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### Enormous Anomaly - Left-Right Parallels in Recent Writing about Race Book Review

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# BOOK REVIEW

## ENORMOUS ANOMALY? LEFT-RIGHT PARALLELS IN RECENT WRITING ABOUT RACE

AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE. By Derrick Bell. New York: Basic Books, 1987. Pp. xii, 288.

REFLECTIONS OF AN AFFIRMATIVE ACTION BABY. By Stephen L. Carter. New York: Basic Books, 1991. Pp. ix, 286.

THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACE IN AMERICA. By Shelby Steele. New York: St. Martin's Press, 1990. Pp. ix, 175.

THE ALCHEMY OF RACE AND RIGHTS. By Patricia J. Williams. Cambridge, Mass: Harvard University Press, 1991. Pp. 263.

*Reviewed by Richard Delgado\**

### INTRODUCTION

Much recent writing about race and civil rights falls squarely within what I might call the classic-liberal mode.<sup>1</sup> This writing, generally highly normative and rights-based in nature<sup>2</sup> but cautiously incremental in scope and ambition, criticizes Supreme Court opinions, decries our recent inattention to the plight of women and persons of color, and urges a renewed commitment to racial justice.<sup>3</sup> It accepts the dominant paradigm of civil rights scholarship and activism, and urges that we work harder—litigate more furiously, press for new legislation, exhort

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1. See Richard Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, 44 *Vand. L. Rev.* 1 (1991) [hereinafter *Delgado, Brewer's Plea*] (discussing liberal jurisprudence and distinguishing it from Critical approaches in matters of race); Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 *Yale L.J.* 923 (1988) (book review) [hereinafter *Delgado, Ever Saved?*] (same). For a recent example of thoughtful liberal analysis, see Roy L. Brooks, *Rethinking the American Race Problem* (1990).

2. See, e.g., Richard Delgado, *Norms and Normal Science: Toward a Critique of Normativity in Legal Thought*, 139 *U. Pa. L. Rev.* 933 (1991) (normativity now the dominant mode of legal scholarship). See generally Symposium, *The Critique of Normativity*, 139 *U. Pa. L. Rev.* 801 (1991) (containing articles by Pierre Schlag, Frederick Schauer, Steven L. Winter, Frank Michelman, Margaret Jane Radin, and this author).

3. See Brooks, *supra* note 1 (proposing incremental reforms and new programs); Delgado, *supra* note 2, at 933–37 (functions of normativity generally).

each other even more fervently than ever before—within that paradigm. Virtually every recent issue of the major law reviews contains articles and notes within this *genre*.<sup>4</sup>

Recently, however, some scholars—particularly ones of color—have begun to find fault with civil rights strategies of the sort the liberals have been defending and promoting. A group of scholars associated with the Critical Race Theory (C.R.T.) school have raised objections from the left and have called for a wholly new approach to racial justice.<sup>5</sup> At the same time, a group of black neoconservatives<sup>6</sup> have been raising questions from the right. This Review argues that in many ways, the critique from the right and that from the left converge.<sup>7</sup> Operating from different perspectives and widely divergent premises, the left- and right-leaning scholars come to many of the same conclusions both about what is wrong with the liberal civil rights program that

4. My casual (and admittedly unsystematic) examination of a selection of recent volumes of the top-tier reviews showed that each one contained pieces of this sort, criticizing current doctrine, urging new models or approaches within the existing framework, and urging that particular legal rules are unjust and counterproductive and should be changed, usually modestly.

5. Critical Race Theory (C.R.T.), sometimes called Critical Race Studies, is a loose-knit coalition of scholars, most of color, who explore new approaches to problems of race. See, e.g., Delgado, *Brewer's Plea*, *supra* note 1, at 6–8 (program and methods of C.R.T.); Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?*, 76 *Va. L. Rev.* 95, 95 n.1 (1990) (identifying common themes in C.R.T. writing: insistence on “naming own reality”; belief that knowledge is a kind of power; doubts about incrementalism; use of Critical social science; debunking of myths; contextualized treatment of doctrine; criticism of liberal legalisms; and an interest in structural determinism); Scott Brewer, *Introduction: Choosing Sides in the Racial Critiques Debate*, 103 *Harv. L. Rev.* 1844 (1990); Jon Wiener, *Law Profs Fight the Power*, *The Nation*, Sept. 4–11, 1989, at 246.

In addition to Bell and Williams, reviewed herein, the school includes the following authors and works: Mari J. Matsuda is Professor of Law at UCLA and the author of numerous articles in the C.R.T. vein, including *Public Response to Racist Speech: Considering the Victim's Story*, 87 *Mich. L. Rev.* 2320 (1989). She is a co-founder and one of the leading spokespersons for the group.

Kimberlé Williams Crenshaw is Professor of Law at UCLA and the author of *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331 (1988).

