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REVIEW ESSAY

BACK TO AFROLANTICA: A LEGACY OF (BLACK) PERSEVERANCE?

KEVIN HOPKINS*

*The ancestors remind us, despite the history of pain
We are a going-on people who will rise again.*

—Maya Angelou¹

I.

INTRODUCTION: A DREAM DEFERRED

“Back to Africa” movements have appealed to large masses of Black Americans for nearly two centuries.² Leaders of these movements have exhorted blacks to leave the United States and to move to Africa or the Caribbean in order to escape European imperialism and white supremacy.³

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1. Excerpts of a poem read by author Maya Angelou at the Million Man March in Washington, D.C., CNN News, Oct. 16, 1995, available in LEXIS, Nexis Library, CNN News File, Transcript # 1249-10.

2. Plans for a Christian African emigration emanated from the black communities of Newport and Boston as early as the 1780s. By the mid 1820s, a reported 6000 blacks had left the United States for Haiti. CEDRIC J. ROBINSON, *BLACK MOVEMENTS IN AMERICA* 53 (1997). In 1822, a small contingency of African Americans returned to Africa and founded the nation of Liberia. ROY L. BROOKS, *INTEGRATION OR SEPARATION? A STRATEGY FOR RACIAL EQUALITY* 121 (1996). The most renowned of such movements in the United States was organized by Marcus Garvey, a Jamaican journalist who, after moving to New York, organized the United Negro Improvement Association (the “UNIA”), an organization that urged blacks to take pride in their skin color and become self-sufficient. SEAN DENNIS CASHMAN, *AFRICAN-AMERICANS AND THE QUEST FOR CIVIL RIGHTS, 1900-1990*, at 38-42 (1991). BROOKS, *supra*, at 132, 135. Garvey’s Back to Africa movement attracted large followings across the United States, and by the early 1920s had attracted between one million to six million supporters. CASHMAN, *supra*, at 38; BROOKS, *supra*, at 139. Garvey envisioned a future where blacks would be united economically, culturally and politically. BROOKS, *supra*, 133-37. By 1924, Garvey had negotiated for the development of a UNIA settlement in Liberia and made arrangements to send the first emigres. The negotiations failed, however, after the Liberian government refused to accept them. *Id.* at 137-138.

3. BROOKS, *supra* note 2, at 134. See also Salim Muwakkil, *Legacy of Black Pride*, CHI. SUN-TIMES, Mar. 17, 1996, at 39 (noting Garvey’s criticisms of European imperialism and white supremacy).

In *Afrolantica Legacies*,⁴ Professor Derrick Bell again considers the emigration of Black Americans to a place conducive to their survival and the effects of their absence on white America.⁵ It is Bell's fourth book⁶ in a series of writings in which he and fictional lawyer-heroine, Geneva Crenshaw,⁷ combine storytelling and essays to discuss America's "greatest challenge": the problem of race.⁸

In Part I of *Afrolantica Legacies*, Bell recognizes the unique opportunity posed by President Clinton's recent Initiative on Race and seizes the moment by creating a story line that incorporates the current initiative into a fictional setting.⁹ As a catalyst for President Clinton's dialogue on race, he uses "The Afrolantica Awakening," a story from *Faces at the Bottom of the Well*, that posed the possibility of a black emigration movement to Afrolantica, a utopian society for blacks.¹⁰ Through the use of Bell's speech-writing abilities and Geneva's special powers, the duo combines to influence President Clinton to issue a Racial Liberation Order—one that insures that whites will take an active role in the dialogue.¹¹ In Part II, Bell

4. DERRICK BELL, *AFROLANTICA LEGACIES* (1998) [hereinafter BELL, *AFROLANTICA LEGACIES*].

5. Professor Bell first alluded to the concept of a black emigration in DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 53-56 (1987) [hereinafter BELL, *SAVED*]. The concept materialized in "The Space Traders," an allegorical tale in which aliens from another planet visit the United States and barter for Black Americans, in DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 158-94 (1992) [hereinafter BELL, *FACES*]. The emigration of blacks in "The Space Traders" was involuntary; however, opponents of the trade suggested several negative consequences that would follow from the absence of blacks in America. For example, businesses that profited from sales in black communities would face losses, as would businesses that service law enforcement agencies and prisons, since high incarceration rates among blacks have made these businesses profitable. *Id.* at 180-81. In *Afrolantica Legacies*, Bell uses the possibility of a mass emigration as the basis for a thought-experiment about what would happen if blacks imagined themselves free and sovereign but then returned, empowered with that knowledge, to the United States. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at x-xi.

6. Bell develops his allegorical messages, as well as the Geneva Crenshaw character, in the previous books in his series: BELL, *SAVED*, *supra* note 5; BELL, *FACES*, *supra* note 5; DERRICK BELL, *GOSPEL CHOIRS: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME* (1996) [hereinafter BELL, *GOSPEL CHOIRS*].

7. See Kevin L. Hopkins, *A Gospel of Law*, 30 J. MARSHALL L. REV. 1039, 1046 n.35 (1997) (reviewing BELL, *GOSPEL CHOIRS*, *supra* note 6) (providing a synopsis of the Geneva Crenshaw character and her relationship with Bell).

8. William Jefferson Clinton, Commencement Speech at the University of California at San Diego (June 14, 1997), in CNN BREAKING NEWS, available in LEXIS, Nexis Library, Transcript # 97061401V00 [hereinafter Clinton's Commencement Speech]. During this speech, the President unveiled his "Initiative on Race" — an initiative to promote a one-year national dialogue on race in America. *Id.*

9. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 3-20.

10. See BELL, *FACES*, *supra* note 5, at 32-46, for a full discussion of "The Afrolantica Awakening."

11. During the President's June 14, 1997 commencement address at the University of California at San Diego, President Clinton stated:

[l]et me say that I know that for many white Americans, this conversation may seem to exclude them or threaten them. That must not be so. I believe white Americans have just as much to gain as anybody else from being a part of this

uses a series of stories and essays to illustrate seven principles ("Legacies") that were proposed and adopted by the black settlers who embarked on the initial journey to Afrolantica.¹²

Professor Bell creates a context for the dialogue on race by recounting the first sighting of Afrolantica, a new continent resembling the mythical continent of Atlantis that mysteriously rose up from the bottom of the Atlantic Ocean.¹³ Afrolantica possessed immeasurable beauty and great wealth and resources.¹⁴ Although the United States and other countries had commissioned delegations to explore and stake claim to the new land mass, its topography was hostile to all but Black Americans.¹⁵ Excited by the news of the discovery of Afrolantica and believing it to be their "promised land," millions of blacks joined together in an unprecedented cooperative effort and organized an armada of ships to emigrate to Afrolantica. The first several hundred black settlers set sail for the new continent on July 4th.¹⁶

As they approached Afrolantica, however, their dreams and hopes were shattered as they found it sinking back into the ocean. Devastated, the black settlers gathered together to pray for strength and understanding and for some revelation of the meaning of what they had just witnessed. During their return back to America, however, the settlers realized the real miracle resulting from their journey to Afrolantica: their accomplishment of a collective enterprise to reach Afrolantica despite government barriers and opposition by friends. More specifically, they realized that they possessed the liberty that they had hoped to gain in their new homeland.¹⁷

Upon their return, the settlers agreed that the real Afrolantica Awakening was one of the mind and not of place and that maintaining this vision

endeavor, much to gain from an America where we finally take responsibility for all our children, so that they at last can be judged as Martin Luther King hoped, not by the color of their skin, but by the content of their character.

See Clinton's Commencement Speech, *supra* note 8. The initiative, however, stops short of admonishing whites to consider the costs for maintaining racism in America. *Id.* In BELL, AFROLANTICA LEGACIES, as a result of Bell and Crenshaw's influence, President Clinton's Liberation Day Speech was specifically directed at white America and called for white Americans to consider the benefits and the burdens of their whiteness — the economic and social costs and lost opportunities that result from the effects of social neglect on account of race. BELL, AFROLANTICA LEGACIES, *supra* note 4, at 8, 11-13, 16-18 (discussing, for example, opposition to government assistance for slum renewal being criticized as subsidizing blacks). During this speech, President Clinton also expressed his intent to take action in addition to new civil rights legislation and litigation to enforce anti-discrimination laws. *Id.* at 16.

12. See *infra* note 20 and accompanying text (discussing the seven Legacies left for future generations of blacks). See Hopkins, *supra* note 7, at 1057-59 (discussing the use of storytelling as a tool for examining racial issues).

13. BELL, AFROLANTICA LEGACIES, *supra* note 4, at ix.

14. *Id.*

15. *Id.* Because of its "heavy and oppressive atmosphere," only African Americans could "breathe and survive" on Afrolantica. *Id.* at ix.

16. *Id.* at ix-x.

17. *Id.* at x-xi.

required a continual struggle in an atmosphere uncondusive to their well-being and scornful of their needs. They realized that those persons determined to keep blacks in positions of subordination were, themselves, dependent upon the presence of blacks in America to provide a gauge for the value of whiteness or the privilege of preference. Finally, the settlers recognized that a privilege in being white carries no value unless members of the unprivileged class honor it.¹⁸ To convey this information to those blacks who had not undergone the Afrolantica experience, the settlers proposed and adopted a series of rules of racial preservation designed to teach other blacks how to transcend physical and/or psychological subordination through a transformation of their thinking.¹⁹ The settlers adopted and left the following Legacies for future generations:

I. No matter how justified by the racial injustices they are intended to remedy, civil rights policies, including affirmative action, are implemented for blacks only when they further interests of whites. Thus, when society's rejection of a policy threatens progress toward our equality goals, that policy should be amended or replaced.

II. Service in the cause of truth and justice is no less worthy of praise because it is misunderstood, misused, or condemned.

III. Coalition building is an enterprise with valuable potential as long as its pursuit does not obscure the basic fact: nobody can free us but ourselves.

IV. An individual whose actions against racism threaten the powerful must be prepared to endure both the condemnation of enemies and the abandonment by friends.

V. Continued resistance by the powerless eventually triumphs over power, and thus oppression must be resisted, even when opposition seems useless.

VI. The courage to confront racism, while worthy of praise, should not obscure the fact that the powerful can employ our confrontative statements to serve their ends as effectively as they can those deplorable self-blaming comments by blacks.

VII. Life seems to favor those in power, while it seldom rewards triumphs with good works. The righteous must rely on their faith and champion justice even in a seemingly lost cause.²⁰

18. *Id.* at xi. Bell does not define the term "honor" but leaves it to the reader to determine what is meant by its use. For this discussion, I refer to one of the term's common meanings – "to accept or pay as valid: *honor a check; a store that honors all credit cards.*" THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992).

19. BELL, AFROLANTICA LEGACIES, *supra* note 4, at xi-xii.

20. *Id.* at xii-xiii.

