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THE 1983 JAMES McCORMICK MITCHELL LECTURE

## A Hurdle Too High: Class-based Roadblocks to Racial Remediation

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PANELISTS

### *Marathonng for Racial Justice*

THE growing tide of serious runners in this country has added new, expressive phrases to the vocabulary. Long distance runners, for example, describe a feeling of exhaustion that can come suddenly after eighteen to twenty miles of a twenty-six mile marathon as "hitting the wall." The wall, as one runner explains it, is "that painful moment when the fuel tank is suddenly empty and the legs are capable only of a slow, anguished shuffle."<sup>5</sup>

Reviewing the complex of mostly non-overt but no less effective barriers that now frustrate the hopes and ambitions of black people, particularly black youth, one is tempted to borrow the marathoner's hitting-the-wall analogy in analyzing the barriers to further progress in the once-vibrant movement to end racial discrimination, a movement now brought to a virtual halt.

But does one dare? The runner, particularly in the latter

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State University of New York at Buffalo law professor Paul J. Spiegelman chaired the symposium. In his introductory remarks, Professor Spiegelman stated that Dean Bell and the panelists are well known for their efforts to articulate the plight of blacks in this country. The relative harmony of themes sounded by the participants serves to amplify seldom-heard views on the critical issues of present-day racism and to avoid the cacophony of more polarized discussions.

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5. J. FIXX, *THE COMPLETE BOOK OF RUNNING* 99 (1977).

stages of a competitive race, must struggle to overcome exhaustion induced by expenditures of energy required to cover long distances at a killing pace. The wall is a physical phenomenon, predictable, measurable, unavoidable. If the runner runs hard, the wall will eventually be there.

Perhaps this experience, translated from sports to racial reform, serves to explain the social roadblocks that have appeared throughout American history to halt civil rights campaigns. Do the exertions of blacks seeking nondiscriminatory participation in society spark anti-participatory reactions by whites that slow and finally reverse black gains?

Many runners, to pursue the possible connection, train hard and run hard, but simply are not destined to win any major races. Perhaps they are not the right size. Good runners tend to be startlingly thin, usually weighing no more than two pounds per inch of height.<sup>6</sup> Perhaps there may be a startlingly simple explanation for the inability of blacks as a group to make and hold gains in this society, an explanation which when all is said and done, is as final in terms of success as is body size for a runner.

Runners run for any number of reasons in addition to hoping to win races. Many run simply because they enjoy it. But blacks do not pursue racial equality merely for their health. They have been competing seriously in a history-long marathon, first for their freedom and then for the bias-free opportunity that seems to them the birthright of every American who is or can pass for a white person.

Their faith in the system, given what physicians call counter-indications, must be close to the perfect faith. Lives are lived in harmony with the Negro spiritual-derived freedom song that joyously reports, "I woke up this morning with my mind set on freedom." And yet racial gains and reverses fall into a cyclical pattern, an ebb and flow that, repeated over time, seems a physical phenomenon of nature, like the tides or the seasons. Set and unalterable.

The pattern is observable in particularly dramatic form in the efforts by blacks to achieve the lodestone of civil rights: equal justice under law. A major goal of my writing is to establish an approach or method of interpreting existing cases and statutes that

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6. *Id.* at 75.

might enable readers to test what usually is deemed “progress” and perhaps come to see—as I do—the cyclical nature of civil rights in ours, the world’s first legal system assertedly committed to recognition and protection of individual rights.

History may not be the perfect teacher, but the lessons it offers in American racial policies are stark, almost mechanical in their repetition and, on the whole, sufficiently discouraging to sober even the most optimistic. From the very first, economic concerns have been the driving force in this society. They, more than anything, led to the country’s break with England, and later were the major motivant for scuttling the Articles of Confederation and formulating the Constitution.

During the period, critical decisions on race were made that continue to have a strong influence in contemporary policymaking:

1) On large issues of economic concern, the individual rights of blacks are subordinated to property interests even if this means, as it did at the beginning, the recognition of slavery with all its attendant evils and irreconcilable conflicts with the nation’s credo regarding the worth of the individual.

2) America is a white country and blacks, particularly blacks as a group, are not entitled to the concern, resources, or even empathy that would be extended to whites similarly situated. Moreover, by reason of their lowly status, blacks can and do serve as the involuntary sacrifices in compromising serious differences between white groups. The loss by blacks helps the whites to bury the hatchet and reconcile their differences. The resolution of the slavery debate at the Constitutional Convention had this effect.

3) No matter how hard blacks push for the end of some racial injustice, reform is seldom forthcoming until white policymakers perceive some self-interest-based benefit for themselves or, occasionally, for other whites. When the reform is adopted, justice for blacks is given as the sole motivation, but even slavery was ended, first in the Northern states, and later across the country, because it was no longer in the interest of most whites to maintain it. Later racial reforms, while less dramatic illustrations, generally have followed a quite similar pattern.

4) Whites, particularly those in lower economic groups, believe that there is economic value, physical security, and even mental serenity in maintaining the mass of blacks—if not on the

bottom—then at some point measurably below themselves. Their total preoccupation with maintaining blacks at some subordinate level apparently blinds them to their exploitation by those policy-makers who promise, quite directly in earlier times and more obliquely today, to protect their superior status.

Unhappily for civil rights advocates, much of the activity occurring in the period since the second edition of *Race, Racism and American Law*<sup>7</sup> was published in mid-1980 has served to give substance to the generally pessimistic tone that some reviewers felt prevails in the book. Fatalism, though, comes easily and without invitation to any serious discussion of American race relations. And when history is blended with contemporary events, rosy optimism about either the present or the future is simply difficult to muster.

Quite appropriately, history is the perspective from which two thoughtful reviews of *Race, Racism* have been written.<sup>8</sup> The comments and particularly the criticisms they contain provide a worthwhile supplemental exposition to the introductory positions set out in my book. The views expressed by the reviewers, particularly those that question positions taken in *Race, Racism*, add several new dimensions to discussion and understanding of a subject that grows more, rather than less, complex with the passing years.

*Freeman—Race and Class: The Dilemma of Liberal Reform*

*Race, Racism* includes lengthy quotes of Professor Alan Freeman's insightful explanation of the differing perspectives on civil rights held by blacks and whites.<sup>9</sup> He acknowledges in his review that court decisions in the last several years have been far less helpful than the earlier precedent-making cases which set legal standards that enabled measurable gains even though, in retro-

7. D. BELL, *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980) [hereinafter *Race, Racism*].

8. Freeman, *Race and Class: The Dilemma of Liberal Reform* (Book Review), 90 *YALE L.J.* 1880 (1980); Wilhelm, *The Supreme Court: A Citadel for White Supremacy* (Book Review), 79 *MICH. L. REV.* 847 (1981).