Charles R. Lawrence, III, Professor of Law at Stanford, is the author of *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *Stan. L. Rev.* 317 (1987).

6. In addition to Carter and Steele, the black neoconservative group includes: Economist Thomas Sowell, author of *Preferential Policies: An International Perspective* (1990); *Civil Rights: Rhetoric or Reality?* (1984); and *Race and Economics* (1975); Glenn C. Loury, author of *Who Speaks for American Blacks?*, *Commentary*, Jan. 1987, at 34.

Clarence Thomas, D.C. Circuit Court judge and recent nominee to the U.S. Supreme Court, is also often described as a neoconservative.

7. In this Essay, I use the terms “the right” and “the left” in the senses mentioned above, that is Black neoconservatives (the right) and writers associated with Critical Race Studies (the left).

has been this country's legacy since the Warren Court years, and about the appropriate response.

I take four books as illustrations—Shelby Steele's *The Content of Our Character*,<sup>8</sup> Patricia Williams' *The Alchemy of Race and Rights*,<sup>9</sup> Stephen Carter's *Reflections of an Affirmative Action Baby*,<sup>10</sup> and Derrick Bell's *And We Are Not Saved*.<sup>11</sup> After briefly describing and differentiating the works and their authors,<sup>12</sup> I trace a series of common themes and conclusions found in both critical and neoconservative writing. My guiding assumption is that ordinarily the left and the right do not agree on much. When they do, it behooves us to take note. Their common target, liberalism, may be in for hard times. Moreover, the areas where the critiques coincide, like circles cast by different flashlights, may be ones in which we may see more readily the flaws in our treatment of America's most intractable problem: Race.

### I. A BRIEF PROGRAM NOTE

Shelby Steele is professor of English at San Jose State University in California. Stephen Carter is professor of law at Yale, Derrick Bell at Harvard, Patricia Williams at Columbia. All four are African-Americans; all are writing about culture and race; all write with style and grace.

Shelby Steele's book, *The Content of Our Character*, consists of nine essays, all dealing with the psychology of being black or with black-white relations.<sup>13</sup> Each of the essays is heavily autobiographical, drawing on the author's experiences as a middle-class black.<sup>14</sup> Steele, a neo-conservative, takes as his principal target the centerpiece of our national civil rights policy—affirmative action—which he calls "racial

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8. Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (1990).

9. Patricia J. Williams, *The Alchemy of Race and Rights* (1991).

10. Stephen L. Carter, *Reflections of an Affirmative Action Baby* (1991).

11. Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (1987).

12. I do this with little editorial comment or serious criticism, for my purpose is to show what the works have in common, not what is wrong with each of them. Many critical reviews are available. See, e.g., Wendy Kaminer, *Citizens of the Supermarket State*, N.Y. Times, May 26, 1991, § 7, at 10 (reviewing Williams, supra note 9); Adolph Reed, Jr., *The Content of Our Character: A New Vision of Race in America*, *The Nation*, Mar. 4, 1991, at 274 (reviewing Steele, supra note 8); Patricia J. Williams, *A Kind of Race Fatigue*, N.Y. Times, Sept. 16, 1990, § 7, at 12 (reviewing Steele, supra note 8).

13. Several of Steele's essays were published earlier in such magazines as *Harper's* and *Commentary*. See, e.g., *I'm Black, You're White, Who's Innocent?*, *Harper's*, June 1988, at 45 (Ch. 1); *On Being Black and Middle Class*, *Commentary*, Jan. 1988, at 42 (Ch. 6). Other chapters appeared in *American Scholar* and the *N.Y. Times Magazine* (see frontispiece, Steele, supra note 8).

14. The description is Steele's. See Steele, supra note 8, at 93–109 (Ch. 6—*On Being Black and Middle Class*).

preference."<sup>15</sup> This system, according to Steele, rewards a victim mentality, discourages people of color from striving to meet prevailing standards of merit and advancement, and exacerbates black-white tensions.<sup>16</sup>

Patricia Williams, a member of the Critical Race Theory school, also writes in a highly personal vein,<sup>17</sup> but her main target is the pattern of words and thinking we use to come to grips with matters of race. She brings to bear techniques of literary criticism,<sup>18</sup> storytelling,<sup>19</sup> irony,<sup>20</sup> and pointed description<sup>21</sup> in an effort to help her readers learn to unthink racist thoughts. She is also concerned with the law's contribution to white-over-black supremacy, addressing such issues as property,<sup>22</sup> the public/private distinction,<sup>23</sup> and racial categorization to show how the legal system helps maintain the racial status quo.<sup>24</sup>

