

REVIEW ESSAY

Recasting the American Race Problem

RETHINKING THE AMERICAN RACE PROBLEM. By Roy L. Brooks.†
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INTRODUCTION

In *Rethinking the American Race Problem*, Roy L. Brooks addresses what many consider America's most intractable problem: race.¹ In this well-researched volume, Brooks sets out to accomplish three tasks: to demonstrate the extent and seriousness of the American race problem (pp. 25-128), explain why it fails to galvanize the American people and their government (pp. 6-9), and offer some suggestions on what ought to be done (pp. 131-72). He is notably successful in the first undertaking, less so with the other two—better at showing the stark realities of the race problem than at showing why these realities persist or what should be done about them. Despite my reservations about the interpretive side of Brooks' book, I believe it makes a significant contribution to our understanding of the race problem. Part I of this review sets out Brooks' thesis. Part II deals with its interpretive deficiencies, showing how certain insights associated with the Critical Race Theory school of jurisprudence could have given Brooks' treatment even more depth and explanatory power.

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1. On the intractability of the American race problem, see D. BELL, *AND WE ARE NOT SAVED* (1987) [hereinafter D. BELL, *NOT SAVED*] (imaginative "Chronicles" illustrating the elusiveness of solutions to race problems); D. BELL, *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980) [hereinafter D. BELL, *RACE, RACISM*] (showing perspectives of racial discrimination in schools, housing, employment, criminal justice, and other areas); Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?* (Book Review), 97 *YALE L.J.* 923, 926 (1988) (Bell's "Chronicles" illustrate "that neither litigation, integrated education, emigration, separatism, self-help, nor armed insurrection . . . will undo American racism.").

I

THE AMERICAN RACE PROBLEM

After the formal end of slavery, the official policy of the United States toward African-Americans was "separate but equal." Under this policy, laid down by the Supreme Court in *Plessy v. Ferguson*,² American blacks had to be afforded the same public rights and privileges afforded whites, although not necessarily in the same physical settings. Under *Plessy*, separate schools, drinking fountains, and waiting rooms were permissible, so long as they were roughly equal to those provided whites.³

In 1953, that policy changed. *Brown v. Board of Education*⁴ declared state-imposed segregation in public schools unconstitutional, a ruling that was soon broadened to include many other services.⁵ *Brown* and later cases established the principle of formal equal opportunity (pp. 25-33) that remains in force today. That principle requires that government laws and policies remain scrupulously color-blind (pp. 29-33) (except, of course, where racial discrimination is found to have occurred, in which case the remedy may take race into account). Deviations from this norm of equal treatment are viewed with suspicion. In order to enforce formal equal opportunity, the courts developed the doctrine of strict scrutiny⁶ (pp. 51-66), under which classifications based on race are declared unconstitutional unless the government can show a compelling interest to support that classification.

The second tenet of formal equal opportunity is institutional integration (pp. 4-5, 29-33). When a public institution, such as a school system, is found to have engaged in impermissible racial treatment, the remedy is to require it to take measures, such as busing, to reverse the segregation that treatment produced. These twin principles, color-blindness and institutional integration, are the mainstays of formal equal opportunity and the centerpieces of our national civil rights policy.

They are also the principal puzzlement for Roy Brooks' book. Despite the legislative and judicial enforcement of formal equal opportunity, our national civil rights strategy has done little to ease blacks' predicament in the years since *Brown*. Compared to whites, blacks still lead

2. 163 U.S. 537 (1896) (upholding forced separation of races in railroad cars).

3. See D. BELL, *RACE, RACISM*, *supra* note 1, at 83-91; Delgado & Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929, 1937-38 (1991).

4. 347 U.S. 483 (1954).

