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## Shelby Steele and the Subtext of Our Developing Civil Rights Laws

Roy L. Brooks\*

### I.

Judges are sometimes influenced in their judicial decisions by the things they read off the bench as much as by the things they read on the bench. This may be especially true in civil rights cases, where the subtext of the cases is too complex and too “non-legal” to be adequately treated in briefs, during oral arguments, or in a footnote to an opinion. Reading Shelby Steele’s book, *The Content of Our Character: A New Vision of Race in America*,<sup>1</sup> which has been widely praised in the media, judges can easily come to the conclusion that the Supreme Court’s current approach to civil rights — generally one of retrenchment — is the proper way to go.<sup>2</sup>

In *The Content of Our Character*, Shelby Steele attempts to explain why so many African Americans are worse off today than they were prior to the civil rights triumphs of the 1960s. His explanation meanders but is essentially a psychological one: More than racism or discrimination, African Americans suffer from what Mr. Steele calls “inferiority anxiety,” i.e., self-doubt and a fear of competing with white Americans. While advancing this argument, Mr. Steele manages to denigrate just about everything sacred to African Americans: their heroes and leaders; African American self-help, identity, pride, culture, and soul; affirmative action; and even the use of the term “African American” as a self-describing nomenclature.<sup>3</sup> I shall, however, address only his central argument in this article.

Slavery and Jim Crow, according to Mr. Steele, have given African Americans a powerful sense of ambivalence about their abilities. This fear of failure was heightened when the racial climate changed from segregation to integration in the 1960s, requir-

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\* Yale University Law School, 1975, © Roy L. Brooks Professor of Law, University of Mn Law School.

1. Shelby Steele, *The Content of Our Character* (1990).

2. For a discussion of different models of judicial decision making, see Roy L. Brooks, *Rethinking the American Race Problem* 31-32, 183-84 (1990).

3. See, e.g., Steele, *supra* note 1, at 47, 55, 62, 63, 68-70, 108-9, 113-25, 156-57.

ing African Americans to compete toe-to-toe with whites. Thus, since the 1960s, African Americans have been experiencing "[i]ntegration shock (those shocks of racial doubt that come to blacks in integrated situations)."<sup>4</sup>

Rather than jettison this self-defeating self-perception, African Americans have consciously or unconsciously repressed it. They have buried it in racial identity, pride, and culture. Until inner doubt is exposed for what it is, until its racial pretexts are torn down, African Americans will, according to Mr. Steele, continue to hold back effort and avoid opportunities. And they will go on blaming their problems on white racism. Thus, Mr. Steele is able to characterize "black identity, painted in the colors of pride and culture" as "a repressive identity that generates a victimized self-image, curbs individualism and initiative, diminishes our sense of possibility, and contributes to our demoralization and inertia. It is a skin that needs shedding."<sup>5</sup>

African Americans who refuse to shed their "blackness," their group identity, wage a kind of guerrilla warfare on white America, Mr. Steele believes. Looking for an explanation for their failures, these African Americans search outward, rather than inward. They exaggerate white racism, manipulate white guilt, and then retreat into group innocence in numerous ways —self-segregated college dormitories, eating tables, student associations, and professional organizations. These small-scale harassing tactics have caused whites to suffer a degree of "racial anxiety" that often expresses itself in racist behavior or rhetoric.<sup>6</sup> "Racism," Mr. Steele states, "becomes a means of rejecting racial guilt, a way of showing that they [whites] are not, ultimately, racists."<sup>7</sup>

Mr. Steele gives a renewed and seductive voice to the old refrain of blame the victim. For that, conservatives will cheer him, while liberals will condemn him. But what about the analysis on which his conclusions are grounded? Is it solid? The answer, I shall argue, is no.

Mr. Steele is an English teacher by profession, but he employs pop psychology to support his conclusions. Indeed, there is very little scientific method to Mr. Steele's analysis. He externalizes his own racial paranoia; that is, he looks within himself to draw large-scale psychological and sociological propositions about African Americans, especially about their alleged inferiority anxi-

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4. *Id.* at 60. *See id.* at 28, 46, 48-53, 170, 173.

5. *Id.* at 55, 172. *See id.* at 45-47, 49-53.

6. *See id.* at 143.

7. *Id.* at 145.

ety.<sup>8</sup> He provides no hard evidence to buttress his bold assertions about white behavior and attitudes, particularly assertions concerning white racial anxiety and excuses for white racism.<sup>9</sup> His analysis, in short, is based almost entirely on anecdote and impression.

There are even deeper problems with Mr. Steele's analysis. His central argument — that African American identity protects, nurtures, and perpetuates self-doubt and a fear to compete with whites — contains two very dangerous and incorrect assumptions. The first is that African Americans in large part have equal opportunities, that the availability of employment, housing, and other opportunities are roughly the same for African Americans and white Americans.<sup>10</sup> The second assumption is that African American culture provides no antidote for inferiority anxiety and, thus, it is a limiting or impoverished culture.<sup>11</sup> I shall use the balance of this article to challenge these assumptions.

## II.

In a sense, the first assumption — that African Americans and whites have roughly equal opportunities — calls into question the validity of an important tenet on which judicial protection (and indeed civil rights legislation) for African Americans and other racial minorities is based.<sup>12</sup> In famous footnote 4 of the Supreme Court's 1938 decision in *United States v. Carolene Products Co.*,<sup>13</sup> the Court suggested that the political powerlessness of "discrete and insular minorities" warranted the most "exacting judicial scrutiny" of legislation deemed harmful to such minorities. By stating that African Americans now enjoy equal opportunities,

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8. See *supra* notes 3-5 and accompanying text.

9. See *supra* notes 5-7 and accompanying text.

10. See *supra* note 1, at 23-28, 39, 169-170, 174, 175.

11. See *id.* at 24-25, 28-30, 45-47, 49-53, 55, 139, 167, 170.

12. See, John Ely, *Democracy and Distrust* (1980); Louis Lusky, *By What Right?* (1975); Bruce Ackerman, *Beyond Carolene Products*, 98 Harv. L. Rev. 713 (1985); J.M. Balkin, *The Footnote*, 83 Nw. U.L. Rev. 275 (1989); Milner S. Ball, *Judicial Protection of Powerless Minorities*, 59 Iowa L. Rev. 1059 (1974); Lea Brilmayer, *Carolene, Conflicts and the Fate of the "Insider-Outsider"*, 134 U. Pa. L. Rev. 1291 (1986); Robert M. Cover, *The Origins of Judicial Activism in the Protection of Minorities*, 91 Yale L.J. 1287 (1982); Louis Lusky, *Footnote Redux: A Carolene Products Reminiscence*, 82 Colum. L. Rev. 1093 (1982); Lewis S. Powell Jr., *Carolene Products Revisited*, 82 Colum. L. Rev. 1087 (1982). My colleagues, Daniel Farber and Philip Frickey question whether footnote 4's rationale has been as important to judges as other commentators have suggested. See Daniel Farber & Philip Frickey, *Is Carolene Products Dead? Reflections on Affirmative Action and the Dynamics of Civil Rights Legislation*, 78 Calif. L. Rev. (1991).

13. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

Mr. Steele suggests that they are no longer a "discrete and insular" minority in a political, social, or economic sense.

Even if Mr. Steele's challenge to footnote 4 were correct, it would be wrong to argue for fewer civil rights laws. For the removal of laws that provide a measure of equal opportunity would return African Americans to the state of vulnerability envisioned in footnote 4. African Americans would have no governmental protections against even the most overt acts of racial discrimination and segregation.

Like others who challenge the current validity of footnote 4,<sup>14</sup> Mr. Steele in large part equates a decrease in racial prejudice with an increase in "equal" opportunities for African Americans. Although one could certainly challenge the notion that racial prejudice among individuals is declining,<sup>15</sup> there is clearly less government-sanctioned racism today than there was thirty, forty, or fifty years ago.<sup>16</sup> One cannot, however, use racism as the primary measure of the availability of opportunities for African Americans, as Mr. Steele seems to do.<sup>17</sup> Indeed, racism is not even the most important measure; racial discrimination is a far more important determinant of racial opportunities. For example, the racist employer who treats its African American and white employees the same (i.e., does not discriminate) provides equal employment opportunities for African Americans; whereas the nonracist employer whose facially neutral employment practices have a disproportionately negative impact on its African American employees (i.e., engages in institutional discrimination) does not provide equal employment opportunities.<sup>18</sup>

Thus, the distinction between racism and racial discrimination is crucial. Racism is a state of mind, defined in *Webster's Seventh New Collegiate Dictionary* as "a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race."<sup>19</sup> Discrimination, on the other hand, is a behavior, treatment, or con-

14. See, e.g., Ackerman, *supra* note 12.

15. See, e.g., Walter Leavy, *What's Behind the Resurgence of Racism in America?*, *Ebony*, April 1987, at 132-139; Janice C. Simpson, *Campus Barrier?: Black College Students Are Viewed as Victims of a Subtle Racism*, *Wall St. J.*, April 3, 1987, at 1, col. 1. See generally Harry Ashmore, *Hearts and Minds: The Anatomy of Racism from Roosevelt to Reagan* (1982).

16. See, e.g., Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-2000e-17 (1982); The Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3617 (1982), as amended by Act of September 13, 1988, Pub. L. No. 100-430, § 1-5, 102 Stat. 1619 (1988).

17. See, e.g., *supra* note 1, at 27.

18. See Roy L. Brooks, *The Structure of Individual Disparate Treatment Litigation After Hopkins*, 6 *Lab. L.J.* 215, 222-223 (1990).

19. *Webster's Seventh New Collegiate Dictionary* 704 (7th ed. 1966).

dition — social, economic or political — to which racism may or may not be an antecedent.<sup>20</sup> In assessing the availability of opportunities, the focus should be on discrimination rather than on racism.

Looking at racial discrimination, it is clear that Mr. Steele's assumption that African Americans enjoy roughly equal opportunities as whites is erroneous. This assumption deflates even when class division is taken into account. To illustrate, I shall compare middle-class African Americans with middle-class whites in the employment context and working-class African Americans with their white counterparts in the housing arena.<sup>21</sup>

Disparity between middle-class African Americans and middle-class whites in the incidence of racial discrimination in employment is manifested in several ways.<sup>22</sup> Among the most telling evidence is the percentage of employment discrimination cases that are brought by African American plaintiffs and the percentage of judgments won in those cases. A recent survey of employment discrimination cases reported by the federal courts in 1987 found seventy-seven cases dealt exclusively with racial discrimina-

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20. See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

21. For a more detailed analysis, *supra* note 2.

22. Establishing the existence of disproportionate employment discrimination can be a bit tricky for two reasons. First, the term *discrimination* is a term of art, that is, it has special legal definitions: "disparate treatment" (unfavorable treatment because of one's race or color) and "disparate impact" (racially neutral employment policies, practices, or procedures that have a disproportionately negative effect on a racial group). See *Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977).

Second, discrimination does not exist, at least not in a legal sense, until a court (and, really, the Supreme Court) says so. A judicial finding of discrimination, however, has an uncertain quality about it. The finding is empirical (a question of fact), analytical (a question of law applied to the facts), and policy-driven (a question of who bears the burden of proof). In addition, a lower court's finding of discrimination is subject to reversal either on direct appeal or years later when and if the issue comes before the court again in another case. Thus a careful review of judicial determinations (the "best" evidence available) is inconclusive evidence of the existence of even a legally controlled concept of discrimination.

Given the uncertainty inherent in judicial determinations, I consider *claims* of discrimination as well as *proofs* (judicial determinations) of discrimination. Claims include personal perceptions of discrimination, government agency filings of discrimination cases in federal courts, and private cases of discrimination filed and reported in the federal case reporters at all three federal levels — trial level (district courts), intermediate appellate level (circuit courts of appeal), and highest appellate level (Supreme Court).

Personal perceptions of discrimination cannot be ignored. Even if they are "wrong" or exaggerated, they are real to the perceiver. More importantly, these perceptions affect an African American's behavior and chances for success and personal happiness. Also, socio-psychological evidence shows that these perceptions are mostly accurate; see, e.g., Charles Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan. L. Rev. 317 (1987).

tion. Of those cases, sixty-five (slightly more than 84 percent) were filed by African American plaintiffs alone, compared to seven (9 percent) filed by white plaintiffs alone. (Five cases were filed by other minorities.) Virtually all of these cases involved middle-class jobs: teachers, chemists, engineers, journalists, physicians, business managers, and the like.<sup>23</sup>

These statistics, it should be noted, represent only *reported* cases, not the total number of employment discrimination cases actually filed in the district courts or appealed to the circuit courts or the Supreme Court in 1987, to say nothing of the claims that never made it to court in that year. District court judges usually report only cases deemed "significant."<sup>24</sup>

Although a small fraction of the employment discrimination cases appearing in 1987, the seventy-seven reported cases tend to undermine Mr. Steele's assumption that African Americans enjoy equal employment opportunities.<sup>25</sup> Given the fact that these cases survived the weeding-out process and were reported (indicating that the discrimination claims were not shams) they suggest that middle-class African Americans are far more likely — nine times more likely — to encounter racial discrimination on the job, and hence unequal employment opportunities, than are middle-class whites. Thus, the percentage of African American plaintiffs in these race-based employment discrimination cases provides substantial empirical evidence against Mr. Steele's assumption that African Americans and white Americans enjoy roughly equal employment opportunities.

