [...] to bear the burdens of redressing grievances not of their making." Do you agree? Are individuals responsible for actions that *indirectly* benefit them (and deprive others of these benefits)?

Document 6: DEBATING AFFIRMATIVE ACTION

In 1954, lawyer Thurgood Marshall—a graduate of the prestigious (historically black) Howard University—argued for education rights in the case *Brown v. Board of Education of Topeka.* This landmark case led the Supreme Court to rule that "separate but equal" educational facilities for blacks and whites were unconstitutional. In 1978, as an Associate Supreme Court Justice, Marshall passionately defended the U.C. Davis affirmative action program. In a dissenting opinion to the Supreme Court decision, Marshall explained that affirmative action was instrumental in achieving racial equality:

> I agree with the judgment of the Court only insofar as it permits a university to consider the race of an applicant in making admissions decisions. I do not agree that petitioner's admission's program violates the Constitution. For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier. [...] While I applaud the judgment of the Court that a university may consider race in its admissions process, it is more than a little ironic 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. [...] Most importantly, had the Court been willing in 1896, in *Plessy v. Ferguson*, to hold that the Equal Protection Clause forbids differences in treatment based on race, we would not be faced with this dilemma in 1978 [...].
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> It has been said that this case involves only the individual, Bakke, and this university. [...] I cannot even guess the number of state and local governments that have set up affirmative action programs, which may be affected by today's decision. I fear that we have come full circle. After the Civil War our government started several "affirmative action" programs. This Court in the *Civil Rights Cases* and *Plessy v. Ferguson* destroyed the movement toward complete equality. For almost a century no action was taken, and this nonaction was with the tacit approval of the courts. Then we had *Brown v. Board of Education* and the Civil Rights Acts of Congress, followed by numerous affirmative action programs. Now, we have this Court again stepping in, this time to stop affirmative action programs of the type used by the University of California.[15]

Mary Frances Berry served as Commissioner on the U.S. Commission on Civil Rights during President Jimmy Carter's administration. She left the commission in 2004. The Bakke case was adjudicated and debated during her lengthy tenure:

> One of the things that happened in the civil rights struggle and the use of remedies for the lack of opportunity was a quarrel and dispute and struggle over language. Now, if people can define you, they can confine you. Or as we say, "If you let me set the terms of the debate, I'll always win." So that when you start talking about affirmative action as being "preferential treatment," you have already set up a situation where anybody who is the beneficiary of preferential treatment will lose. If you say "reverse discrimination" against somebody, it already sounds like a bad thing is happening, and you don't focus on what the injustice was. So affirmative action was not preferential treatment for blacks. What it was, was trying to do something about remedying preferential treatment for whites, the injustice that had occurred in the past.
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> By 1979, the climate of opinion had changed almost completely in the country on issues related to civil rights and the advancement toward equality for blacks in American society—college-going rates down for black students, the unemployment rates up for blacks in general, and for youth in particular. People who had jobs and had gotten them through the civil rights and affirmative action programs found themselves stuck and stranded, not able to get promotions, under attack everywhere for complaints about things like reverse discrimination and the like. So it was a very terrible time for the black community.
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> You would see the reaction everywhere, the backlash against the progress that had been made. You would see rationales being used for why nothing more needed to be done. For example, people would say, "Well, we can't have equal opportunity and excellence at the same time, and since we want excellence, I guess we have to stop all of this emphasis on civil rights." And what did they mean by excellence? In many cases, it seemed that they meant an absence of black folk at every level of any importance in the society.[16]

CONNECTIONS

1. What irony did Marshall find in the Courts' objection to the program at U.C. Davis? What did he call this program? Why did he think it did not violate the Constitution?
2. What did Marshall mean when he called affirmative action "a class-based remedy"? What did such programs seek to remedy?
3. In his dissenting opinion Marshall also wrote, "The majority of the Court [ruling in *Plessy v. Ferguson* in 1896] rejected the principle of color blindness and for the next 60 years [...] ours was a Nation where, by law, an individual could be given 'special' treatment based on the color of his skin." What did Marshall mean by the term "color-blindness"? What are the implications of a color-blind society in a democracy?

4. Berry argues that much of the debate on affirmative action is a debate about language. She argued that, "if people can define you, they can confine you." What do you think she means by this statement? How does defining affirmative action as "reverse discrimination" or "preferential treatment" influence the debate?

5. What did Berry refer to when she talked about a backlash? What were the reasons for a white backlash against the civil rights movement's achievements?

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[1] Henry Hampton and Steve Fayer, *Voices of Freedom: An Oral History of the Civil Rights Movement from the 1950s through the 1980s* (New York: Bantam Books, 1990), 594.
[2] "Sarah Roberts vs. Boston," *The Long Road to Justice: The African American Experience in the Massachusetts Courts*, http://www.masshist.org/longroad/02education/roberts.htm (accessed on July 25, 2006).
[3] Hampton, *Voices of Freedom*, 588.
[4] Ibid., 588–91.
[5] Judge W. Arthur Garrity, Jr.: Papers on the Boston School Desegregegation Case 1972–97, Healy Library at University of Massachusetts, http://www.lib.umb.edu/archives/garrity2.html (accessed on July 14, 2006).
[6] Hampton, *Voices of Freedom*, 611–12
[7] Ibid., 612.
[8] Lyndon Johnson, "To Fulfill These Rights," Commencement Address at Howard University, June 4, 1965, Lyndon Baines Johnson Library and Museum, http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp (accessed on July 5, 2006).
[9] Ibid.
[10] "Equal Opportunity Clause," US Department of Labor, http://www.dol.gov/dol/allcfr/ESA/Title_41/Part_60-1/41CFR60-1.4.htm (accessed on July 14, 2006).
[11] Maynard Jackson, "Inaugural Address," *Eyes on the Prize Civil Rights Reader* (New York: Penguin Books, 1991), 614–18.
[12] Hampton, *Voices of Freedom*, 631.
[13] Ibid., 634–35
[14] *Regents of the University of California v. Allan Bakke* Supreme Court Judgment, June 28, 1978, Find Law, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=438&invol=265 (accessed July 5, 2006).
[15] Ibid.
[16] Hampton, *Voices of Freedom*, 644–45.
[17] *Regents of the University of California v. Allan Bakke* Justice Marshall's dissent, June 28, 1978, *Find Law*, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=438&invol=265 (accessed July 5, 2006).