As Bell's story continues, government scientists discovered signs of a reappearance of Afrolantica.²¹ President Clinton, fearing that a resurfacing of the continent might trigger another emigration movement by blacks to Afrolantica, takes an unprecedented step by addressing the nation in a "Liberation Day Speech" in which he informs the nation of the tragic effects on the country should blacks decide to leave and challenges white America to consider what it really means to be "white" in the United States and the effects of racism on whites.²² In this speech, the President urges that whites be the major participants in this discussion and poses the following questions for consideration: "How much are [whites] willing to continue to pay" and "how much are [whites] willing to continue to risk to preserve a property right in whiteness?"²³ The President thus refers to Professor Cheryl Harris's assertion that American law has recognized a property interest in whiteness.²⁴ Professor Harris contends that,

In ways so embedded that it is rarely apparent, the set of assumptions, privileges, and benefits that accompany the status of being white have become a valuable asset that whites sought to protect and that those [blacks] who passed sought to attain. . . . Whites have come to expect and rely on these benefits, and over time these expectations have been affirmed, legitimated, and protected by the law.²⁵

As the nation discusses the issues raised in the President's speech, Bell and Geneva have left the country and are at Afrolantica where they collaborate on a series of stories and essays designed to illustrate the Legacies and to offer strength and inspiration for tackling the tough problems affecting blacks.²⁶

21. *Id.* at 3. In BELL, AFROLANTICA LEGACIES, President Clinton is unaware of the crisis posed by Afrolantica's resurfacing on June 14, 1997, at the University of California at San Diego commencement ceremony where he unveiled his Initiative on Race. *Id.* at 4-5.

22. *Id.* at 13, 18-19. Economist Robert L. Heilbroner has noted that society at-large suffers from the results of a failure to correct social evils that whites, for whatever reason, associate with being black. Robert Heilbroner, *The Roots of Social Neglect in the United States*, in IS LAW DEAD? 288, 296 (Eugene V. Rostow ed., 1971). For example, because many whites view programs to improve slums as ones that subsidize blacks, they refuse to support measures that could benefit the entire society. BELL, AFROLANTICA LEGACIES, *supra* note 4, at 8.

23. *Id.* at 22 (discussing Geneva's response to the questions posed by President Clinton to white Americans). Bell argues that in a country where property ownership is a symbol of self-worth, many whites who lack traditional forms of property such as money, securities and land, view their whiteness as a property right. *Id.* at 9.

24. Cheryl I. Harris, 106 HARV. L. REV. 1707 (1993) (providing a critical legal review of the emergence of whiteness as a protected property right).

25. *Id.* at 1713.

26. Bell, Afrolantica Legacies, *supra* note 4, at 33, 172. Geneva informs Bell that during the Great Race debate, their stories will provide a renewed purpose and heightened insight for blacks. *Id.* at 33.

This Essay provides another occasion to reflect upon the burdens of racism on America and strategies for black survival. Part II considers the controlling theme behind President Clinton's Liberation Day Speech: a recognition of a property value in whiteness that provides specific benefits and privileges to those who share this attribute. Bell contends that a critical aspect of racism, one that has been left out of debates on race, concerns the "value of whiteness, the privilege of preference, the presumption of normality."²⁷ He argues that the property value attributed to whiteness depends upon its recognition and legitimation by blacks.²⁸ I agree with Professor Bell that the race debate often ignores the privileges attached to being white or a member of the majority class, whether the class structure is based upon race or wealth. I argue against Bell's views on the centrality of black recognition of the property value in whiteness. Simply refusing to acknowledge a value that society and the courts have attributed to being white will do no more than frustrate blacks who, because of their minority status, are too few in number to effect the legislative changes needed to eradicate a life-style and protocol that has been in existence for several centuries.

In addition, I disagree with Professor Bell that Black Americans would welcome and support a call for emigration. Internal class divisions within the black community and the unattractiveness of relocating to many parts of Africa, given the current poverty, famines, health epidemics and threats of war that plague many of the African nations, would likely thwart any plan for emigration. However, despite the Clinton administration's checkered history in the area of civil rights, if emigration were a viable option for blacks, the threat of such an emigration would likely be sufficient to prompt the President to respond by urging the majority population to consider both the social and economic realities of being born white in America.

In Part III, I critique the application of Legacy I in the aftermath of recent attacks on affirmative action in college admissions, and of Legacy III in the context of black-Jewish coalition building. First, I discuss the inconsistency between the compromise strategy advocated by Bell in Legacy I and his previous position urging blacks to refuse to give value to the privileges embedded in whiteness. I then point out the inapplicability of Legacy I in an environment where the legislature, through constitutional amendment, has eliminated any opportunity to amend or to replace affirmative action policies.

In reviewing Legacy III, I agree with Professor Bell that blacks must protect their own self-interest when engaging in coalitions with Jews or other groups. However, I argue against his logic in faulting Jews for not considering the total effects of their actions on blacks when using economic

27. *Id.* at xi.

28. *Id.*

clout to protest against anti-Semitic comments and behavior. I contend that because promotion of self-interest is a basic principle of human psychology, an extension of Professor Bell's logic, if adopted, would require a reciprocal response by blacks to consider the effects of their actions on non-racist whites before using their resources to protest against discrimination. Finally, I disagree with the Professor regarding the emphasis placed on Jewish reaction to anti-Semitic behavior and contend that declining birth rates, assimilation, and intermarriage pose the more serious threat to the American Jewish community.

II.

WHITE AMERICA'S BURDEN

A. *The Privilege of Whiteness*

Dialogues on racism in America have generally focused on its effects on or harms to minority groups and, more specifically, blacks. It is no secret that America, a nation "conceived in liberty and dedicated to the proposition that all men are created equal,"²⁹ openly embraced a system of enslavement of blacks for more than two centuries.³⁰ Unfortunately, even after the abolition of slavery, America continued to deny democratic equality for blacks for nearly another century.³¹ Given this history, it is reasonable and even customary for many whites, when thinking about the topic of

29. Abraham Lincoln, *The Gettysburg Address*, in GARY WILLS, *LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA* 261 (1992); *THE DECLARATION OF INDEPENDENCE* para. 2 (U.S. 1776).

30. The first African slaves arrived in Jamestown, Virginia in August, 1619. In 1776, approximately 500,000 Africans were enslaved or held in indentured servitude in the United States. *THE REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* 95 (1968). By 1860, almost four million Africans were enslaved. *Id.* at 97. Congress officially abolished the institution of slavery in America through the adoption of the 13th Amendment in 1865. U.S. CONST. amend. XIII.

31. See e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483, 494-95 (1954) (invalidating the policy that allowed states to provide "separate but equal" public schools for students of different races and finding that separate facilities are inherently unequal); *Loving v. Virginia*, 388 U.S. 1 (1967) (striking down Virginia's statutory scheme preventing interracial marriage as a violation of the 14th Amendment's Equal Protection and Due Process clauses); *Lee v. Washington*, 390 U.S. 333 (1968) (finding that Alabama statutes that establish racial segregation in prisons and jails violate the 14th Amendment); *Mayor of Baltimore v. Dawson*, 350 U.S. 877 (1955) (affirming without opinion the 4th Circuit's decision eliminating racial segregation in public beaches and bath houses); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (reversing and remanding a 5th Circuit decision that allowed racial segregation on public golf courses with instructions to enter a decree for petitioners in conformity with *Mayor of Baltimore v. Dawson*); Civil Rights Act of 1964, 42 U.S.C. § 2000a (a), (b) (1995) (banning racial discrimination in places of public accommodation); Voting Rights Act of 1965, 42 U.S.C. § 1971(a) (1995) (establishing uniform standards for voting qualification and prohibiting restrictions on voting rights based on race, color or previous condition); Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619 (1995) (banning racial discrimination in the sale or rental of housing). Even now, it is arguable that a full recognition of civil rights for blacks remains unrealized. See e.g., *Shaw v. Reno*, 509 U.S. 630 (1993) (finding that North Carolina's reapportionment scheme, which was designed to prevent dilution of the black vote, was irrational on its face and without sufficient justification); *McCleskey v. Kemp*, 481

race, to ask—"what would it be like if I were black."³² Recently, however, legal scholars and other academics have begun to look at issues of race from a different perspective, one that poses the question in its reverse—"what is it like to be white?"³³ "Whiteness studies" movements have become popular at college campuses throughout the country.³⁴ These movements are the product of white and black scholars who have explored how whiteness has influenced, history, sociology, philosophy, art, films, television, literature and law.³⁵ Schools such as the University of California at Berkeley, the University of Massachusetts, Harvard University, Northwestern University and Georgia State University, offer courses designed to educate whites concerning how whites contribute to racial injustice.³⁶ Discussions and research in these courses focus on "how white advantage correlates with black disadvantage and what it means and feels like to be a white person in America."³⁷ Although the University of Massachusetts has

U.S. 279 (1987) (rejecting an equal protection challenge to the Georgia death penalty despite strong statistical evidence that those convicted of the murder of a white person are far more likely to receive the death penalty than are those convicted of the murder of a black person in similar circumstances).

32. The humorist Fran Lebowitz notes that discussions about race are only "topics" for white people and the difficulty of separating "I" from being white. She states that "it is this 'I' in this context that is, in fact, the white man's burden." She argues that conversations on race never amount to anything because human nature is to think of oneself as well-intentioned and compassionate and therefore, the most compassionate way to understand another's predicament is to try to "walk a mile in their shoes." *Fran Lebowitz on Race*, VANITY FAIR, Oct. 1997, at 220 [hereinafter Lebowitz, *On Race*].

33. See Harris, *supra* note 24, at 1713-15 (referring to whiteness as "treasured property in a society structured on racial caste," and considering the assumptions, privileges and benefits that are embedded within the status of being white). See also Derrick Bell, *Xerxes and the Affirmative Action Myth*, 57 GEO. WASH. L. REV. 1595, 1608 (1989) (noting that the petitioner's argument raised in *Plessy v. Ferguson*, 163 U.S. 537 (1896) concerned a property interest in whiteness); PEGGY MCINTOSH, WHITE PRIVILEGE AND MALE PRIVILEGE: A PERSONAL ACCOUNT OF COMING TO SEE CORRESPONDENCES THROUGH WORK IN WOMEN'S STUDIES (1988) (discussing dozens of inconveniences suffered by blacks that the author, being white, could avoid). See David Osborne, *White Like Me*, THE INDEPENDENT, Apr. 26, 1998, at 3 (discussing the work of McIntosh and other American academics who attempt to "deconstruct" whiteness and fight racism) [hereinafter Osborne, *White Like Me*].

34. *Id.*

35. V. Dion Haynes, *Sponsors Say Studying "Whiteness" Can Loosen Racism's Grip on Society*, CHI. TRIB., Feb. 25, 1998, at N4 [hereinafter Haynes, *Sponsors*].

36. *Id.*; Osborne, *White Like Me*, *supra* note 33, at 3.

37. Fran Lebowitz analogizes the advantages of whiteness with the benefits that accrue to the children of movie stars who themselves seek acting careers and states:

It is now common. . . to see interviews with up-and-coming young movie stars whose parents or even grandparents were themselves movie stars. And when the interviewer asks, "Did you find it an advantage to be the child of a major motion-picture star?" the answer is invariably "Well, it gets you in the door, but after that you've got to perform, you're on your own. . . ." Getting in the door is pretty much the entire game, especially in movie acting, which is, after all, hardly a profession notable for its rigor. That's how advantageous it is to be white. It's as though all white people were the children of movie stars. Everyone gets in the door and then all you have to do is perform at this relatively minimal level.