Derrick Bell is perhaps the country's leading African-American legal scholar. An ex-litigator with the NAACP Legal Defense Fund, he joined the Harvard faculty in 1969 as its first black professor. *And We Are Not Saved* is his first sole-authored book; a portion of it appeared previously, in the form of his 1985 Harvard Supreme Court Foreword, *The Civil Rights Chronicles*.<sup>25</sup> Bell uses a series of imaginative tales ("Chronicles") illustrating some contradictions in our civil rights thinking to show how the search for racial justice always fails. Each takes the form of a dialogue between Bell and Geneva Crenshaw, his fictional alter ego, a black attorney who has emerged from a 20-year hiatus to

15. See, e.g., *id.* at 90, 111 (Ch. 7—Affirmative Action: The Price of Preferences), 116.

16. See *id.* at 21–35, 111–25, 127–48.

17. Her book's frontispiece has the subtitle "Diary of a Law Professor."

18. See, e.g., Williams, *supra* note 9, at 81 (discussing Othello's murder of Desdemona as an exam hypothetical).

19. See, e.g., *id.* at i ("Once upon a time there was a society of priests . . ."); *id.* at 44–51, 71 (incident at Benetton's); *id.* at 155–58 (story of great-great-grandmother); *id.* at 202–04, 234–36 (story of polar bears and schizophrenia-fears).

20. See, e.g., *id.* at 216 (author's mother tells her that she has the law "in [her] blood" because her great-great-grandmother, a slave, was impregnated by a white lawyer).

21. See, e.g., *id.* at 80–94 (analysis of law exams given by her colleagues and results of her conversations with them about racial bias in exams they drafted).

22. See *id.* at 12–13, 124, 164–65, 216–39 (Ch. 12, On Being the Object of Property).

23. See *id.* at 19, 34–35, 43, 68–78, 185.

24. See, e.g., *id.* at 12–14 (law teaches us not to see what we see). As with Steele's book, a number of the essays in Williams' book have been published before. For example, a version of Ch. 6: The Obliging Shell (an informal essay on formal equal opportunity) appears as *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 *Mich. L. Rev.* 2128 (1989).

25. Derrick Bell, *The Supreme Court, 1984 Term—Foreword: The Civil Rights Chronicles*, 99 *Harv. L. Rev.* 4 (1985).

discuss the nation's racial scene with the author.<sup>26</sup>

Stephen Carter's book, *Reflections of an Affirmative Action Baby*, contains, in addition to his well-known essay, *The Best Black*, ten other chapters each of which explores some aspect of this nation's racial predicament. As heavily autobiographical as Williams' or Steele's book,<sup>27</sup> Carter's devotes a great deal of attention to the relationship of black conservatives, whom he calls "dissenters," to the rest of the black community.<sup>28</sup> The book is also heavily reflexive—the three major sections are entitled, On Being an Affirmative Action Baby; On Being a Black Dissenter; and On Solidarity and Reconciliation, which deals with the problem of achieving unity within a civil rights community that is ideologically split.

## II. WHAT THE LEFT AND THE RIGHT ARE SAYING ABOUT RACE

Moderate liberals in think tanks, government, academia, and civil rights organizations should take note: Both the Critical left and the New right are finding fault with the strategies and ways of framing problems that have been our stock in trade for years. The criticisms are wide-ranging; they are more than disagreements over matters of detail or timing. In section B, I detail some of the more striking coincidences. First, however, I must briefly distinguish the two groups of writers, showing what separates them.

### A. "To Be Sure": What the Crits and the Neoconservatives Disagree About

The parallels should not obscure the many respects in which the two Critical and two neoconservative authors disagree. The neoconservatives emphasize individual agency and volition much more than the two leftist writers. Carter, for example, writes:

Consequently change, if change there is to be, is in *our* hands—and the only change for which we can reasonably hope will come about because we commit ourselves to battle for excellence, to show ourselves able to meet any standard, to pass any test that looms before us, in short, to form ourselves into a vanguard of black professionals who are simply too good to ignore.<sup>29</sup>

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26. See Bell, *supra* note 11, at 18–22 (describing Crenshaw—probably a composite figure based on litigators with whom Bell practiced at the NAACP Legal Defense Fund).

27. All three authors rely heavily on anecdotes and personal experience, although with slightly differing objectives in mind: Williams, to debunk and displace comfortable racial stereotypes and ideas held by whites; Steele, to extrapolate from his own experience to a universal black "character"; and Carter, to show how difficult it is to be a black dissident intellectual.

28. See, e.g., Carter, *supra* note 10, at 99–191 (Pt. II, On Being a Black Dissenter).

29. *Id.* at 60; accord Steele, *supra* note 8, at 173 ("There will be no end to despair and no lasting solution to any of our problems until we rely on individual effort within the American mainstream—rather than collective action against the mainstream—as our means of advancement.").

