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DERRICK BELL'S *RACIAL REALISM*: A COMMENT ON WHITE OPTIMISM AND BLACK DESPAIR

Richard Delgado*

DERRICK Bell's *Racial Realism*¹ is likely to be met with a predictable response—from his readers of majority race, at any rate.² Why such a somber message, some will ask? Yes, yes, we know the Supreme Court has been handing down a series of unfriendly decisions,³ but has not the Congress reversed most of them?⁴ And do not some statistics, at least, bespeak racial progress, the closing of the race “gap,” the growth in the black middle class?⁵ Perhaps Professor Bell is jaded, due to admittedly bruising battles in the past. Perhaps he is singing a sad song to win our sympathy, to remind us that our society still has a way to go before blacks and whites have equal opportunity. Whatever the reason, though, should he be saying those things? What effect can they have on the young, on students? Does not everyone need hope? Without it, why continue to struggle? Many white readers will shake their heads at Bell's latest line, wondering whether he has not gotten things seriously wrong. The message of *Racial Realism* may have been appropriate in the past, but the Professor, by continuing in this vein, has made a large mistake.

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1. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992).

2. Recently, a talented writer of color took Bell and other Critical Race theorists to task for some of the reasons mentioned immediately *infra*. See Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1988).

3. See, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (striking down a minority set-aside ordinance that mandated that a percentage of city construction contracts be granted to minority-owned contracting firms).

4. See Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 42 U.S.C.)

5. On the (slightly) improving statistics relating to black poverty and educational achievement, see ROY BROOKS, *RETHINKING THE AMERICAN RACE PROBLEM* (1991) (pointing out that much work remains to be done).

If this response materializes, it will not be the first time charges of excessive pessimism have been leveled at Derrick. Reviewing the second edition of Bell's casebook, *Race, Racism and American Law*,⁶ Alan Freeman questioned the effect such a darkly despairing work would have on both students learning and faculty teaching from it.⁷ Freeman's review suggests that exposure to Bell's pessimism could leave impressionable young readers paralyzed; perhaps it also will deter them from pursuing careers in the public interest.⁸

I believe that Derrick is right and his critics wrong.

America's zig-zag course, in regard to racial relations, sustains Bell's downbeat assessment of our prospect for legitimate racial progress.⁹ Further, his gloomy words are not calculated to injure the cause of racial reform—quite the contrary, they may prove helpful to it.¹⁰ In this Comment, I offer two reasons for the "optimism gap" between Bell and his critics. The first concerns the psychology of race and life in this culture as a person of color. The second reason relates to the current wave of conservative, anti-minority sentiment that is sweeping the land. Both reasons offer some insight into the optimism gap, into why Bell is pessimistic while his majority-race readers prefer a more sanguine—or, at least, a non-pessimistic—view. In the end, even if the message *is* pessimistic, it will still advance racial reform, for reasons I will note toward the end of this Comment.

I. THE PSYCHOLOGY OF RACIAL HOPE AND DESPAIR

For many persons of majority race, the principal psychological need in the area of race is for reassurance, for innocence. On looking around oneself, a white member of this society sees that a large segment of the population is poor, desperate, reviled and outcast.¹¹ Many

6. DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980).

7. Alan Freeman, *Race and Class: The Dilemma of Liberal Reform*, 90 *YALE L.J.* 1880, 1886-87 (1981) (reviewing DERRICK BELL, *RACE, RACISM AND AMERICAN LAW*, *supra* note 6).

8. *Id.* at 1886.

9. For a detailed tracing of the one-step-forward, one-step-back tragedy, see DERRICK BELL, *AND WE ARE NOT SAVED* (1987); see also A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR* (1978) (documenting the vacillation of courts, state legislatures, and public servants, in attempting to justify or alter the legal status of blacks in the colonial period).

10. See *infra* part III, pp. 531-32. For an earlier treatment of a few of my reasons for believing so, see Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 *YALE L.J.* 923 (1988).

11. See BROOKS, *supra* note 5, at 67-130 (reviewing still desperate situation of black poor and working classes).

persons in this predicament are black or brown.¹² Yet the majority-race person lives comfortably, has a high standard of living, and rarely if ever experiences discrimination. This noticeable contrast between blacks and whites is apt to instill discomfort, if not guilt: perhaps our society is at fault for the observed state of affairs; or, more devastating, perhaps even I myself share some of this fault.

If, however, the white person can say to himself or herself that the situation of African Americans is improving, and that the gap between the well-being of that group and mine *is* closing, then the sense of fault and responsibility reduces to manageable proportions. If blacks and whites currently are not living at the same level, at least the "gap" is closing.¹³ Importantly, we have *Brown v. Board of Education*¹⁴ and a panoply of civil rights statutes¹⁵ to guarantee nondiscriminatory treatment in housing, education, employment, and many other areas of life. Perhaps not today or tomorrow, but at some point soon, we *will* all be equal. Any sense of urgency abates; all we need to do is wait. The idea of black progress and improvement, the belief that things are getting, and will be, better—the idea that Bell rejects—thus serves important psychological needs of persons in the majority group.¹⁶

For persons of color, the situation is the reverse. Our need is for understanding—for cold, sober insight into our condition. Since we were children, all of us have heard and absorbed—from stories, songs, movies, plays, and other children—the message of our own inferiority.¹⁷ We have learned color symbolism. We have seen and noticed the stock characters, the images, the stereotypes, the advertising logos, all conveying to us and to the majority group our own outcast status.¹⁸ We

12. See *id.* Brooks separates out the contributions of racism, classism and poverty in his admirable book. See Richard Delgado, *Recasting the American Race Problem*, 79 CAL L. REV. 1389 (1991) (book review praising Brooks' *RETHINKING THE AMERICAN RACE PROBLEM* (1991), for this feat).