5. For a description of the judicial aftermath of *Brown*, see D. BELL, *RACE, RACISM*, *supra* note 1, at 92-94.

6. See *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938) (structuring framework for strict scrutiny test). Brooks documents the harmful consequences of strict scrutiny at pp. 10, 83-84, 156-57, 165, and n.57.

shorter lives,⁷ have higher unemployment⁸ and infant mortality rates,⁹ and have lower household incomes.¹⁰ Moreover, the black-white gap on many such measures is growing, not narrowing.¹¹ Has our civil rights strategy failed, or are other factors responsible for the continuing misery these statistics bespeak? Many have fastened on to the comforting answer that class differences are responsible for racial disparities. If blacks' predicament is simply the product of lack of jobs or other forms of cultural capital, it should ease in time; no special measures nor soul-searching would be in order. Our commitment to equal justice would be sound—the problem is not race or racism, but something else.

The great contribution of Brooks is to cast serious doubt on this soothing interpretation. Class and culture-of-poverty millstones do, indeed, weigh blacks down. But race unfortunately retains its malevolent efficacy. To tease out the interlocking contributions of race and class Brooks subdivides his treatment of African-Americans, devoting separate chapters to the black poverty class (pp. 106-30), the black working class (pp. 67-105), and the black middle and upper classes (pp. 34-66). Marshalling an impressive array of statistics, many compiled by the federal government, Brooks shows that under virtually every index of welfare, health, and happiness, blacks fare worse than whites at the same income level. Middle-class black managers show more stress, illness, frustration, and early death than their white counterparts (pp. 39-51), and the same is true for members of the black poverty (pp. 109-27) and working classes (pp. 69-103). At every level, blacks experience more discrimination, stress, insecurity, school failure, and psychological and physical health problems than persons of the majority race (pp. 10-14). Brooks concludes that the only possible explanation for these findings is the legacy of racial treatment that continues to haunt our society 40 years after *Brown* and despite this nation's commitment to the ideal of formal equal opportunity.

Why have several decades of commitment to eliminating racial subordination accomplished so little? Why are many Americans today even less interested in working for civil rights than before? What can be done? Brooks' answers to these more interpretive questions are disappointing. Like many liberals, he answers the question—why do whites do nothing?—in terms of lack of knowledge or will: most whites do not know about the obstacles facing blacks, or if they do they are unwilling to incur

7. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1990, at 74 (110th ed. 1990) (table 106).

8. *Id.* at 397 (table 654).

9. *Id.* at 77 (table 110).

10. *Id.* at 452 (table 730).

11. *See id.* at 75 (table 107—death rates), 77 (table 110—infant mortality rates), 453 (table 733—median income), 459 (table 744—persons below poverty level).

the sacrifices necessary to address them (pp. 6-7). This answer is unsatisfactory, for reasons I shall explain. Brooks' answer to the first question—why does a civil rights strategy centered around the principle of formal equal opportunity do so little to arrest racism?—is even less persuasive. The principle itself is sound, he writes, and the best that can be achieved within our system of law and politics (pp. 15, 32-33). But its effectuation has been hampered by unnecessary limitations. If we could only eliminate, or at least modify, judicially created rules related to burden of proof, causation, intent, and, in particular, the strict-scrutiny principle (pp. 152-66), formal equal opportunity would quickly enable us to address the causes of black despair.

But Brooks points out that the remedy should not include institutional integration as this generally makes matters worse by hastening white flight, causing the loss of experienced black teachers and administrators, and encouraging promising black students and middle-class families to leave inner-city neighborhoods where they formerly served as role models and mentors (pp. 120-27). According to Brooks, then, the problem with our system of race-remedies law lies in its effectuation; the principle itself is sound.

The same is true with Brooks' *solution* to our racial ills, the subject of the final part of his book (pp. 131-73). That solution would take the form of a coordinated attack, consisting of renewed federal programs and a new campaign of self-help on the part of the black community (pp. 131-49). Federal aid should include job training and maintenance, as well as other measures aimed at enabling blacks to become upwardly mobile (pp. 150-70). At the same time, the black community must begin to address the causes of its own misery (pp. 131-49). Middle- and upper-class black families should "adopt" struggling ones from the poverty and working classes, model successful behavior, teach strategies such as time management, budgeting, homework, job interviewing, and deferred gratification (pp. 131-42). These two approaches working together can help break the cycle of self-defeating behavior that traps many blacks in despair and a "culture of poverty" (pp. 140-42, 147-49).

