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Derrick Bell

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Cover Page Footnote

I would like to thank the African American and African Studies Institute and the Black Law Students Association for making my lecture at Fordham University School of Law possible.

ESSAYS

POLITICAL REALITY TESTING: 1993

DERRICK BELL*

Much of the material included in this lecture, given by Professor Bell at Fordham University School of Law on February 19, 1993, is contained in his recent book, Faces at the Bottom of the Well: The Permanence of Racism (1992). Excerpts are reprinted with the permission of the publisher, Basic Books. Professor Bell's speech was sponsored by the Black Law Students Association and the African American and African Studies Institute.

THE major theme of my book is set out in its introduction. This theme is easier to reject than to refute:

Black people will never gain full equality in this country. Even those herculean efforts we hail as successful will produce no more than temporary "peaks of progress," short-lived victories that slide into irrelevance as racial patterns adapt in ways that maintain white dominance. This is a hard-to-accept fact that all history verifies. We must acknowledge it, not as a sign of submission, but as an act of ultimate defiance.¹

I arrived at this conclusion with all the reluctance one can imagine after believing for many years—and working to give meaning to that belief—that racial integration was the answer to America's racial problems.

But in the wake of the widespread optimism—bordering on euphoria—following President Bill Clinton's State of the Nation speech a few nights ago,² my prediction about the dire future for black Americans seems far off the mark and mean-spirited to boot.

I was impressed. For me, the State of the Union speech represented the first time in a dozen years that I was able to listen to a U.S. President for more than a few minutes without feeling patronized, alienated, and—I confess—very unpatriotic. Clinton mustered the political courage to tell much of the truth about the condition of the American economy. He spoke forthrightly about the need for more taxes for the well-to-do, the reduction of government expenditures, and the need to address long-ignored needs in jobs, job training, education, and health services.

There has been, as the President asserts, much neglect during the last two decades—and actually long before that. But, forgetting the blame,

* Visiting Professor of Law, New York University School of Law. I would like to thank the African American and African Studies Institute and the Black Law Students Association for making my lecture at Fordham University School of Law possible.

1. Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* 12 (1992). For a review of this book, see Tracy E. Higgins, *Derrick Bell's Radical Realism*, 61 *Fordham L. Rev.* 683 (1992).

2. See R. W. Apple Jr., *Ambitious Program Aims at 4-Year Deficit Cut of \$500 Billion*, *N.Y. Times*, Feb. 18, 1993, at A1.

there was not much mention of why we lag so far behind much less well-off nations in meeting the basic needs of our people. The real question is whether the barriers to past progress will serve as bars to the Clinton Administration's social reform program.

As I see it, there were two areas in which Clinton was silent. And these areas will have to be addressed if Clinton's plans are to succeed. First, there was the silence about the far worse status of black Americans. The President did not mention that while many Americans are out of work, black Americans are a disparately large percentage of those unemployed. This omission was likely intentional. Perhaps it was good politics, for to have America think that reforms are a massive civil rights program is to doom them to defeat. But the facts of continuing racial discrimination in the job market cannot be masked by not mentioning them: The official unemployment rate for blacks is two and one half times the rate for whites and, as a result, black per-capita income is not even two-thirds of the income for whites.³ Blacks are three times more likely to have income below the poverty level than whites.⁴ Estimates indicate that the real unemployment rate among blacks, including those no longer looking for work, exceeds fifty percent in some urban black communities.⁵

This is not a temporary phenomenon. In his recent book, Andrew Hacker traces the two-times, black-white unemployment gap and finds that

Black Americans get jobs only after white applicants have been accommodated. In periods of prosperity, when the economy requires more workers, blacks who had been unemployed are offered vacant positions. But as last hired, they can expect to be the first fired. In bleak times, the jobless rate among blacks can approach 20 percent, as it did in 1983. Since 1974, unemployment rates for blacks have remained at double-digit levels, and they have not fallen below twice the white rate since 1976. Even more depressing, the gap between the black and white figures grew during the 1980s, suggesting that the economy has little interest in enlisting black contributors.⁶

Statistics cannot, however, begin to express the havoc caused by joblessness and poverty: broken homes, anarchy in communities, and futility in the public schools. All are the bitter harvest of race-determined unemployment in a society where work provides sustenance, status, and the all-important sense of self-worth. What we now call the "inner city" is, in fact, the American equivalent of the South African homelands. Poverty is less the source than the status of men and women who, de-

3. See Bell, *supra* note 1, at 3.

4. See *id.*

5. See David H. Swinton, *The Economic Status of African Americans: 'Permanent' Poverty and Inequality, in The State of Black America* 25, 56-62 (National Urban League ed., 1991).

6. Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* 102 (1992).

spised because of their race, seek refuge in self-rejection. Drug-related crime, teenaged parenthood, and disrupted and disrupting family life all are manifestations of a despair that feeds on itself. That despair is bred anew each day by the images on ever-playing television sets, images confirming that theirs is the disgraceful form of living, not the only way people live.

The Bureau of Labor Statistics reports that close to thirty percent of the nation's "discouraged workers," are black.⁷ "Discouraged workers" are those who would like to work, but have ceased looking, convinced that they will never find a job.⁸ Hacker reports that many "nonworkers" support themselves on the streets by providing products and services in the underground economy.⁹ Others resort to theft and other crimes that lead inevitably to the growing number of blacks languishing in the nation's prisons.¹⁰

The result: on an average day in America, one of every four African-American men, ages twenty to twenty-nine, was either in prison, jail, on probation, or parole.¹¹ But, as Jerome Miller points out, this study did not concentrate on inner-city males where arrest records are substantially higher.¹² Other studies show that in the country's largest fifty-six cities, fifty-one percent of non-white males will be arrested, charged with a felony, and acquire a criminal record.¹³ This figure does not include misdemeanor arrests—which make up the largest share of arrests and bookings into jails nationally.¹⁴

Last year, a study in Washington, D.C., estimated that, at a minimum, seventy percent "of the young black men living in D.C. would be arrested and jailed at least once before reaching age thirty-five."¹⁵ A Florida survey estimated the lifetime risk at between eighty percent and ninety percent.¹⁶ What these figures mean for employment opportunities is too obvious and painful to spell out in detail.

The new president has promised to create more jobs, but how do you create unskilled and semi-skilled jobs at decent wages in an economy where such jobs are either disappearing because of technology or export to foreign countries, or are occupied by the hundreds of thousands of legal and illegal immigrants who are willing to work for sub-standard wages? Taken together, these factors, magnified by a harder to prove but

7. *See id.* at 105.

8. *See id.*

9. *See id.*

10. *See id.*

11. *See* David Savage, *1 in 4 Young Blacks in Jail or in Court Control, Study Says*, L.A. Times, Feb. 27, 1990, at A1.

12. *See* Jerome G. Miller, *Search and Destroy: The Plight of African American Males in the Criminal Justice System 2* (National Center on Institutions and Alternatives, forthcoming 1993).

13. *See id.*

14. *See id.*

15. *Id.* at 3.

16. *See id.* at 4.

no less pernicious racism, provide a formula for a not so gentle genocide for a great many African Americans.

One might respond with the time-worn Republican slogan that a rising tide lifts all boats. And clearly, if the Clinton reforms are adopted and implemented, blacks as well as whites will benefit from better health care, improved schooling opportunities, and more jobs.

But here, I must mention the second silence in the Clinton message—a silence more likely unconscious than intentional. Racism is the barrier to much-needed social reforms and it neither disappears nor stops functioning simply because progressive politicians do not mention it. Racism in America disadvantages whites as it subordinates blacks.

Almost always, the injustices that dramatically diminish the rights of blacks are linked to the serious economic disadvantage suffered by many whites who lack money and power. Whites, rather than acknowledge the similarity of their disadvantage, particularly when compared with that of better-off whites, are easily detoured into protecting their sense of entitlement vis-à-vis blacks for all things of value. Evidently, this racial preference expectation is hypnotic. It is this compulsive fascination that seems to prevent most whites from even seeing—much less resenting—the far more sizable gap between their status and those who occupy the lofty levels at the top of our society.

Race consciousness of this character, as Professor Kimberlé Crenshaw suggests, makes it difficult for whites “to imagine the world differently. It also creates the desire for identification with privileged elites. By focusing on a distinct, subordinate ‘other,’ whites include themselves in the dominant circle—an arena in which most hold no real power, but only their privileged racial identity.”¹⁷

The critically important stabilizing role that blacks play in this society constitutes a major barrier in the way of achieving racial equality. Throughout history, politicians have used blacks both as scapegoats for economic or political policies that they opposed and as red herrings for policies they favored.