Additionally, children of movie stars, like white people, have at — or actually in — their fingertips an advantage that is genetic. Because they are literally the progeny

offered a whiteness course, most of the other schools cover the topic in other classes.³⁸ The movement has also extended beyond the college campus and has spread to corporate America and some of the nation's public schools.³⁹

In *Afrolantica Legacies*, Bell presents a dialogue concerning what it means to be white. He creates an emergency situation where the President, some time after the announcement of his Initiative on Race, must deal with the potential national crisis of a black emigration movement to Afrolantica. Recognizing what emigration could do to the nation, President Clinton does more than just call for a national dialogue on race. He specifically controls the agenda by focusing the discussion on the benefits of being white in America and the burdens those benefits place on race relations.⁴⁰ The President thus insures that whites will be actively involved in the dialogue and in any ultimate solutions.⁴¹

Critics of President Clinton's Initiative on Race have argued that a simple dialogue on race, without some major focal point or directive as to what specific issues should be addressed, would be worthless.⁴² The President himself has acknowledged this.⁴³ President Clinton's national dialogue on race began with a series of town hall meetings facilitated by his advisory panel. The panel's purpose was to encourage Americans of all

of movie stars they look specifically like the movie stars who have preceded them, their parents; they don't have to convince us that they can be movie stars. We take them instantly at face value. . . . That's the advantage of being white. . . .

Lebowitz, *On Race*, *supra* note 32, at 222.

38. Haynes, *Sponsors*, *supra* note 35, at N4.

39. *Id.*

40. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 13, 18-19.

41. *Id.* at 8. Cf. Clinton's Commencement Speech, *supra* note 8 (failing to call on whites explicitly to be involved in the dialogue on race). Such a directive supports the goals of the whiteness studies movement — that progress towards ending racism can be made once whites understand themselves and understand how they have, consciously or otherwise, contributed to racial injustice. See Osborne, *White Like Me*, *supra* note 33, at 3.

42. Sony Ross, *Race to Be Focus of Town Halls*, CHATTANOOGA FREE PRESS, June 5, 1997, at A4 [hereinafter Ross, *Race to Be Focus*]. A few of the current issues that have sparked intense reactions and created division between blacks and whites involve police brutality, black on white crime, interracial relationships, welfare reform, attacks on affirmative action programs, the disproportionately high incarceration rate for black males as compared to white males and the sentencing disparity in the punishment of crack cocaine offenders and powder cocaine offenders. See Haya El Nasser, *Poll: Whites Increasingly Accept Blacks*, USA TODAY, June 11, 1997, at 1A (reporting a significant reduction in the expression of overtly racist views but persistent gulfs in the perception of the treatment of blacks in the U.S.). See also U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1996, at 510 (Tables 6.11, 6.12) (noting that in 1995, black males comprised approximately 46% of the total number of individuals in state and federal prisons and local jails); U.S. SENTENCING COMM'N, COCAINE AND FEDERAL SENTENCING POLICY xi (1995) (noting that in 1993, blacks comprised a majority of federal crack cocaine distribution convictions (88.3% blacks as compared to 4.1% whites), while whites comprised a majority of federal powdered cocaine distribution convictions (32% whites as compared to 27.4% blacks)). Each of these issues, alone, could provide a sufficient basis for a year-long discussion.

43. The President has stated:

racess and ethnicities to talk openly about race. Members of the panel traveled around the country and facilitated town hall meetings for one year, gathering information that would ultimately be incorporated into recommendations for the President.⁴⁴ Critics, however, have contended that the dialogue became just another "rhetorical exercise." For example, Karen Narasaki, the executive director of the National Asian Pacific American Legal Consortium believed that the purpose of the initiative was too unclear and that there should have been a "serious discussion and proposals and resources to make it more than a public relations event." Ronald Walters, a professor of African-American studies at the University of Maryland, has questioned whether it was even possible to "dialogue racial harmony into existence."⁴⁵

In retrospect, although President Clinton had hoped that the national dialogue would inspire Americans to "draw strength from all our people and our ancient faith in equality and human dignity to become the world's first truly multiracial democracy,"⁴⁶ he provided little guidance concerning how this would occur and the national dialogue's role in helping to make this a reality. As Bell and other scholars have contended, the American legal system has implicitly recognized whiteness as a valuable property right, one that carries benefits and privileges only for white persons or others with similar physical features and denies similar benefits to blacks and other minorities possessing non-white physical features.⁴⁷ Any meaningful dialogue concerning race must acknowledge the truth of this assertion.⁴⁸

If we do nothing more than talk, it will be interesting, but it won't be enough. If we do nothing more than propose disconnected acts of policy, it will be helpful, but it won't be enough. But if 10 years from now people can look back and see that this year of honest dialogue and concerted action helped to lift the heavy burden of race from our children's future, we will have given a precious gift to America.

Clinton's Commencement Speech, *supra* note 8.

44. Ross, *Race to Be Focus*, *supra* note 42, at A4.

45. Julia Malone, *Even 'Sketchy' Plans for Clinton Race Initiative Raising Hope, Doubts*, COX NEWS SERV., June 5, 1997, available in LEXIS, News Library.

46. Clinton's Commencement Speech, *supra* note 8.

47. See Harris, *supra* note 24, at 1710-13 (discussing "passing," the assimilation into white culture by blacks possessing "white features").

48. President Clinton's Advisory Board on Race concluded that acknowledgment of white privilege must be the first step towards eliminating racial prejudice: "Americans must confront 'this country's history of white privilege' before its many races can begin to get along." Larry Bivins, *Ignorance, Stereotypes Block Constructive Dialogue on Race, Report Concludes*, GANNETT NEWS SERV., Sept. 17, 1998, available in LEXIS, News Library. Unfortunately, Special Prosecutor Kenneth Starr's Whitewater investigation of the President and the impeachment process have nullified any meaningful consideration of this point. A search of the Lexis' "Major Newspapers" database turned up a total of 122 stories on the Advisory Board on Race since September 18, 1998, but those major newspapers have mentioned the advisory board only 12 times since October 31, 1998. Meanwhile, a search in the same database for "Lewinsky and blue dress" turned up 892 stories. Many of the stories about the advisory board mention the fact that its work has been overshadowed by the

Unfortunately, America is not a color-blind society. Race continues to matter in the most basic of daily activities for most black Americans. Frequent and repeated examples include: the process of hailing a cab in a large city; the unprofessional service provided by employees of restaurants, theaters and other service providers; the detainment by police for "driving while black" or "walking while black" in the wrong neighborhood; and the presumption by department store security that blacks are more likely to shoplift than whites.⁴⁹ Too often the dialogue on race has centered around an empathy for the victims of discrimination while excluding a consideration of the benefits of a privilege that has been historically afforded to whites.⁵⁰ Blacks "have never had the power to enforce racism."⁵¹ Whites in America have always held and wielded this power. Therefore, an honest and open dialogue on the ways in which the American legal system has conferred privileges in whiteness would begin the process of enlightening whites as to the burdens of racism and the role white America has played

Lewinsky scandal. See, e.g. Michael A. Fletcher, *Clinton Gets Race Report, Rejects Criticism*, WASH. POST, Sept. 19, 1998, at A8 (criticizing Clinton's initiative on race for having failed to penetrate the public consciousness and pointing out that, just when the effort began to gain momentum, public attention was diverted by the Lewinsky scandal); Steven A. Holmes, *Clinton Panel on Race Urges Variety of Modest Measures*, N.Y. TIMES, Sept. 18, 1998, at A1 (noting that the board was "hamstrung" in its efforts because public attention was diverted by the Lewinsky scandal).

49. A recent Gallup Poll found that blacks and whites live in "two different perceptual worlds" when dealing with issues of race. The survey consisted of 1,269 blacks and 1,680 whites (an unusually high number of blacks). Of those polled, 45% of the blacks surveyed indicated they had been treated unfairly because of their race within the last thirty days. Among black men between the ages of 18 to 34, 70% reported incidents of recent discrimination in stores, restaurants and theaters, and in dealing with the police. James Bock, *Poll Finds Big Divide in Views on Race; Blacks and Whites Reported Far Apart in Perceptions*, THE BALTIMORE SUN, June 11, 1997, at 1A. See also Paul Butler, *"Walking While Black": Encounters with the Police on My Street*, LEGAL TIMES, Nov. 10, 1997, at 23 (discussing the author's detainment and questioning by the District of Columbia Police while walking in his neighborhood); Valerie Lynn Gray, *Shopping for Equality*, BLACK ENTERPRISE, July 1998, at 60 (discussing "consumer racism" towards blacks such as the failure of department store sales clerks to honor legitimate credit cards of black patrons, their demands for numerous forms of identification before completing the transactions and false and unwarranted accusations of shoplifting made by department store security officers) [hereinafter Gray, *Shopping for Equality*]; John W. Fountain, *No Fare; You're Black. You're Male. You Just Want a Cab. Why Is It so Cold Out There?*, WASH. POST, May 4, 1997, at F1 (discussing the author's experiences and frustrations in attempting to hail a cab in the District of Columbia).

50. "And what it is like to be white is not to say, 'We have to level the playing field,' but to acknowledge that not only do white people own the playing field but they have so designated this plot of land as a playing field to begin with. White people are the playing field." Lebowitz, *supra* note 32, at 220, 222.

51. "Black people have never had the power to enforce racism, and so this is something that white America is going to have to work out themselves. If they decide they want to stop it, curtail it, or to do the right thing. . . then it will be done, but not until then." Interview by Roger Ebert with Spike Lee, Director, *DO THE RIGHT THING*, Chicago, Ill. (June 14, 1989), in ROGER EBERT'S HOME MOVIE COMPANION 889, 893 (1990). Although blacks commit hate and violent crimes against Asians, Hispanics and whites, my use of the term "racism" is limited to racial prejudice and discrimination by whites towards blacks.

in contributing to racial injustice. Only when whites recognize and acknowledge the privileges of whiteness and actively work to insure equality for all in every aspect of society, can the dismantling of racism occur.

Embedded within the discussion of white privilege lies another argument worthy of evaluation. Professor Bell asserts that during the return from their journey to Afrolantica, the black settlers experienced the major revelation that the relationship of privilege based on whiteness is two-sided. He argues that unless those who are in positions of subordination honor it, the relationship carries no value.⁵² Despite its emotional appeal, this revelation is difficult to act upon. Blacks comprise approximately 12.6% of the total population in America.⁵³ As legal scholars have pointed out, the property rights attributed to whiteness are deeply rooted in American society, and protections of those rights were even considered by the framers of the Constitution.⁵⁴ On its face, Bell's argument seems unrealistic. Even if the entire black population united together and agreed to dishonor a value of whiteness—one contemplated by the founders of America and implicit in the founding documents—such a collective commitment alone would be unlikely to eradicate racism in America. A simple refusal to acknowledge the value attributed to whiteness would probably have no effect on the current status of racial affairs in this country.

Bell, however, hints that the revelation referred to above is really spiritual, transforming the "subordination of the body into triumph of the spirit."⁵⁵ If this is the case, I concur. Both history and experience indicate that despite their numbers, blacks have made major gains when refusing to honor discriminatory practices emanating from the privileges of whiteness through economic means such as boycotts of white establishments that continue actions or policies injurious to blacks.⁵⁶ Recent projections indicate

52. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at xi.

53. U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES*: 1997, at 18 (117th ed.) (No. 18. Resident Population, by Race, 1980 to 1996, and Projections, 1997 to 2050) (noting that in 1996, blacks comprised approximately 12.6% of the total population) [hereinafter *STATISTICAL ABSTRACT*].

54. The Constitution expressly refers to blacks on three occasions. *See* U.S. CONST. art. I, § 2, cl. 3 (referring to blacks as "three fifths of all other persons" for determining representation in the House and for tax apportionment), § 9, cl. 1 (prohibiting congressional action against slavery until after 1808). *See also id.* art. IV, § 2, cl. 3 (requiring the delivery and return of fugitive slaves to their legal owners).