All four authors rely on personal experience and storytelling, but the leftist writers use these tools to draw a message about social power or relations: Their minds run toward sociology and social theory.<sup>30</sup> The two more conservative authors use narrative and personal experience to draw lessons about black and white mindset; the science for which they feel the most affinity is psychology.<sup>31</sup>

The four authors show the same division regarding their prescriptions for our racial ills. Carter and Steele believe that racial progress will come only when black people change their attitudes and way of relating to white society, work harder, and resolve to "beat whitey" at his own game.<sup>32</sup> The two Critical writers are much more doubtful about the payoff for black resolve. Both see hidden barriers—Bell in material,<sup>33</sup> Williams in structure-of-thought factors<sup>34</sup>—that are likely to impede black success.

The authors place widely different premiums on individual versus collective effort<sup>35</sup> and make different uses of history. The leftist authors tend to see blacks' current problems as continuations of the

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30. Williams uses the tools of literary criticism, deconstruction, and "psychoanalysis." See Williams, *supra* note 9, at 202–14; *supra* notes 18–24; see also Bell, *supra* note 11, at 140–61 (Ch. 6—The Chronicle of the DeVine Gift, showing how social homeostasis operates to maintain white ascendancy at a law school, even when diligent affirmative action surprisingly produced an abundance of superbly qualified black teaching candidates).

31. See Steele, *supra* note 8, at 40–45 (describing childhood experience to illustrate expansion and deepening of individuals' "innate capacity for insecurity"); Carter, *supra* note 10, at 55–58 (describing how affirmative action causes whites to expect all blacks to be intellectually inferior); *infra* notes 57–60 and accompanying text (experience of affirmative action demeaning and stigmatizing).

32. See Carter, *supra* note 10, at 58–62, 94–95, 227–35 (urging Blacks to toughen up, abjure victim-mentality and take advantage of opportunities now open to them); Steele, *supra* note 8, at 127–65 (same).

33. For examples of Bell's material determinism, see Bell, *supra* note 11, at 26–50 (Constitution supports white-over-black supremacy); *id.* at 140–61 (white society will not tolerate black progress beyond a certain point); *id.* at 215–58 (same); *infra* notes 42, 48 and accompanying text (interest-convergence formula).

34. See Williams, *supra* note 9, at 55–79 (language and mindset determine how we see racial events); *id.* at 146–65 (blacks and whites see formality and rights in radically different ways).

35. Conservatives naturally place more emphasis on individual effort, initiative or "character," see *supra* notes 28–30 and accompanying text; Criticalists on destabilization tactics and mass actions, see, e.g., Bell, *supra* note 11, at 5 (destabilization); *id.* at 215–35 (collective action); *id.* at 239–58 (same).

past.<sup>36</sup> The conservatives are more present- and future-oriented:<sup>37</sup> if we set aside dimmed expectations and wounded self-images stemming from centuries of mistreatment, we will be able to take advantage of today's purportedly improved racial climate.<sup>38</sup>

And, finally, the two sets of writers assign different valences and locations to hatred. For the neoconservatives, the main problem is that blacks hate themselves;<sup>39</sup> for the Criticalists, whites hate blacks and are unwilling to afford them their fair share of America's bounty.<sup>40</sup> All these differences, of course, shape the two groups' thinking on the nature of and cure for America's racial predicament.

The four authors, then, are manifestly not saying the same things. But on one level they are: They are all finding serious fault with (a) the racial status quo; and (b) the current system of civil rights laws and policies by which that status quo is maintained and (sometimes) permitted to evolve. I now examine a series of ways in which the attacks coincide on a critique of liberalism.

#### B. *Left-Right Parallels and the Critique of Liberal Legalism*

Despite their differences, the two groups of authors share deep dissatisfaction with the moderate-liberal civil rights policies this nation has

36.

If, moreover, racism is artificially relegated to a time when it was written into code, the continuing black experience of prejudice becomes a temporal shell game manipulated by whites. Such a refusal to talk about the past disguises a refusal to talk about the present. If prejudice is what's going on in the present, then aren't we, the makers and interpreters of laws, engaged in the purest form of denial? Or, if prejudice is a word that signified only what existed "back" in the past, don't we need a new word to signify what is going on in the present? Amnesia, perhaps?

Williams, *supra* note 9, at 103; see also Bell, *supra* note 11, at 26-50 (Black Americans' current status stems in part from political decisions made at Constitutional Convention).

37.

Supporters of preferences cite a whole catalogue of explanations for the inability of people of color to get along without them: institutional racism, inferior education, overt prejudice, the lingering effects of slavery and oppression, cultural bias in the criteria for admission and employment. All of these arguments are most sincerely pressed, and some of them are true. But like the best black syndrome, all of the arguments entail the assumption that people of color cannot at present compete on the same playing field with people who are white. I don't believe this for an instant . . . .

Carter, *supra* note 10, at 69.

38. See, e.g., *id.* at 32-34, 94-95, 232-33; Steele, *supra* note 8, at 28, 31, 39, 46-54, 66, 73, 173-74.

39. See, e.g., Carter, *supra* note 10, at 12-20, 31 (racial preferences make blacks doubt themselves and their abilities); Steele, *supra* note 8, at 33 (cultivation of victim-role); *id.* at 46-48, 117-19, 152 (internalized fear that inferiority whites teach might be real).

