LETTERS

The Bakke Case and the Fourteenth Amendment

John Walsh's article on the Bakke case (News and Comment, 1 July, p. 25) generally sets out the contentions of the parties on each side of the question accurately. However, it only briefly alludes to the historical context in which the Fourteenth Amendment was passed and refers to "the argument that there is no firm, constitutional foundation for the preferential programs for minorities." The Legal Defense Fund has done an extensive study of the legislative history of the Fourteenth Amendment, and it is our conclusion that one of the specific reasons for its enactment was to *validate* "affirmative action" programs passed by Congress as part of Reconstruction.

The same Congress that passed the Fourteenth Amendment also passed a variety of legislation designed to assist freedmen achieve true equality. Opposition to Freedmen's Bureau legislation was vociferous, and in many cases precisely the kinds of arguments now advanced by opponents of preferential admissions programs were made. For example, Walsh quotes a *Columbia Law Review* article (*1*) citing the status of ethnic minorities among the white population, including Irish, Italians, and Poles, as reasons why blacks should not be singled out for special consideration. Opponents of Freedmen's Bureau legislation in 1864 similarly questioned why there should not be "a bureau of Irishmen's affairs, a bureau of Dutchmen's affairs, or one for the affairs of Caucasian descent generally, who are incapable of properly managing or taking care of their own interests by reason of a neglected or deficient education" (*2*). They also asked why blacks should become "marked objects of special legislation, to the detriment of the unfortunate whites" (*2*).

It was partly on the basis of such arguments that President Andrew Johnson vetoed Freedmen's Bureau legislation on a number of occasions. Although Congress was able to override a number of those vetoes, it was concerned with the constitutionality of such legislation in light of the objections in the presidential veto messages that such legislation constituted special treatment for blacks. Indeed, Freedman's Bureau legislation was being debated in Congress contemporaneously with the passage by both houses of the Fourteenth Amendment. The same legislators who comprised the two-thirds majority necessary to override a veto of the Freedman's Bureau Act of 1866 also composed the two-thirds majority which approved the Fourteenth Amendment. It seems incomprehensible that the same Congress which passed the Fourteenth Amendment when it was considering legislation to aid blacks would have intended that amendment in some way to invalidate such legislation.

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References

1. L. M. Lavinsky, *Columb. Law Rev.* **75**, 520 (1975).
2. U.S. House of Representatives, *H.R. Rep. No. 2* (38th Congr., 1st sess., Washington, D.C., 1864), p. 2.

Changing Norms: Before and After Kuhn

Readers of Nicholas Wade's article "Thomas S. Kuhn: Revolutionary theorist of science" (News and Comment, 8 July, p. 143) might also be interested in the classic monograph by Paul Schrecker *Work and History* (*1*), which, to my knowledge, first articulated the notion that science is a set of changing norms, and not of immutable laws. Schrecker, a refugee from Hitler, was a lawyer-turned-philosopher-of-history, who had studied—and rejected—logical positivism in Vienna. At the time he wrote the monograph, he was a professor of philosophy at the University of Pennsylvania. He conceived the notion that humans are active in two domains, nature and civilization; the latter could be characterized as a series of changing norms, the record of which is the substance of history. All civilizations manifested creative activity in six provinces which probably corresponded to six basic needs in people; these were science, economics, language, art, religion, and politics. The relative importance of the six provinces differed from society to society and from time to time. (Ours was—and remains—a society in which economic and/or scientific factors were likely to be most decisive in determining individual choices, or *acts* of work.) Each of the six provinces had, at any particular time, a hierarchy of norms that were perceived as constituting its laws. At the top of each norm hierarchy was a *generative principle*. Revolutions occurred in any field when one generative principle—or some related paradigm high on the norm hierarchy—was replaced by another. The process through which a generative principle was overthrown required countless acts of work by countless, usually anonymous, individuals; it might or might not include a dramatic event analogous to a political revolution. Sometimes a generative principle might become conventionalized, and no longer direct creative acts, without immediately being replaced by a new principle because none was available with sufficient power to engage the belief of most of the practitioners of that field (the "priests" in a prophet-priest-layman trichotomy). The norm structures of all six provinces were isomorphic; hence one could learn a lot about scientific revolutions by studying the histories of art, politics, or any of the other provinces.

I do not know whether Kuhn was aware of Schrecker's work when, some years later, he published *The Structure of Scientific Revolutions*; it doesn't really matter. Unlike Kuhn, Schrecker was not an experimental scientist, and he was never able to formulate as clear a notion of what precisely sat at the top of science's norm hierarchy (that is, the paradigm). Rather, his genius lay in perceiving that everything in civilization (including science) is normative; in explaining the process through which these norms change; and in recognizing the isomorphism and the interrelatedness of the various provinces of history. Some enterprising historian of ideas might find it interesting to examine why Schrecker's global analysis of the historical process affected the thinking of only a few professional philosophers, while Kuhn's more restricted analysis of scientific history did, in fact, spawn a scientific revolution.

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References

1. P. Schrecker, *Work and History* (Princeton Univ. Press, Princeton, N.J., 1948; reprinted by Peter Smith, Gloucester, Mass., 1967).

For many years I shared the uncomfortable feelings about Kuhn's well-known book, so vividly described in Wade's recent article. My attitude changed only when a discriminating friend pointed out that this was in effect a treatise on the *sociology* of science. Since Wade's extensive interviews seem to indicate that this viewpoint is not yet taken into account, I wish to bring it up as an indispensable alternative.

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