Before the Civil War, rich slave owners persuaded the white working class to stand with them against the danger of slave revolts—even though the existence of slavery condemned white workers to a life of economic privation.¹⁸ After the Civil War, poor whites fought social reforms and settled for segregation rather than see formerly enslaved blacks get ahead.¹⁹ Most labor unions preferred to allow plant owners to break

17. Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331, 1380-81 (1988).

18. See Bell, *supra* note 1, at 8.

19. See generally Derrick A. Bell, Jr., *The Racial Imperative in American Law, in The Age of Segregation: Race Relations in the South, 1890-1945*, at 3 (Robert J. Haws ed., 1978) (discussing generally whites' attitudes toward social reform).

strikes with black scab labor than allow blacks to join their ranks.²⁰

The “them against us” racial ploy—always a potent force in economic bad times—is working again today. Whites, who are as disadvantaged by high status entrance requirements as blacks, fight to end affirmative action policies. These policies, by eliminating class-based entrance requirements and requiring widespread advertising of jobs, have actually likely helped far more whites than blacks. And, in the 1990s as through much of the 1980s, millions of Americans—white as well as black—face steadily worsening conditions: unemployment, inaccessible health care, inadequate housing, mediocre education, and pollution of the environment. The gap in national incomes is approaching a crisis as those in the top fifth now earn more than their counterparts in the bottom four fifths combined.²¹ The conservative guru Kevin Phillips indicated a different but no less disturbing comparison: the top two million income earners in this country earn more than the next 100 million.²²

Shocking. And yet conservative white politicians are able to gain and hold even the highest office despite their failure to address seriously any of these issues. They rely instead on the time-tested formula of getting needy whites to identify on the basis of their shared skin color, and suggest with little or no subtlety that white people must stand together against the Willie Hortons, or against racial quotas, or against affirmative action. The code words differ. The message is the same. Whites are rallied on the basis of racial pride and patriotism to accept their often lowly lot in life, and encouraged to vent their frustration by opposing any serious advancement by blacks. Crucial to this situation is the unstated understanding by the mass of whites that they will accept large disparities in economic opportunity in respect to other whites as long as they have a priority over blacks and other people of color for access to the few opportunities available.

We can predict with plenty of historic support that opponents of meaningful social reform will devise arguments suggesting with varying degrees of subtlety that blacks will be the unfair beneficiaries of any change. The effectiveness of these appeals explains the fragility of civil rights gains and ensures that opponents of social reforms in the future—as in the past—will be able to gain the support of whites to oppose gains needed by all by suggesting that they will help blacks and harm whites. It is for this reason that I write in my epigraph:

Black people are the magical faces at the bottom of society's well.
Even the poorest whites, those who must live their lives only a few
levels above, gain their self-esteem by gazing down on us. Surely, they

20. See Bell, *supra* note 1, at 8; see also 1 Herbert Hill, *Black Labor and the American Legal System: Race, Work, and the Law* 16-17 (1977) (discussing organized labor's exclusion of blacks with the cooperation of employers, who recognized the benefits of cheap, unorganized black labor).

21. See Bell, *supra* note 1, at 8.

22. See Kevin Phillips, *Politics of Rich and Poor* 12-13 (1990).

must know that their deliverance depends on letting down their ropes. Only by working together is escape possible. Over time, many reach out, but most simply watch, mesmerized into maintaining their unspoken commitment to keeping us where we are, at whatever cost to them, or to us.²³

While I would characterize my statement as encompassing a maximum of "outreach" to whites, including as victims those who have been oppressors, some whites see it as a condemnation. Thus a black student leader at Vassar told me she found a white student there tearing down posters that included this epigraph. He viewed my effort at outreach as "racist." My point, of course, is not that all whites are evil, but that in a nation where worth is based on how much property one holds, many whites gain a sense of quasi-property from being white and feeling entitled to priority over blacks for all things of value. This feeling, translated into public policy and private practice, renders blacks and whites vulnerable to all manner of manipulation by whites in powerful positions.

I have worked for thirty-five years, my whole professional life, in the struggle against racism. My challenge is now to tell what I view as the truth about racism without causing disabling despair. Much of this truth though is not easy to take. I found it more palatable to convey it in allegorical stories.

