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# Book Reviews

## Race and Class: The Dilemma of Liberal Reform

*Race, Racism and American Law* (Second Edition). By Derrick A. Bell, Jr. *Boston and Toronto: Little, Brown & Co.*, 1980. Pp. 685. \$20.00.

Alan D. Freeman†

All too often, one greets the newest edition of a law school text with something less than enthusiasm. Typically, the “new” edition is the “old” book, with a few new cases and articles and footnotes jammed into the old form, which maintains the structure, analytic framework, and perspective of the original edition. Derrick Bell could easily have gotten away with the typical ploy. He had already produced an exciting and unconventional book,<sup>1</sup> rich in material on the historical and social context of legal developments, refreshingly insistent in its unabashed quest for racial justice. Instead of merely replicating a previous success, however, Bell has written a new book,<sup>2</sup> drawing on the strengths of the earlier edition while offering a new form, a new perspective, and a basis for a serious critical appraisal of civil rights law.

If one goes no further than the summary table of contents,<sup>3</sup> the book looks rather conventional, what one would expect from a civil rights text. There is a fifty-page historical chapter, followed by eight substantive chapters, dealing with interracial sex and marriage, public facilities, voting rights, administration of justice, protests and demonstrations, education, housing, and employment. A mere glance at the detailed table of contents, however, suggests that there is something different about this

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1. D. BELL, *RACE, RACISM AND AMERICAN LAW* (1st ed. 1973).

2. D. BELL, *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980) [hereinafter cited by page number only].

3. P. ix.

book. One sees topic headings such as “The Principle of the Involuntary Sacrifice,”<sup>4</sup> “Reserved Racial Representation,”<sup>5</sup> “Racial Interest-Convergence Principles,”<sup>6</sup> “Minority Admissions as a White Strategy,”<sup>7</sup> and “Employment and the Race-Class Conflict.”<sup>8</sup> In these sections as well as in ones with more conventional names, Bell introduces, develops, and amplifies a number of themes that run through the book.

A major theme is that there is one and only one criterion for assessing the success or failure of civil rights law—results. Bell’s approach to legal doctrine is unabashedly instrumental. The only important question is whether doctrinal developments have improved, worsened, or left unchanged the actual lives of American blacks (the book focuses almost exclusively on black/white relationships because it is in that context that most of the doctrine has developed). Bell eschews the realm of abstract, ahistorical, normative debate; he focuses instead on the relationships between doctrine and concrete change, and the extent to which doctrine can be manipulated to produce more change. With respect to voting rights, for example, Bell offers three prerequisites to effective voting—access to the ballot, availability of political power, motivation to participate in the political process<sup>9</sup>—and then argues for recognition of aggregate voting rights and affirmative action in filling electoral positions.<sup>10</sup> Similarly, with respect to education, the issue for Bell is not desegregation, if that implies integration as the remedial goal, but how to obtain effective education for black children, with or without busing or racial balance.<sup>11</sup> In its instrumentalism and result orientation, the new book resembles the first edition, although many arguments have been developed further. The critical perspective of the new book, however, sets a strikingly different tone from that of the old one.

The problem addressed by Bell confronts everyone currently teaching civil rights law who is committed to achieving measurable, objective, substantive results: these results have for the most part not been achieved, and legal doctrine has evolved to rationalize the irrelevance of results. In 1973, when Bell’s first edition came out, one could, despite the Burger Court, look with optimism at civil rights litigation. Perhaps the Court was going to dismantle the rights of the accused and soften the First Amendment,

4. P. xi.

5. P. xiv.

6. P. xviii.

7. *Id.*

8. P. xxi.

9. P. 155.

10. Pp. 197-206.

11. Pp. 411-31.

but it was remaining firm on civil rights. Decisions like *Swann*,<sup>12</sup> *Wright*,<sup>13</sup> and *Griggs*<sup>14</sup> not only allayed fears, but actually contributed to a spirit of utopianism. Since then, and beginning in 1974, we have experienced, among other Supreme Court cases, *Milliken v. Bradley*,<sup>15</sup> *Pasadena Board of Education v. Slangler*,<sup>16</sup> *Beer v. United States*,<sup>17</sup> *City of Mobile v. Bolden*,<sup>18</sup> *International Brotherhood of Teamsters v. United States*,<sup>19</sup> *Washington v. Davis*,<sup>20</sup> *Warth v. Seldin*,<sup>21</sup> and *Village of Arlington Heights v. Metropolitan Housing Development Corp.*<sup>22</sup>