55. Bell implies that some action must occur sufficient to create a transformation of a physical subordination to spiritual or mental liberation. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at xii. This view has its roots in Marcus Garvey's advocacy of a "spiritual return" to Africa for those blacks who could not physically return to Africa. *See* PAULA F. PFEFFER, A. PHILIP RANDOLPH, *PIONEER OF THE CIVIL RIGHTS MOVEMENT* 15 (1990) (discussing a spiritual return to Africa and Garvey's hope that this would help free blacks from the sense of inferiority resulting from white domination).

56. Probably the most renowned example of economic dishonor of whiteness by blacks occurred on December 5, 1955, in Montgomery, Alabama, where 30 thousand to 40 thousand black passengers boycotted the city bus lines in protest of the bus company's practice of "rolling segregation" on its vehicles. *See* DAVID R. GOLDFIELD, *BLACK, WHITE, AND*

that the total income for black Americans in 1998 will reach \$459 billion.⁵⁷ With an increased recognition of the spending power of blacks by major corporations and the significant losses of revenues that can occur when blacks challenge the privileges embedded in whiteness through economic boycotts coupled with legal actions and negative publicity by the media,⁵⁸ Bell's suggestion that blacks refuse to honor white privilege could result in both a mental and a more tangible liberation from the effects of white subordination.⁵⁹

B. *Back to Afrolantica*

The question of emigration by blacks to Afrolantica raises another concern. If given the chance to leave America, would blacks today, similar

SOUTHERN: RACE RELATIONS AND SOUTHERN CULTURE 1940 TO THE PRESENT 93, 96-99 (1990). The boycott deprived the bus company of three thousand dollars in revenues per day and continued for a year until the U.S. Supreme Court affirmed a lower court decision ruling the Montgomery practice of segregation of public buses was unconstitutional. TOWNSEND DAVIS, *WEARY FEET, RESTED SOULS* 22-24 (1998). A more recent yet successful use of the economic boycott by blacks occurred in 1996 when the Reverend Jesse Jackson and other civil rights activists pressured Texaco, the 14th largest company in the United States, to settle a race-discrimination case after the release of a secret recording of a meeting where Texaco executives discussed destroying relevant evidence and ridiculed black employees by referring to them as "black jelly beans." Texaco settled the case for \$176 million and created a program to promote minorities one day before a scheduled nation-wide boycott of its stock and credit cards was to become effective. Mark Tran, *American Notebook: Texaco Pays For Shameful History*, THE GUARDIAN (Manchester), Nov. 18, 1996, at 17; Adam Bryant, *2 In Texaco Case Found Not Guilty*, N.Y. TIMES, May 13, 1998, at A1. See generally Thomas Goetz, *Boycotts That Worked*, THE VILLAGE VOICE, July 8, 1997, at 46 (providing other recent examples of successful boycotts).

57. This projection surpasses the gross national product of some leading world economies. Gray, *Shopping for Equality*, *supra* note 50, at 62 (referring to Black Enterprise Board of Economists member Andrew Brimmer in *Countdown to the 21st Century*, BLACK ENTERPRISE, June 1998).

58. See *id.* at 60-62 (discussing the over one million dollar jury verdict imposed against Dillard's Department Store in Overland Park, Kansas for racism towards consumers when its security guard wrongly accused a black patron of shoplifting and a one million dollar verdict against Eddie Bauer, Inc. for punitive damages for false imprisonment, negligent supervision of its security guards and defamation for detaining and requiring a 16 year-old black male honor student at an Eddie Bauer warehouse store to remove a shirt worn by the youth and bought a day earlier, after the student could not produce a receipt).

59. Black boycotts of corporations and services that discriminate have resulted in the creation of "fair share agreements" or covenants between the discriminating entity and civil rights groups. The covenants are contracts worked out behind the scenes to quickly settle pending litigation and have become a swift remedy for discriminatory practices in the workplace. Although the covenants do not require that direct payments be made to specific groups, they have indirectly resulted in hundreds of jobs and millions of dollars in contracts for minorities. Jerry Thomas, *Agreements Help Minorities Unlock Doors of Big Business*, CHI. TRIB., Dec. 10, 1996, at N1. Finally, in protesting the wide-spread use of racial profiling in detaining blacks while traveling, blacks could lobby their state policy makers for legislation that would strengthen the victim's rights to sue the police for stopping an individual based on his race. See *Black Leaders Ask Clinton to Help Fight Police Abuses*, CHI. TRIB., Feb. 26, 1999 at N20 (discussing the Congressional Black Caucus' recent request that Attorney General Janet Reno investigate police practices, including improper use of deadly force, racial profiling, and harassment of minorities).

to their ancestors during the 1920s or the settlers who journeyed to Afro-lantica, leave the United States to start afresh in Africa? If so, would such a mass emigration by blacks be sufficient to prompt the President to take official action to prevent this? Unlike Bell, I argue that the answers to these questions are "no" and "yes" respectively.

First, although black separatists' calls for the establishment of a black nation appear periodically, their popular reception is often tied to an emotional appeal to blacks facing times of intense crisis.⁶⁰ Too often, these movements lack the longevity and structure needed for the execution of their call for separation once the crisis subsides.⁶¹ This point is well illustrated by a brief examination of the Nation of Islam's (the "NOI") nationalistic philosophy. The NOI was founded in the 1930s by Elijah Muhammad during the height of the "Jim Crow" laws. The NOI, an exclusively black organization, advocates separate schools for blacks, a ban on interracial marriages, and the creation of a separate state or territory within the United States or abroad for the descendants of African slaves. Minister Louis Farrakhan, the current NOI leader, continues to espouse the separatist views of the NOI.⁶² Not since the negotiations for a UNIA settlement in Liberia during the 1920s has there been a major attempt to actually organize a black state or nation in either the United States or Africa, or even a back to Africa movement. A few of the internal problems that contributed to the failure of the Garvey movement emanated from ideological conflicts amongst blacks and disorganization.⁶³

This raises a second point: the black community is not monolithic. Blacks are no more immune than the white majority from division over issues of crime, sexism, patriarchy, class, religion and even black racism.⁶⁴ Bell spoke passionately about these internal problems in his last book, yet

60. Sociologist Orlando Patterson at Harvard University notes that the separatist appeal is one that has a "powerful emotional force" for those marginalized individuals in any society and is often sparked by crisis. *Many in Middle Class Reject Separatist Move*, THE DALLAS MORNING NEWS, Nov. 5, 1995, at 11A.

61. *Id.*

62. BROOKS, *supra* note 2, at 120-21; CASHMAN, *supra* note 2, at 171. See also Barbara Kleban Mills, *Predicting Disaster For A Racist America*, *Louis Farrakhan Envisions An African Homeland For U.S. Blacks*, PEOPLE, Sept. 17, 1990, at 111; *Muslim Suggests Secession of Blacks*, N.Y. TIMES, Apr. 22, 1984, at 16 (discussing Minister Farrakhan's threat to call for a black secession from the United States if the Reverend Jesse Jackson's candidacy for the Presidency in 1988 was not taken seriously at the Democratic National Convention).

63. BROOKS, *supra* note 2, at 120.

64. See Hopkins, *supra* note 7, at 1042, 1044, 1052-56 (critiquing Bell's argument in *GOSPEL CHOIRS* that black Americans are in a crisis as a result of high unemployment, long-term joblessness and crime and that the solution for survival is to strengthen the internal structure of the black community through the elimination of sexism and notions of patriarchy). Justice Clarence Thomas, in a speech at the National Bar Association's annual meeting, accused his black critics of holding racist views because they assumed that he was influenced by conservative, white Justices and could not accept the notion that he could think for himself. Neil A. Lewis, *Justice Thomas Suggests Critics' Views Are Racist*, N.Y. TIMES, July 30, 1998, at A1.

seems to have forgotten about them and how they might hinder the success of an emigration in *Afrolantica Legacies*. In *Gospel Choirs*, Bell also discussed discrimination within some quarters of the black community against homosexuals and the need for blacks to "save [their] energies for [their] true enemies."⁶⁵ In *Afrolantica Legacies*, however, Bell fails to consider or discuss whether blacks would bring with them to Afrolantica the internal problems that currently affect the black community, nor does he assess how the Pilgrims could overcome these problems should emigration prove impossible.⁶⁶ Black separatists' ideology advocates total separation as a logical and preordained solution to the American race problem.⁶⁷ If the quality of life in a new state is as oppressive as or worse than the old one, then there would be no logical incentive to leave the old state. History has taught that a crucial feature necessary to make emigration an attractive alternative to racial integration is the transportation of democratic traditions, ideas, and safeguards to protect against discrimination even by blacks.⁶⁸

Absent such democratic safeguards, the results of past emigration movements have not been encouraging. In 1822, a small group of African Americans emigrated to Africa and established the Republic of Liberia. Ironically, while freeing themselves from a culture and mentality of subordination, the new emigrants transported and transplanted the antebellum South's caste structure of subordination to their new republic. The American-Liberians extended their rule over the regional tribes and denied them participation in democratic governance and basic liberties such as freedom of speech, the press and religion. This caste-like political and social structure continued until 1980, when a bloody military coup organized by Samuel K. Doe ended the first Republic of Liberia. After an additional military coup and an on-going civil war, the Liberian Republic remains in crisis. One half of its 2.5 million citizens have been displaced, and its economy and social structure have collapsed.⁶⁹

Third, any separatist movement by blacks will have to contend with an affluent black middle class and the increasing class divide between the black middle and underclasses.⁷⁰ In the past three decades, the gap has

65. Bell, *Gospel Choirs*, *supra* note 5, at 95.

66. Professor Bell states that Afrolantica provided blacks with the opportunity to build a new society, one free of the racial hostility that had hindered their abilities to survive in America. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at ix; BELL, *FACES*, *supra* note 5, at 32-33. He is quick, however, to recognize that no society would be completely immune from problems and notes that even King Arthur's Camelot was not free from divisions. *Id.* at 171.

67. See BROOKS, *supra* note 2, at 120 (discussing this point as a founding principle of the NOI), 134-36 (reviewing Marcus Garvey's theory of racial separation).

68. *Id.* at 121.

69. *Id.*

70. Recent census data suggests that blacks are closing the gaps with whites in the percentages of blacks graduating from both high school and junior college. 35.1% of blacks over 25 years old as compared to 33.9% of whites have attained high school diplomas as

widened between the black middle class and the under-class.⁷¹ Henry Louis Gates, director of the W.E.B. DuBois Institute for Afro-American Research at Harvard University, contends that the gulf between the black middle and lower classes is as wide as that between the black and white races. Gates suggests that “[u]nless we have an ethical revolution, helping people believe they can make it within the system, along with job-training programs to prepare them for the high-tech jobs of the 21st century, we’re going to have a self-perpetuating black middle class and a self-perpetuating black underclass.”⁷² Since the 1960s, the black middle class has quadrupled in size, yet one-third of all blacks continue to live in poverty.⁷³ This gap has created tension and disagreement between the ideologies of the “haves” and the “have nots” concerning the appropriate strategy for black survival during the next century.⁷⁴ I seriously doubt that a significant portion of today’s black middle class, a group that, for the most part, has had to embrace middle class values to become economically successful⁷⁵ would leave

their highest degrees, and 6.7% of blacks as compared to 7.3% of whites have attained Associate’s Degrees as their highest degrees. STATISTICAL ABSTRACT, *supra* note 53, at 160 (No. 245. Educational Attainment, by Selected Characteristic: 1996). Black families have also begun to close the income gap. Between 1980 and 1995, the *median* income of black males increased by approximately 7% as compared to a 3.1% decrease for white males during the same period. However, the average income for white males in 1995 was \$23,895 as compared to \$16,006 for black males. *Id.* at 472 (No. 731. Median Income of Persons with Income in Constant (1995) Dollars, by Sex, Race, and Hispanic Origin: 1980 to 1995). *Cf.* Orlando Patterson, *Racism Is Not The Issue*, N.Y. TIMES, Nov. 16, 1997, at 15 (noting that between 1970-1995, the *average* income of white men declined by 3% to \$34,741 as compared to an 11% increase to \$27,136 for black men).