Brooks' positive suggestions suffer from the same deficiencies that afflict his answers to the other two questions. The black community has too little money and too few resources to lift itself by its own bootstraps.¹² The black managerial and professional class, on whose shoulders the burden of Brooks' self-help program would fall, are absorbed in

12. See Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass*, 78 GEO. L.J. 1929, 1930 (1990) ("The black and brown middle class is too small to carry out a rescue operation of the magnitude needed.").

problems of their own.¹³ At the same time, enthusiasm on the part of federal and state governments for programs aimed at blacks—or even at poverty generally—has weakened.¹⁴ Brooks' suggestions are likely to fall on deaf—or tired—ears. His statistical treatment, contained in the first part of the book, lays the groundwork for a program of theory and practice that might effectively address the causes of black marginalization. But it requires elaboration and development if this is to take place. I believe that many of the missing ingredients may be found in analyses currently under development by the Critical Race Theory school.¹⁵

II

UNDERSTANDING THE AMERICAN RACE PROBLEM

A. *Why Moderate-Liberal Approaches Fail*

Our system of antidiscrimination law is designed to detect and punish breaches of the principle of formal equal opportunity (pp. 51-66). For Brooks, as for most liberals, the problems that afflict this approach lie in its implementation. The tests by which courts evaluate claims of unequal treatment are too stringent (pp. 100-01), the burden of proof incorrectly placed (pp. 152-55), the remedies ill-considered (pp. 120-28), and the requirements of proof of intent and causation too strict (p. 155) to enable the law to function effectively.

But an emerging counterview holds that the problems with the principle lie not merely with the means by which courts enforce it. Rather: (A) the principle itself is poorly suited to its task—racism and racial subordination are the *norm* in our society rather than the exception; and (B) members of our culture—including judges—construct key notions like race and racism so as to maintain relations between the races in roughly their current condition.

B. *Why Formal Neutrality Cannot Cure Racism—Two Reasons*

Formal conceptions of equality treat racism as an anomaly, an illness, a sort of cancer on an otherwise healthy body. They are aimed at deviations from a status quo or baseline assumed to represent equality. If we spot such a deviation, we punish it. But most racism is not a deviation. As a number of Critical writers have been pointing out, racial sub-

13. "Middle- and professional-class people of color find that prejudice is no less virulent as one moves up the occupational ladder." *Id.* at 1931 n.17.

14. See Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1334 (1988) ("The position of the New Right . . . is that the goal of the civil rights movement . . . has already been achieved.").

15. On Critical Race Theory generally, see D. BELL, NOT SAVED, *supra* note 1; D. BELL, RACE, RACISM, *supra* note 1; Crenshaw, *supra* note 14; Delgado, *supra* note 1; Wiener, *Law Profs Fight the Power*, THE NATION, Sept. 4/11, 1989, at 246 (describing the emergence of Critical Race Scholars).

ordination is an ordinary, "normal" feature of our social landscape.¹⁶ It is "normal science"—the ordinary state of affairs.¹⁷ Because racism is an ingrained feature of our cultural landscape, it looks ordinary and natural to everyone in that culture.¹⁸ It is "the way things are."¹⁹ Formal equal opportunity is thus calculated to remedy at most the more extreme and shocking forms of racial treatment; it can do little about the business-as-usual types of racism that people of color confront every day and that account for much of our subordination, poverty, and despair.

A second, related insight is associated with the "storytelling" school of Critical Race Theory.²⁰ This group of scholars starts from the premise that a culture *constructs* its own social reality,²¹ and does so in ways that are harmonious with and calculated to promote its own self-interest.²²

16. See, e.g., D. BELL, NOT SAVED, *supra* note 1 ("The discrepancy between the nation's deeply held beliefs and its daily behavior add a continuing confusion to racial inequities that undermine effective action." *Id.* at 5); D. BELL, RACE, RACISM, *supra* note 1 (focusing on Critical Race Theory's emphasis on the legitimating role of legal ideology and legal-rights rhetoric); Crenshaw, *supra* note 14, at 1336, 1369-81 ("[R]acism is a central ideological underpinning of American society." *Id.* at 1336); Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989) (an event that seems nonracist to whites appears racist when told from a minority viewpoint); Note, *Racism and Race Relations in the University*, 76 VA. L. REV. 295, 304-12 (1990) (authored by Darryl Brown) ("It is a racism that is a persistent and constituent part of the social order, woven into the fabric of society and everyday life." *Id.* at 295).