For example, in a society where racial discrimination is rampant, we have more anti-discrimination laws on the books than at any time in our history. To illustrate just how ineffective these laws are, my heroine, Geneva Crenshaw, tells the following tale:

It was enacted as the Racial Preference Licensing Act. At an elaborate, nationally televised signing ceremony, the President—elected as a "racial moderate"—assured the nation that the new statute represented a realistic advance in race relations. "It is," he insisted, "certainly not a return to the segregation policies granted constitutional protection under the stigma inflicting 'separate but equal' standard of *Plessy v. Ferguson* established roughly a century ago.

Far from being a retreat into our unhappy racial past," he explained, "the new law embodies a daring attempt to create a brighter racial future for all our citizens. Racial realism is the key to understanding this new law. It does not assume a nonexistent racial tolerance, but boldly proclaims its commitment to racial justice through the working of a marketplace that recognizes and seeks to balance the rights of our black citizens to fair treatment and the no less important right of some whites to an unfettered choice of customers, employees, and contractees."

Under the new act, all employers, proprietors of public facilities, and owners and managers of dwelling places, homes, and apartments could, on application to the federal government, obtain a license au-

23. Bell, *supra* note 1, epigraph.

thorizing the holders, their managers, agents, and employees to exclude or separate persons on the basis of race and color. The license itself was expensive though not prohibitively so. Once obtained, it required payment to a government commission of a tax of 3 percent of the income derived from whites employed, whites served, or products sold to whites during each quarter in which a policy of "racial preference" was in effect. Congress based its authority for the act on the commerce clause, the taxing power, and the general welfare clause of the Constitution.

License holders were required both to display their licenses prominently in a public place and to operate their businesses in accordance with the racially selective policies set out on their license. Specifically, discrimination had to be practiced in accordance with the license on a nonselective basis. Licenses were not available to those who, for example, might hire or rent to one token black and then discriminate against other applicants, using the license as a shield against discrimination suits. Persons of color wishing to charge discrimination against a facility not holding a license would carry the burden of proof, but such burden might be met with statistical and circumstantial as well as with direct evidence provided by white "testers."²⁴ Under the act, successful complainants would be entitled to damages set at ten thousand dollars per instance of unlicensed discrimination, including attorneys' fees.

License fees and commissions paid by license holders would be placed in an "equality fund" used to underwrite black businesses, to offer no-interest mortgage loans for black home buyers, and to provide scholarships for black students seeking college and vocational education. To counter charges that black people, as under *Plessy*, would be both segregated and never gain any significant benefit from the equality fund, the act provided that five major civil rights organizations (each named in the statute) would submit the name of a representative who would serve on the commission for one, nonrenewable three-year term.

The President committed himself and his administration to the effective enforcement of the Racial Preference Licensing Act. "It is time," he declared, "to bring hard-headed realism rather than well-intentioned idealism to bear on our long-standing racial problems. Policies adopted because they seemed right have usually failed. Actions taken to promote justice for blacks have brought injustice to whites without appreciably improving the status or standards of living for blacks, particularly for those who most need the protection those actions were intended to provide. . . .

. . . This bill I now sign into law is the result of long debate and

24. Testing is an effective, but too little utilized, technique to ferret out bias in the sale and rental of housing, or discrimination in employment practices. Generally, it involves sending people who are alike in virtually every way except race or ethnicity to apply for jobs, housing, or mortgages. The results are then analyzed for how differently whites are treated compared with black or Hispanic people. In 1982, the Supreme Court found that testers in a housing discrimination suit and the housing association to which they were attached, had standing to sue in their own right as injured parties. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

good-faith compromise. It is, as its opponents charge and its proponents concede, a radical new approach to the nation's continuing tensions over racial status. It maximizes freedom of racial choice for all our citizens while guaranteeing that people of color will benefit either directly from equal access or indirectly from the fruits of the license taxes paid by those who choose policies of racial exclusion.

A few, final words. I respect the views of those who vigorously opposed this new law. And yet the course we take today was determined by many forces too powerful to ignore, too popular to resist, and too pregnant with potential to deny. We have vacillated long enough. We must move on toward what I predict will be a new and more candid and collaborative relationship among all our citizens. May God help us all as we seek with His help to pioneer a new path in our continuing crusade to bring justice and harmony to all races in America."²⁵

The chapter containing the Racial Preference Licensing Law was published as a cover story in the American Bar Association Journal this past summer²⁶ and created—interestingly enough—more upset among conservatives than civil rights liberals. The liberals (and perhaps the conservatives as well) may recognize that while a permissive segregation law would besmirch the ideal of equality, it might result in less discrimination than blacks now experience.