71. Joseph Perkins, *A Better Way to Help the Black Underclass*, THE SAN DIEGO UNION-TRIB., Mar. 6, 1998, at B5, B9 (noting the income divide between blacks and whites in America is not as wide as the economic and social gap between the black middle and underclasses).

72. Sherri M. Owens, *Henry Louis Gates, Jr.*, ORLANDO SENTINEL, Apr. 5, 1998, at 6.

73. Blacks have made significant progress in the last few decades. Educational levels for blacks have soared and blacks have gained significant representation in both the electoral process and other realms of society. Tamar Jacoby, *Whatever Became of Integration?*, WASH. POST, June 28, 1998, at C2. Although the number of upper-income blacks have grown, the number of lower-income blacks is no better today than at the time of Dr. Martin Luther King Jr.’s death. The richest one-fifth of black Americans earn a record 50% of the total income of the black community. Salim Muwakkil, *Movin’ on Apart*, IN THESE TIMES, Mar. 22, 1998, at 11 [hereinafter Muwakkil, *Movin’ on Apart*]. However, 29% of all blacks and 41% of black children continue to live in poverty. *See* STATISTICAL ABSTRACT, *supra* note 53, at 475 (No. 736. Persons Below Poverty Level and Below 125 Percent of Poverty Level: 1960 to 1995; No. 737. Children Below Poverty Level, by Race and Hispanic Origin: 1970 to 1995).

74. *See* Muwakkil, *Movin’ on Apart*, *supra* note 73, at 11 (recognizing the entanglement of factors such as race and class in the black community and the disagreement among black leaders in determining the best strategy for helping blacks).

75. Like their white counterparts, members of the black middle class tend to be college-educated, seek to enroll their children in private schools, purchase homes in suburban neighborhoods and maintain strong family relations. *See* Doug Cumming, *Bright Flight: A New Term and Trend: Middle-Class Blacks Heading for the Suburbs and Private Schools*, THE ATLANTA JOURNAL-CONST., Apr. 20, 1997, at 1R.

America to start anew in Africa.⁷⁶ Under a separatist ideology, the black middle class would be a critical component in insuring that the newly formed state or country would be self-sufficient.⁷⁷ Unless its economy were totally independent from reliance on outside capital, a society composed solely of the black underclass would be destined for failure. In short, the class division within the black community poses serious impediments to both the organization of an emigration movement and to the ultimate survival of the emigrants if such an emigration actually occurred.

Finally, assuming that a black emigration might be viable and that the black community, collectively, would embrace the idea, the threat of a mass exodus by blacks would likely be sufficient to compel the President to take preventive action to stop it, despite the President's inaction during the public controversy over the nomination of Professor Lani Guinier as Assistant Attorney General for Civil Rights at the Department of Justice⁷⁸ and during the recent California debate over the adoption of Proposition 209.⁷⁹ In defending his decision to withdraw Professor Guinier's nomination, President Clinton merely stated that providing Professor Guinier with the opportunity to clarify her views would "guarantee a bloody and divisive

76. According to the 1997 Report of the United Nations Development Program, 19 of the 20 poorest countries in the world are in Africa. Thirty-four of the 45 countries characterized as having low human development based on factors such as life expectancy, education, and income are in Africa. Estimates suggest that nearly half of all Africans live in poverty — surviving on approximately one dollar a day. The literacy rate in sub-Saharan Africa is 56% (few countries have the resources to pay for teachers and schools). The roads and transportation system in many African countries is substandard. Diseases such as diarrhea, malaria, cholera and AIDS have reached epidemic proportions. Life expectancy for Africans is fifty years, and barely half of the population has access to sufficient health care, clean water and sanitation facilities. Dave Peterson, *Finding African Solutions to African Problems*, 21 WASH. QUARTERLY 149 (1998). Currently in West Africa, a rebel movement dislodged earlier this year from a brief period in power in Sierra Leone has waged a campaign of mutilation against civilians. Hundreds of poor farmers and villagers including men, women and children have been shot, disemboweled or mutilated. Barbara Crossette, *In West Africa, a Grisly Extension of Rebel Terror*, N.Y. TIMES, July 30, 1998, at A1.

77. See BROOKS, *supra* note 2, at 122 (discussing "black towns" — separate communities comprised of at least 90% black Americans that sprung up during Jim Crow and the lack of self-sufficiency as one reason for their failure to survive).

78. President Clinton abruptly withdrew the nomination of Professor Lani Guinier after Guinier provoked controversy by advocating the adoption of cumulative voting, a voting mechanism frequently used by corporations in electing directors, as a remedy to strengthen the power of minority candidates in the electoral process. LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE* 23-56 (1993). The President withdrew the nomination without offering Guinier the opportunity to defend her scholarship during the hearing process. *Id.* at 114-25.

79. California voters passed The California Civil Rights Initiative ("Proposition 209") in 1996. The initiative amended the California Constitution and provides in relevant part that, "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting. . . ." CAL. CONST. ART. I, § 31(a). The Ninth Circuit upheld the constitutionality of Proposition 209, and the Supreme Court declined to review the decision. *The Coalition for Econ. Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 397 (1997).

conflict over civil rights, based on ideas that [he] as president could not defend."⁸⁰ President Clinton's involvement in the Proposition 209 debate was also unimpressive. The President offered no significant reason for failing to become active in the debate, despite the negative ramifications of the legislation. Legal commentators have argued that Proposition 209 would "eliminate outreach programs targeting women and minorities, goals and timetables, and countless other efforts to overcome past gender discrimination," and would actually tolerate more discrimination against women than is permitted under current California law.⁸¹

Although the full effect of Proposition 209 remains to be seen, the President's withdrawal of Professor Guinier's nomination has not hindered an aggressive enforcement of civil rights by the Justice Department. The Department's actions have been little different from what one would have expected under Guinier's leadership. Both Deval Patrick, former Assistant Attorney General for Civil Rights at the Justice Department, and Bill Lann Lee, the current Acting Assistant Attorney General for Civil Rights, have taken politically controversial stands in support of affirmative action and civil rights.⁸²

80. *President Clinton Withdraws Lani Guinier Nomination*, CNN News, June 3, 1993, available in LEXIS, Nexis Library, Transcript # 198-1 [hereinafter *President Clinton Withdraws Lani Guinier*].

81. Erwin Chemerinsky, *The Impact of the Proposed California Civil Rights Initiative*, 23 HASTINGS CONST. L.Q. 999 (1996) [hereinafter Chemerinsky, *Impact of Civil Rights Initiative*]. See generally Eugene Volokh, *The California Civil Rights Initiative: An Interpretive Guide*, 44 UCLA L. REV. 1335 (1997) (analyzing the text of Proposition 209 and its use of legal jargon) [hereinafter Volokh, *California Civil Rights Initiative*]. Critics of the President's Initiative on Race, have questioned his motives, criticizing the President for remaining silent on Proposition 209 during the election season when presidential leadership and funding from the Democratic Party could have made a difference. See Katha Pollitt, *About Race: Can We Talk? Discrimination in Education*, THE NATION, July 7, 1997, at 9; *Clinton's Advisory Board on Race*, (NPR radio broadcast, June 12, 1997), available in LEXIS, Nexis Library, Transcript # 97061208-210 (criticizing the President for making only one speech about Proposition 209 late in his campaign).

82. *Exit Deval Patrick*, WASH. TIMES, Nov. 19, 1996 at A16 (criticizing Patrick for sharing Guinier's views on matters of race and for advocating racial preferences in employment, education and elected political offices) [hereinafter *Exit Deval Patrick*]; Sam Skolnick, *DOJ's Acting Civil Rights Chief to Take Third Shot at Confirmation*, LEGAL TIMES, Dec. 14, 1998, at 10 (noting that under Lee's command the Division has pressured the National Collegiate Athletic Association to extend college sports to students with learning disabilities, instituted an aggressive task force targeting worker exploitation and reached agreements with several housing owners who had been discriminating against minority would-be tenants) [hereinafter Skolnick, *DOJ's Acting Civil Rights Chief*]. When the *Taxman* case (see *infra*, note 97) was presented to the Supreme Court, the Justice Department under Patrick filed an amicus curiae brief, arguing in support of the Piscataway School Board's system of racial preference. The brief is available on the Justice Department's website at <<http://www.usdoj.gov/crt/briefs/pisc.htm>>. See *Exit Deval Patrick*, *supra*. The Justice Department under Lee similarly filed an amicus brief in *Houston Contractors Ass'n v. Metro. Transit Author.*, 945 F. Supp. 545 (S.D. Tex. 1997), arguing that the court should not have granted a motion by a municipal construction contractor that prohibited a local transportation authority from implementing an affirmative action program for minority contractors. Skolnick, *DOJ's Acting Civil Rights Chief*, *supra*.

Both Proposition 209 and the Guinier nomination were politically charged issues that created intense divisions amongst the various political factions. Neither, however, possessed the same magnitude or exigency as an emigration of approximately thirteen percent of the nation's population in protest of discriminatory practices. If the potential political fall-out from these issues was sufficient to prevent the President from taking a stand against the opponents of Professor Guinier's appointment and the proponents of Proposition 209, then the political stakes in taking a stand to prevent an emigration of blacks would be even higher. However, Professor Bell previously has offered several convincing reasons why the President might be required to take some action to prevent a mass emigration of blacks from the country. Each supports an interest-convergence whereby the President's actions in promoting black equality would also result in major benefits to whites.⁸³ First, Bell argues that a departure of blacks would adversely affect the United States' leadership status abroad, and evoke "a surge of shame and guilt with predictable recriminations."⁸⁴ Bell here alludes to an argument made in the government's brief in *Brown*, where the government contended that "discrimination against minority groups in the United States has an adverse effect upon our relations with other countries."⁸⁵ Second, in discussing his "Space Traders" tale, Bell suggested that business leaders whose profits were dependent upon sales in black communities or who supplied law enforcement agencies, prisons, or other similar institutions would face substantial losses if a mass black emigration occurred.⁸⁶ Finally, Bell has argued that the presence of blacks in America is critical for stabilizing the economy in light of the increasing disparity between the incomes of the rich and the poor.⁸⁷ As discussed earlier, with a 1998 income figure for blacks that is projected to surpass the gross national product of some leading world economies, the economic impact of a black emigration, coupled with its political consequences, would surely be sufficient to require the President to take some action to prevent its occurrence.⁸⁸

83. See e.g. Derrick Bell, *Brown v. Board of Educ. And the Interest Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (arguing that racial remedies may be manifestations of sub-conscious judicial conclusions that the remedies will advance or at least not harm the interests of middle and upper-class whites) [hereinafter Bell, *Brown v. Board*].