It is tempting to regard these decisions as aberrations, as cases that could just as easily have "gone the other way," with better legal argument or incremental changes in judicial personnel (a fantasy becoming even more remote in the current political environment). Bell could, consistently with his result orientation, have simply offered new legal arguments or ways of distinguishing the worst cases, and seized on the few deviant decisions, however ambiguous their reasoning, as substantial sources of hope.<sup>23</sup> Even this strategy would have required dismantling much of the first edition, such as the long section on seniority remedies under Title VII, swept away by the *Teamsters* case, or the lower court cases, given prominence in the first edition, that have since been obliterated by footnote twelve in *Washington v. Davis*.<sup>24</sup> The alternative approach is to try to put the doctrinal developments in perspective by asking what could have been expected from modern civil rights law, in whose interest the enterprise really functioned anyway, and whether what has actually happened is in fact more consistent with fundamental patterns of American society than what was once expected.

From the very beginning of the book, Bell develops such an alternative

12. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

13. *Wright v. Council of Emporia*, 407 U.S. 451 (1972).

14. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

15. 418 U.S. 717 (1974).

16. 427 U.S. 424 (1976).

17. 425 U.S. 130 (1976).

18. 446 U.S. 55 (1980).

19. 431 U.S. 324 (1977).

20. 426 U.S. 229 (1976).

21. 422 U.S. 490 (1975).

22. 429 U.S. 252 (1977).

23. For example, Bell makes little of the 1979 decisions in *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979), and *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979), treating them briefly, and moving on quickly to a discussion implying the worthlessness and futility of seeking racial balance remedies within urban school districts. See pp. 406-31.

24. The first edition contained a twenty-page section on seniority, rendered largely moot by the *Teamsters* case. Compare D. BELL, *supra* note 1, at 762-82 with *International Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977). With respect to *Washington v. Davis*, 426 U.S. 229 (1976), of the seven cases not involving public employment that were "overruled" in footnote twelve, 426 U.S. at 244 & n.12, the six that had then been decided were featured cases in Bell's first edition. See D. BELL, *supra* note 1, at 485, 652, 686, 700, 761.

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perspective. In the preface he suggests:

We have witnessed hard-won decisions, intended to protect basic rights of black citizens from racial discrimination, lose their vitality before they could be enforced effectively. In a nation dedicated to individual freedom, laws that never should have been needed face neglect, reversal, and outright repeal, while the discrimination they were designed to eliminate continues in the same or a more sophisticated form.<sup>25</sup>

The historical chapter not only provides background information, but also argues that what we have just gone through is best understood as a “Second Reconstruction,” perhaps less successful than the first.<sup>26</sup> Bell’s discussion of the Emancipation Proclamation leads him to offer some generalizations intended to echo throughout the book:

First, blacks are more likely to obtain relief for even acknowledged racial injustice when that relief also serves, directly or indirectly, to further ends which policymakers perceive are in the best interests of the country. Second, blacks as well as their white allies, are likely to focus with gratitude on the relief obtained, usually after a long struggle. Little attention is paid to the self-interest factors without which no relief might have been gained. Moreover, the relief is viewed as proof that society is indeed just, and that eventually all racial injustices will be recognized and remedied. Third, the remedy for blacks appropriately viewed as a “good deal” by policymaking whites often provides benefits for blacks that are more symbolic than substantive; but whether substantive or not, they are often perceived by working class whites as both an unearned gift to blacks and a betrayal of poor whites.<sup>27</sup>

Moreover, Bell takes serious issue with the liberal myth of “the civil rights crusade as a long, slow, but always upward pull that must, given the basic precepts of the country and the commitment of its people to equality and liberty, eventually end in the full enjoyment by blacks of all rights and privileges of citizenship enjoyed by whites.”<sup>28</sup>

In support of this alternative perspective, Bell marshals a diverse array of sources. In the historical chapter, he cites historian Edmund Morgan for the view that “slavery for blacks led to greater freedom for poor whites,”<sup>29</sup> and develops that view a few pages later into a principle of

25. P. xxiii.

26. See pp. 37-38.

27. P. 7. See also pp. 230, 266-67, 303-04 (echoing quoted passage).

28. P. 8.

29. P. 25.

“involuntary sacrifice” of blacks.<sup>30</sup> He uses a quotation from Justice Holmes about the powerlessness of law to define a notion of “democratic domination.”<sup>31</sup> In a wonderfully inside-out (and somewhat ironic) treatment of Herbert Wechsler’s famous “neutral principles” argument, Bell suggests that Wechsler may have been normatively wrong but descriptively all-too accurate:

To the extent that this conflict is between ‘racial equality’ and ‘associational freedom,’ used here as a proxy for all those things whites will have to give up in order to achieve a racial equality that is more than formal, it is clear that the conflict will never be mediated by a “neutral principle.” If it is to be resolved at all, it will be determined by the existing power relationships in the society and the perceived self-interest of the white elite.<sup>32</sup>

Bell is not at all hesitant in citing and taking advantage of the work of more radical critics. W.E.B. Dubois is cited for his perception that the *Brown* decision would not have been possible “‘without the world pressure of communism’” and the self-perceived role of the United States as leader of the “Free World.”<sup>33</sup> Lewis Steel is quoted for his perception that doctrinal changes in the law governing sit-ins and demonstrations were attributable to the fact that blacks ceased to be “‘humble supplicants seeking succor from White America’” and became more militant, with the resultant decisions amounting to a “‘judicial concession to white anxieties.’”<sup>34</sup> From Frances Piven and Richard Cloward comes the perception that “the poor gain more through mass defiance and disruptive protests than by organizing for electoral politics and other more acceptable reform policies,” and that the latter kind of activity actually undermines effectiveness.<sup>35</sup> And I discovered myself cited for the proposition that “the probable long-term result of the civil rights drive based on integration remedies will result in the bourgeoisification of some blacks who will be, more or less, accepted into white society,” with the great mass of blacks remaining in a disadvantaged status,<sup>36</sup> and quoted at some length for my own perceptions about the ideology of antidiscrimination law.<sup>37</sup>

With the presence of his more intense critical perspective, Bell’s “Racism Hypos,” which appeared in the first edition and regularly punctuate

30. Pp. 29-30.

31. See pp. 127, 231.

32. P. 435.

33. P. 412.

34. P. 303.

35. P. 306.

36. P. 565.

37. Pp. 658-59.

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his substantive chapters in the new edition, gain more force and become more valuable teaching devices. As in the earlier book, Bell uses these problems to ask the hard questions, probing the tension between concrete results and abstract rights, between group needs and individualistic assumptions, between legal doctrine and concrete historical reality, between the presupposed "color-blind" world of ethnic fungibility and the actual asymmetry of racism. One must confront such problems as black opposition to remedial law assisting interracial couples,<sup>38</sup> prison segregation through (seemingly) genuine freedom of choice,<sup>39</sup> and mandatory proportionate representation based on race in county government<sup>40</sup> or in the jury box.<sup>41</sup>

While retaining valuable features of the first edition, Bell has substantially altered the form of the book. The book is neither a casebook (as was the first edition, although of the "cases and materials" variety) nor a treatise on civil rights doctrine. It is a text about the development of civil rights law. There are no cases as such. Instead, Bell offers narrative accounts of cases, almost always capturing with precision both facts and reasoning.<sup>42</sup> As an educational technique, his method is much more useful than a large collection of heavily edited cases, enhancing student assimilation of doctrinal materials while promoting the continuing interplay between cases and other materials. A subtler effect, too, stems from the change in form. The cases cease to be atomic units investigated individually for their reasoning, their flaws, and their impact; instead, they present themselves as parts of an evolving historical pattern. One grasps much more easily through this form how the cases were related to one another as they developed. Yet the change in form, along with Bell's critical perspective, raises two serious issues, both much more easily presented than resolved. What is one supposed to do in teaching this course? Does (or should) the book offer a social theory of contemporary racism or, in particular, of the relationship between race and class?

In the last chapter of the book, Bell offers three generalizations about employment discrimination law that, he suggests, are equally applicable to other areas of antidiscrimination law:<sup>43</sup>

### 1. Employment discrimination laws will not eliminate employment

38. Pp. 69-70. Bell retained five of the seventeen Racism Hypos from the first edition, adding seven new ones for a total of twelve.

39. Pp. 94-96.

40. Pp. 204-06.

41. Pp. 273-74.

42. A paperback companion volume is available for those who want cases, containing edited versions of 37 Supreme Court cases. CIVIL RIGHTS: LEADING CASES (D. Bell ed. 1980).

43. P. 657.

discrimination.