If we take the analysis one step further and compare the number of victories by African American plaintiffs with the

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23. My research assistant, Lincoln B. Smith, and I conducted what might be called "juri-statistical" research of employment discrimination cases brought before the federal courts in 1987. We used Westlaw, a standard research tool in law, accessing its database of primary and secondary legal authorities through the "allfed" library (see Westlaw 1989 version). For a more detailed description and analysis of this research, see Lincoln B. Smith, *Juri-Statistical Methods in Legal Research* (December 1989) (typescript copy on file with Law & Inequality). See generally Westlaw: Introductory Guide to Legal Research (1988). Our survey revealed 1248 employment discrimination cases alleging discrimination on the basis of race, sex, religion, age, nation original, and other bases. See *infra* note 24.

24. It should also be noted that of the 1,248 employment discrimination cases (including sex, religion, age, national origin, and several other discriminatory bases as well as and in combination with race) filed in the district courts from July 1, 1986 to June 30, 1987 (the United States Courts Administrator's most relevant reporting period), only 11.7 percent reached trial. This is a relatively high percentage; on average, only 5 percent of all civil cases filed in the district courts during this period reached trial. *1987 Annual Report of the Director of the United States Courts*, table C4 at 208.

25. See *supra* text accompanying note 10.

number of victories by white plaintiffs, we get an even more definitive sense of the racial distribution of employment discrimination and, hence, employment opportunities. African American plaintiffs won fourteen of the cases they brought; white plaintiffs won none of their cases.<sup>26</sup>

Other legal reference sources support the claim that employment discrimination falls more heavily on African Americans than on whites. A perusal of all the federal employment discrimination cases reported between 1975 and 1989 reveals that a majority of cases involved African American plaintiffs and that far more African American plaintiffs won their cases than did whites.<sup>27</sup> The major employment discrimination casebooks are in accord.<sup>28</sup>

Litigation brought by the federal government's Equal Employment Opportunity Commission (EEOC) provides further evidence. EEOC annual reports briefly describe the lawsuits the commission is authorized to file in federal court as a plaintiff. Since at least 1980, the great majority of the race cases allege discrimination against African Americans or Hispanics.<sup>29</sup>

Racial wage gaps offer compelling evidence that racial discrimination faced by middle-class African Americans is more than an intermittent phenomenon. They provide at least prima facie proof that such discrimination is regular and systemic in places of middle-class employment, from corporations, law firms, law faculties, and newsrooms, to the motion picture and television industries.<sup>30</sup>

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26. See sources cited *supra* note 23.

27. See West's Federal Practice Digest Edition, 1975 to Date, Sec. 9.10 (1984). This case digest, consisting of several volumes, is updated weekly with advance sheets published by West.

28. For example, in Michael Zimmer, Charles Sullivan, and Richard Richards, *Cases and Materials on Employment Discrimination* (2d ed. 1988), the chapters dealing with the concept of discrimination (chaps. 1-4) report a few major federal cases involving a white plaintiff. Casebooks, of course, provide limited and purposeful case collections.

29. See, e.g., 1988 E.E.O.C. Ann. Rep. 23 (1989); 1983 E.E.O.C. Ann. Rep. 18 (1984).

30. On corporations, see *Social Issues—Progress Report on the Black Executive: The Top Spots Are Still Elusive*, *Business Week*, Feb. 20, 1984, at 104-105; Derek T. Dingle, *Will Black Managers Survive Corporate Downsizing?*, *Black Enterprise*, March 1987, at 49-55. On law firms, see Edward J. Burke, *3,700 Partners. 12 Are Black*, *Nat'l L.J.*, July 2, 1979, at 1; Smith, *The Invisible Lawyer*, *Barrister*, Fall 1981, at 42-49. On law faculties, see Derrick Bell, *The Price and Pain of Racial Perspective*, *Stan. L. Sch. J.*, May 9, 1986, at 5.

On the news media, see David Hatchett, *Blacks and the Mass Media*, *Crisis*, June/July 1989, at 18; Noah Griffin, *Broadcasting*, *Crisis*, June/July 1989, at 28; William A. Henry, III, *Double Jeopardy in the Newsroom: Despite Progress, Minority Journalists Face Stubborn Obstacles*, *Time*, Nov. 29, 1982, at 90; Richard M. Levine, *The Plight of Black Reporters: Why 'Unconscious Racism' Persists*, *TV Guide*,



Despite dramatic improvements in the occupational status of African Americans since the 1960s — mainly as the result of improvements in education and affirmative action<sup>31</sup> — a wage gap still exists between African American and white males of comparable ages and with comparable education and experience. For example, Farley and Allen,<sup>32</sup> in *The Color Line and the Quality of Life in America*, report that in 1979 young African American lawyers averaged about two dollars less per hour in earnings than young white lawyers.<sup>33</sup> Unfortunately, the authors do not indicate whether they took account of differences in type and size of law practice or even regional differences in the practice of law.

Other studies offer more cogent evidence of a racial wage gap. One, published by the Rand Corporation in 1986, found that African Americans earned twenty to thirty percent less than comparably educated whites in 1980.<sup>34</sup> Another, published by *Money* magazine in 1989, reported that this gap may have shrunk somewhat, to ten to twenty-six percent, in 1987, the latest figures available.<sup>35</sup> One important lesson to be drawn from these studies is that “*simply equalizing the number of years of schooling alone would [still] leave a sizable racial wage gap.*”<sup>36</sup>

Employment is simply one area of American life in which the opportunities for African Americans and whites of the same socioeconomic class are not evenly distributed. Housing provides yet another example.

The unequal distribution of housing opportunities in American society can be determined by focusing on housing discrimination within the American working class. Such housing

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July 25, 1981, at 22. On the motion picture and television industries, see Erwin Washington, *Racism and the Movie Industry*, *Crisis*, June/July 1989, at 34; Joy Horowitz, *Hollywood's Dirty Little Secret*, *American Visions*, Aug. 1989, at 16; Scott Hays, *Capturing the Black Experience*, *TV Guide*, Nov. 29, 1986, at 10.