9. Section 9.13.1 of Bell's work summarizes Freeman's victim/perpetrator analysis of perspectives on discrimination: Whereas blacks generally view themselves as the victims of a system of political and cultural discrimination, whites tend to view discrimination as a phenomenon of individual actions perpetrated on specific members of a target group. The legal system, in Freeman's view, reflects the latter perspective. See Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 *MINN. L. REV.* 1049, 1052-53 (1978).

spect, many of them promised more than they produced.<sup>10</sup> Freeman finds that despite the presence of doctrinal materials in *Race, Racism*, "the book in its dominant tone is impatient with legal doctrine and despairing," half-heartedly offering legal arguments which are unlikely ever to be adopted by the courts.<sup>11</sup> He predicts that some readers will find the book's emphasis cynical while others will see it as realistic. But he wonders: "What is one supposed to do in teaching" a course on this material?<sup>12</sup>

He explains his dilemma. Students enrolling in a civil rights course are usually those most committed to seeking social justice through law. "Yet," he says, "if the truth seems so hopeless and dismal, and the generation of more legal argument so pointless, then one is dealing with something other than the usual law school enterprise of helping students to fashion a measure of craft, skill, and insight to deal with needs and hopes of social life."<sup>13</sup>

There is, Freeman feels, a need to pierce the veil of presuppositions upon which civil rights doctrine relies. That is:

—a world in which autonomous and responsive law, shared values such as individualism and color-blindness, monolithic whiteness or blackness rather than class-structured societal divisions, and gradual linear civil rights progress are assumed.<sup>14</sup>

Freeman would close the gap between "the mythical world of legal doctrine and the real world in history":<sup>15</sup>

—a world where law is more "responsive to power than to powerlessness, where values are contradictory, conflicting, and bound up with patterns of domination and hierarchy, where class relationships exist along side racial ones, and where cyclical failure is as plausible as linear progress."<sup>16</sup>

Freeman sees a number of possible strategies:

*Strategy One.* "Playing the Game." Self-consciously manipulate legal doctrine to achieve whatever can be gained that will improve the lives of some, but without any real hope that structural change

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10. Freeman, *supra* note 8, at 1881-82.

11. *Id.* at 1886.

12. *Id.*

13. *Id.*

14. *Id.* at 1887.

15. *Id.*

16. *Id.*

can come through litigation and legislation under the existing political structure.<sup>17</sup>

*Strategy Two.* "Politicizing the Game." Extending Strategy One to maximize the politicization of the doctrinal activity—that is, "pushing the legal forms for explicitly political reasons to reveal contradictions and limits, promote public awareness, and even win cases."<sup>18</sup>

But Freeman finds even these strategies preserve what he calls the "myths of liberal reform."<sup>19</sup> Neither obviates the need to immerse civil rights doctrine in social and historical reality. He then admits that "it is one thing to call for—and show the need for—the historicization of civil rights law, and quite another to write the history."<sup>20</sup> In the balance of his review, Professor Freeman attempts to provide "a concrete historical account to replace what is exposed as inadequate."<sup>21</sup> *Race, Racism*, Freeman finds, fails to provide a "coherent account that would place civil rights law in its historical and social setting."<sup>22</sup> He notes that at many points the question of race is permitted to intersect with that of class. He cites as examples textual questions as to whether "'the capitalistic class structure [could] maintain itself without the scapegoat role which blacks have filled for 300 years.'" <sup>23</sup> Freeman also refers to several variants of my oft-expressed maxim that "blacks will never get free until poor whites get smart." By this statement, I refer to the fact that ruling-class whites, not blacks, maintain most whites in a subordinate status.<sup>24</sup> Admittedly, my references to the intersections of race and class were not intended to be definitive, but rather were offered as a motivant for broadening the discussion of race that too frequently focuses on black victims of

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 1887-88.

22. *Id.* at 1888.

23. *Id.* (quoting *Race, Racism*, *supra* note 7, at 51). Freeman counts 27 references of this type. See *Race, Racism supra* note 7, at 7, 51, 64, 66, 85-86, 93, 267, 399, 435, 437, 438, 439, 443, 454-56, 457, 492, 530, 536, 553-54, 556, 565, 589, 589-91, 611-12, 632-33, 636, 656-65.

24. See, e.g., the concern that referenda on civil rights issues are damaging to blacks because "lower-class whites will often support referenda advancing middle-class values, even to the detriment of their own economic interests," thereby isolating blacks from "potential class allies." *Race, Racism, supra* note 7, at 492.

racism and assumes harm that they have suffered was the result of the total insensitivity if not downright perfidy of whites. But from the Founding Fathers' decision to sanction slavery in the Constitution to the present day, economics has been a strong factor, perhaps the crucial factor, in policymaking involving race.

Freeman, though, would supplement and strengthen my tentative suggestions of a race/class connection in American racial issues. He finds some help in Professor George Fredrickson's recently published comparative history of race relations in the United States and South Africa from the seventeenth to the twentieth century.<sup>25</sup> The history of racial policies in both countries, Professor Fredrickson found, was affected in a major way by the tensions or divisions within the white social structure. "The degradation of non-whites frequently served to bind together the white population, or some segment of it, to create a sense of community or solidarity that could become a way of life and not simply a cover for economic exploitation."<sup>26</sup> With regard to the American South, Fredrickson reaches conclusions quite like those of historians quoted in chapter one of *Race, Racism*. He finds that the fact that most whites were not slaveholders was a critical factor in explaining the rigidity of racial distinctions because "racial privilege could and did serve as a compensation for class disadvantage."<sup>27</sup>

He also observes that the failure of the First Reconstruction could have been the product of the conflict between the Radical Republicans' middle-class idealism and their concern about the prospect of class conflict brought out by the emergent labor movement. The conflict, he suggests, revealed the ideological limitations of their egalitarianism. Freeman then quotes Fredrickson's perspective about the relationship between industrialism and racial discrimination which he suggests, and I agree, is applicable to modern racial policymaking:

My assumption is that economic discrimination along racial lines would not have developed and persisted in the industrial era to the extent that it did if it had not served in some way the material interests of industrial capitalists and skilled white workers. But it is difficult to account for the specific nature

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25. G. FREDRICKSON, *WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY* (1981).

26. *Id.* at 70.