2. Employment discrimination laws will not help millions of non-whites.
3. Employment discrimination laws could divide those blacks who can from those who cannot benefit from its protection.

Generalizations like these, in the context of this book, trigger a realization in the reader that a significant line has been crossed between the two editions of *Race, Racism and American Law*. That line represents the difference between teaching students to *do* civil rights law and teaching them *about* the unhappy history of modern civil rights law. It is not that the doctrinal materials are missing. To the extent that arguments remain available, one can find them in the book, or find the materials from which to formulate one's own. In many instances, doctrinal developments have already played themselves out to depressing conclusions. In at least one instance in which Bell ends a chapter in the second edition on a tentative and limited note of optimism, a subsequent Supreme Court case has reached the depressing conclusion.<sup>44</sup>

Despite the presence of doctrinal materials, the book in its dominant tone is impatient with legal doctrine and despairing; the book reflexively yet almost unwillingly offers legal arguments unlikely ever to be accepted. For some, Bell's emphasis will be regarded as merely cynical; others will find it realistic. At this point, my first serious issue reappears. What is one supposed to do in teaching this course? The simplest, but perhaps too facile, answer is: tell the truth. Yet if the truth seems so hopeless and dismal, and the generation of more legal argument so pointless, then one is dealing with something other than the usual law school enterprise of helping students to fashion a measure of craft, skill, and insight to deal with the needs and hopes of social life.

The dissonance becomes more striking when one considers the students who typically take a course in civil rights law. Based on my own eight years of teaching the course, I can report that the students who elect it tend to be the most committed to the goal of seeking social justice through law, the most believing in the possibility of such an outcome. Thus, one finds oneself not only offering a cynical perspective on one of the most idealistic areas of legal endeavor, but sharing that perspective with the students most likely to carry on with the endeavor in the future. One must let those students know that civil rights doctrine depends on and gains its

44. Bell devotes a section to "voter dilution" cases in the Fifth Circuit, finding some basis for the most cautious of optimism for some voters in that circuit. See pp. 181-86. The principal case relied on was reversed by the Supreme Court in 1980. See *City of Mobile v. Bolden*, 446 U.S. 55 (1980), *rev'g* *Bolden v. City of Mobile*, 571 F.2d 238 (1978).



legitimacy through a number of presuppositions.<sup>45</sup> The world depicted in the doctrine is one of autonomous and responsive law, shared values (for example, individualism, color-blindness), monolithic whiteness or blackness (that is, no class structure), and gradual yet linear progress. To question these presuppositions is to suggest the gap between the mythical world of legal doctrine and the real world in history—where law is relatively autonomous at best and responsive to power more than to powerlessness, where values are contradictory, conflicting, and bound up with patterns of domination and hierarchy, where class relationships exist along side racial ones, and where cyclical failure is as plausible as linear progress. Then what?

A number of teaching strategies are possible. One is simply to promote the self-conscious manipulation of legal doctrine to achieve whatever results one can. This approach emphasizes “playing the law game” but refuses to accord the game any legitimacy other than in utilizing the forms of argument the players must adopt. Along with this approach comes the frank recognition that structural change will not come through litigation (or legislation, given the current political process) and that all one can do is win occasional cases and improve the lives of some people.

A second strategy would extend the first and call for maximal politicization of the doctrinal activity—pushing the legal forms for explicitly political reasons to reveal contradictions and limits, promote public awareness, and even win cases. A variant of the second strategy would take off from the Piven and Cloward insight about mass movements<sup>46</sup> and seek to promote legal activity that maximizes the force and protects the integrity of large, noisy, disruptive political activity, which is the real method of extracting concessions from power.

In some fashion, however, each of these strategies preserves the myths of liberal reform. To avoid those myths, one must simultaneously consider civil rights doctrine as immersed in social and historical reality. Such an approach assumes that negative, critical activity that self-consciously historicizes areas of legal doctrine like civil rights law will lead both to more self-aware and effective employment of legal forms and to a more realistic appraisal of the comparative utility of mechanisms for social change. The issue is not one for legal teaching alone; its implications are precisely parallel for both practice and scholarship. Yet it is one thing to call for—and show the need for—the historicization of civil rights law, and quite another to write the history. The task of unmasking, of exposing presupposi-

45. For my own more detailed discussion of these, see Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1052-57, 1065-76 (1978).

46. See p. 1884 *supra*.

tions, of delegitimizing, is easier than that of offering a concrete historical account to replace what is exposed as inadequate. The remainder of this review will consider the more difficult, reconstructive problem.