After all, the necessity of advertising one's discriminatory policy takes much of the psychological fun out of it. No one, after all, wants to admit to racism. And indeed, much of contemporary discrimination is not based on hate. Instead, as economist Matthew S. Goldberg puts it—it is racial nepotism rather than racial animus that is the major motivation for much of the discrimination blacks experience.²⁷

Modern discrimination is, moreover, not practiced indiscriminately. Whites, ready and willing to applaud and even idolize black athletes and entertainers, refuse to hire, or balk at working with, blacks. Whites, who number individual blacks among their closest friends, either approve or do not oppose practices that bar selling or renting homes or apartments in their neighborhoods to blacks they do not know. Employers, not wanting "too many of them," are willing to hire one or two black people, but will reject those who apply later. Most hotels and restaurants who offer black patrons courteous—even deferential—treatment, uniformly reject black job applicants, except perhaps for the most menial jobs. When did you last see a black waiter in a really good restaurant?

Racial schizophrenia is not limited to hotels and restaurants. As a result, neither professional status nor relatively high income protects even accomplished blacks from capricious acts of discrimination that

25. Bell, *supra* note 1, at 47-49, 51-52 (citations omitted).

26. See Derrick Bell, *The Racial Preference Licensing Act: A Fable About the Politics of Hate*, 78 A.B.A. J. 50 (Sept. 1992).

27. See Matthew S. Goldberg, *Discrimination, Nepotism, and Long-Run Wage Differentials*, 97 Q.J. Econ. 307, 308 (1982).

may reflect either individual "preference" or an institution's bias. The motivations for bias vary; the disadvantage to black victims is the same.

Careful examination reveals a pattern to these seemingly arbitrary racial actions. When whites perceive that it will be profitable or at least cost-free to serve, hire, admit, or otherwise deal with blacks on a nondiscriminatory basis, they do so. When they fear—accurately or not—that there may be a loss, inconvenience, or upset to themselves or other whites, discriminatory conduct usually follows. Selections and rejections reflect preference as much as prejudice. A preference for whites makes it harder to prove the discrimination outlawed by civil rights laws.

Racial preference-based prejudice was at work when the Constitution's Framers condemned those in slavery to a continuation of that status as the necessary cost of creating a new nation.²⁸ It was at work again when the Hayes-Tilden Compromise was struck in 1877, giving the presidency to Hayes, and turning the freedmen in the South over to the far from tender mercies of their former masters.²⁹ My students tell me that so blatant a compromise of black rights could never happen again. My response is the Space Traders:

1 January. The first surprise was not their arrival. The radio messages had begun weeks before, announcing that one thousand ships from a star far out in space would land on 1 January 2000, in harbors along the Atlantic coast from Cape Cod to North Carolina. Well before dawn on that day, millions of people across North America had wakened early to witness the moment the ships entered Earth's atmosphere. However expected, to the watchers, children of the electronic age, the spaceships' approach was as awesome as had been that earlier one of three small ships, one October over five hundred years before, to the Indians of the island of Santo Domingo in the Caribbean.

No, the first surprise was the ships themselves. The people who lined the beaches of New Jersey where the first ships were scheduled to arrive, saw not anything NASA might have dreamed up, but huge vessels, the size of aircraft carriers, which the old men in the crowd recognized as being pretty much like the box-shaped landing craft that carried Allied troops to Normandy beachheads during the Second World War.

As the sun rose on that cold bright morning, the people on the shore, including an anxious delegation of government officials and media reporters, witnessed a fantastic display of eerie lights and strange sound—evidently the visitors' salute to their American hosts. Almost unnoticed during the spectacle, the bow of the leading ship slowly lowered. A sizable party of the visitors—the first beings from outer space anyone on Earth had ever seen—emerged and began moving majesti-

28. According to William Wiecek, 10 provisions in the Constitution either directly or indirectly allow slavery or provide protection for slave owners. See William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848*, at 62-63 (1977).

