

PRINTER-FRIENDLY FORMAT



May 8, 2004

AN ESSAY

If Affirmative Action Fails . . . What Then?

By DAVID L. CHAPPELL

he 50th anniversary of the Brown v. Board of Education decision this month is a well-deserved feel-good moment for civil rights strategists, but it is only a temporary distraction from the deep conflicts that remain.

Many people earnestly believe that aggressive remedies like affirmative action are still necessary to eliminate the inequality at which Brown made only a glancing blow. Even the most ardent supporters of affirmative action are frustrated, however, because of its persistent unpopularity and its very limited success in closing the academic and economic gaps between black and white Americans.

The Supreme Court's decision last year involving the University of Michigan Law School, though it defended a form of affirmative action, appears to put a 25-year limit on the court's tolerance of even the most scrupulously moderate considerations of race. In the companion decision on Michigan's undergraduate program, the court banned broader forms of affirmative action altogether.

So what now?

Of the shelfload of new books that try to answer that question, "The Pursuit of Fairness: A History of Affirmative Action" by Terry H. Anderson (Oxford University Press) is a good place to get your bearings. Following the political scientist John David Skrentny and the historian Hugh Davis Graham, Mr. Anderson emphasizes the "ironies of affirmative action," the policies' logical contradictions and perverse effects. Mr. Anderson, a history professor at Texas A&M, defends many of the policies from simplistic attack. But he makes clear that the best defense of affirmative action has always been that the alternatives to it are even worse.

Mr. Anderson will surprise many with his reminder that the federal government did not commit itself to affirmative action until the Republican administration of Richard M. Nixon. Racial hiring preferences had been declared illegal after President Lyndon B. Johnson's brief experiment with them. Nixon revived them, Mr. Anderson says, partly from political calculations. Democratic liberals would be forced to defend and expand Nixon's affirmative action policy. Black hiring preferences would supersede white workers' hard-won seniority rights, thus driving a wedge between union members and black voters. Nixon was able to capitalize on the division by the end of his first term, turning against his own initiatives and other strong remedies, like court-ordered busing. As Nixon hoped, white rank-and-filers abandoned the Democrats in droves.

Opposition to affirmative action persisted, partly because racists resented black success. But people who were not racists also found it hard to justify violating the 14th Amendment's equal-protection clause to serve its deeper purpose. And when affirmative action worked at all, it tended to aid those

who least needed aid: black students who had already qualified for university admission or come very close. That increasingly meant affluent black students with college-trained parents. Affirmative action offered little to those who suffered most from racism, the poor.

Sheryll Cashin, a law professor at Georgetown, offers the most refreshing path away from the confusion: integration, a goal so long out of fashion that it is ripe for revival. In "The Failures of Integration: How Race and Class Are Undermining the American Dream" (PublicAffairs), she warns upwardly mobile black parents that their growing separatism is a swindle even as she sympathizes with their desire to forgo fighting for acceptance in their neighborhoods. Black enclaves in leafy suburbs are now available. But one of the selling points of these enclaves — the huge racial discounts on nice houses that white buyers won't consider because too many neighbors are black — make the benefits short-lived. Real estate agents steer black buyers into these areas, emphasizing that they will "fit in." They don't mention that economic development is moving away from these areas or that underfinanced schools and services often explain much of the racial discount. Black enclaves are often closest to declining areas of the city.

Ms. Cashin addresses the white middle class with equal seriousness, seeing among them too many flight risks. They, too, are getting cheated. As the rich hunker down in gated communities or otherwise remove themselves from the common tax base, they stick the rest of America with the bill for their extended sewer lines and commuting time (increased road maintenance, pollution, accidents).

Ms. Cashin presents historical evidence that America's unusual stratification does not result from individual choices or market forces. Laws have trapped a desperate underclass in ghettos and ferried a decadent overclass away. The Federal Housing Administration, created in 1937, underwrote one-third of all new housing construction in its first 35 years. Its manual required that all properties "continue to be occupied by the same social and racial classes." The Interstate Highway Act (1956), in addition to subsidizing oil barons in Texas and Saudi Arabia, directly displaced 330,000 poor families, mostly black. State laws made things worse. A combination of new town charters (which encourage creation of low-tax havens), zoning laws (which artificially concentrate both poverty and wealth) and local building codes (which make housing affordable to a select stratum) have sharply segregated, and to some extent created, social classes.

The recent vintage of these policies is important. The widespread barriers — which are arguably more harmful than legal segregation or the lingering effects of slavery — created the world we live in today.

In "Silent Convenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform" (Oxford University Press), Derrick Bell tacks in the opposite direction from Ms. Cashin, insisting that separatism is unavoidable and that benefits can be had within it. It is significant that Mr. Bell, who provocatively posits that black people might have been better off without the Brown decision, still strongly supports affirmative action. White opponents of affirmative action were deluded, he writes: affirmative action never deprived them of opportunities or benefits. This is hard to square with Mr. Bell's advocacy of slave reparations. His logic seems to be: white people resisted giving black people their due when it cost them nothing. Why don't we try making them pay a lot of money instead?

Mr. Bell's main theme is the "interest convergence" theory he advanced 24 years ago — that white leaders grant concessions to black people only to prevent upheaval or otherwise serve their own interests. The theory was novel not so much for its realism as for the outrage that Mr. Bell conveyed when explaining it. Though many call him a cynic, Mr. Bell, a visiting professor at New York University Law School, still appears deeply hurt that white people do not voluntarily give up their privileges.

Mr. Bell's most practical section covers alternatives to school desegregation. He will irritate liberals and union supporters by advocating experiments with vouchers, along with charter schools and single-sex education. Unfortunately, he leaves the proposals underdeveloped. Showing advanced symptoms of academic celebrity, he may be too busy to put in the long hours of contemplation or to do the digging necessary to come up with fresh, factually rich arguments to vie with Ms. Cashin's.

Charles Ogletree Jr., a professor at Harvard Law School, names Mr. Bell as a mentor and is clearly on the celebrity track with him. Like Mr. Bell, he is a brilliant lawyer, but he writes evenhandedly in "All Deliberate Speed: Reflections on the First Half-Century of Brown v. Board of Education" (W. W. Norton), more like a judge than Mr. Bell, who is content to advocate one side. Mr. Ogletree shares Ms. Cashin's concerns about black flight and, like her, takes economic divisions, including those within the black population, very seriously. The best part of his book is an invigorating memoir of his rise from poverty. He found opportunity and hope in desegregation, which balance his disappointment with Brown's unfinished business.

Mr. Ogletree gives critics of reparations a fair hearing, though he ultimately rejects their arguments. His proposal for reparations, one of many in this wide-ranging book, is his most fully developed idea — perhaps because he is preparing a related suit, on behalf of victims of the Tulsa race riot in 1921. Since the Tulsa victims are few, and since they sustained direct injuries, their case sidesteps some of the objections to reparations for slavery: slavery was perfectly legal until 1865; its victims and perpetrators are long dead; only racists think guilt is genetically transferable. (So far, the Tulsa suit does not answer the objection that, politically, reparations are a pipe dream.)

If the suit helps revive black commitment to the freedom struggle, or white support, it will revive the most elusive part of the struggle's half-century-old heyday. If not, the frustrations of the affirmative-action era may not go away so much as change form.

David L. Chappell is the author of "A Stone of Hope: Prophetic Religion and the Death of Jim Crow."

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