27. *Id.* at 87.



of racial caste or exclusion in industry without reference to pre-existing beliefs about the character, capacity, and social status of nonwhites. Furthermore, political and legal developments of a partially autonomous nature could impinge on the economic order in such a way as to influence significantly, for better or worse, the life chances of blacks or other nonwhites in the industrial arena.<sup>28</sup>

Freeman finds Fredrickson's explanation far more convincing than the conventional Marxist analyses of racism that

make the mistake of *either* collapsing racism into a problem of class domination generally, as if it were nothing more than an incidental consequence of evolving capitalism (thereby denying its experiential reality), *or* treating racism as a mode of oppression so autonomous from capitalist social and economic relationships that it can be rectified by aiming at a target of oppressors that appears as (classless?) "white society."<sup>29</sup>

Contrary to traditional Marxist theories, Freeman believes that "the goal of civil rights law is to offer a credible measure of tangible progress without in any way disturbing class structure generally."<sup>30</sup> Thus, the interests of ruling classes will be advanced by "bourgeoisifying" a sufficient number of minority people in order to transform those people into active and visible legitimators of the underlying and basically unchanged social structure. Freeman would agree with William J. Wilson<sup>31</sup> and Thomas Sowell<sup>32</sup> that some anti-discrimination strategies like affirmative action contrib-

28. *Id.* at 205, quoted in Freeman, *supra* note 8, at 1890.

29. Freeman, *supra* note 8, at 1891. Freeman describes a "reserve army of labor" view under which racism serves to hold down wages generally by offering capitalists a ready market of cheap unskilled labor. He sees some truth in this, but questions whether the "reserve army" theory either serves or is even consistent with contemporary capitalism where an unskilled work force is a liability and even a threat to the modern corporate state. Similarly, the notion that racism serves to divide the working class, to create internal conflicts and antagonisms that frustrate the creation of genuine class consciousness essential to racial reform, seems incomplete to Freeman. Again, he agrees that racism may have served this function. Nevertheless, he feels that the theory that racism precludes the development of genuine class consciousness cannot account entirely for the historical development of racism as a unique form of oppression, nor can it reveal why racism is needed given the widespread adherence to belief systems such as the liberal tradition and liberal notions such as equality of opportunity, and given media-induced consumerism and occasional bouts of hysterical nationalism. *Id.* at 1892.

30. *Id.* at 1894. This view accords with those asserted by Robert Allen who finds a similarity in the post-*Brown* elevation of some blacks in this country to the policy of creating class divisions among the subjugated people utilized by the European colonizers in Africa. See *Race, Racism*, *supra* note 7, at 662-63 (citing R. ALLEN, *BLACK AWAKENING IN CAPITALIST AMERICA* 2-20 (1969)).

31. See W. WILSON, *THE DECLINING SIGNIFICANCE OF RACE* (1978).

32. See T. SOWELL, *BLACK EDUCATION: MYTHS AND TRAGEDIES* (1972).

ute to this result by improving the lot of a small number of middle-class minorities while consigning vast numbers of lower-class minority people to perhaps permanent underclass status.

The question for Freeman is not whether racism is different from class divisions generally (he concedes that it is), but whether "anything significant can be done about the admittedly unique problems of racism without paying attention to class structure and the forces that maintain it." He believes that a measurable portion of American society has committed itself to remedying the historical problem of race, but has made not even the pretense of such a commitment with respect to class.

Freeman's quote is significant. It offers an explanation why so many sincerely advanced measures intended to reduce discrimination are diluted in their implementation, and why even though large portions of the white population benefit directly or indirectly from the removal of barriers harmful to blacks, such as too-rigid college admissions standards, they remain at least ambivalent about such reforms and, as with affirmative action in the work place, tend to be quite hostile to them. In the application of some reforms, Freeman views opposition by whites as understandable as well as predictable.

Thus, for Freeman, there is no question but that the disappointed white worker who loses out to a minority under an affirmative action policy is a class victim. Inevitably, he warns, the effort to remedy racism in a class society with a stagnant or dwindling economy means that burdens of displacement will fall heavily on powerless whites. For this reason, he agrees with history-based conclusions reached in *Race, Racism* and by Professor Fredrickson that the assault on racism under such circumstances will come to a halt, lest it unleash too much rage or expose the reality of class relationships.

He concludes, with hardly more optimism than he found in *Race, Racism*: "There is nothing particularly radical about the goal of ending racial discrimination. The goal would be achieved if nonwhites were stratified across American society in percentages similar to whites. The class structure would remain intact." He wonders, though, with me, "whether even that modest, liberal reformist goal is at all achievable without a radical confrontation with the truth of American history and society, past and pre-

sent."<sup>33</sup> For us both, the question of "whether" is of no more interest than those of "when" and "how."

*Willhelm—The Supreme Court: A Citadel for White Supremacy*

Despite the premature victory celebrations by liberals in the mid-1960s, racism-free, egalitarian society has not arrived, and, Professor Willhelm asserts, the growing disparity in the statistical indicia of economic status between whites and blacks provides bottom-line proof that the advent of racial equality remains a future event. The question is: Why has not the generally accepted doctrine of equal opportunity served to liberate blacks?<sup>34</sup> In response, Willhelm first rejects as unsatisfactory and unsupported the self-interest motivations suggested in *Race, Racism*.<sup>35</sup> He questions the importance of Cold War fears that segregation at home would hinder the country's efforts to win the allegiance of nonwhite peoples emerging from colonial rule. World opinion had little impact on this government's conduct in the war in Vietnam. Nor, in his view, can we explain the equality doctrine by any proof that whites were responding to blacks' heightened expectations, based on their participation in World War II, to make the world safe for democracy. America entered World War I with similar slogans, and yet there was a resurgence of racism after the conflict. Willhelm claims a heightened demand for labor, and not an ideological commitment to democracy, prompted wartime concessions to blacks. And, he adds, while it generally is believed that segregation inhibited the industrialization of the South, materials in the second edition of *Race, Racism* document that racial segregation prevailed in the North throughout industrialization.

Why did the country adopt the ideology of equality if not as a concession to blacks? Willhelm says that "changes in the economy made the ideology of Equality an appropriate tool to preserve White privilege, just as earlier changes had led to the demise of slavery and the rise of segregation."<sup>36</sup> He does not see this transformation as conscious any more than was the transformation from slavery to segregation. Rather, it occurred gradually. Even

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33. Freeman, *supra* note 8, at 1895.

34. See generally Willhelm, *supra* note 8.

35. See *Race, Racism*, *supra* note 7, at 435-38 (white self-interest as a support for Brown).

36. Willhelm, *supra* note 8, at 850.

so, he cites the continued segregation of most schools, housing, and the racial disparities in income as indications that make it apparent that "constitutional Equality is merely another form of White domination."

Like Professor Freeman, Willhelm believes that while slavery and segregation rested on the need to exploit black labor, whites now produce wealth through the exploitation of technology, and, not needing blacks, feel free to offer them "equal opportunity." In support of his charge that blacks are increasingly being disgorged from the labor force as surplusage in the modern, computerized economy, Willhelm cites figures that the percentage of black males out of the labor market altogether—those neither working nor seeking work—doubled from twenty percent in the mid-sixties to the present forty percent.<sup>37</sup> *Race, Racism*, according to Willhelm, does not go far enough in pointing out that constitutional decisions have not produced socioeconomic improvements for blacks and have not eradicated racism, which remains "embedded in the fabric of American Society . . . ." The Constitution itself is a racist document, and the very idea of equal treatment for blacks and whites is racist because it fails to take account of over three hundred years of racist oppression. Blacks remain under the domination of whites. Only the doctrines which sanction that domination have changed.