84. BELL, AFROLANTICA LEGACIES, *supra* note 4, at 4.

85. Derrick A. Bell, Jr., *Racial Remediation: An Historical Perspective on Current Conditions*, 52 NOTRE DAME L. REV. 5, 12 n.30-31 (1976) (citing to Brief for the United States as Amicus Curiae at 6, *Brown v. Bd. of Educ.* 347 U.S. 483 (1954) and noting that TIME magazine predicted that the international impact of *Brown* would be "scarcely less important" than its effect on the education of black children).

86. BELL, FACES, *supra* note 5, at 180-81.

87. Bell believes that, "If blacks were removed from the society, working- and middle-class whites — deprived of their racial distraction — might look upward toward the top of the societal well and realize that they as well as the blacks below them suffered because of the gross disparities in opportunities and income." *Id.* at 181.

88. See *supra* note 57 and accompanying text.

III.

A CRITIQUE OF BELL'S STRATEGIES FOR AFFIRMATIVE
ACTION AND COALITION BUILDING

During a lengthy and distinguished career as a civil rights activist, Professor Bell has raised and challenged numerous claims concerning American jurisprudence and its treatment of blacks. In Part II of *Afrolantica Legacies*, Bell draws upon many of his previous writings to support several of his conclusions on racism and his universal canons of black perseverance.⁸⁹ Bell relies upon excerpts and themes discussed in several of his earlier published works to illustrate many of his principles.⁹⁰ In critiquing this section of his book, I evaluate the consistency of Bell's arguments in light of his previous recognition of white privilege and assertion that blacks dishonor it.

A. *Affirmative Action: Mend It or End It?*

*Legacy I. No matter how justified by the racial injustices they are intended to remedy, civil rights policies, including affirmative action, are implemented for blacks only when they further interests of whites. Thus, when society's rejection of a policy threatens progress toward our equality goals, that policy should be amended or replaced.*⁹¹

89. Although Professor Bell refers to these as principles of racial-preservation, I believe that they are more reflective of principles of racial-perseverance — a set of constants that I believe must be understood and grasped in order to persevere in the quest for civil rights, even in light of a national attack on programs historically designed to assist disenfranchised members of society. See BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 170. It is unlikely that an understanding and adoption of the seven legacies would be the total solution for preserving the black race given the current economic and social crises that threaten black survival.

90. For example, at the heart of Legacy I, "Chiara's Enlightenment," BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 39-59, is his interest-convergence theory. See Bell, *Brown v. Board*, *supra* note 83, at 522-28, asserting that whites will only advance racial equality when doing so is consistent with their own self-interest and arguing that *Brown* was the product of an interest-convergence between whites and blacks. In Legacy II, "The Citadel," BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 61-80, he reiterates an allegory taken from his book *Confronting Authority*. Derrick Bell, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994) [hereinafter BELL, *CONFRONTING AUTHORITY*]. Finally, in Legacies III, "Shadowboxing: Blacks, Jews and Games Scapegoats Play," BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 81-108, IV, "Paul Robeson: Doing the State Some Service," *id.* at 109-121, and VI, "The Black Sedition Papers," *id.* at 137-154, he incorporates aspects of the Fourth Rule of Racial Standing discussed in *Faces at the Bottom of the Well*, where he addressed the fate of blacks who make statements or take actions that the white community deems outrageous and the response by whites to those statements. *FACES*, *supra* note 5, at 118-124. See also Derrick Bell, *The Black Sedition Papers*, printed in 66 *TRANSITION* 107 (1995). Part II of *Afrolantica Legacies* selects and discusses two controversial issues to further illustrate Legacies I & III: (1) affirmative action; and (2) coalition building between Jews and blacks. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 39-59 ("Chiara's Enlightenment"), 81-108 ("Shadowboxing: Blacks, Jews and Games Scapegoats Play").

91. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at xiii.

Legacy I is a restatement of Professor Bell's interest-convergence theory. To illustrate the Legacy, Bell considers affirmative action and the hostile reactions by some whites to affirmative action programs. For example, in the context of college admissions, he identifies a potential interest convergence between working-class whites and blacks and notes that whites benefit from affirmative action in college admissions just as much as blacks.⁹² He implies that such a convergence on this issue has not occurred primarily because of a perception by whites that an alignment with blacks would result in the relinquishment of their racial prerogatives.⁹³ He briefly digresses to a recognition of the dual roles the affirmative action officer plays in trying to further the interests of blacks both in and outside of the institution and the impossibility of the task.⁹⁴ In accord with the express language contained in the first Legacy, Bell argues that when society's (white America's) rejection of an affirmative action policy threatens the progress towards equality for blacks, the policy should be either amended or replaced.⁹⁵ Implicit in this principle is the notion that, if society decides that an affirmative action policy will benefit it, then the policy will be promoted. This assertion, however, directly contradicts Bell's earlier argument in Part I of his book where he specifically urged blacks to take a stand against recognizing a property value in whiteness and to dishonor those practices that continue to relegate blacks to a subordinate status.⁹⁶ In short, Legacy I advocates sacrificing those policies that are offensive to whites despite the merits of those policies, by suggesting that blacks work towards either amending or ultimately replacing the policies.⁹⁷ An examination of a University of California affirmative action officer and the dual

92. Professor Bell argues that studies indicate that college admissions tests do not necessarily select the best candidates but measure past opportunity better than future potential. *Id.* at 50. See also Susan Strum & Lani Guinier, *The Future of Affirmative Action: Reclaiming The Innovative Ideal*, 84 CAL. L. REV. 953 (1996) (arguing that new paradigms for affirmative action can integrate the claims of diversity with conceptions of merit in order to enable the selection process to adopt to the challenges of a dynamic and uncertain economy).

93. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 50. Bell, *Brown v. Board*, *supra* note 83, at 523.

94. *Id.* at 62.

95. See *supra* text accompanying note 20.

96. See BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at xi.

97. Although inconsistent with his earlier position, Professor Bell's rationale for this change in strategy is understandable in light of the Supreme Court's refusal to review recent holdings by lower federal courts on affirmative action policies designed to promote gender and race. See *Coalition for Econ. Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997) (rejecting claim that California's Proposition 209 was unconstitutional), *cert. denied*, 118 S. Ct. 397 (1997); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) (holding the University of Texas Law School's affirmative action admissions program that granted preferences to Black and Mexican American applicants to further diversity objectives violated the 14th Amendment's Equal Protection Clause), *cert. denied*, 518 U.S. 1033 (1996). The Supreme Court did grant certiorari in *Taxman v. Bd. of Educ.*, 91 F.3d 1547, 1558 (3d Cir. 1996) (holding the Piscataway Board of Education's affirmative action plan of preferring minority teachers over non-minority teachers in layoff decisions where teachers were equally qualified, violated Title

constituencies she serves is illustrative of the futility in following Bell's approach when neither the opportunity to amend nor to replace the policy is viable.

After California's adoption of Proposition 209, only 191 black students were among the 8,304 undergraduate students admitted into the University of California at Berkeley's class of 2002, and only fifteen black students were admitted at Berkeley's prestigious Boalt Hall School of Law.⁹⁸ The director of the Black Recruitment and Retention Center at Berkeley faced the dilemma of whether to actively recruit black students to attend Berkeley, furthering its interest in having a diversified student body⁹⁹ or to act in the interest of the black students by alerting them to the realities of the atmosphere at Berkeley as a consequence of the race-blind admissions process mandated by Proposition 209. In total defiance of the institutional interest, and placing her employment in jeopardy, the director decided that she could not, in good conscience, tell the students that a decision to attend Berkeley would be wiser than to attend someplace else.¹⁰⁰

In the context of Proposition 209 and public education in California, Bell's compromise provides blacks and other minorities with virtually no legal recourse where a majority of California residents, through the use of the legislative process, amended the California Constitution to eliminate the use of affirmative action in admission to public colleges and universities. Bell's solution is thus unworkable in situations where the policy that

VII because it was adopted for purposes of promoting racial diversity rather than to remedy discrimination or the effects of past discrimination), *cert. granted*, 117 S. Ct. 2506 (1997), *dismissed*, 118 S. Ct. 595 (1997). However, this case was settled on the eve of the Supreme Court's review in January 1998, after several civil rights groups decided that it was preferable to avoid the almost certain adverse ruling by the Supreme Court and raised money to support the settlement. See *Affirmative Action; A Good Solution to a Bad Case*, STAR TRIBUNE (Minneapolis), Nov. 27, 1997, at 42A. See generally David Benjamin Oppenheimer, *Understanding Affirmative Action*, 23 HASTINGS CONST. L.Q. 921, 933-946 (reviewing Supreme Court jurisprudence on affirmative action).

98. Recent projections for the 1998-99 academic year indicate that blacks will constitute only 1-2% of all freshmen at Berkeley. The admission statistics for the entering class at the Boalt Hall School of Law during 1997 were even more disturbing. Not one of the 15 students who had been accepted by the law school enrolled. Michael Dougan, *Cal's Minority Profs Consider Leaving; Ask, "Why Am I Here?" As Fewer Blacks, Latinos Enroll*, S.F. EXAMINER, May 7, 1998, at A1.

99. See *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (holding that the Constitution permits educational institutions to consider race as one of many factors considered in deciding which students to admit). The Supreme Court specifically noted "[t]he freedom of a university to make its own judgments as to education includes the selection of its student body," and discussed the "four essential freedoms" that constitute the academic freedom of a university: "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Id.* at 311-12 (quoting Justice Frankfurter in *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957)).

100. Frank Bruni, *Blacks at Berkeley Are Offering No Welcome Mat*, N.Y. TIMES, May 2, 1998, at A1.

further black equality has been rejected entirely through legislative enactments, but it may work if policies furthering black equality are merely rejected by the courts.¹⁰¹ In the latter instance, the legislature has constitutionally-mandated authority to enact legislation that could circumvent a judicial ruling, thereby providing a remedy for the judicial attack on the policy. For example, after the Fifth Circuit's ruling in *Hopwood* and the Supreme Court's denial of *certiorari*, the Texas legislature responded by enacting legislation that assures minorities access to the state's top colleges without using race preferences.¹⁰² In California, however, pre-Proposition 209 affirmative action-based admissions policies cannot be amended as contemplated by Bell. Therefore, under Legacy I, the only options left for minorities in California are to work towards replacing the old policies with new ones that survive constitutional scrutiny or to undo Proposition 209 through the legislative process.

After the adoption of Proposition 209, the University of California at Berkeley redesigned its admissions policy to take into consideration factors other than test scores and to give every applicant more attention so that the best students could be selected. Berkeley's redesigned admissions policy allows admissions officers to give more favorable consideration to applicants from poor households. Although supporters had hoped the newly designed policy would maintain campus diversity without taking race into account, minority admissions at Berkeley for the Fall 1998 class fell drastically. Of the 10,509 students offered admission, only 2.4% were African American (down from 5.6% last year). Chicano students of Mexican descent comprised 6% of the entering class as compared to approximately 11% of the 1997 entering class. Despite Berkeley's attempt to buffer the

101. See *Hopwood*, 78 F.3d at 962 (holding that the University of Texas School of Law could not use race as a factor in its admissions process in order to achieve diversity).