31. See, e.g., James Smith and Finis Welch, *Closing the Gap: Forty Years of Economic Progress for Blacks* at xx-xxi, 85-91 (1986); Barbara R. Bergmann, *An Affirmative Look at Hiring Quotas*, *N.Y. Times*, Jan. 10, 1982, B3, col. 1. See also, Michael Wright and Caroline R. Herron, *The Nation: Affirmative Word from Washington*, *N.Y. Times*, Dec. 13, 1981, § 4 (Week in Review). An unpublished study by the U.S. Labor Department clearly documents the effectiveness of affirmative action; for discussion of the study see Robert Pear, *Study Says Affirmative Rule Expands Hiring of Minorities*, *N.Y. Times*, June 19, 1983, at A1; Mary Thornton, *Affirmative Action Found to Diversify Work Force*, *Wash. Post*, June 20, 1983, at A1.

32. Reynolds Farley and Walter Allen, *The Color Line and the Quality of Life in America* (1987).

33. *Id.* at 317

34. Smith and Welch, *supra* note 31, at 23.

35. See Walter Updegrave, *Personal Finance: Race and Money*, *Money*, Dec. 1989, at 152.

36. Smith and Welch, *supra* note 31, at 23 (emphasis added).

discrimination is evidenced in several ways. Although the great majority of the plaintiffs in housing cases filed in federal court since 1975 were African American or Hispanic,<sup>37</sup> the record of housing discrimination judgments is probably not the best source of information; in 1987, at least, the number of race-only housing discrimination cases decided by the federal courts was too small to be statistically significant.<sup>38</sup>

Evidence of housing discrimination is readily available, however, in the dozens of fair housing studies conducted periodically by local and regional offices of the Department of Housing and Urban Development (HUD).<sup>39</sup> These studies are designed to test the rental housing market for housing discrimination. A typical study begins with a telephone survey of advertised apartment vacancies, followed by a site survey conducted by both minority and white teams. Each test team usually consists of two or three "apartment hunters" (a couple and an individual), one of whom would normally be identified by telephone voice either as white or as an African American or other minority. Usually, after one team has inquired about a vacancy by telephone and made a follow-up visit to the site, the other team duplicates this procedure. The teams do not exchange information during testing.

In Boston, forty-two tests were conducted on eighteen apartment houses. The white team was invited to the apartment complex to see a unit in every test, whereas in thirty-one of the tests the minority team was told *not* to come to the apartments building, because no units were available. A Detroit study of eleven rental complexes, each of which was tested four times, yielded similar results: white teams were treated more favorably than minority teams in thirty of the forty-four tests. According to HUD, these and other studies conducted in cities throughout the nation "produced firm evidence" of housing discrimination.<sup>40</sup>

Housing discrimination today can also be more subtle. In fact, like much discrimination in the post-1960s, it often takes the form of complex racial discrimination, which is subtle in the sense

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37. West's Federal Practice Digest Edition, 1975 to Date, Civil Rights § 11.5. See *supra* note 23, at § 11.5.

38. African Americans were plaintiffs in eight of the fifteen available cases (53.33 percent) and won five of these cases (62.5 percent). There were no white-only plaintiffs. For further discussion see Juri-Statistical Methods in Legal Research, *supra* note 23.

39. The studies reported in the next several paragraphs are collected, along with others, in several sources. One of the best is Department of Housing and Urban Development, Fair Housing Enforcement Demonstration 23-28, and 37-44 (1983).

40. *Id.* at 23-28.

that it may be sophisticated, unconscious, or institutionalized and is sometimes accompanied by nonracial factors.<sup>41</sup> In contrast to those who suffer from what might be called the "Al Campanis syndrome,"<sup>42</sup> practitioners of complex racial discrimination are usually clever enough to hide racist feelings.

Housing officials have noted, for example, that African Americans "often encounter discrimination with a smile." As one official describes: "Many times people are denied [housing] and know they've been denied, but don't know it's discrimination. . . . The person may be very nice and may never directly say anything that leads [prospective tenants or homeowners] to know it's something about them . . . but [they are] told that a unit is not available."<sup>43</sup>

The lack of opportunities for African Americans in such areas as employment and housing are clear beyond peradventure. Had Mr. Steele bothered to look at the data, perhaps he would have been more circumspect in making assumptions about the availability of opportunities for African Americans.

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41. Overt acts of racism today are less common, although incidents such as those in Howard Beach, New York, and in Forsythe County, Georgia, should not be discounted. In December 1986, three African Americans who walked into a diner in the Howard Beach neighborhood of Queens to use a telephone were chased and beaten by a gang of whites. One of the African Americans was killed when his attackers forced him into the path of an oncoming car. In Forsythe County, in January of 1987, the Ku Klux Klan stoned a predominantly African American group marching to commemorate Dr. Martin Luther King's birthday. See Richard Stengel, *Black vs. White in Howard Beach*, Time, Jan. 5, 1987, at 48; *Fear of Blacks, Fear of Crime*, N.Y. Times, Dec. 28, 1986, sec. 4 (Week in Review), see also Walter Leavy, *What's Behind the Resurgence of Racism in America?*, Ebony, Apr. 1987, at 132-39; Samuel Freedman, *New York Race Tension is Rising Despite Gains*, N.Y. Times, March 29, 1987, sec. 1, col. 1 (city ed.); Janice Simpson, *Black College Students Are Viewed as Victims of a Subtle Racism*, Wall St. J., Apr. 3, 1987, sec. 1, at 1, col. 1; Ezra Bowen, *Wrong Message from Academe*, Time, Apr. 6, 1987, at 57; Joe Davidson, *Private Schools for Black Pupils Are Flourishing*, Wall St. J., Apr. 15, 1987, at 6, col. 3.

42. Al Campanis, a former major-league baseball player, was fired from his position as vice-president for player personnel for the Los Angeles Dodgers, the third-highest position in the organization, for the bush-league bigotry he displayed in a television interview on ABC's "Nightline" on April 6, 1987. When asked by anchor Ted Koppel why there were no African American managers, coaches, or owners in baseball, Campanis responded that African Americans may lack "some of the necessities" for holding managerial positions. After a "flabbergasted" Koppel gave him a chance to remove his foot from his mouth, Campanis stuck it in deeper by remarking—from out of left field—that "blacks are not good swimmers because they don't have the buoyancy." *Grapevine*, TV Guide, Apr. 18-24, 1987, at A-2 San Diego ed.; Sam McManis, *Campanis Fired in Wake of Racial Remarks*, L.A. Times, (San Diego ed.) Apr. 9, 1987, pt. 3, at 1, col. 1.