The starting point is a return to Bell's text. Despite the already described overall tone of the book, Bell stops short of offering a coherent account that would place civil rights law in its historical and social setting. The crucial passages in the book are those in which Bell, through his own comments or those of others, permits the question of race to intersect with that of class.<sup>47</sup> I discovered no fewer than twenty-seven references, direct or indirect, spread throughout the book.<sup>48</sup> For example, Bell asks whether "the capitalistic class structure [could] maintain itself without the scapegoat role which blacks have filled for 300 years."<sup>49</sup> He suggests that segregation laws "represented an economic-political compromise between elite and working-class whites."<sup>50</sup> He characterizes the Supreme Court's rejection of metropolitan school desegregation remedies as having "allayed middle-class fears."<sup>51</sup> Substantive racial equality, for Bell, has nothing to do with "neutral principles"; rather, "it will be determined by the existing power relationships in the society and the perceived self-interest of the white elite."<sup>52</sup> Even the *Brown* case is regarded as having happened, not primarily out of any national sense of injustice, but more out of a sense of political or economic self-interest on the part of elite whites.<sup>53</sup> Poor whites fail to see the similarity of their position with blacks "under an economic system that exploits and subjugates both groups,"<sup>54</sup> but they do perceive—correctly—that advances for blacks will come at their expense.<sup>55</sup> Yet, as Bell says in criticizing referenda, "lower-class whites will often support referenda advancing middle-class values, even to the detriment of their own economic interests," isolating blacks from "potential class allies."<sup>56</sup> With respect to housing, Bell finds it "hardly accidental that the most active proponents of fair housing are those liberals living in areas

47. I do not mean to adopt any particular, narrow, or simplistic notion of "class." While intending to remain within the Marxist tradition, I prefer to use "class" as still the best shorthand referent for the complex of recurring relationships of power and hierarchy that pervade American society, as well as for the institutional and ideological forms supporting those relationships.

It is interesting to note that the race-class issue has become a matter of debate in the establishment media, although reprocessed as "The Black Plight: Race or Class?" See N.Y. Times, Oct. 5, 1980, § 9 (Magazine), at 22.

48. See pp. 7, 51, 64, 66, 85-86, 93, 267, 399, 435, 437, 438, 439, 443, 454-56, 457, 492, 530, 536, 553-54, 556, 565, 589, 589-91, 611-12, 632-33, 636, 656-65.

49. P. 51.

50. P. 85.

51. P. 399.

52. P. 435.

53. Pp. 437-38.

54. P. 455.

55. See p. 457.

56. P. 492.

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where housing is priced beyond the means of all but a small number of elite blacks.”<sup>57</sup> He notes the “irony of middle-class blacks joining with middle-class whites to oppose any housing project intended to benefit poor blacks.”<sup>58</sup> Finally, in the last chapter of the book, Bell focuses directly on “Employment and the Race-Class Conflict,” suggesting that successful efforts to achieve racial equality will remain limited “until poorer whites come to recognize that their disadvantaged position in the society will not be improved so long as they choose to blame blacks rather than ruling class whites for their plight.”<sup>59</sup>

One comes away from these excerpts with a sense of confusion engendered by many of the questions that have often plagued radical or Marxist thought about racism. Is racism a unique form of oppression, with its own history and ideology, or one that merely follows from class relationships in capitalist society? Does racial discrimination remain economically necessary, or even useful, to ruling-class whites? Or is it just a problem of neutralizing an ideological hangover from the past? Can racism be targeted as a form of oppression to be remedied while holding class relationships otherwise intact? Is the perpetuation of racial hostility between lower class whites and blacks something to be desired by ruling classes, or something to be feared?

For some complicated answers to these questions, at least with respect to the past, one can turn to the recent and widely hailed work of George Fredrickson. In *White Supremacy*,<sup>60</sup> he offers a comparative history of race relations in the United States and South Africa from the seventeenth to the twentieth century. Fredrickson’s insights resonate with many of Bell’s comments. He suggests that

one cannot understand crucial developments in the history of white supremacy in the United States and South Africa without assigning a major causal role to tensions or divisions within the white social structure. The degradation of non-whites frequently served to bind together the white population, or some segment of it, to create a sense of community of solidarity that could become a way of life and not simply a cover for economic exploitation.<sup>61</sup>

With respect to the American South, Fredrickson claims that “the fact that a majority of the white caste held no slaves was probably a critical

57. P. 536 n.17.

58. P. 565.

59. P. 665.

60. G. FREDRICKSON, *WHITE SUPREMACY* (1981). For an example of critical reaction, see the accolade review by David Brion Davis on page one of the *New York Times Book Review*. N.Y. Times, Jan. 25, 1981, § 10 (Book Review), at 1.