13. On the "gap is closing" mindset, see Delgado, *supra* note 10, at 930-42.

14. 347 U.S. 483 (1954).

15. See, e.g., Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (codified as amended in scattered sections of 42 U.S.C.) (expanding rights of plaintiffs in employment discrimination law by overturning Supreme Court precedents, discussed *supra* in text accompanying note 4); THEODORE EISENBERG, *CIVIL RIGHTS LEGISLATION* (3d ed. 1991).

16. The "law," in particular, is something the majority looks to in order to reassure itself that it is addressing the needs of society; however, it may merely provide a symbolic function that may not truly reflect the state of affairs in society. When the "law" conveys the message "we shall all be equal," it risks rendering the majority complacent, whether or not progress is in fact occurring.

17. See Richard Delgado & Jean Stefancic, *Images of the Outsider*, 77 CORNELL L. REV. (forthcoming 1992).

18. *Id.*

have been taught that we are less intellectually able than whites, morally inferior, and lazier; that we attend schools and get jobs all at sufferance—not because we deserve these things, but because whites are sometimes generous, “nice.”¹⁹

Our need, then, is for counterstories that reveal the lie implicit in the thousands of majoritarian narratives and sub-narratives according to which we are inferior, according to which our lowly estate is deserved. That is why we hungrily absorb our own cultural history, why we fasten on and memorize the story of our own oppression, our loss of lands (if we are American Indians), of culture and self-respect (if we are Black or Hispanic).²⁰ These truths serve for us the opposite function they serve for whites. They *absolve us* because they inform us that our lowly estate is not our fault.²¹ When Derrick Bell tells us (as he does in his case book²² and *Racial Realism*²³) that we cannot rely on the good faith and intentions of whites, that the legal system will only provide us with, at best, sporadic and unreliable relief, these things strike a chord. It is no accident that Bell has a tremendous underground circulation and status in the minority community of color.²⁴ We know that his message is true. And more important, we want it to be true.

II. NEOCONSERVATISM AND THE SENSE THAT BLACK CAUSES ARE PASSE

Today there is a second reason why Bell's bleak Chronicles and analyses²⁵ are likely to fall on deaf ears. The country's conscience is exhausted—many whites are tired of feeling guilty about the black community's misfortunes.²⁶ The various civil rights statutes and the few

19. See generally Richard Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982) (effects of racial stereotypes on minds of persons of color, especially children).

20. See Richard Delgado, *Legal Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2437-38 (1989).

21. See BELL, *supra* note 6.

22. *Id.*

23. Bell, *supra* note 1.

24. Adding credence to Bell's acceptability is his status as the first black professor to teach at Harvard Law School and as the originator of the Critical Race Theory movement.

25. See, e.g., BELL, *supra* note 9; Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 ST. LOUIS U. L.J. 393, 397-400 (1990).

26. For examples of the new literature in this vein, see DINESH D'SOUZA, *ILLIBERAL EDUCATION* (1991), THOMAS SOWELL, *PREFERENTIAL POLICIES* (1990), and SHELBY STEELE, *THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACISM IN AMERICA* (1990).

widely-celebrated Supreme Court “breakthrough cases”—for example, *Brown v. Board of Education*²⁷—have persuaded white Americans that blacks’ problems with discrimination are solved. With all these remedial statutes on the books—assuring fair treatment in housing, education, the workplace, and credit—if blacks are still unsuccessful, still miserable, still complaining, well, what can be done? The formal apparatus of legal strictures on racism has, paradoxically, deepened the predicament of people of color. It has enabled persons of the majority race to believe that the race problem has been solved, enabled them to begin to blame blacks.²⁸ And it has deprived us of many of the few allies we ever had in majority circles.²⁹

In today’s climate, then, appeals for racial decency sound increasingly hollow. We have solved that problem—or so say many in the majority group to themselves and each other. Now it is time to pay attention to our slipping economic position, our budgetary deficit, our loss of markets, our overseas competition. If blacks and others cannot assist us in this effort, they should at least not stand in the way, should not make new, unreasonable demands when other matters are more pressing, should above all stop adding to the welfare burden—should stop whining and get to work.³⁰

III. PARADIGM FOR A NEW FUTURE

For these two reasons—the psychology of race and the rise of anti-minority conservatism—I believe Bell’s message will be welcomed by and will ring true to his readers of color, but will play less well with whites. This is a pity—it means that two groups that do need each other are unlikely to agree on either a diagnosis of what is wrong with our racial status and relationships or the direction we should move to remedy it. Sometimes understanding *why* two groups see something differently is a first necessary step toward understanding what must be done. Bell’s message can provide this first step by liberating persons of color from the burden of self-doubt and false optimism. It can provide a reason for litigators of progressive causes to persevere even in the

27. 347 U.S. 483 (1954).

28. On this legitimation function, see Delgado, *supra* note 10, at 942-43, and Alan Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).

29. Sympathetic whites, believing the “race problem” has been solved, turn to other causes—for example, saving endangered species, or reducing military spending.

30. See sources cited *supra* note 26 (preaching self-reliance and the need for individual effort by blacks as the solution to their racial ills).

face of the setbacks they will constantly receive. And it will help—if only a little—dispel the majority's comfortable sense that all is well with the racial situation.