17. The term "normal science" comes from T. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 5 (1962) (normal science is the mode of thought prevailing within a dominant scientific paradigm at any given time).

18. Formal principles of neutrality cannot spot everyday ("institutional") racism of the normal-science sort because it seems natural, or inherent to the black condition. Altering it would seem an act of favoritism, a disadvantaging of whites. To one accustomed to playing on a tilted field, leveling the field seems foreign, unfair. The recent legal-storytelling movement aims to change this by jarring and displacing comfortable majoritarian views and narratives with "counterstories." See Delgado, *supra* note 16.

19. On the difficulty of even imagining a fairer, better world, see Delgado & Stefancic, *Why Do We Tell The Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 STAN. L. REV. 207, 208 (1989) (legal research and indexing systems "facilitate traditional legal thought and constrain novel approaches to the law").

20. See, e.g., D. BELL, NOT SAVED, *supra* note 1 (using imaginative "Chronicles" to examine racial oppression); Delgado, *supra* note 16, at 2411 nn.2-7 (citing samples of storytelling in scholarship).

21. See, e.g., P. BERGER & T. LUCKMAN, THE SOCIAL CONSTRUCTION OF REALITY (1966) ("What is 'real' to a Tibetan monk may not be 'real' to an American businessman." *Id.* at 2-3); N. GOODMAN, WAYS OF WORLDMAKING (1978) (arguing that "worlds are as much made as found," *id.* at 22).

22. See, e.g., Delgado, *Mindset and Metaphor*, 103 HARV. L. REV. 1872, 1875-77 (1990) (law faculties use the metaphor of a small "pool" of qualified minority law professors as an excuse for not diversifying); Delgado, *supra* note 16, at 2412 ("The dominant group creates its own stories . . . [that] provide it with a form of shared reality in which its own superior position is seen as natural."). Derrick Bell's elaboration of the "interest convergence" hypothesis is a related thesis. See, e.g., D. BELL, RACE, RACISM, *supra* note 1, at 39-44 (arguing that the progress blacks have made toward equality has depended upon whether increased opportunity for blacks would best serve the interests of whites); Bell, Brown v. Board of Education and the Interest-Convergence Dilemma, 93 HARV. L. REV. 518 (1980) (suggesting that the *Brown* decision resulted from a unique convergence of white and black social interests).

Our social world does not come to us as a given. Rather, we construct it through images, pictures, stories, and narratives that, among other things, tell us who is and deserves to be poor, that certain cultures have less ambition than others, that the majority group is largely innocent of racial wrongdoing, and that the current unfortunate racial polarization and poverty affecting persons of color will right themselves in time if we are patient.²³ These dominant narratives are markedly at odds with those held by persons in the subordinated groups.

To take an everyday example, students of color frequently complain that the university is a racist place.²⁴ Liberal white sympathizers are distressed; they want to know what the blacks have in mind—what shocking incidents, vicious racist insults, or other race-based mistreatment the students have suffered. The whites are prepared to do something about these conditions, so they listen attentively. But when the blacks explain what they mean when they say “the university is a racist place,” the whites are surprised—it turns out the blacks mean one thing, the whites another. The whites had formed a mental picture of physical assaults, exclusion from housing, slurs, badgering, and denials of service at restaurants. What they hear may include some of this, to be sure. But the blacks will also go on in some detail about the lack of black professors and fellow students. “This place is so white!” Other complaints may point out the lack of courses on black literature or African-American history and language. They will mention that there is no black theme house or student center; the cafeteria does not offer soul food.²⁵

The liberal sympathizers were not prepared for this; for them, these matters are ordinary, normal—or at least understandable. They are certainly relatively *minor*, and do not rise to the level of what the white means by “racism.” But they do for the black student. The white has constructed the term “racism” narrowly to mean dramatic, indefensible, and intentional acts of vicious bigotry. The matters the black student complains of are unfortunate, perhaps, but simply not what the white majority means by racism.²⁶

These twin insights of Critical Race Theory—that racism is ordinary and normal, and that we construct the social world in ways that minimize discomfort—explain much of what Brooks, like many other liberal writers, finds puzzling in our racial predicament. I describe six

23. For an example of one dominant group story, see the doctor's side of the dialogue in Delgado, *supra* note 1, at 928-47.