61. G. FREDRICKSON, *supra* note 61, at 70.

factor in making racial distinctions as uniquely rigid as they were" because "racial privilege could and did serve as a compensation for class disadvantage."<sup>62</sup> Similarly, according to Fredrickson, the failure of the First Reconstruction may well have been a product of the conflict between the middle-class idealism of the Radical Republicans and the prospect of class conflict brought out by an emergent labor movement, the latter revealing the ideological limitations of their egalitarianism.<sup>63</sup> Finally, in generalizing about the relationship between industrialism and racial discrimination, Fredrickson offers a perspective that may well be applicable to modern civil rights law:

My assumption is that economic discrimination along racial lines would not have developed and persisted in the industrial era to the extent that it did if it had not served in some way the material interests of industrial capitalists and skilled white workers. But it is difficult to account for the specific nature of racial caste or exclusion in industry without reference to pre-existing beliefs about the character, capacity, and social status of nonwhites. Furthermore, political and legal developments of a partially autonomous nature could impinge on the economic order in such a way as to influence significantly, for better or worse, the life chances of blacks or other nonwhites in the industrial arena.<sup>64</sup>

Fredrickson has little to say about the modern American reform era. He notes that "Southern blacks were, of course, re-enfranchised and protected against legalized segregation in the wake of the changed climate of American opinion and rising black assertiveness that developed after the Second World War," but he also points out that the "persistence of *de facto* segregation in the United States, particularly in the allocation of urban space and in education, makes it clear that equality and fraternity do not result automatically from the elimination of Jim Crow laws and practices."<sup>65</sup> I wish that Fredrickson had applied his historical sophistication to the modern development of civil rights law instead of merely stopping short with this final speculation. His book represents the best of neo-Marxist scholarship about race and class, blending insights about economics and ideology, black and white interclass conflict, and the special role of political and legal institutions. The task for scholars on the left is to apply similar insights to the civil rights developments of the past twenty-five years, to begin to offer an account of race and class that avoids the sim-

62. *Id.* at 87.

63. *Id.* at 189.

64. *Id.* at 205.

65. *Id.* at 280.

plistic explanations that have all too often been provided.

In marked contrast with Fredrickson, conventional Marxist accounts of or ways of dealing with racism engender a sense of dissatisfaction or, at least, incompleteness. No one can deny that racism is a distinct and historically separate form of oppression. The statement is almost superfluous, given the actual life experience of people who have been or who are being so oppressed. But that fact does not by itself suggest that it is a problem that can be understood by itself as a separate problem. However separate its origins and historical practices may be, racism must be confronted today within the context of contemporary American capitalist society. The problem is how to connect a unique history with a complex present. Traditional Marxist accounts of racism seem often to make the mistake of *either* collapsing racism into a problem of class domination generally, as if it were nothing more than an incidental consequence of evolving capitalism (thereby denying its experiential reality), *or* treating racism as a mode of oppression so autonomous from capitalist social and economic relationships that it can be rectified by aiming at a target of oppressors that appears as (classless?) “white society.”

One traditional view<sup>66</sup> sees racism as providing an underclass of wage laborers willing to work for wages far below those of workers not victimized by racism—the “reserve army of labor.” Under this view, racism serves to hold down wages generally by offering the capitalists a ready market of cheap unskilled labor. The net results are additional extraction of surplus value and greater capital accumulation. This is one of the views that seem to deny the historical reality of racism by almost collapsing it into an economically motivated capitalist plot.<sup>67</sup> In a less simplistic version, however, it cannot be denied that there is some truth in this explanation. What encouraged capital accumulation for a time—and the “reserve army” may well have done so—need not have been invented by the capitalists or by the logic of capitalism. The problem, though, is the present, and it is questionable whether the “reserve army” theory serves capitalism at all any more, or is even consistent with the needs of the modern corporate liberal state. That racism persists—perhaps as a virulent ideological plague from the past—does not alone make it economically functional.