Willhelm explains that in the plantation economy the Protestant ethic which legitimated the worldly accumulation of wealth also sanctioned slavery. In the industrial era, social Darwinism sanctioned the right of the rich to their wealth and also justified the segregation of blacks. Today, neither religion nor social Darwinism is sufficient to justify the continued degradation of blacks.

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37. *Id.* at 851 (citing Malabre, *Recession Hits Blacks Harder than Whites, Widening the Pay Gap*, Wall St. J., Aug. 21, 1980, at 1, col. 1). The failure of blacks to gain education for skilled, technological jobs does not explain the figures, Willhelm maintains. Unemployment for blacks relative to whites increases with level of education.

Among persons aged sixteen through twenty-four in 1979, 16.4 percent of White high school dropouts were unemployed while the figure for Blacks stood at 31.6 percent for a Black-to-White ratio of 1.9; 8.5 percent of White high school graduates were unemployed in contrast to 21.3 percent of Blacks, for a ratio of 2.5; and unemployment among White college graduates amounted to 4 percent while Black college graduates had an unemployment rate of 17.1, for a ratio of 4.3.

Willhelm, *supra* note 8, at 851 (citing Stephens, *Joblessness Worsens Among Black Youths*, Wall St. J., Sept. 8, 1980, at 1, col. 1).

This status must be sanctioned on the constitutional ground of equality.

This myth of equality within a context of oppression simply provides a veneer for more oppression. The redundancy of blacks in the labor market and the growing socioeconomic gap causes Willhelm to have fears about the continued existence of black life in America. With no powerful whites willing to protect them because of their value as labor, predictable future ghetto uprisings could provide the excuse for some police and other officials to eliminate blacks who resist military rule over the ghetto. Military retaliation, Willhelm warns, will not recognize class distinctions. All blacks, regardless of class, will be the enemy.

Thus, Professor Willhelm shares, on the basis of different data, the pessimism permeating Professor Freeman's analysis of racism in America. One wonders whether the picture for the future may not be brightened by a massive utilization of the vote by blacks, as has occurred in Chicago, Philadelphia, and several other cities where blacks have been elected mayors and become a major force in local politics. Professor Willhelm would likely dampen any incipient optimism based on these developments with a brief history lesson covering the political power blacks gained and lost during the Reconstruction Era more than a century ago.

### *Hidden Victories Amidst the Setbacks*

Despite their gloomy cast, I accept readily Professors Freeman and Willhelm's forecasts of continued American racism, and willingly incorporate their insightful rationales into my own. Certainly, the civil rights actions of courts, legislatures, and executives in the period since publication of the Freeman and Willhelm book reviews do little to support claims that their bleak assessments are excessive.

There is a continued willingness on the part of courts to grant rather narrow relief on the presentation of clear proof of discrimination. And while racial bias in a myriad of more or less subtle forms continues to flourish, the barriers of class and past discrimination, rendered invisible by the seemingly liberating but actually stifling policy of equality, have become insurmountable for literally millions of blacks.

More recent income and unemployment statistics than those

cited by Professor Willhelm<sup>38</sup> indicate that the poverty rate for blacks is nearly three times the rate for whites, and the unemployment rate for blacks is more than twice the rate for whites.<sup>39</sup> Nor is Willhelm's fear that blacks may not survive in America extravagant.<sup>40</sup> Quite similar concerns are reflected in a report issued by a group of thirty prominent black scholars who met in Tarrytown, New York, in 1981 and 1982 to explore the vast array of problems black Americans face in the closing decades of the twentieth century.<sup>41</sup> The black academics found that "[a]ccumulated social and economic pressures, feeding upon the longstanding effects of American racism, have produced a special crisis for the black family today."<sup>42</sup>

In support of their concern, the Tarrytown group noted that a tradition of strong black families derived from African societies had survived and provided a continuing source of strength for blacks through slavery, legal segregation, and hostile government and societal policies, practices, and attitudes. But in two decades, a combination of forces has weakened a family fabric that until 1960 had enabled a remarkable seventy-five percent of black families to include both husband and wife. Today, forty-eight percent of black families with related children under eighteen are headed by women and half of all black children under eighteen live in female-headed households where, in 1979, the median income was only \$6,610 compared with close to \$20,000 for all families.<sup>43</sup>

Significantly, the Tarrytown meeting participants would agree with the Freeman and Willhelm assessments of the impact of class on black status. They see at least three societies in the country: "the mainstream, the assimilated minorities, and the excluded." These three societies, the group found, "are separate and unequal and the disparities among them threaten to destroy the national fabric."<sup>44</sup> The excluded are seen as a relatively new species, made up of the poor, unemployed, or underemployed,

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38. Willhelm, *supra* note 8, at 848, 851.

39. Pear, *Don't Count Economic Rights As Civil Rights, Some Argue*, N.Y. Times, Sept. 18, 1983, at E5.

40. See Willhelm, *supra* note 8, at 853.

41. JOINT CENTER FOR POLITICAL STUDIES, A POLICY FRAMEWORK FOR RACIAL JUSTICE (1983). The author was a member of the Tarrytown group.

42. *Id.* at 9.

43. *Id.* at 10.

44. *Id.* at 1.

with blacks disproportionately represented because of historic problems of discrimination. The exploitation of this group as society's scapegoat is also noted. "For far too long the poor, the black, the brown, and the powerless have been blamed for America's social and economic problems. The fundamental truth is that far from causing the problems, they have been particularly victimized by them."<sup>45</sup>

In the light of this additional reinforcement which, of course, is far from exhaustive, Professor Freeman's pedagogical concern remains. "What is one supposed to do in teaching this course?" Freeman concludes correctly that he must tell the truth. But his question takes on a more urgent and universal tone when posed by literally millions of hopelessly downtrodden and vigorously middle-class blacks as well who now wonder: "How do we accept this truth and live our lives in this society?" Blacks, from the beginning, have served faithfully and, when given a chance, performed extraordinary achievements for a nation which, had there been a choice, would have chosen others and, if given a chance, will accept the achievement and neglect the achievers.

Out of roadblocks of this magnitude, coming as they do when those still struggling toward racial equality have already been on their cyclical track too long, easy formulations for further progress are not easily devised. There have been no easy avenues to salvation through America's ongoing racial wasteland. Even the hard ways have not guaranteed progress or the meaningful hope of progress. Freeman and Willhelm, for example, note the pessimistic tone of *Race, Racism*, but in effect are critical that it does not cover other areas of racial policy that would render it more pessimistic than it is.