24. See Note, *supra* note 16, at 295 (“[P]eople of color continue to experience a racism [at universities] that takes more subtle and elusive forms than in earlier eras . . .”).

25. See *id.* at 314-22 (giving examples of overt and subtle acts of racism at universities).

26. See Delgado, *supra* note 16, at 2412 (conditions of social hierarchy seem natural, deserved from the viewpoint of whites); Note, *supra* note 16, at 314-15 (white university students often believe that racism has all but disappeared on university campuses).

such recurring puzzles below. Each is associated with failure to appreciate one or both of the above insights.

Puzzle Number One

Why do things never seem to get better? Brooks and other liberal writers find the continuing subordination and poverty of blacks forty years after *Brown* a puzzlement. They seek answers in the black family,²⁷ "dysfunctional" elements of black culture (pp. 147-49), economic factors,²⁸ and judicial hostility coupled with defects we have allowed to creep into judicial doctrine for the redress of racial wrongs (pp. 120-27, 152-66). For Critical Race Theory writers, there is a more basic explanation: neutral mechanisms *cannot* spot, much less redress, most forms of racism because they are not designed to do so. They are calculated to detect and punish only that which appears abnormal—*i.e.*, shocking incidents of intentional racism.²⁹ But with the realization that racial subordination *is* the norm, formal neutrality's failure to do much to repair our racial ills is unsurprising. Indeed, as Critical writers have pointed out, our elaborate system of antidiscrimination laws and statutes may even *heighten* the predicament of people of color. For if, as the majority believes, our system of law and politics is scrupulously fair and neutral, and black persons are still not getting ahead—well, what can be done?³⁰ Legal approaches based on formal equality, then, enable those in power to blame the victims while assuring themselves and each other that they are free from any fault. The answer to the first puzzle, then, is that things are not getting better because antidiscrimination law and principles are not calculated to make things better and in some respects actually make matters worse.

Puzzle Number Two

Why do most persons of the majority race fail to become alarmed over the current racial scene and take action? As mentioned earlier, this troubled Brooks as well, yet resort to the second theme of Critical Race Theory supplies the reason: persons of the majority race have simply

27. See, e.g., *Scapegoating the Black Family: Black Women Speak*, THE NATION, July 24/31, 1989 (articles discussing myths surrounding the "present wretched conditions" of black families).

28. W.J. WILSON, *THE DECLINING SIGNIFICANCE OF RACE* (1978) (structural economic changes have more significance than racism in subordinating blacks).

29. See *supra* notes 16-19 and accompanying text (discussing "normal" racism).

30. See Delgado, *supra* note 16, at 2418-22 (dominant group rationalizes the rejection of a minority candidate through "fair" procedures built exclusively on the criteria and values of the dominant group); Delgado, *supra* note 1, at 942 (the Constitution holds out an appearance of fairness while perpetuating unequal conditions); see also Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1052-57 (1978) (the structure of civil rights law, and its conceptions of "fault" and "causation," relieves most whites of responsibility for the condition of blacks).

constructed racial realities so as to avoid any sense of personal responsibility.³¹ To the majority race, the predicament of persons of color fails to galvanize for a number of reasons: it is not the majority race's fault;³² things are getting better all the time;³³ existing remedial mechanisms and government programs are adequate (more would be unfair to "innocent" whites);³⁴ and statistics showing black poverty and despair are counterbalanced by ones showing at least some types of progress.³⁵ Measured responses, not emergency actions, are in order today.