29. See Bell, *supra* note 1, at 98 n.*.

cally across the water toward shore. The shock of seeing these beings, regal in appearance and bearing, literally walking on the waves was more thrilling than frightening. At least, no one panicked.

Then came the second surprise. The leaders of this vast armada could speak English. Moreover, they spoke in the familiar comforting tones of former President Reagan, having dubbed his recorded voice into a computerized language-translation system.

After the initial greetings, the leader of the U.S. delegation opened his mouth to read his welcoming speech—only the first of several speeches scheduled to be given on this historic occasion by the leaders of both political parties and other eminent citizens, including—of course—stars of the entertainment and sports worlds. But before he could begin, the principal spokesperson for the space people (and it wasn't possible to know whether it was man or woman or something else entirely) raised a hand and spoke crisply, and to the point.

And this point constituted the third surprise. Those mammoth vessels carried within their holds treasure of which the United States was in most desperate need: gold, to bail out the almost bankrupt federal, state, and local governments; special chemicals capable of unpolluting the environment, which was becoming daily more toxic, and restoring it to the pristine state it had been before Western explorers set foot on it; and a totally safe nuclear engine and fuel, to relieve the nation's all-but-depleted supply of fossil fuel. In return, the visitors wanted only one thing—and that was to take back to their home star all the African Americans who lived in the United States.

The jaw of every one of the welcoming officials dropped, not a word of the many speeches they had prepared suitable for the occasion. As the Americans stood in stupefied silence, the visitors' leader emphasized that the proposed trade was for the Americans freely to accept or not, that no force would be used. Neither then nor subsequently did the leader or any other of the visitors, whom anchorpersons on that evening's news shows immediately labeled the "Space Traders," reveal why they wanted only black people or what plans they had for them should the United States be prepared to part with that or any other group of its citizens. The leader only reiterated to his still-dumbfounded audience that, in exchange for the treasure they had brought, they wanted to take away every American citizen categorized as black on birth certificate or other official identification. The Space Traders said they would wait sixteen days for a response to their offer. That is, on 17 January—the day when in that year the birthday of Martin Luther King, Jr., was to be observed—they would depart carrying with them every black man, woman, and child in the nation and leave behind untold treasure. Otherwise, the Space Traders' leader shrugged and glanced around—at the oil slick in the water, at the dead gulls on the beach, at the thick shadow of smog that obscured the sky on all but the windiest days. Then the visitors walked back over the waves and returned to their ships.³⁰

15 January. [Ultimately, the question was put to the American peo-

30. *Id.* at 158-60 (footnote omitted).

ple to decide, by way of a public referendum.] Many whites had, to their credit, been working day and night to defeat the amendment; but, as is the usual fate of minority rights when subjected to referenda or initiatives, the outcome was never really in doubt. The final vote tally confirmed the predictions. By 70 percent to 30 percent, American citizens voted to ratify the constitutional amendment that provided a legal basis for acceptance of the Space Traders' offer. . . .³¹

17 January. The last Martin Luther King holiday the nation would ever observe dawned on an extraordinary sight. In the night, the Space Traders had drawn their strange ships right up to the beaches and discharged their cargoes of gold, minerals, and machinery, leaving vast empty holds. Crowded on the beaches were the inductees, some twenty million silent black men, women, and children, including babes in arms. As the sun rose, the Space Traders directed them, first, to strip off all but a single undergarment; then, to line up; and finally, to enter those holds which yawned in the morning light like Milton's "darkness visible." The inductees looked fearfully behind them. But, on the dunes above the beaches, guns at the ready, stood U.S. guards. There was no escape, no alternative. Heads bowed, arms now linked by slender chains, black people left the New World as their forebears had arrived.³²

Thus, we can hail and support President Clinton's efforts to bring about social reform. We can even join in those efforts as long as we know that he and likely many others will not acknowledge it. The barriers to reform are far more serious than Republicans, comfortable with the status quo, and berating every social move as more "tax and spend," will acknowledge.

In the last month we have both commemorated the birthday of Dr. Martin Luther King, and hailed at his death, Justice Thurgood Marshall. Both evolved in their understanding of the true character of racial bias. We must act on their hard-earned insight as we carry on their efforts to define the true face of racism and better understand its real challenge.

31. *Id.* at 192-93 (footnote omitted).

32. *Id.* at 194.