40. See, e.g., Bell, *supra* note 11, at 26-51 (basic constitutional thought consigns blacks to inferior status); *id.* at 51-74 (majority race uses civil rights laws and civil rights "breakthroughs" to continue oppression of blacks).



been pursuing since the days of *Brown v. Board of Education*.<sup>41</sup> This dissatisfaction often results in striking parallels with respect to the goals to which people of color ought to aspire, the means by which we should strive to reach these goals, the ways in which our racial problems are framed, and the role of law in advancing or retarding the search for racial justice.

1. *Problem Framing*. — Both sets of writers have a vision of the search for racial justice, and law's role in it, that differs sharply from the conventional one. Many C.R.T. writers believe that civil rights law was never designed to help blacks. Derrick Bell's interest-convergence formula holds that whites will advance the cause of racial justice only when doing so coincides with their own self-interest.<sup>42</sup> Writers on the right, particularly Steele, sound a similar theme when they write that racial programs are aimed mainly at assuaging white guilt and constitute justice "on the cheap"—enable whites to say they are doing something for blacks when they are doing very little.<sup>43</sup> Some Critical writers see civil rights law as a sort of societal safety valve that assures that racial reform occurs at just the right rate of speed. (Too much reform would be terrifying, too little might lead to disruption.)<sup>44</sup> Similarly, writers on the right hold that a prime function of affirmative action is to offer whites "innocence"—the assurance that they are guiltless with respect to past transgressions and that little more need be done.<sup>45</sup>

Both sets of writers argue that antidiscrimination law often makes matters worse. Critics point out that periodic victories—*Brown v. Board of Education*,<sup>46</sup> the 1964 Civil Rights Act<sup>47</sup>—are trumpeted as proof that our system is fair and just—but are then quickly stolen away by narrow judicial construction, foot-dragging, and delay.<sup>48</sup> The celebrations assure everyone that persons of color are now treated fairly in virtually every area of life—housing, education, jobs, and voting. With all that, if blacks are still not achieving, well, what can be done? Writers on the right echo this charge when they point out that affirmative action stigmatizes its intended beneficiaries, assists those least in need of help, and does little to remedy the structural sources of poverty and mis-

41. 347 U.S. 483 (1954) ("*Brown I*," declaring segregated schooling unconstitutional, overruling separate-but-equal doctrine of *Plessy v. Ferguson*, 163 U.S. 537 (1896)).

42. See, e.g., Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980); Bell, *supra* note 11, at 51-74 (civil rights laws benefit majority race at least as much as blacks).

43. See Steele, *supra* note 8, at 1-21 (Ch. 1—I'm Black, You're White, Who's Innocent?), 77-92 (Ch. 5—White Guilt).

44. See Delgado, *Ever Saved?*, *supra* note 1, at 923-24.

45. See *supra* note 43 and accompanying text.

46. 347 U.S. 483 (1954).

47. 42 U.S.C. §§ 2000(a)-2000(h)(6) (1988).

48. See Bell, *supra* note 11, at 25-50, 51-74, 140-61, 215-35 (civil rights law colonizes blacks, enables whites to maintain control, and ensures racial progress is slow and measured).

ery.<sup>49</sup> Williams, a Criticalist, writes that law teaches us not to know what we know—to ignore and falsify our own lives.<sup>50</sup> Similarly, conservatives such as Carter and Steele write that law falsifies our experience by denying us agency—by teaching us that we are weak, victimized, inferior, and must rely on preferences and handouts to get ahead.<sup>51</sup>

2. *Need for a Better Civil Rights Strategy and Goals.* — Not only do the two groups of writers concur on much of what is amiss with the current civil rights vision, they agree on at least the general contours of a new one. For the neoconservatives, this task will entail a heavy dose of anti-essentialism and recognition of intragroup differences.<sup>52</sup> Not all blacks are the same; indeed, it is the essence of racism to believe so. Thus, any new strategy must take account of a complex, fragmented racial reality in which middle-class blacks, working-class blacks, and black entrepreneurs have differing goals and needs. There can be no single civil rights agenda, no single solution, no “party line.”<sup>53</sup>

Writers on the far left, too, insist on the need to “name [our own] reality”<sup>54</sup>—formulate our own vision—but for them, that means freedom from the mental shackles of white-coined culture and mindset. For Williams, the grammar and concepts of race are pernicious, laid down long ago in an era in which blacks were property, were inferior, were denied an education or even, in some cases, the right to form a family.<sup>55</sup> Bell writes that the Constitution and entire body of race-reform statutes and case law are infected with racism and must be replaced.<sup>56</sup> For both sets of authors, therefore, the dominant narratives