The question of function is a difficult one to resolve; one is quickly mired in debates about statistics, job categories, and correlations that may or may not amount to evidence of causation. It does seem questionable

66. For general discussions, see R. EDWARDS, M. REICH, & T. WEISSKOPF, *THE CAPITALIST SYSTEM* 287-321 (1972), and *PROBLEMS IN POLITICAL ECONOMY: AN URBAN PERSPECTIVE* 143-205 (D. Gordon ed. 1977).

67. For a sensitive critique of theories that merely collapse race into class, see E. GENOVESE, *Class and Nationality in Black America*, in *IN RED AND BLACK* 55-72 (1971).

whether racism of a kind traditionally experienced by black Americans remains necessary, or even useful, for the support of capitalist exploitation. Account must be taken of the growth of technology, with its consequent and continuing displacement of unskilled workers, the growth of welfare systems that make membership in the "reserve army" less functional than it might be otherwise (for capital accumulation, that is),<sup>68</sup> the continued high levels of unemployment, which provide a "reserve army" to some extent (one that is disproportionately populated, it is true, by black and other minority people, but that fact alone does not explain why racism is functional for capitalism), and the presence of a genuine reserve army, in the classic sense, in the form of "illegal" aliens. (That many illegal aliens are members of the same minority groups that have suffered under traditional American racism may make it ideologically easier for their exploitation to be tolerated, but that fact does not transform the issue into one of racism per se.)

The other traditional view, which is just the economic explanation presented with an explicitly ideological cast, is that racism serves to divide the working class, to create internal conflicts and antagonisms that frustrate the creation of the genuine class consciousness essential to a racial change.<sup>69</sup> Although that view may once have had some truth in it, as it perhaps still has, it too seems incomplete. For one thing, as noted earlier with respect to the "reserve army" theory, it does not explain the historical development of racism as a unique form of oppression; it merely asserts the utility of racism for the perpetuation of capitalist class structure. In addition, because other powerful ideologies also help arrest the development of class consciousness—such widespread belief systems as the "Liberal" tradition, media-induced consumerism, and equality of opportunity, as well as occasional bouts of hysterical nationalism—racism seems hardly necessary, and perhaps superfluous, if regarded only as serving that function.

In two other respects, the divide-the-working-class explanation of racism seems even more seriously deficient. First, it fails to explain how the abolition of racism, at least at the formal level and in the realm of public moral consciousness, has become a project of America's dominant classes, at least in the period since the original *Brown* decision. This pattern of change, however limited to the formal and however inadequate in substance, does suggest the presence of contradictory forces with respect to the perpetuation of racist practices in the United States. The second problem

68. For a general discussion of the tension between accumulation and legitimation, see J. O'CONNOR, *THE FISCAL CRISIS OF THE STATE* (1973).

69. For a discussion that relies on a number of explanatory factors, including this one, see P. BARAN & P. SWEEZY, *MONOPOLY CAPITAL* 249-80 (1966).

## Race and Class

with this variant of the traditional theory is that it fails to acknowledge that too much racism may be just as destabilizing to the class structure as too little. With what we know of twentieth-century world history, it is entirely plausible that a critical level of racial division—one version may have been manifested in the George Wallace movement of the late 1960s—may well exploit latent but powerful hostilities to bourgeois society among the white working class and create an hysteria that lets loose the uncontrollable and disordering forces of demagogic fascism.

The other traditional Marxist ways of looking at racism belong more to political strategy than to theory, but a theory is at least implicit in the practice. One is the opportunistic approach of selecting members of racial minorities as people already aware enough of their own oppression within capitalist society to be receptive to radical political ideas. The theory is that one has to start somewhere if one is committed to radical political change (unless one believes in the paramount role of impersonal, ineluctable historical forces) and that people already aware of their oppressed status are most likely to form the core of an emerging radical political movement. That theory may even be progressive for those to whom it is addressed; it may create awareness of and effect some change in racist practices in an era otherwise dominated by complacent racism. But the theory is ultimately counterproductive—to the extent that it plays on the historical uniqueness of racism for its appeal, but denies that uniqueness in the goals it sets for action, and to the extent that, by simultaneously identifying racism as a unique experience and disavowing racism's historical uniqueness, it ends up creating more intraclass racial antagonisms than the strategy sought to alleviate.<sup>70</sup>