43. John DeMott, *The Racism Next Door*, Time, June 30, 1986, at 40.

## III.

Mr. Steele's second assumption — that African American identity or culture is limiting or impoverished because it cultivates rather than counteracts an inferiority complex among African Americans — is equally without merit. Mr. Steele's error in this regard is far more egregious than his first. He is an educated African American, and one would think that he would have taken the time to study and practice his own culture more faithfully than he has.<sup>44</sup> Had he taken the time, he would have discovered that African American culture is so replete with antidotes for racial inferiority — that the culture moves resolutely *against* inferiority — the clear solution to the problem of inferiority anxiety, or integration shock, is to embrace African American culture, rather than jettison it.

Moreover, had Mr. Steele investigated African American culture before writing his book, he would have seen evidence that African Americans today, perhaps due to the success of African American culture, do not in large part suffer from inferiority anxiety. The integration shock Mr. Steele posits may be his own. But the lack of material success many African Americans — including those farthest removed from mainstream society — experience in our “integrated” society may well be a function of limited opportunities and feelings of anger and despair.

Historians have grappled with the question of African American culture for decades. Some, like Stanley Elkins, have argued that the arduous ocean voyage during slavery robbed African Americans of their African culture.<sup>45</sup> Others have claimed that the slaves retained much of their African culture, which in turn developed into a distinct, autonomous African American culture.<sup>46</sup> Still others, such as C. Vann Woodward<sup>47</sup> and Mechal Sobel,<sup>48</sup> have modified this theory, arguing that the African American culture developed as (and perhaps continues to be) a shared culture—African-English in the 18th century and African-Southern thereafter.

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44. Mr. Steele makes a revealing confession: “We are the only black family in our suburban neighborhood . . . . For me to be among large numbers of blacks requires conscientiousness and a long car ride, and in truth, I have not been very conscientious lately.” *Supra* note 1, at 21.

45. See Stanley M. Elkins, *Slavery: A Problem in American Institutional and Intellectual Life* 89-98 (1959).

46. See, e.g., Charles E. Becknell, *Black Culture in America* (1987); Lawrence W. Levine, *Black Culture and Black Consciousness* (1977).

47. See C. Vann Woodward, *Origins of the New South* (1951).

48. See Mechal Sobel, *The World They Made Together: Black and White Values in Eighteenth-Century Virginia* 64-67, 165-67, 226-29 (1987).

To understand African American culture today, one must begin with the traditional definition of culture. Culture is defined as the sum of behaviors, values, and attitudes (in other words, customs) that differentiates one group of people from another. Culture is transmitted intergenerationally through stories, poems, songs, and other forms of written and spoken language; family structure, religious practices, and similar institutions; art, sculpture, architect, and other physical objects; and rituals, such as dance, holidays, and celebrations. Although a group can choose its own culture, many aspects of culture are often thrust upon a group by external conditions, such as by poverty and physical isolation from the dominant culture. Culture has "good" and "bad" elements. The work ethic is a positive cultural trait in the American dominant culture; racism and sexism are not.<sup>49</sup>

Based on this understanding of culture, one could reasonably conclude that there are several cultures within African American society, each of which is manifested roughly along class lines. For example, the African American underclass culture is distinctly different from that of the African American middle class, working class, and even other groups of poor African Americans (such as the working poor). In addition, some of the behaviors, values, and attitudes of the African American underclass culture — such as crime, drugs, and welfare — are clearly "bad" in the sense that they are dysfunctional in American society or are otherwise harmful to individuals in the group. Many of these customs are influenced by the underclass's isolation from mainstream society and by the paucity of opportunities available to members of the class. The group has no choice but to make its own opportunities in order to survive with some degree of happiness.<sup>50</sup>

African American culture is by no means a balkanized culture, however. There are certain customs among African Americans that transcend socioeconomic boundaries. Some of these cultural phenomena replicate those of the larger, mainstream American society. Others are quite unique to African Americans.

Both African Americans and whites value excellence, education, work, and the work ethic. Next to political values fundamental to the American way of life (such as liberty and democratic process), these values may be the most important shared or common cultural beliefs of African Americans and whites.

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49. See, e.g., Richard Schaefer, *Sociology* 63-83, 86, 182, 202, 609 (1989).

50. For further discussion of the African American underclass, see, e.g., William Wilson, *The Truly Disadvantaged: The Inner City, The Underclass, and Public Policy* (1987); and Brooks, *supra* note 2, at 106-30.

The African American desire for excellence is limited only by the opportunities foreclosed by racial discrimination. In sports and the arts, particularly music, where opportunities have traditionally been most available to African Americans, the drive toward excellence is most in evidence. African American artists and athletes — from James Brown, the “godfather of soul music,” Aretha Franklin, the “Queen of Soul,” to Julius Erving, “Dr. J” on the basketball court — have set high goals for themselves. And, along the way, they have transformed their crafts, raising them to higher levels. Rightfully, they bristle at the oft-stated remark that they relied on natural ability (connoting a degree of easy acquisition) rather than hard work to succeed.

On any given day, one can see the desire for excellence in the myriad endeavors undertaken by African Americans. Not only on the playgrounds, where youngsters strive to be Reggie Jackson or Michael Jordan, or in apartment houses or basements, where the future Janet and Michael Jacksons are developing their talents, but also in schools and in work places, can one find expressions of the desire for excellence among African Americans. Too often these high expectations are smothered, not by the fear to compete with whites, but by unnurturing integrated environments—the junior high school teacher who is quick to discipline African American students or place them in slow learning tracks;<sup>51</sup> the high school curriculum that ignores or trivializes the contributions of African Americans in literature and history;<sup>52</sup> or the supervisor who steers the young executive away from choice assignments so as not to upset clients who are not ready to work closely with an African American.<sup>53</sup>

Education has always been highly valued in African American society. Indeed, education is one of the most deeply rooted values in African American society. During slavery, when it was against the law to educate slaves and, in some states, free persons of color, African Americans risked their lives to educate themselves.<sup>54</sup> The legal struggle for equal educational opportunity that climaxed in the Supreme Court’s 1954 decision of *Brown v. Board*

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51. See *supra* note 2, at 75-76.

52. *Id.* at 77, 79.

53. *Id.* at 46-47.