49. See, e.g., Carter, *supra* note 10, at 11–20, 71–72, 80; Steele, *supra* note 8, at 14, 33, 52–54, 115.

50. See, e.g., Williams, *supra* note 9, at 80–88.

51. See Carter, *supra* note 10, at 24–25, 53–54, 232–33; Steele, *supra* note 8, at 33–35, 37–39, 115–19, 152.

52. See Carter, *supra* note 10, at 40 (asserting that those who believe blacks have same views make category mistake of biology implying ideology); Steele, *supra* note 8, at 72 (“most dangerous threat to black identity is not . . . [white racism] . . . but the black who insists on his or her own individuality”). Both conservatives go further, urging that intra-group differences are healthy or a positive good. See Carter, *supra* note 10, at 99–253 (Pts. II, III—need for black dissenters); Steele, *supra* note 8, at xi, 23, 30, 93–109, 113 (community contains more than lower-income activists). For further articulation of this “anti-essentialist” message, see Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 *Harv. L. Rev.* 1745, 1778–1807 (1989). But see Steele, *supra* note 8, at 4–5 (race identity sometimes transcends class differences).

53. See Carter, *supra* note 10, at 99–191 (Pt. II—need for black dissenters); cf. Steele, *supra* note 8, at xi (“Whatever I do or think as a black can never be more than a variant of what all people do and think.”).

54. This term was coined by Kimberlé Crenshaw, see Crenshaw, *supra* note 5, at 1336, 1349.

55. See Williams, *supra* note 9, at 11, 40, 49, 119–20, 162 (visions of white as superior metaphor over blackness); see also *supra* note 42 and accompanying text (civil rights law responds to white needs).

56. See, e.g., *supra* notes 42, 48 and sources cited therein.

and stories animating current civil rights law are wrong. They require wholesale revision; their defects cannot be fixed by a small amendment or change of focus.

3. *Tactics and Means*. — Not only do the four writers agree that there are fundamental flaws in our civil rights vision, they also demonstrate a surprising amount of agreement over (i) means for advancing a new vision and (ii) means that have failed and should be rejected. For example, writers on the left have exposed tokenism and other grudging, trickle-down approaches to racial justice, such as the "role model" argument.<sup>57</sup> For their part, conservatives find affirmative action demeaning and urge that we reject handouts in favor of individual and collective efforts to defeat the system by doing it one better.<sup>58</sup> Both sets of authors want to ensure that the individual is not nullified. Steele portrays affirmative action as a form of redemption—whites give blacks (almost any blacks) a few slots to free whites from any taint of a racist past.<sup>59</sup> For Carter, the only thing that matters is that the beneficiary be recognizably "black"—that is, conform to whites' idea of what a person of color should be like.<sup>60</sup> This approach denies black individuality, a charge Williams echoes when she complains of affirmative action's tendency to be satisfied with numbers rather than genuine representative diversity.<sup>61</sup>

Both groups reject white idealism and generosity as reliable wellsprings for advancing the cause of black justice.<sup>62</sup> The leftists urge mobilization, disruption, and subversive storytelling to fuel change.<sup>63</sup> The

57. See, e.g., Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want To Be a Role Model?*, 89 Mich. L. Rev. 1222, 1223 n.5 (1991) ("The role model argument . . . holds that affirmative action is justified in order to provide communities of color with exemplars of success, without which they might conclude that certain social roles and professional opportunities are closed to them.").

58. See Carter, *supra* note 10, at 58–62, 228–31 (beating them at their own game).

59. See Steele, *supra* note 8, at 86–92, 115 (affirmative action is device to achieve cosmetic diversity); see also Carter, *supra* note 10, at 34 (discussing the "deceptive rubric of diversity"); cf. Williams, *supra* note 9, at 116–17 (exploring nullification of individual when "social text is an 'aesthetic of uniformity'").

60. See Carter, *supra* note 10, at 34 ("The ideals of affirmative action have become conflated with the proposition that there is a *black way to be*—and the beneficiaries of affirmative action are nowadays supposed to be people who will be black the right way.").

61. See Williams, *supra* note 9, at 103, 121.

62. See, e.g., Carter, *supra* note 10, at 67–69, 71–72 (rejecting affirmative action and handouts); Steele, *supra* note 8, at 9, 39, 113 (same); *supra* notes 42, 48, 56 and accompanying text (Bell's interest-convergence formula, distrust of white idealism as staunch support for black justice); see also Derrick Bell, *Race, Racism and American Law* 3, 305 (2d ed. 1980) (discussing the futility in relying on the "moral sense of the white race"); Delgado, *Ever Saved?*, *supra* note 1, at 928–47 (dialogue between Geneva Crenshaw and her optimistic white psychiatrist, modeled after dialogues created by Derrick Bell).