Take, for example, the frequently heard response that liberal-coined antidiscrimination law, if it has accomplished nothing else, has at least created a large black middle class (pp. 120-27). But has it, and at what price? A recent National Research Council study showed that the black middle class has actually shrunk slightly in size since the early 1980s and that the number of black undergraduates has been dropping.³⁶ Although there were economic and political gains between the 1960s and the 1980s, those gains may well have resulted from activism, not legal reforms.³⁷ Moreover, as Brooks points out, any gains for the black middle class may have come at the expense of the black working and poverty classes (pp. 100-01, 164) and may have contributed to white complacency and tokenism (pp. 8-11, 95). Finally, attaining middle-income status confers fewer gains for blacks than for whites and is often accompanied by additional stress, conflict, and unhappiness (pp. 39-43).³⁸

Puzzle Number Three

To writers familiar with them, the problems of the black underclass are so deep-seated that only a massive national commitment is likely to make a dent. Yet the American public rejects such programs even when it seriously recognizes the problems that call for them. Brooks finds this puzzling and frustrating. Like most moderate-liberals, he writes as

31. See *supra* notes 21-23 and accompanying text.

32. See Freeman, *supra* note 30, at 1055.

33. See Delgado, *supra* note 1, at 930-31 (white liberal view of progress in integration and political power).

34. See D. BELL, NOT SAVED, *supra* note 1, at 140-61 (there is an unspoken limit on affirmative action).

35. See Delgado, *supra* note 1, at 930-34.

36. NATIONAL RESEARCH COUNCIL COMM'N ON THE STATUS OF BLACK AMERICA, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY (G. Jaynes & R. Williams eds. 1990); see Duke, *Conference Studies Plight of Black Males*, Wash. Post, May 23, 1991, at A3, col. 1 (discussing report and other studies on plight of black community).

37. For views suggesting that legal reform, white idealism, and moral progress contribute little to blacks' search for justice, at least compared to activism and self-help, see *supra* note 22.

38. For example, Brooks discusses "John Henryism"—the phenomenon in which black males bottle up their rage and anger at racism and discrimination in an attempt to succeed in the workplace—as well as high blood pressure, excessive drinking, and high death rates for middle-class blacks (pp. 40-42).

though the government and the public have simply shifted their attention—become tired of the problem (pp. xiv, 2). In doing so, he underestimates the resistance to programs aimed at benefiting blacks. It is not that we are now newly indifferent to the problems of the black underclass, an indifference that could reverse itself when—as sometimes happens with trends—enthusiasm for racial justice returns. Rather, governmental programs for blacks *always* have generated resistance. For, under the principle of formal neutrality, we are invariably led to see them as *favoritism*. They violate the rule against special treatment; we will tolerate them only for a short time, all the while conscious of their costs. For a time, our resistance was held in abeyance because other forces required an investment in black justice. But as these other forces have faded, so has our commitment to addressing black needs.

Puzzle Number Four

Members of the majority group strongly prefer equality of opportunity over equality of result. Brooks accepts this preference as an unexplained curiosity on the part of our culture without accounting for its deeply held nature (p. 172), and structures his programmatic solutions accordingly (pp. 150-70). For Critical Race Theory, however, the distinction between the two forms of equality is incoherent—the two simply collapse. One cannot judge whether two athletic teams are playing fairly, on an even field, without attending to the results of the game, and vice versa. Law's preference for protecting only equality of opportunity is, then, a veiled way of assuring that those who benefit from the current rules of the game continue winning.

Puzzle Number Five

Curious alignments are taking place, alignments that present novel opportunities for segments of the black community to advance their interests. Addressing blacks' economic and racial ills is no longer the near-exclusive province of blacks' traditional allies, the Democratic party. Republicans are making cautious overtures to minority groups, while writers of color like Brooks are discussing ideas and approaches associated with neoconservatism—self-help, self-reliance, and separatism.³⁹ But these alignments and allies will seem strange only to readers unfamiliar with Critical writing on "interest convergence."⁴⁰ Derrick Bell, for example, observes that gains for blacks have not been the result of resurgences of idealism or altruism among the American people. Nor are they accidental or the product of a moral breakthrough on the part of