It is, though, not the goal of *Race, Racism* to provide a social formula that would solve either all or any of the racial issues that beset the country. Rather, its goal is to review those issues in all their political and economic dimensions, and from that vantage point enable lawyers and lay people to determine where we might go from here. The goal for us, as it was for all those back to the slavery era who labored and sacrificed for freedom, was not to guarantee an end to racism, but to work forcefully toward that end.

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45. *Id.*

Optimism for American blacks comes not from a predictably bleak future but from a praiseworthy past in which the misery of lowly status has been transcended to reveal the essence of both God and man. Our future is bleak, but it is bright indeed when compared with that of our slave forebears who were chattels, property, mere things to be bought and sold—allowed to eat, sleep, live or die at the whim of those who owned them.

And yet they who had nothing to live for, survived, and left as a heritage the Negro Spiritual, a song form that has provided the roots for most of American music. They took the religion of the slave masters, and found in it a comfort and a spiritual dimension that those who enslaved them had never experienced.

Alan Freeman is right. Idealistic law students enrolled in a civil rights course must be taught the truth. Except that an important part of that truth is the unspoken assumption and acceptance that the roadblocks to racial remediation are as much a part of this country's nature as are tides in the oceans and the seasons to the earth. One struggles against them, but does not really expect triumph in any final sense. The challenge, the occasional success, and even the predictable setback, are in the struggle itself.

#### THE PANELISTS RESPOND

At the conclusion of Dean Bell's paper, Professors Freeman, Fordham, and Willhelm offered the following comments.

#### PROFESSOR ALAN FREEMAN:

Derrick quite accurately summarized my views on this subject. And because I am anxious to hear Monroe Fordham's new perspective, I will simply say that the gist of my review of Derrick's book was that there is something deeply wrong with the legally conceived approach to dealing with the race discrimination problem in that it attacks the problem from the outside.

We need to look at how legal questions become legal questions. For any number of historical reasons, the dominant mode of civil rights reform became litigation. This commitment by the NAACP seemed to triumph in the *Brown* decision, and it certainly cast the civil rights effort in mainly legalistic terms for the next thirty years. And that, I think, is the problem.

I think that by conceiving the problem of racial discrimina-



tion in legalistic terms, many belief systems are held constant that should not be: belief systems associated with the liberal tradition like individualism, vested rights, privacy, autonomy—in fact, all the glorious, supposedly shared, American values.

But it is simply nonsense to say that those are shared American values and that there is at bottom a commitment in this country to equality. Moreover (and this is the subject of my next work) I think the whole idea of equality of opportunity is a mammoth fraud.

I am being outrageous as usual, but I think that all the belief systems which are held constant, touted as basic American values, and internalized in people, especially lower class whites, interfere with progress with respect to racism. It is only through the dismembering of all structures associated with those belief systems and the exposing of them as the frauds that they are, showing how they serve to rationalize power relationships as they are, that we can uncover the real nature of economics in this society.

That is the political mission for the next decade. There has to be a coalition of lower-class whites and blacks to solve the economic problem. And the belief structures we accept without thinking are the real impediment to any genuine steps in the process from here on.

Unthinking adherence to these belief structures is as much a barrier for those who would benefit from a new society as it is for those who seem content with things as they are. I think that is why the failure to build meaningful coalitions has been the long-term curse of the American left. Even those of us on the left of American politics are prisoners of the ideology we are trying to overcome—the ideology of self-interested, competitive atoms seeking what they want as against the worth of everybody else. It leads to groups fighting among themselves over what little there is to get.

I think some form of class-based, but not class-collapsing, coalition is the path to significant improvement in the fight against racism in the next ten to twenty years. I don't think any other plan can deliver, but the problem is how to get together. It is easy to rally around a slogan like, "Hate Reagan! Hate Reagan!" But what happens when you get rid of him? We go back to fighting with one another.

We can also unite under the banners of abstract general slo-

gans that don't mean anything; when we do this we invariably debate the meaning of the slogans and end up in disagreement and, eventually, in disarray. I think it would be great to have a coalition of the oppressed, but there is a problem agreeing on what you mean by oppressed.

Teaching these subjects leads me to believe that each category of people subject to oppression in our history and culture has a unique history. It is wrong to demean the experience of a particular group by lumping all oppression together. And yet it has been fashionable in leftist discussions to do lists: race, class, sex—as if each of these were the same. You don't want to leave anyone out, but none of the categories benefits by this kind of inclusion.

To a Marxist, it is rather crazy to hear someone talk about classism as a form of discrimination. But with the racism-classism-sexism jargon now in use, it would appear that classism is some form of prejudice. And in any traditional Marxist format, that makes no sense. My point is that capitalist class relationships are inordinate obstacles to meaningful social reform. That does not mean you embrace class as the only problem worth talking about because that demeans other people's experiences.

My work in this area has been mainly in the context of the black American experience and racism. I think any coalition has to respect the uniqueness of racial experience without demeaning it and to build togetherness from that point. The same is true of other groups you want to involve. We must allow for different perceptions based on differing backgrounds of oppressed group members.

The needs and goals of white middle-class women and lower-class black and white women are different. You can't simply talk about women's issues and ignore those differences. The same is true of black aspirations. The needs and goals of the black middle class which has largely succeeded as a result of *Brown* are very different from the needs and goals of the huge black underclass whose predicament Sidney describes so eloquently, and whose perceptions, as Monroe suggests, may be far different than the perceptions of those who examine them from the outside.

We must talk to one another, constitute our coalition by really listening to one another, and not simply posture as group spokespeople and negotiate demands. It will lead only to collapse

and more failure.

PROFESSOR MONROE FORDHAM:

One of the themes that's common to all of the presentations under discussion here today is that the prognosis for black elevation in America is not very good. In fact, that theme is fairly common in many of the recent writings of social scientists and journalists on topics relating to race relations, civil rights, and the overall outlook for Afro-Americans.

On the economic side, the statistics as well as the literature pertaining to the economic prospects for black Americans is anything but optimistic. In the area of education for blacks, most of the literature, whether it be for or against pursuing racial balance as a solution to the problem of unequal education, does not offer much hope for improvement in inner-city schools anytime soon.

The various writers who voice pessimism about the future of black uplift advance a variety of theories in support of that view: class-based roadblocks, increasing indifference of white Americans to black concerns, inability or unwillingness on the part of government to make the necessary commitment to guarantee equality of opportunity, revival of blatant racism, et cetera. Whatever the rationale, the conclusion is often the same. As Professor Bell stated in his presentation, "fatalism . . . comes easily and without invitation to any serious discussion of American race relations."