63. See, e.g., Bell, *supra* note 11, at 245–58 (discussing "the ultimate civil rights strategy"); Bell, *supra* note 62, at 279–361 (Ch. 6: Potentials of Protest, Parameters of

conservatives also reject whites' altruism and the magical helping hand, but offer a different alternative—work hard, make money, open a business, get a professional degree.<sup>64</sup> Then you will have something better and more reliable than good will: You will have entered the system on a basis of equality and respect.<sup>65</sup>

Both are distrustful of high-flown liberal discourse and academic writing praising equality, equal respect, and equal citizenship.<sup>66</sup> Both use stories, irony, and humor to puncture self-serving majoritarian myths built around such ideas.<sup>67</sup> Both point out that concepts such as "race," "racism," and "discrimination" are constructed by groups to serve their own purposes.<sup>68</sup> Both advocate storytelling by persons of color, although for slightly differing reasons. Critical writers encourage black people to tell and retell stories of their own oppression as an antidote to disabling self-doubt and hatred.<sup>69</sup> Through recounting terrible tales of torture, rape, and spirit-murder, we gain healing: we realize that our current low estate is not our fault.<sup>70</sup> The conservative writers use storytelling for a different reason—to encourage their brothers and sisters to make use of what opportunities are now open to them, to stop thinking of themselves as victims, and to forge ahead fearlessly.<sup>71</sup>

Protection, including discussion of "Creative Disorder and the Courts"); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 Mich. L. Rev. 2411 (1989) [hereinafter *Oppositionists*].

64. See Carter, *supra* note 10, at 88–89 ("[T]he proper goal of all racial preferences is opportunity . . . . So justified, the benefit of racial preference carries with it the concomitant responsibility not to waste the opportunity affirmative action confers.").

65. Steele, *supra* note 8, at 173 ("There will be no end to despair and no lasting solution to any of our problems until we rely on individual effort within the American mainstream—rather than collective action against the mainstream—as our means of advancement."); accord Carter, *supra* note 10, at 60 (advocating development of a "vanguard of black professionals who are simply too good to ignore"); see also Steele, *supra* note 8, at 108–09 ("Hard work, education, individual initiative, stable family life, [and] property ownership" are means by which black Americans must advance.).

66. Compare the dialogue between Geneva Crenshaw and her psychiatrist in Delgado, *Ever Saved?*, *supra* note 1, at 928–47 (psychiatrist is "high-minded" liberal who is dissatisfied with Geneva's despairing attitude toward possibility of black progress, and wishes to "cure" her of this pessimism) with Carter, *supra* note 10, at 73–75 (describing incident in which a conventional liberal tried to convince Carter that he was a deprived victim of "systemic" racism when Carter felt no such disadvantage). See *infra* note 71.

67. On the use of counter-narratives and stories to debunk or jar self-serving majoritarian myths, see Delgado, *Oppositionists*, *supra* note 63; Steele, *supra* note 8, at 127–48 (telling stories of campus radicals who demand orthodoxy, magnify grievances and pretend there has been no racial progress in last 25 years).

68. Steele, *supra* note 8, at 28–35; Williams, *supra* note 9, at 65–66.

69. See Delgado, *Ever Saved?*, *supra* note 1, at 923–24, 927–28.

70. See *id.* at 929–47; Delgado, *Oppositionists*, *supra* note 63, at 2435–37.

71. Carter recounts a conversation he had with an older student during his first year at law school at Yale. The older student tries to persuade Carter that he has been disadvantaged by racism; Carter disagrees, pointing out that racism helped fuel him, helped him to succeed. The student wants Carter to focus on the obstacles, but Carter

Among the former, Williams tells of being taught in law school to combat raw power with images of powerlessness, to clothe victims in "utter, bereft[] naivete," to "give voice to those whose voice had been suppressed . . . [by arguing] that they [have] no voice."<sup>72</sup> This is one of Steele's favorite themes: The victim binds himself to his victimization, comes to believe that prospects can only be improved by social means, not by individual initiative.<sup>73</sup> Steele says we need to break this dependency, jettison affirmative action, which encourages reliance on entitlements,<sup>74</sup> and emphasize deracinated programs that attack poverty in general, not black poverty.<sup>75</sup> Williams, on the other hand, advocates expanding our system of civil rights, including affirmative action, and offers stories and parables to explain how such a system might, at least at times, embolden and empower persons of color.<sup>76</sup>

Both sides are urging novel alignments. Critics are questioning the utility of the black-left coalition that has persisted over the years;<sup>77</sup> one (this author) has even urged that the nonwhite poor consider aligning themselves with the progressive wing of the Republican Party.<sup>78</sup> Steele and Carter seem open to this suggestion. Carter devotes nearly fifteen pages of his book to laying out ways in which moderate Republicans might strike up a liaison with at least a segment of the black community.<sup>79</sup>

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prefers laying the past to rest and making the most of the opportunities now present. See Carter, *supra* note 10, at 73-75.