54. See John Hope Franklin, *From Slavery to Freedom* 200-201 (1947); Philip S. Foner & Josephine F. Pacheco, *Three Who Dared* xiv-xv (1984); Carter G. Woodson, *The Education of the Negro Prior to 1861* at 24-29 (1919). See, e.g., *Education and the Rise of the New South* (Ronald K. Goodman & Arthur O. White eds. 1981); Thomas L. Webber, *Deep Like The Rivers: Education in the Slave Quarter Community, 1831-1865* (1978).

of Education,<sup>55</sup> and which in large part continues today, traces back to colonial America where Prince Hall and other African Americans in Boston complained persistently about the quality of education available to African American children.<sup>56</sup>

Clearly, some African American teenagers choose not to attend school or to take seriously the education offered in their schools. These individuals may view education as a white or "Uncle Tom" value, which simply attests to the degree to which some young African Americans have been miseducated about their heritage. Alternatively, they feel that the education they receive is so inferior to what is provided elsewhere in society that their best chance for succeeding is to use school time to pursue more productive activities (such as drug dealing). Or they may feel that the teaching, curriculum, and atmosphere in their schools are so un-supportive of and even hostile to their individual needs that to show up for classes is tantamount to receiving an emotional whipping several times a day.<sup>57</sup>

Like education, work and the work ethic are common values. They are values that are not held by white Americans alone. Nor are they only middle class or working class (African American or white) values. A recent study published by the Rand Corporation demonstrates that although society as a whole may view drug dealing as a form of criminal or recreational activity, adolescent African American males who live in poverty and deal in drugs view drug dealing as "an important career choice and major economic activity."<sup>58</sup> Drug dealing is what they do for a living. It is not simply their job (they view themselves as capitalists, not as laborers), it is their *business*. And despite the extraordinary risks involved in this occupation—jail, and even death—these African Americans continue to work seriously at building their businesses. Not unlike those formally educated in Harvard Business School principles of finance, they consciously seek to establish the optimum level of risk and return. As the report states:

Drug selling was widely perceived by respondents as both profitable and risky. . . . Perceptions of returns from drug selling were reasonably accurate. A high percentage of adolescents

55. 347 U.S. 483 (1954).

56. See *supra* note 2, at 75-76.

57. See, e.g., *Visions of a Better Way: A Black Appraisal of Public Schools* (S. Lightfoot ed. 1989); Jennifer Hochschild, *The New American Dilemma: Liberal Democracy and School Desegregation* (1984). See also *supra* text accompanying notes 50 and 51.

58. Peter Reuter, Robert MacCoun, & Patrick Murphy, *Money from Crime: A Study of the Economics of Drug Dealing in Washington, D.C.* xi (1990) [hereinafter "Rand Report"].

believed that earnings of \$1000 per week were readily obtainable; in fact, such earnings are available to those who work steadily in the drug trades (though most participants, by working only occasionally, earn much less). Persons who had sold five or more times saw the risks as lower and the returns as higher than did those who were nonsellers or who sold only very rarely. Nonetheless, even among sellers, 38 percent reported that a person selling drugs for a year would very likely be caught by the police, and half thought that such a person was very likely to be injured seriously or killed. Thus, it is not for lack of awareness of risks that so many are going into this criminal business.<sup>59</sup>

Another study, *Drug Abuse in the Inner City*, also underscores the business aspect of drug dealing: "The structure of drug-dealing organizations is complex and contains many roles with approximate equivalents in the legal economy."<sup>60</sup>

Although the work ethic is clearly manifested among those African Americans farthest removed from mainstream society, it is equally clear that they are in the wrong line of business, that the work they do is self-defeating in the long run. Why, then, do they do it, especially considering the risks involved? Is it because they are acting out a fear of failure or self-doubt when going up against whites? No, they must compete against white dealers and the white legal establishment—police, prosecutors, judges—to operate their businesses. Is it because they fear the challenges of integration in legitimate businesses? No, being the capitalists that they are and as adverse to risk as the next person, they would work in legitimate businesses if there were economic incentives. "Drug selling by inner-city youths has had major effects on low-income communities by offering substantial economic opportunities that undermine the willingness of such youths to work at *low-wage* legal jobs."<sup>61</sup> The Rand Report concurs: "A substantial percentage of those who sell drugs earn much more than they can earn from legitimate activities."<sup>62</sup> Drug dealing, in short, offers economic opportunities to low-income communities that cannot be found anywhere else.

Work and the work ethic are not newly acquired African American values. They are values African Americans have traditionally and unabashedly believed in and practiced for years. African American women have scrubbed floors, washed clothes, and

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59. *Id.* at x.

60. Bruce Johnson, Terry Williams, Kojo Dei, & Harry Sanabria, *Drug Abuse in the Inner City: Impact on Hard-Drug Users and the Community, Drugs and Crime 9* (Michael Tonry and James Wilson eds. 1990).

61. *Id.* (emphasis added).

62. Rand Report, *supra* note 57, at xi.



raised the children of whites from dawn to dusk for hundreds of years just to feed, clothe, and shelter their own children.<sup>63</sup> African American men, far from having an inborn aversion to work, have labored long hours at bone-breaking menial jobs. These good, decent men have often had to work under a constant barrage of racial insults that rip away at a man's dignity.<sup>64</sup>

Excellence, education, work, and the work ethic are common values; values that inhere in both the African American and white cultures. These values militate against the anti-self, inferiority anxiety. They speak to the African American individual in positive, uplifting, hopeful voices. Those who imbibe the messages are not likely to suffer inferiority anxiety.

This is not to say that African Americans do not suffer pangs of self-doubt or that some African Americans do not embrace self-destructive behaviors or attitudes (such as drug-dealing or dropping out of high school). But the self-doubt some experience, that all human beings experience on occasion, and the self-destructive acts that some undertake are not necessarily the products of inferiority anxiety. Anything from inadequate preparation for an assigned task to the uncertainty of a new job could produce self-doubt in an African American professional. The absence of opportunities in education, employment, or housing, a generalized anger against whites, or the act of expressing (*not* denying) one's self-importance could throw a young African American male into drug-dealing or some other form of self-destructive behavior. Mr. Steele fails to make these distinctions.

Mr. Steele also fails to recognize that many values or customs in African American society provide a powerful antidote to self-destruction, generalized self-doubt, and self-doubt caused by feelings of inferiority. These cultural phenomena are unique to the African American ethos.

Among the most prominent of these African American cultural traits are (1) adherence to certain survival skills for succeeding in a racist society—such as, the African American survival maxim, *soyez mefiant*, “masking,” the belief in personal sacrifice and perseverance, and the belief in society as “the System” or “the Man”; (2) reliance on the church for leadership and direction in both secular and spiritual matters; and (3) self-help.

African Americans have developed many techniques designed to help them survive in a racist society, whether integrated or segregated. The African American survival maxim is one of these

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63. See, e.g., Brooks, *supra* note 2, at 145.