The pessimism and fatalism that one often encounters among scholars on the subject of race relations and equality of opportunity for blacks is especially interesting when one juxtaposes that outlook with the prospects expressed by so-called grass-roots level blacks. In spite of numerous setbacks since the decade of the 1960s—the high unemployment, the problems of education in inner-city schools, and the myriad other obstacles—there is a pervasive sense of optimism around the black community today. In fact, many in the community feel that the race is on the threshold of a giant leap forward. The recent political victories in Chicago, Philadelphia, and other cities represent both a cause and an effect of that optimism. The political developments among blacks during recent years suggests not only optimism about the future but also a renewed faith in the workability of the system.

In the recent primary election campaign in Buffalo, one could find large numbers of persons who had fallen through the so-

called "safety net" out conducting voter registration drives and canvassing neighborhoods for black candidates. Some of the angry and alienated young men and women of two decades ago are now some of the leading advocates of black political involvement. That kind of activity implies a belief that success can be achieved through such efforts.

Many blacks feel that the downturn of events during the Nixon and Reagan years may be a blessing in disguise because those policies, they believe, have forced the race closer to unity and a collective sense of purpose. There is a genuine feeling that black political power and collective work and responsibility can effect real changes in the black condition.

I should point out that no attempt is being made here to evaluate the long- or short-term consequences of the trends described above. The question of whether political action holds the key to black elevation is problematic. The important point here is that the black community itself is optimistic about its future, while a large body of social science research is much more negative and fatalistic on that question. I believe the reason for that disparity says a lot about the methodology of social science research pertaining to Afro-Americans.

If one were to pose the hypothetical question, "How shall the race be elevated in America?," to black leaders and spokesmen from the last three centuries, and attempt to find the answers to that question in the speeches, writings, and sermons of those leaders and spokesmen, one could place those answers in two broad categories. On the one hand, there would be the responses that advocated a strategy of attacking the outside obstacles that stand in the way of upward mobility. Historically those obstacles have included slavery, racial prejudice, segregation laws, class-based roadblocks, and many other forms of legal and extra-legal proscription. In every period of Afro-American history, there have been those leaders who contended that the best strategy for achieving racial elevation was to attack, and attempt to wipe out, the outside obstacles. On the other hand, there have always been black spokesmen who believed that a campaign against the major obstacles might take generations before success was achieved. In that category, there were those who even placed racial prejudice and its ominous effects in the same category as sin (sin will always be with us.) They believed that, like sin, racial prejudice would be

a permanent reality in American life. Blacks who fall into this broad category were not pessimistic or fatalistic, however; they believed that the race could be elevated in spite of the obstacles. Thus, they tended to ignore the obstacles and concentrated instead on strategies that were more internal in their emphasis.

The Booker T. Washington approach would certainly fall into this category. For example, the end of the nineteenth century was a period when lynchings were at an all-time high, and blacks were pondering the long-term meaning of the *Plessy* decision. Blacks had been abandoned by the courts, the government, both political parties, and the liberal reformers. This was indeed an era that one historian called the "nadir" of the Afro-American experience.

Yet, at that very time, a Bookerite would say that the greatest danger facing the race was the danger that blacks would not take advantage of all the opportunities that were available to them. Thus, in spite of the obstacles, Washington saw a bright future for the race if it would concentrate on self-help and internal efforts. The numerous generations of black nationalists and other advocates of self-help would show only minimal interest in attacking the external obstacles to racial elevation. This was not due to any pessimism or fatalism, but to a profound belief that the future of the race lay in its own hands. It was this belief that led the black poet, Don L. Lee, to declare in the 1960s that black people can be free anytime they decide that they want to be free. Part of the historical problem, from the nationalist point of view, has been mobilizing the race to collective action.

Historically, black spokesmen from the two broad approaches to the racial elevation question have had to vie with each other for support in the larger black community. Generally, the black community has been pragmatic in the way it has responded to those appeals. During periods when there were high hopes for successful attacks on legal proscriptions, racism, and other outside obstacles to racial elevation, the most popular black community leaders were those who advocated attacking the obstacles to racial elevation.

On the other hand, during times and circumstances when the obstacles seemed immovable, leaders from the internal emphasis or self-help school usually moved to the forefront. For example, during the late nineteenth century and the so-called nadir of the

black American experience, advocates of self-help, black exodus, and accommodation moved to the forefront as the most popular black leaders.

At this point, I should pause again to state that my purpose here is not to evaluate one strategy as opposed to the other. All of what I've said was merely to provide some background to explain my response to the initial question: How is it that social scientists can be so pessimistic and fatalistic about the prospects of black elevation in America, while black expectations and outlook reflect hope and optimism?

My response, in brief, is that social scientists, in their studies of topics relating to black elevation, almost always focus their attention on external obstacles. Given the fact that those obstacles are deeply rooted in the fabric of American life, pessimism concerning the outlook for dramatic short-term change is often justified. Consequently, the social scientist who examines the external obstacles to black elevation may logically conclude that because of economic conditions, class-based roadblocks, a conservative governmental structure, or other similar factors, there is little hope for blacks in America. This is especially true if, at a particular time, the obstacles seem unmovable.

But social scientists in this case have examined only one dimension of the question. They have examined the resistance to change. They have not given ample attention to a major part of the force *for* change. The vibrant and creative energies, beliefs, cultural tradition, and institutions that operate internally within the black community are often scarcely considered at all.

Historically, black progress in America has not been solely a product of the demise of racial prejudice, or of fundamental institutional changes in America, or of an elimination of the major outside obstacles to black progress. Most observers would agree that the number of outside obstacles confronting blacks have not changed dramatically over time—sure, slavery is no longer legal, but basically the number of outside obstacles to black progress has remained fairly constant. Certainly, however, the degree of intensity of those obstacles has varied with social, economic, and political conditions in America. A close analysis will show that blacks themselves have been active participants and agents for change. In fact, the race has played a major role in shaping its historical destiny in America.

Ideally, the prospects for black progress in America should be arrived at by giving careful consideration to the forces that act to make change happen as well as the outside obstacles or resistance to change. The former factor is not often reflected in the research of social scientists.

In spite of their one-dimensional focus, I feel that the studies that project racism, class-based roadblocks, and other similar obstacles to black uplift as more or less unmovable forces are extremely useful in the struggle for black uplift. At critical times, such studies set off warnings to the black community and trigger the mechanism that facilitates the shift into the self-help mode of thinking.

Professor Willhelm's book, *Who Needs the Negro?*,<sup>46</sup> alerts blacks to the seriousness of the economic dangers that lay ahead in capitalist America. The book has caused many thoughtful black leaders to reflect on the question of whether past strategies will be adequate and appropriate for the obstacles that they will encounter in the next quarter century. The legal history presented by Professor Bell in his book, *Race, Racism and American Law*, can be seen as a subtle warning that it might be unwise for blacks to stake all of their future hopes on American law and court actions. Thus, both works help to shape the ongoing dialogue between black spokesmen who favor the campaign against outside obstacles, and those who believe that blacks must act creatively and aggressively to shape their own destinies even in the face of those obstacles.