The final Marxist approach is a version of the immediately preceding one, applied directly to legal struggles. In this view, the legal actions and political actions that together have achieved what progress there has been in civil rights have also produced substantive gains in the class struggle. Although I do not deny the actual achievements of the legal struggle for civil rights, I do suggest that this view overrates what has been accomplished: it ignores the historical uniqueness of racism by substituting for limited gains in the struggle against racism even more limited gains against capitalist class structure generally; and by remaining embedded in one of the traditional Marxist theories of racism, it ignores the possibility that some measure of racial change may well be in the self-interest of the contemporary dominant classes. In a long article on civil rights law, which traced doctrinal developments in the Supreme Court, I argued that civil

70. For some critical views, see H. CRUSE, *Behind the Black Power Slogan*, in *REBELLION OR REVOLUTION?* 193-258 (1968).

rights law for the twenty-five years since the *Brown* case has served more to rationalize the continued effects of racial discrimination than to promote any genuine liberation from a history of oppression.<sup>71</sup> Those developments led me to conclude that the process by which the law absorbed the civil rights struggle, reprocessed it, and turned it out in recent cases is in some fashion a part of what may be called the legitimation process. Today's legal ideology pretends in many ways that racism has been cured, that the problem has been dealt with, that we can go on to other problems, that the legal rights that have been created amount to sufficient equality or liberation for formerly oppressed people. To call those ideas ideology is to contend that their content masks rather than accords with reality as we experience it.

An adequate contemporary theory of racism must explain both the progressive efforts that have been accepted and the tenacity with which the conditions associated with racism remain in place. I suggest in that regard that, contrary to some of the traditional Marxist views of racism, at least since the 1950s it has been in the interest of America's ruling classes to pretend to be ending racism in this country. The major goals associated with that project have been to hold the United States out as a genuinely equal society that does not condone the practices associated with racism in the past, to avoid embarrassment in the world, and to stabilize the position of the United States in the world. These goals can be regarded either as traditionally economic or as part of the role of a state relatively autonomous from the capitalist class in its dealings with both its own oppressed classes and other states in the world arena.<sup>72</sup> It seems to me that, despite the massive struggles underlying the demand for civil rights reform, acceptance of that reform and the shape that it has ultimately taken must be understood in the context I have sketched.

From my perspective, the goal of civil rights law is to offer a credible measure of tangible progress without in any way disturbing class structure generally. The more specific version of what would be in the interest of the ruling classes would be to "bourgeoisify" a sufficient number of minority people in order to transform those people into active, visible, legitimators of the underlying and basically unchanged social structure. The question to be asked is whether particular strategies for fighting racism, such as affirmative action, run the risk of being caught up in the process of improving the lot of a small number of middle-class minority people, while consigning vast numbers of lower class minority people, who disprop-

71. See Freeman, *supra* note 45.

72. Cf. T. SKOCPOL, STATES AND SOCIAL REVOLUTIONS 14-33 (1979); Block, *The Ruling Class Does Not Rule: Notes on the Marxist Theory of the State*, SOCIALIST REVOLUTION, May-June 1977, at 6-28 (now SOCIALIST REVIEW).



portionately populate lower classes already, to a longer term in their situation. The question is not whether racism in all of its continuing manifestations is different from class division generally—surely it is different. The question is the extent to which anything significant can be done about the concededly unique problem of racism without paying attention to class structure and the forces that maintain it.

My answer to the question must be obvious by now. One way of capturing it is to consider the sort of dilemma often posed in “normative” debate about affirmative action programs. How does one justify to a personally “innocent” white working-class person his or her displacement in favor of an equally or less “qualified” minority person? For me, the answer is easy, and the problem it raises intractable. The harsh answer is that American society (or some dominant portion of it) has committed itself (or did) to remedying its historical problem of race, but has made not even the pretense of such a commitment with respect to class. The disappointed white worker is a class victim; the very notion of “qualification” presupposes as reality the myth of equality of opportunity. To remedy racism in a class society with a stagnant or dwindling economy means necessarily that burdens of displacement will fall heavily on powerless whites.<sup>73</sup>

Then comes the intractable part. If the history cited by Bell and amplified by Fredrickson suggests anything, the assault on racism under such circumstances will come to a halt, lest it unleash too much white rage or expose the reality of class relationships. There is nothing particularly radical about the goal of ending racial discrimination. The goal would be achieved if nonwhites were stratified across American society in percentages similar to whites. The class structure would remain intact. The question raised by Bell’s book is whether even that modest, liberal reformist goal is at all achievable without a radical confrontation with the truth of American history and society, past and present.

73. See L. THUROW, *THE ZERO-SUM SOCIETY* 178-89 (1980).