Steele recounts his own reaction to a professor's racist story. Steele responded defensively instead of seizing the opportunity to show the professor (his debate coach) his "blindness." See Steele, *supra* note 8, at 103-06.

Seeing myself as a victim meant that I clung all the harder to my racial identity, which, in turn, meant that I suppressed my class identity. This cut me off from all the resources my class values might have offered me. In those values, for instance, I might have found the means to a more dispassionate response, the response less of a victim attacked by a victimizer than of an individual offended by a foolish old man. As an individual, I might have reported this professor to the college dean. Or, I might have calmly tried to reveal his blindness to him, and possibly won a convert.

*Id.* at 105.

72. See Williams, *supra* note 9, at 155-56.

73. See Steele, *supra* note 8, at 14-15.

74. See *id.* at 90, 158 (eliminating racism may require collective action at times, but *betterment* results only from individual initiatives); see also Carter, *supra* note 10, at 60, 88-89 (change in our hands).

75. See Steele, *supra* note 8, at 124, 172-75.

76. See Williams, *supra* note 9, at 164.

77. Bell's entire book can be seen as an impeachment of liberalism, see, e.g., Bell, *supra* note 11, at 51-74 (civil rights litigation has benefitted whites more than blacks).

78. See Richard Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass*, 78 *Geo. L.J.* 1929, 1940-45 (1990); see also Bell, *supra* note 11, at 53-59 (Chronicle of the "Conservative Crusader," implying that a conservative Court might, paradoxically, advance cause of racial justice more than earlier liberal ones).

79. See Carter, *supra* note 10, at 154-68.

4. *Persistence of Racism; Unlikelihood of Relief.* — Finally, both groups agree that racism persists in our society, in the face of liberalism's optimistic claims of progress and forecasts of a rosy future.<sup>80</sup> Williams, for example, notes ironically that she is considered nonblack for purposes of inclusion in mainstream society, but black for purposes of exclusion.<sup>81</sup> She records a horrifying series of mistreatments at the hands of students, colleagues, and store clerks.<sup>82</sup> The two conservative writers also describe racist incidents they have suffered or witnessed—Carter, for example, recounts discrimination he suffered in the Boy Scouts, on a city bus, and at the hands of high school counselors and passing motorists—but nevertheless declines to call these “serious.”<sup>83</sup> Steele recounts racial categorization in a vignette describing a road trip with his college debate team, but with a reverse twist: His middle class identity is presumed to override his blackness. Because Steele was a high-achieving member of his team, his coach, a university English professor, felt comfortable recounting his own racist treatment of a black renter.<sup>84</sup>

The two conservatives argue that current race-relations mechanisms, especially affirmative action, perpetuate racist attitudes and stereotypes. Derrick Bell goes even further: These effects, which might seem inadvertent, in fact confer a benefit on white elite groups, and hence will continue.<sup>85</sup> For both groups, civil rights and affirmative action are premised on, and inscribe even more deeply, white power and black helplessness. In that sense they serve to perpetuate the existing racial hierarchy.<sup>86</sup>

### CONCLUSION

Critical and neoconservative writers, while differing in a number of respects, nevertheless join in a wide-ranging attack on the current liberal civil rights vision, methods, and ideology. All four writers, like Critical theorists and neoconservatives generally, are impatient with incrementalism and token representation. Both groups share the belief that our much-vaunted system of racial justice is not working and perhaps was never intended to do so. In an era, like ours, hostile to racial reform, liberalism will thus be unable to look to many theoreticians of color for support.

Unless liberalism is able radically to transform itself, it will likely

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80. See, e.g., Delgado, *Ever Saved?*, supra note 1, at 928–46 (on black despair and white optimism in writing of Derrick Bell and other Criticalists).

81. See Williams, supra note 9, at 10.

82. See id. at 21–24, 44–51, 71–72, 80–91, 96–97, 214–15.

83. See Carter, supra note 10, at 71–95 (Ch. 4—Racial Justice on the Cheap).

84. See Steele, supra note 8, at 104.

85. The most stark expression is his “interest-convergence” formula. See supra note 42 and accompanying text.

86. See supra notes 41–51, 57–60, 63–68, 71–75 and accompanying text.

continue to weaken. What will replace it as a civil rights strategy? My guess is nothing. Society's need for legitimacy will assure that a few blacks ascend, while opposition to spending and mass programs will guarantee that most fall further and further behind. Conditions for change like those present in the 1960s are missing. The white leadership is timid or indifferent; the white middle- and blue-collar classes are frankly hostile to racial reform. There is little pressure at the international level for the United States to transform itself. In time, these conditions may change; in particular, demographic shifts will one day begin to add special urgency. But if I am right, in the short run liberalism will continue to decline, and nothing coherent will replace it, while conditions for blacks and other people of color will worsen. Race, our most enduring problem, is likely to remain, for now, as intractable as ever.