64. *Id.*

techniques, and a very important one. It states as follows: You have the right to be angry about centuries of racial exploitation as well as present-day racism and racial discrimination, but you do not have the right to dwell on that anger, to feel guilty about these matters, to suffer low self-esteem, or to react in other self-destructive ways.<sup>65</sup>

The African American survival maxim is a psychological device that helps African Americans deal with mixed-emotions about "buying into" a racist society. Some African Americans feel defiance and anger about the inertia of discriminatory and racist traditions in our society and about the vista of grayness they see down the road. But there are also strong feelings going in the opposite direction. Among these are the desire to excel and the sense that to succumb to the negative emotions plays into the hands of the white racists, dishonors the sacrifices of African American mothers, fathers, and heroes, and is otherwise a self-defeating attitude. The African American survival maxim is a vindication of the positive emotions and a cure for self-doubt, whatever its cause, and self-destructive attitudes.

Mistrust of whites, or what the French call *soyez mefiant* (be mistrustful), is another important survival value taken from the African American experience. This value keeps African Americans at an arms-length distance from whites, and raises the issue of how close African American and white American friends can ever really become.

Leon Lewis reflects on mistrust in the following passage.

Everything is different when you're black. It's amazing how the quality of one's life can be changed by what might happen, by what you think might happen and by what other people think might happen.

Often I've been invited to cocktail parties, openings and other gatherings of a business or civic nature, and many times I've been the only black person in attendance. I can become very uncomfortable in that setting. My subconscious might start sending up smoke signals, and I think, say, "What if that lady standing near me should suddenly scream?" Every eye would be on me, and I could be in a world of trouble. Why should a thought like that enter my mind? The lady doesn't look as if she is about to scream, but it has happened and who is to say it will never happen again?<sup>66</sup>

It is instructive to contrast Lewis's situation with a similar one described by Mr. Steele in his book.

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65. See *id.* at 143-44.

66. Leon Lewis, *About Men: In On the Game*, N.Y. Times, Feb. 3, 1985, (Magazine), at 70.

It is a warm, windless California evening, and the dying light that covers the redbrick patio is tinted pale orange by the day's smog. Eight of us, not close friends, sit in lawn chairs sipping chardonnay. A black engineer and I (we had never met before) integrate the group. A psychologist is also among us, and her presence encourages a surprising openness. But not until well after the lovely twilight dinner has been served, when the sky has turned to deep black and the drinks have long since changed to scotch, does the subject of race spring awkwardly upon us. Out of nowhere the engineer announces, with a coloring of accusation in his voice, that it bothers him to send his daughter to a school where she is one of only three black children. "I didn't realize my ambition to get ahead would pull me into a world where my daughter would lose touch with her blackness," he says.

Over the course of the evening we have talked about money, past and present addictions, child abuse, even politics. Intimacies have been revealed, fears named. But this subject, race, sinks us into one of those shaming silences where eye contact terrorizes. Our host looks for something in the bottom of his glass. Two women stare into the black sky as if to locate the Big Dipper and point it out to us. Finally, the psychologist seems to gather herself for a challenge, but it is too late. "Oh, I'm sure she'll be just fine," says our hostess, rising from her chair. When she excuses herself to get the coffee, the psychologist and two sky gazers offer to help.

With four of us now gone, I am surprised to see the engineer still silently holding his ground. There is a willfulness in his eyes, an inner pride. He knows he has said something awkward, but he is determined not to give a damn. His unwavering eyes intimidate even me. At last the host's head snaps erect. He has an idea. "The hell with coffee," he says. "How about some of the smoothest brandy you've ever tasted?" An idea made exciting by the escape it offers. Gratefully, we follow him back into the house, quickly drink his brandy, and say our good-byes.<sup>67</sup>

Did the African American engineer exhibit an attitude of accusation against his white friends, as Mr. Steele claims,<sup>68</sup> or a cry for help to work through a problem over which many middle-class African Americans agonize everyday? Was the "death" of the party caused by an African American harassing whites or by an unsupportive nonresponse to a matter of deep concern to a friend?

Whatever the answers to these questions, one thing is clear: *soyez mefiant* would have saved the African American; for it teaches African Americans to keep their distance in tight situations. Better to keep your deepest concerns in a warm corner of

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67. See *supra* note 1, at 1-2.

68. *Id.* at 2-3.

your heart than to risk having them misunderstood or treated with cold indifference by your white friends.

"Masking" is closely related to *soyez mefiant*. The term comes from Ralph Ellison's book, *Invisible Man*,<sup>69</sup> but the concept goes back to slavery.<sup>70</sup> It asserts that African Americans must mask their true feelings around powerful whites. Showing your true face, your true feelings around whites in positions of authority only invites trouble. It may, for example, draw out white racism (e.g., feelings that you are acting uppity, that you are not staying in your place, that you are capable of causing "trouble") or induce other forms of white oppression.

Masking is an essential parenting technique in African American society. Two leading African American child psychiatrists, James P. Comer of Yale University and Alvin Poussaint of Harvard University, state that the African American child must be "trained to cope with white oppression." Parents must, among other things, pass on "to a growing child both the strengths of the old culture and the rules and techniques essential for successful adaptation in the modern world." These techniques include the art of being "practical as well as cunning," learning "how to win some sort of acceptance from belligerent whites," and even acquiring the habit of containing one's "aggression around whites while freely expressing it among blacks."<sup>71</sup>

Another survival value within African American society is the belief in personal sacrifice and struggle. Matriarchal sacrifice and struggle for children and family—such as, holding down two tiring jobs, one outside, the other inside, the home—is the basis for the deep respect African American mothers have in the culture. Often overlooked, African American men also have a tradition of sacrifice and struggle. They have been the fearless leaders of the race. Prince Hall, Nat Turner, Frederick Douglass, E. E. Just, Charles Houston, Paul Robeson, Martin Luther King, and countless other African American men have been the marines in the fight against racial injustice in our society—the first to go and the first to die. These sacrifices and struggles by both African American women and men were gallant. They were made for a noble cause (or "the Cause," as African Americans often say) and by individuals who have taken nothing for themselves but the hope for

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69. Ralph Ellison, *Invisible Man* (1952).

70. See, e.g., Gilbert Osofsky, *Puttin' on Ole Massa* (1969).

71. James Comer and Alvin Poussaint, *Black Child Care: How to Bring Up a Black Child in America — A Guide to Emotional and Psychological Development* 19-21, 22-23 (1975).

a better life for the next generation of African Americans.<sup>72</sup>

African Americans tend to have a negative or suspicious view of American society, often referred to as "the System" or "the Man" in African American society. Years of racial oppression have conditioned African Americans to see their relationship with American society similar to that of an abused child and an abusive parent. Society is unfair to African Americans; it is uncaring and leaves them vulnerable. African Americans are subordinated to whites. An old saying captures this idea: "When white folks get a cold, black folks get pneumonia."<sup>73</sup>

Langston Hughes's poem, "Mother to Son," reflects on "the System."