102. Referred to as the "10% plan," the legislation guarantees that all Texas high school students graduating in the top 10% of their classes will be accepted at any public college in the state. Because most high schools in Texas are nearly exclusively black, white or brown, the legislation has the potential to ensure a diversified student body. At the prestigious University of Texas at Austin (UT Austin), however, the same proportions of black and Hispanic students (approximately 33%) were accepted for 1998 as for 1997. The 10% plan failed to actually increase the number of blacks admitted at UT Austin where of the 296 black students admitted in the Fall 1998 entering class (in contrast to the 416 students admitted in 1997), black enrollment represented only 2.9% of all admissions (in contrast to 4.3% during the previous year) or at Texas A&M University where enrollment of blacks and Hispanic students fell 3% and 7% respectively. *Texas' 10% Solution Boosts Campus Fairness, Diversity*, USA TODAY, May 7, 1998, at 12A. Supporters of the Texas plan attribute its lack of success to the University's failure to publicize the program, the luring away of Texas students by neighboring states where affirmative action is permitted, and a lack of financial resources available to students admitted to cover tuition and board. Adam Cohen, *Back to Square One: In California and Texas, Two Attempts to Maintain Campus Diversity Falter on Race*, TIME, Apr. 20, 1998, at 30.

effects of Proposition 209, African Americans, Native Americans and Latinos, who collectively comprise 34% of the California population, accounted for only 10% of the 1998 entering class.¹⁰³ One final option available to minorities in California would be to use the legislative process to undo Proposition 209 by amending the California Constitution. Unlike the U.S. Constitution, the California Constitution requires only a two-thirds vote in each house of the legislature or the signatures of only 8% of the voters in order to place the proposal on the ballot at the next election. The proposal will succeed if it obtains a majority of the votes cast during the next election. For obvious reasons, however, it is unlikely that a majority of the voters in California would support a proposal to eliminate Proposition 209 so soon after its adoption.¹⁰⁴

Unlike the "ardent protester,"¹⁰⁵ a label that Bell wore proudly during the early part of the 1990s, Bell no longer urges blacks to argue the merits of affirmative action policies, nor does he suggest that they refuse to "honor" the status quo and protest through the use of the judiciary, the legislature, or even the media.¹⁰⁶ Instead, he cautions them against rocking the boat and urges that they quietly work behind the scenes to come up with alternatives that will accomplish the same goals.¹⁰⁷ In the interim, minority students in California are left powerless to challenge Proposition 209.¹⁰⁸

Both the continued need for affirmative action and its effectiveness as a remedy for past discriminatory practices against minorities and women is unquestionable.¹⁰⁹ As a result of successfully implemented affirmative action, the number of Black Americans, Hispanics and other minorities in

103. *Id.*

104. Volokh, *California Civil Rights Initiative*, *supra* note 81, at 1391 (discussing the process of amending the California Constitution).

105. Bell uses this label as a reference to himself in the title of his 1994 book, *BELL, CONFRONTING AUTHORITY*, *supra* note 90.

106. Bell's new strategy is at odds with a statement made during a speech on racial realism delivered at the University of Connecticut School of Law in 1991. In that speech, Bell stated, "We must realize, as our slave forebears, that the struggle for freedom is, at bottom, a manifestation of our humanity that survives and grows stronger through resistance to oppression, even if that oppression is never overcome." Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 378 (1992). Bell briefly reflected upon a personal encounter with Mrs. Biona MacDonald, an elderly black woman whom he had met while working to desegregate schools in Harmony, Mississippi and her statement that she "lives to harass white folks." In explaining Mrs. MacDonald's statement, Bell emphasized the "triumph" involved in her determination to resist oppression despite her lack of economic and political power. *Id.* at 379.

107. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 39-40.

108. See Chemerinsky, *Impact of Civil Rights Initiative*, *supra* note 81 (discussing the impact on minorities and women under Proposition 209's elimination of preferences).

109. See Oppenheimer, *supra* note 97, at 958-997 (presenting social science data on education, employment, housing, health care and economic opportunity as demonstrative evidence of the existence and continuation of pervasive unconscious racism in America). See also STATISTICAL ABSTRACT, *supra* note 53, at 475 (No. 736. Persons Below Poverty Level and Below 125 Percent of Poverty Level: 1960 to 1995; No. 737. Children Below

attendance at the most prestigious academic institutions in the country have increased significantly since the Civil Rights era.¹¹⁰ Black Americans have reached near-proportional representation in Congress and minority-owned businesses have grown significantly as a result of affirmative action.¹¹¹ Even President Clinton has acknowledged that, because of affirmative action, there are now more women-owned businesses and more African-American, Latino and Asian-American judges, lawyers, scientists, engineers, accountants and executives than ever before.¹¹²

Finally, there are very few successful replacements for affirmative action-based college admissions policies.¹¹³ Given the fact that neither the President, nor Congress, nor state policy makers have had any success in creating color-blind policies that would replace affirmative action yet accomplish its goals, it is no surprise that both Berkeley's and Texas' experiments with admission policies designed to eliminate the factor of race failed to increase their minority enrollment.¹¹⁴ In considering these points, the black recruitment director who refused to encourage black students to attend Berkeley and the freshmen and law students who refused to enroll at Berkeley exercised the only option immediately available to them: to dishonor Proposition 209's elimination of affirmative action-based admissions by a refusal to enroll at Berkeley. This response is one that Bell sanctioned in Part I of his book where he urged blacks to refuse to honor or give value to whiteness and those institutional privileges embedded in the status of being white. Although at first glance the reactions of the director and the black students at Berkeley may seem inconsequential, Professor Bell has acknowledged that the transformation of the spirit is essential to an escape from physical subordination.

Poverty Level, by Race and Hispanic Origin: 1970 to 1995) (noting that 29% of all blacks and 41% of black children continue to live in poverty).

110. WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 3-10 (1998); Paul Butler, *Affirmative Action and the Criminal Law*, 68 U. COLO. L. REV. 841, 855 (1997) [hereinafter Butler, *Affirmative Action*].

111. See Butler, *Affirmative Action*, *supra* note 110, at 855.

112. See Clinton's Commencement Speech, *supra* note 8 (stating that affirmative action has given the nation a whole generation of professionals in fields that used to be "exclusive clubs where people like [the President] got the benefit of 100% affirmative action").

113. See text *supra* accompanying notes 101-104 (discussing both the Texas legislature and the University of California at Berkeley's responses after Hopwood and Proposition 209). Currently, both policies have failed to even maintain the racial composition of the previous year's entering classes at the respective state colleges.

114. See William Neikirk, *Clinton Backs Affirmative Action; "Mend It, Don't End It," He Says In Announcing Guidelines*, CHI. TRIB., July 20, 1995, at N1 (discussing the President's defense of affirmative action and his strategy to "[m]end it, but don't end it"). Although the President has expressed his enthusiasm for continuing affirmative action, he has offered little if any details on how he would actually "mend it." Joan Biskupic, *On Race, a Court Transformed: Affirmative Action Defenders Now Avoid Justices*, THE WASH. POST, Dec. 15, 1997, at A1.

In my review of *Gospel Choirs*, I argued that a prerequisite to dealing with the internal issues of patriarchy and sexism in the black community is to consider the effect of racism on black self-esteem, and more specifically, the self-esteem of black males. I urged Professor Bell to consider ways to reprogram how blacks view themselves and their own self-worth. Bell's suggestion that blacks refuse to give value to whiteness seems to be one way to begin the channeling of black thought away from the crippling effects of racism.¹¹⁵ A decision by black students to dishonor California's rejection of affirmative action-based admissions policies by refusing to attend one of the country's most prestigious public universities implies a level of integrity and self-esteem that I believe is a critical step towards black perseverance, especially in the face of legislation that will continue to facilitate the physical and mental subordination of both minorities and women in California.¹¹⁶

B. *Black-Jewish Alliances: Better Watch Your Back*

Legacy III. Coalition building is an enterprise with valuable potential as long as its pursuit does not obscure the basic fact: nobody can free us but ourselves.

In Legacy III, Professor Bell acknowledges the inherent value in building coalitions with other groups and individuals but reminds blacks of a basic principle of self-help: "nobody can free us but ourselves."¹¹⁷ To illustrate this legacy, he alludes to a once-beneficial partnership that existed between blacks and Jews during significant points in history.¹¹⁸ In 1909, German Jews and black elites came together to form the National Association for the Advancement of Colored People, an organization that works towards the elimination of segregation and for the promotion of equal education for black and white children, voting rights for blacks, and the enforcement of the 14th and 15th Amendments. In 1911, the National Urban League was founded by blacks and Jewish philanthropists in order to improve the economic and social conditions for blacks moving from the South to northern cities.¹¹⁹ During the 1920s, the largely Jewish Amalgamated Clothing Worker's Union formed a housing cooperative with blacks that built and provided housing for black families moving from Harlem to the Bronx, and Jewish labor union leaders assisted A. Phillip Randolph, a Black

115. Hopkins, *supra* note 7, at 1060-61.

116. Chemerinsky, *Impact of Civil Rights Initiative*, *supra* note 81.

117. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at xii.

118. Successful black-Jewish partnerships date back to the early part of the 20th Century. MURRAY FRIEDMAN, *WHAT WENT WRONG?: THE CREATION & COLLAPSE OF THE BLACK-JEWISH ALLIANCE* (1995) [hereinafter FRIEDMAN, *WHAT WENT WRONG?*]; MICHAEL LERNER & CORNELL WEST, *JEWS & BLACKS: LET THE HEALING BEGIN* (1995) [hereinafter LERNER & WEST, *JEWS & BLACKS*].

119. FRIEDMAN, *WHAT WENT WRONG?*, *supra* note 118, at 46-48.

American and one of the nation's most important labor leaders, in organizing the Brotherhood of Sleeping Car Porters.¹²⁰ Finally, Jewish participation and financial support were widespread during the Civil Rights Movement of the 1950s to 1960s.¹²¹

Bell argues that Jews recently have caused significant harm to the individual and collective interests of blacks when they sense a conflict with their own well-being.¹²² He specifically refers to the response by many Jews to the anti-Semitic rhetoric of Minister Louis Farrakhan and argues that recent Jewish disagreement with Farrakhan's views has taken the form of retaliation through threats of economic reprisals towards any entity that supports the NOI or its spokespersons. According to Bell, black leaders and groups, whether or not they actually agree with the NOI's spokespersons, are urged to condemn the speakers or face economic sanctions.¹²³ To illustrate this point, Bell refers to the Jewish reaction towards United Nations Ambassador Andrew Young after Jewish leaders learned that Young had secretly met with the Palestinians, and to the Reverend Jesse Jackson's position concerning Israel and Palestine and the "hymietown" remark made during Jackson's 1984 presidential campaign.¹²⁴ Bell cautions blacks that, although some Jews will fight for racial justice despite the costs, others who claim to be friends demand that, in order to receive their support, all blacks must condemn any black person who makes anti-Semitic comments.¹²⁵

Bell does not suggest that Jews should simply ignore statements they deem anti-Semitic. However, he appeals to Jewish morality by arguing that Jews should consider the total record of blacks and not use their wealth and influence in the community to block political aspirations and other activities unconnected with the statements or actions that offend them.¹²⁶ Interestingly, in the first-ever national poll conducted on how blacks and Jews feel about each other, 59% of the blacks and 69% of the Jews surveyed believed that blacks and Jews "should form a partnership to work on civil rights issues." As expected, however, the Jews who had the highest "unfavorables" toward Farrakhan were most likely to believe that relations between the two groups were deteriorating.¹²⁷ Bell believes that neoconservative Jewish scholars who have denounced affirmative action

120. *Id.* at 83-84.