SIDNEY M. WILLHELM:

*Who's Blocking the Roadways?*

There are four basic economic systems in America. There is the economy of greed—otherwise known as capitalism; there is the economy of extortion—otherwise known as government; there is the economy of the exploited—otherwise known as labor; and there is the economy of uselessness—otherwise known as blacks.

Although highly oversimplified for presentation here, it is necessary to understand the relationships among these four economic concerns to comprehend the fate of blacks in a white

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46. S. WILLHELM, *WHO NEEDS THE NEGRO?* (1970).

America.<sup>47</sup> Each possesses its very own economic imperative: capitalism requires profits for its accumulation of wealth; government demands huge sums of financing through its power to tax; labor demands wages; and blacks must cope with the fact that increasingly they confront the economics of redundancy.

There is no questioning but that the economic aspirations both of labor and black people are subordinate to the economic domination of both capitalists and government. This is easily demonstrated by the fact that a mere 7.5 percent of American families own about 60 percent of all the individually held wealth in this nation, while 25 percent of families own absolutely no wealth at all for they are, indeed, penniless.<sup>48</sup>

The government's commanding position is reflected by the supreme power to levy taxes; the federal government spent 10 percent of the gross national product in 1929, whereas now it accounts for about 35 percent<sup>49</sup> through a taxation system which increasingly besets the individual income earner rather than the 7 percent holders of great wealth.<sup>50</sup> When any group can accumulate and then hold 60 percent of all privately held wealth at the expense of the remaining 93 percent, and when government readily extorts huge sums from wages and earnings rather than from the wealth of a limited few, then we have the powerful few dictating to the powerless many.

The powerlessness of blacks is all too painfully apparent. Whereas during the seventies black income relative to white income peaked at 64 percent,<sup>51</sup> today that ratio stands at 55 percent.<sup>52</sup> In 1974, 31.4 percent of blacks were in poverty;<sup>53</sup> as of 1982, 35.6 percent of all blacks fell below the official poverty line.<sup>54</sup> Black income relative to white income has retreated back to

47. The reader is invited, for a more complete analysis, to consult my work, S. WILHELM, *BLACK IN A WHITE AMERICA* (1983).

48. See Harrington, *Post-Industrial Society and the Welfare State*, 23 *DISSENT* 244, 248 (1976) (citing figures compiled by Lester Thurow to illustrate family wealth in 1962).

49. Pett, *Can Anyone Control the Government?*, Buffalo News, June 14, 1981, at E1.

50. *Who Bears the Burden?*, Dollars & Sense, July-Aug. 1981, at 12.

51. B. WATTENBERG, *THE REAL AMERICA* 125 (1974).

52. *Black Help for the Black Family*, N.Y. Times, Sept. 27, 1983, at A32, col. 1 [hereinafter *Black Help*].

53. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS (SPECIAL STUDIES), SERIES P-23, NO. 80, *THE SOCIAL AND ECONOMIC STATUS OF THE BLACK POPULATION IN THE UNITED STATES: AN HISTORICAL VIEW, 1790-1978*, at 49 (1979).

54. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS:



the level of 1960;<sup>55</sup> blacks have lost twenty years of effort. These figures confirm the economic deterioration of blacks.

Women head 41 percent of black families without the presence of a husband—an increase of nearly one-third since 1970. During this same time span black divorce was double the white rate, unmarried women gave birth to half of all black children, and, consequently, the percentage of black children residing within a one-parent household zoomed upward from 32 percent to 49 percent.<sup>56</sup> Considering these statistics, the poverty statistics for blacks are not surprising.

A most basic economic trend about blacks is that of unemployment. The official figures show that in 1948 black unemployment stood at 5.9 percent, rose to 11 percent during 1962, and is presently (September 1983) 19 percent.<sup>57</sup> In mid-1978, the widest gap between black and white unemployment appeared—revealing, once again, the *growing* disparity between blacks and whites. While the official rate hovers around 19 percent, actual black unemployment is at least 25 percent.<sup>58</sup> Still, the most revealing statistic is not to be detected by examining either income, employment, or unemployment; none of these figures reveal the ultimate fate of blacks in a white America. What is without question for the future of blacks is the entire removal of blacks from the workforce itself. The percentage of black males out of the labor market altogether—those not working or seeking jobs—doubled from the mid-sixties to 1980, leaping from 20 to 40 percent.<sup>59</sup> Within the black male workforce itself, *one-half over the age of sixteen are without work*.<sup>60</sup> The combination of *non*employment and *un*employment means nothing less than an economic ca-

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CONSUMER INCOME, SERIES P-60, No. 140, MONEY, INCOME AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE UNITED STATES 3 (1983).

55. *Black Help*, *supra* note 52, at A32, col. 1.

56. *Changing Family Patterns Could Hurt Black Progress*, *Bus. Wk.*, Oct. 3, 1983, at 14. See also *Black Help*, *supra* note 52, at A32, col. 1.

57. McCarthy, *Unemployment Rate Fell to 9.3% in September*, *Buffalo News*, Oct. 7, 1983, at 1.

58. This 25% rate is my own calculation based upon discouraged workers, part-time employment, and unemployment figures.

59. These percentages, which necessarily are approximations, are supported by the statistics cited in the following sources: *King's Dream: How It Stands 20 Years Later*, U.S. NEWS & WORLD REP., Aug. 29, 1983, at 47; *Blacks in America: A Statistical Profile*, N.Y. Times, Aug. 28, 1983, at 30, col. 4; Malabre, *supra* note 37, at 1, 14.

60. *Black Help*, *supra* note 52, at A32, col. 1.

lamiy crashing down upon blacks. That calamity is not only real but ridiculously simple to comprehend.

What is taking place with regard to black people is the empirical fact that black labor is no longer necessary to economic needs of capitalism or for the state economy; black people are increasingly becoming superfluous within the private and public economies. Without economic salvation there can be no possibility of black survival in this country; the socio-economic deterioration of blacks will continue and will do so to the point of extermination. Any effort to reverse this *inevitable* outcome will have to take the form of violent confrontation; to respond violently in a nation so dedicated to white supremacy over a black minority is an open invitation to extermination.<sup>61</sup>

These statistics make it clear that the economic road to black redemption may be a dead end. Bell's book, perhaps unwittingly, makes it clear that the political road to black survival does not offer more promise. As Bell impeccably concludes, despite the civil rights legislation and progressive rulings by the courts, the overall experience of the twentieth century reinforces the conclusion drawn from the experience of the previous century that there is little reason to place much faith in the law.<sup>62</sup>

It is Bell's thesis—a thesis which he upholds with remarkable competence—that the fate of blacks is sealed to the economic system's needs at any moment in time. Blacks, he argues, gain only as a consequence of wanting whatever might be beneficial to whites; their needs will be fulfilled *only* as blacks themselves fulfill *white* needs. But Bell fails to tell us what those white needs are, and he is most uncertain *whose needs among the whites* are being fulfilled. Blacks, he tells us, "are more likely to obtain relief for even acknowledged racial injustice when that relief also serves, directly or indirectly, to further ends which policymakers perceive are in the best interests of the country."<sup>63</sup> This assertion means: (1) needs determine the fate of blacks; and (2) such needs exist among whites and will be articulated by white *policymakers* acting "in the best interests of the *country*."