39. See Delgado, *supra* note 12, at 1931 n.15, 1940-45.

40. On interest convergence, see D. BELL, *RACE, RACISM*, *supra* note 1, at 39-44; Bell, *supra* note 22, at 522-30.

the right, or forgetfulness on the part of the left. Rather, gains for people of color come when such a gain would advance the interests of society's control group and do not impose too great a cost on other whites in a position to resist them.⁴¹ Recently, the Democratic Party has been more interested in currying favor with disenchanted working-class whites than strengthening ties with its traditional ethnic constituencies.⁴² The Republicans, by contrast, are beginning to make overtures to the black community—its business element, at any rate—in an effort to expand its own base and administer a final, crushing defeat to the left.⁴³ These shifting alignments are putting a new complexion on racial politics as we enter the 1990s.

Puzzle Number Six

The final recurring puzzle is the persistence of a "self-defeating" underclass culture. Brooks observes that few persons in the underclass of color save money, budget time, supervise their children's homework, or defer gratification in general (pp. 132-42, 147-49). He urges that black leaders and professionals volunteer their time as tutors, mentors, and adopt-a-family coaches in an effort to teach the behaviors that members of the poverty class of color need if they are to advance in society at large (pp. 132-42). A dismal truth eludes Brooks: The behaviors he proposes to change through coaching and tutoring are not dysfunctional—quite the opposite. They serve the interest of elite whites in maintaining cultural ascendancy.⁴⁴ And for those caught up in the culture, they are perfectly rational responses to a world in which promises—including those our society makes about equality, love, care, and concern—are daily falsified, a world in which one takes what gratification one can as soon as it is available and makes little provision for tomorrow.⁴⁵ Tomorrow may never come. If it does, what one has saved may be taken away by forces beyond one's control—including a society that is perfectly

41. See D. BELL, *RACE, RACISM*, *supra* note 1, at 39-44 (degree of success for blacks after slavery has depended on whether the aims of whites are being served).

42. See Delgado, *supra* note 12, at 1929-32 (concerns of poor people of color are on liberal "back burner").

43. See generally Delgado, *supra* note 12 (arguing that poverty-class blacks would profit from alignments with conservatives).

44. Cf. D. BELL, *NOT SAVED*, *supra* note 1, at 51-75 (civil rights litigation serves the interests of whites by diverting blacks' energies from real solutions). According to Bell, maintenance of a large group of poor blacks unites rich and poor whites, who perceive the black group as a threat. See *id.* at 40. Implicit in Bell's argument is that this unity allows lower-class whites to accept their status, and permits a thriving crime-control industry. See *id.* at 245-58; see also D. BELL, *RACE, RACISM*, *supra* note 1, at 40-44 (racism profitable), 589-665 (twists and turns of fair-employment doctrine).

45. See, e.g., Delgado, *On Taking Back Our Civil Rights Promises*, 1989 WIS. L. REV. 579 (new restrictive legal doctrines have developed to thwart the ability to document racial inequality with computer-aided statistics).

prepared to see one suffer and be poor, that believes this is fair, neutral, and natural, and that will not remedy one's pain if this entails any costs to itself—and justifies this refusal on grounds of *principle*. In a neat reversal, any such action would be unfair, nonneutral—and wrong.

III

CONCLUSION

Rethinking the American Race Problem is a gallant but flawed book by a major new writer. It painstakingly details the failures of America's neutrality-based system of race-remedies law and governmental programs. But it fails at an interpretive level, unable, like many works rooted in liberal thought, to draw the necessary conclusions from its own premises. The book neglects the most obvious cause of black despair—that majority society is perfectly happy to tolerate it unless it can be remedied without cost—and offers solutions about whose prospects for success not even the author is sanguine. Critical analysis helps explain our racial predicament and its persistence forty years after *Brown*. It enables us to understand why racial progress is slow and sporadic and why gains almost never come if they entail costs for powerful whites. Critical analysis shows that neutral principles are incoherent and doomed to replicate, not remedy, white-over-black domination. Talented writers like Brooks should take note of the broadened vistas Critical analysis can offer. If we are ever going to get anywhere in addressing our most intractable problem, these insights will be an indispensable first step to any effective action.



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