Well, son, I'll tell you:  
 Life for me ain't been no crystal stair.  
 It's had tacks in it,  
 And splinters,  
 And boards torn up,  
 And placed with no carpet on the floor—  
 Bare.  
 But all the time  
 I've been a-climbin' on,  
 And reachin' landin's,  
 And turnin' corners,  
 And sometimes goin' in the dark  
 Where there ain't been no light.  
 So boy, don't you turn back.  
 Don't you set down on the steps  
 'Cause you finds it's kinder hard.  
 Don't you fall now—  
 For I've still going', honey,  
 I've still climbin',  
 And life for me ain't been no crystal stair.<sup>74</sup>

"Mother to Son" is inspiring. It provides a powerful and elegant response to African American self-doubt and self-destructive attitudes.

Perhaps no other institution in African American society has provided a more constant countercheck to self-doubt or self-destructive attitudes, especially inferiority anxiety, than the African American church. The church plays a unique role in African American culture. African Americans have traditionally relied upon the church for wisdom and direction in the secular world. The church has never been simply a weekend spiritual retreat for African Americans. It has had an important and diurnal presence

72. See, e.g., Rethinking the American Race Problem, *supra* note 2, at Ch. 5.

73. N.Y. Times, Sept. 30, 1990, § 7 (Book Review), at 7.

74. Langston Hughes, *Mother to Son*, *The Weary Blues* 107 (1926).

in the lives of African Americans, supplying a steady stream of well-educated, middle-class African American intellectuals and activists who were just as interested in reforming society as in reforming the soul. Adam Clayton Powell, Vernon Johns, Martin Luther King, Jesse Jackson and countless other ministers, operating on a smaller scale, are known more for their social engineering than for their religious crusades, although none of these heroes would endeavor to separate the two.<sup>75</sup>

Surely, Mr. Steele would not claim that these African American heroes suffer from an inferiority complex, or integration shock. And just as surely, Mr. Steele could not deny that these heroes draw strength not only from their spirituality, but from their culture — African American culture.

Not only does Mr. Steele fail to recognize the medicinal value of hands-on African American self-help (an important cultural tradition) in fighting the diseases of self-doubt and self-destruction, he denounces any form of participatory self-help or assistance from middle-class African Americans. He would only support self-help by example, a kind of arm-chair version of self-help or self-help at a safe distance. Mr. Steele argues that it is counterproductive for middle-class African Americans to provide direct, personal assistance to their less fortunate brethren. Such self-help, he believes, undermines individuality and personal responsibility.<sup>76</sup>

Hands-on assistance from the more successful members of the race, however, is a major feature of African American culture. Ever since the founding of this country, African Americans who have "made it" have consistently believed that they should work closely with those who have not in order to support individual achievement, racial development, and a racially just society. "Beneficial societies," the Underground Railroad, and countless other self-help institutions were formed for just this purpose.<sup>77</sup> Even the civil rights movement, wherein the African American middle class engineered protest marches and sit-ins and created new literary voices, fits this mold. And even Mr. Steele's book, with its

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75. On the social role of the African American church *see, e.g.*, William L. Banks, *The Black Church in the U.S., Its Origin, Growth, Contribution, and Outlook* (1972); E. Franklin Frazier, *The Negro Church in America* (1964); Hart M. Nelsen and Anne Kusener Nelsen, *Black Church in the Sixties* (1975); James H. Cone, *For My People: Black Theology and the Black Church* (1984); Albert B. Cleage, Jr., *Black Christian Nationalism: New Directions for the Black Church* (1972); W.D. Weatherford, *American Churches and the Negro* (1957).

76. *See supra* note 1, at 108-09.

77. *See, e.g.*, Roy Brooks, *Re-packaging Noblesse Oblige*, *Am. Visions*, June 1987, at 12.

“middle class” formula for racial development, follows the tradition of middle-class involvement.

#### IV.

Mr. Steele argues that the major impediment to the advancement of African Americans today is not the enemy from without — racism, discrimination, inadequate civil rights protections — but the enemy from within — repressed feelings of racial inferiority and the fear to compete against whites. If judges and legislators believe Mr. Steele’s “expert” opinion — his inside account about the people for whom our civil rights laws are primarily designed — one is terrified to think about what may happen to civil rights in the 1990s. Based on Mr. Steele’s teachings, judges and legislators could easily conclude that any significant expansion or restoration of civil rights protections for African Americans would be futile and unnecessarily intrusive of the freedoms to which whites are entitled. Also, consistent with the Supreme Court’s current approach to civil rights, well-established protections may be cut back by narrow construction or even by reversal. There is, however, another side to the story Mr. Steele tells.

Some African Americans do in fact suffer from inferiority anxiety or integration shock. This cannot be denied, unless we are to ignore the residual effects of centuries of slavery and Jim Crow and the negative racial images projected by contemporary society. But how much of the low socioeconomic status of African Americans is caused by other internal conditions — a generalized anger against whites, a feeling that succeeding in mainstream society legitimizes a morally bankrupt, oppressive system, a deep belief that racism and discrimination can overpower individual effort no matter how sincere the effort, an ill-advised conviction that African Americans should sit on their hands and wait for the government to rescue them from racial inequality. The enemy from within exists, but Mr. Steele may have cornered the wrong suspect or only a minor criminal.

Although African Americans face internal problems, Mr. Steele gives too little attention to their external problems. He is too quick to excuse white racism and, more importantly, he assumes, without considering relevant legal and socioeconomic data, that African Americans have adequate opportunities to compete with whites. Yes, racism and discrimination are problems for African Americans, Mr. Steele concedes,<sup>78</sup> but he makes it clear that in

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78. See, e.g., *supra* note 1, at 48, 49, 169.

the end African Americans are their own worst enemies.<sup>79</sup>

Racism and racial discrimination cannot be given such short treatment. They directly affect an African American's chances for worldly success and happiness. When an African American is paid substantially less than a white person of comparable education and experience,<sup>80</sup> she then has less money to educate her children or to buy quality housing, and African Americans as a group have less money for business investments and other vehicles of wealth creation. No amount of individual effort can resolve the problem of racial discrimination. Governmental effort through the creation and enforcement of effective civil rights laws is needed.

Finally, his style of analysis — anecdote and impression — fails to uncover the antidotal value of African American culture (particularly the unique features of that culture) for the inner problems of African Americans, including the problem of inferiority anxiety. Mr. Steele does not know his own culture, and that is a tragedy. But it will be a greater tragedy if *The Content of Our Character* should become the subtext for our developing civil rights law.

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79. *E.g., id.* at 39, 49, 54, 61, 72, 106-07, 158, 165.

80. *See supra* text accompanying notes 26-31.