121. *Id.* at 131-212; LERNER & WEST, *JEWS & BLACKS*, *supra* note 118, at 81-82.

122. *See* BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 82.

123. *Id.* at 89, 98.

124. *Id.* at 98-99.

125. *Id.* at 82.

126. *Id.* at 99.

127. Clarence Page, *Still Partners After All These Years*, CHI. TRIB., May 3, 1998, at C21.

share responsibility for the plight of blacks.¹²⁸ In short, Bell implies that blacks had better watch their backs when attempting to engage Jewish support for black causes, because Jewish self-interest will prevail over black self-interest. The promotion of self-interest, however, is a fundamental characteristic of human behavior and one that economists have studied in the context of the work world.¹²⁹ It is thus not surprising that Jews continue to promote their own self-interest even while working to promote social justice for blacks.

Ironically, Professor Bell fails to follow his own advice to Jews for dealing with this current threat to the maintenance of future black-Jewish partnerships: to be willing "to view the entirety of an ally's performance [and] not judge and condemn based on a few sound bites."¹³⁰ Although Professor Bell cites to a few instances where Jews have used their economic power to force blacks to refrain from participating in activities that further anti-Semitism, he fails to present instances in which Jews, despite the growing popularity of Farrakhan, continue to be supportive of black interests.¹³¹ Instead, he generalizes that many Jews lack the ability to distinguish between actual threats to their existence and mere verbal criticisms and abuses by Minister Farrakhan and his spokesmen.¹³² As a result, he concludes that Jews, in turn, generalize that blacks who fail to denounce anti-Semitic comments are the enemy and are therefore appropriate targets for economic reprisals.¹³³

Professor Bell does not consider or discuss the plight of the Black American Jews with respect to this controversy. Recent estimates suggest that there are approximately 200,000 black Jews, comprising nearly 4% of the U.S. Jewish population. Black Jews are caught in the middle of the

128. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 95. Although Bell agrees that not all Jews have supported the attacks on affirmative action, he concludes that their failure to challenge those attacks have resulted in a silent acquiescence. *Id.*

129. Bruce E. Kaufman, *Models of Man in Industrial Relations Research*, 43 *INDUS. & LAB. REL. REV.* 72 (1989). Modern economists have developed two different models for assessing human behavior in the context of industrial relations: (1) the economic approach; and (2) the behavioral approach. *Id.* The economic model presumes that "[a]ll human behavior can be viewed as involving participants who maximize their utility from a stable set of preferences. . . ." Gary S. Becker, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 14 (1976). The behavioral model presumes, for the most part, that humans possess "bounded rationality" — individuals intentionally act to further their own self-interests. Herbert A. Simon, *Economics and Psychology*, in 6 *PSYCHOLOGY: A STUDY OF A SCIENCE* 685 (Sigmund Koch ed., 1963).

130. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 95-96.

131. For example, black and Jewish executives have forged close partnerships, and several chief Jewish executives at top U.S. companies have named talented blacks as the "heir-apparent." Jonathan Kaufman, *As Blacks Rise High In the Executive Suite, CEO Is Often Jewish*, *WALL ST. J.*, Apr. 22, 1998, at A1; *see also*, Sherry Bebitch Jeffe, *Jewish-Latino Relations in Los Angeles*, *CAL. J.*, Sept. 1, 1998 (discussing the importance of the alliance between black and Jewish voters in the 1973 election of Tom Bradley as Los Angeles' first black mayor).

132. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 90.

133. *Id.* at 99.

dilemma and are actually in the best position to understand the hurt experienced by individuals on each side. These Jews experience both the hurt resulting from Farrakhan's anti-Semitic remarks even if he is not referring to black Jews and the "indignation and assault on black personhood when some Jewish organizations attempt to tell blacks who black leaders should be and where they should lead [them]." For example, some black Jews considered the Anti-Defamation League's public denouncement of the Million Man March as "the most mainstream event led by an anti-Semite in recent American history," an attack on black leadership.¹³⁴ In light of their position in this controversy, black Jews could act as mediators between white Jews and Black Muslims.

Professor Bell is correct in recognizing the competing self-interests involved in future coalition building between blacks and Jews and alerting blacks to the critical need to insure that their own interests are protected when they align themselves with Jews or any other groups. One reason for the success of previous black-Jewish alliances was the fact that both groups shared the common enemy of discrimination and were able to look past their differences in order to overcome this obstacle.¹³⁵ It is only logical that, as significant strides were made towards eliminating the overt barriers of discrimination against the two groups, other internal concerns affecting each group would arise and that, as a result, the interests of both blacks and Jews might diverge. For example, the Jewish experience in America has been vastly different from that of Black Americans. American Jews did not have to endure the southern caste system of slavery, were never referred to and treated as property under the Constitution and were never relegated to the subordinate position of second-class citizenship as were blacks immediately following the Reconstruction Period.¹³⁶

However, the use of economic clout by Jews in fighting against a potential future holocaust by refusing to provide financial support to those individuals or groups that support anti-Semitic rhetoric, in reality, serves the same function as the use of economic boycotts by blacks in fighting against current and future threats of discrimination against them. Both are no more than self-help measures designed to further the special interests of the respective groups. I recognize that a major difference between Black and Jewish Americans is that Jews have been successful in acquiring sufficient financial resources to directly promote their interest while many

134. Robin Washington, *Perspectives on the Million Man March: For Black Jews, A Second Day of Atonement Can Bridge A Gulf*, L.A. TIMES, Oct. 13, 1995 Part B.

135. See LERNER & WEST, *Jews and Blacks*, *supra* note 118, at 2 (noting that blacks and Jews have been hated and despised peoples and that the "tragicomic character of the Black and Jewish experiences in modernity — coupled with a nagging moral conscience owing to undeniable histories of underdog status and unusual slavery-to-freedom narratives. . . haunts both groups").

136. This truth does not discount the fact that Jews, like blacks, have also experienced discrimination in America and continue to be discriminated against.

blacks have been prevented from acquiring similar resources and are limited to protecting their interests through indirect means. The parallel to be drawn, however, is not in the nature of the available resources but in the use of these resources to protect and promote the respective interests. For purposes of fairness, an expectation that Jews consider the impact of their actions on blacks who oppose anti-Semitism before confronting anti-Semitic behavior through the use of available resources should implicate a similar expectation that blacks consider the impact of their behavior on non-racist whites before confronting and dishonoring discriminatory practices resulting from racism through boycotts and other means—an expectation that Professor Bell would clearly reject.

Finally, the Professor implies that the most important concern of Jews today is anti-Semitism and that the major rationale for vigorous Jewish reaction in confronting anti-Semitic comments and behavior is to “strike hard at the first instance of hate” in order to prevent the occurrence of another Jewish holocaust.¹³⁷ Although I do not discount the significance of this concern, a more subtle but immediate crisis facing Jews today is the preservation of Judaism itself.¹³⁸ During the last half-century, the Jewish American population has decreased from three percent to two percent of the American population as a result of low birth rates among Jews and intermarriage with non-Jews.¹³⁹ In a single generation, approximately one third of the Jewish population has disappeared and many believe that in the next two generations, the Jewish American population may be non-existent.¹⁴⁰ Contrary to Professor Bell’s contention, a more immediate threat to future Jewish-American existence is the high rate of assimilation of non-Orthodox Jews into American secular culture.¹⁴¹

137. BELL, *AFROLANTICA LEGACIES*, *supra* note 4, at 93, 99-101.

138. See Charles Krauthammer, *At Last, Zion: Israel and the Fate of the Jews*, THE WKLY. STANDARD, May 11, 1998, at 23 (discussing the possibility of the disappearance of Israel and the assimilation of Jews in other countries) [hereinafter Krauthammer, *At Last, Zion*]. Some Jews argue that the “most divisive factor in American Jewish life is . . . Judaism,” and that most American Jews would be more concerned if their child married an Orthodox Jew and became Orthodox, than if the child married a non-Jew and lived a secular lifestyle. Terry Mattingly, *American Jews’ Future in Peril, Ex-Reagan Aide Argues*, SACRAMENTO BEE, Nov. 15, 1997, at C5.

139. Recent demographics indicate the fertility rate among American Jews is 1.6 children per woman and the rate required to maintain a constant population is 2.1. The current rate is 20% below the necessary rate for zero growth. Finally, intermarriage poses another threat to Jewish survival. More Jewish Americans marry non-Jews than Jews. The current intermarriage rate amongst Jews is 52% as compared to only 8% in 1970. Krauthammer, *At Last, Zion*, *supra* note 138, at 24-25. Moreover, only 28% of the children produced by these marriages are raised as Jews. Diane Granat, *Promised Land*, WASHINGTONIAN, Apr. 1992, at 58, 115.

140. Krauthammer, *At Last, Zion*, *supra* note 138, at 25.

141. See Madeleine Bunting, *Crisis of the Faith*, THE GUARDIAN (Manchester), Aug. 18, 1998, at 6 (noting that “[w]hat horrifies Orthodox Jews is that tolerant, secularized western culture could prove even more destructive to Judaism than Hitler”).

IV. CONCLUSION

Racism is the single-most perplexing issue facing America in the Twentieth Century and one that without a doubt, will carry over into the next millennium.¹⁴² Although race relations in America have improved significantly since the Civil Rights era, "the unfinished work of our time—to lift the burden of race and redeem the promise of America,"¹⁴³ remains a dream deferred. In *Afrolantica Legacies*, Professor Bell has provided yet another perspective in the on-going race debate, one that urges whites to genuinely reflect upon the costs of racism to society and to take the lead in policing its evils.

Eliminating racism, however, is not so easy. Successful solutions will require the active participation and voices of both blacks and whites working together to insure equal access to opportunities for all Americans. A national dialogue on race is only the beginning in the long journey towards equality. In the interim, blacks must continue to persevere. They must continue to actively challenge overt and covert attacks on affirmative action,¹⁴⁴ a policy that has resulted in significant increases in minority and female representation in all facets of American life, and must not lose sight of the benefits of building meaningful coalitions with Jews and other groups that share similar concerns and struggles. Regrettably, Professor Bell missed the opportunity in his book to leave blacks and other minorities with specific strategies for combating future measures like Proposition 209¹⁴⁵ or to consider the successful legacies of black-Jewish alliances throughout history. Neither does he provide critical discussion of ways in which the two groups can continue to form meaningful partnerships for addressing civil rights issues in the next century. A more attentive discussion of these points would have provided future generations with useful and tangible strategies essential for persevering during the challenging times ahead.

142. In 1903, renowned scholar Dr. W.E.B. DuBois predicted "[t]he problem of the twentieth century [would be] the problem of the color-line. . . ." W.E.B. DUBOIS, *THE SOULS OF BLACK FOLK* 54 (Signet Classic ed., Penguin Books 1969) (1903). The color-line still divides America even ninety-six years later. See JOHN HOPE FRANKLIN, *THE COLOR LINE: LEGACY FOR THE TWENTY-FIRST CENTURY* 5 (1993) (predicting that the problem of the color line will be the problem of the twenty-first century as well).

143. See Clinton's Commencement Speech, *supra* note 8.

144. Although critics argue that affirmative action is problematic, it remains the most successful and viable short-term solution for remedying the effects of discriminatory practices emanating from racism.

145. See Ethan Bronner, *Conservatives Open Drive Against Affirmative Action*, N.Y. TIMES, Jan. 26, 1999, at A10 (discussing recent nationwide attacks on affirmative action on college campuses).