But needs don't exist in the abstract, and they are not deter-

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61. See S. WILLHELM, *supra* note 46, at 270-327.

62. *Race, Racism*, *supra* note 7, at 39.

63. *Id.* at 7.

mined by policymakers who promote national interests. Needs come forth out of the requirements of capitalism for accumulating profits, and out of the state seeking to sustain its own imperatives as well as enforcing the economic interests of private enterprise. Needs, therefore, are imposed by a political-economic elite—by the 7.5 percent of white Americans holding 60 percent of the property and the infinitesimal percentage of Americans who are the powerbrokers deciding state policy.<sup>64</sup>

What Bell unmistakably and so perceptively demonstrates is the gerrymandering of judicial rulings to comply with white needs. He seemingly does not realize that white needs for blacks reflect *property* interests entrenched in corporate America and immersed in the state apparatus. And what are these white needs?

As the evidence already presented clearly shows, *there is no white need for blacks*. Private enterprise no longer depends upon blacks to supply labor for its accumulation of wealth; profits cannot be derived by exploiting black labor as in the past but are now obtained through technological production of goods and services. Government has no need for blacks; blacks are perceived as an economic burden which must be carried on the welfare rolls. Black labor is no longer a cost factor for business, and government is determined to keep blacks from becoming an economic liability in its budgetary processes.

Few interpreters of the black experience with white America reach this conclusion. They do not simply because they fail to perceive and accept the economic disengagement of black labor made economically feasible by the rise of computer technology. The economics of automation initiates *an entirely new economic phenomenon*: an economy of uselessness. Labor, by definition, is no longer required as the computer becomes a tool of production. Blacks are the first collective to undergo the consequence of this new technological revolution. This development has been predictable, and it has been anticipated by those whose analyses incorporate the fact of economic disengagement caused by automation.<sup>65</sup>

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64. In addition to the authorities cited *supra* notes 48-50 and accompanying text, see Zeitlin, *Who Owns America?*, in *CAPITALIST SOCIETY: READINGS FOR A CRITICAL SOCIOLOGY* 59-67 (R. Quinney ed. 1979). See also T. BLAIR, *RETREAT TO THE GHETTO: THE END OF A DREAM?* 1-5 (1977).

65. At least one analyst does perceive the expendability of blacks as a result of the economics of automation. See S. YETTE, *THE CHOICE: THE ISSUE OF BLACK SURVIVAL IN*

Anyone failing to understand that the economics of uselessness created out of permanent unemployment generates an entirely new phenomenon will never comprehend the black fate. We are now experiencing a truly momentous historical era, not only for understanding black/white relations but for grasping the future for us all. It would have been absolutely beyond economic possibility for the planter's class (the economic elite during the era of slavery), to dismiss half their male slaves from the workforce when cotton was king; likewise, it would have been impossible to cast aside half the black adult males during segregation without destroying private enterprise; yet it will be impossible for contemporary capitalism to retain black labor. It would have been unthinkable for the state to restrain blacks from its armed forces in conducting all its major military engagements, yet the state allowed for the economic deterioration of blacks for the very first time during a major conflict—namely, the Vietnam War. Simply put, black bodies are expendable, both commercially and militarily.

A people removed from labor processes and beset by family disruption as severe as that experienced by blacks cannot prevail. What was so apparent in the sixties as a possibility became a certainty in the seventies and has now become a reality in the eighties. This black reality, however, is but a weathervane; it is only a matter of time until whites, too, move decisively into the economics of uselessness as the technological onslaught of automation casts its doom more broadly. For, as a congressional report concludes, the "alarming transfer of wealth," reflected by vast profit-taking by U.S. industries, is reducing the status of America to that of a lesser-developed country.<sup>66</sup>

The fate of blacks will not be resolved through the conventional channels of electoral politics leading to the replacement of white by black politicians.<sup>67</sup> The struggle yet to emerge will most likely be political, but it will be expressed as the politics of despair.<sup>68</sup> It is not feasible to believe otherwise, given the economics

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AMERICA (1971).

66. *U.S. Economy "Stifling,"* Nat'l Cath. Rep., Dec. 4, 1981, at 4, citing assessments of statistics compiled in H.R. Doc. No. 390, 97th Cong., 1st Sess. 11 (1981).

67. For a critique of the view that electoral politics can provide for black progress, see S. WILLHELM, *supra* note 47, at 60-72.

68. "Guerrilla warfare," writes Robert G. Colodny, "is the supreme manifestation of

of uselessness and the flourishing of white racism. I would therefore take issue with Bell's assertion that "[o]ur future is bleak, but it is bright indeed when compared with that of our slave forebears who were chattels, property, mere things to be bought and sold . . . ."<sup>69</sup> Being property, blacks could at least, like any article of property, prevail because they were economically valuable to whites; now, being *valueless*, their very survival stands in jeopardy. Still, Bell is surely correct in defining optimism as the ability of blacks to keep struggling. For that, black struggle is itself the victory.

Perhaps, under these circumstances, the solemn admonition from Dylan Thomas might do well: Do not go gentle into that good night.

#### THE PANELISTS' RESPONSES TO QUESTIONS FROM THE AUDIENCE

*Question:* Given Professor Willhelm's dire outlook for the future of blacks in America, would you agree with his suggestion that slaves were better off than free blacks are at the present time?

*Fordham:* If you accept his premise, which I am not sure I do, that blacks are going to be expendable in the economic system, then it follows logically. It follows because previously blacks had powerful whites running interference for them, insuring that they would work, albeit as slaves. Contemporary blacks do not have that advantage. But I don't accept Professor Willhelm's premise.

*Bell:* I agree with Sidney Willhelm about the deep devastation of unemployment, and some must think that even slavery provided regular work. But the current statistics, while dramatically awful, should not cause us to lose sight of the fact that they have been bad before. As to Sidney's frightening conclusion that blacks are ripe for elimination now that their labor is no longer needed, I would remind him that blacks also serve as the society's involuntary sacrifice on those all-too-rare occasions when whites awaken to the fact that they, too, are being exploited in this land of supposed equal opportunity.

So, blacks, even when there is no work for many of them,

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the politics of despair." See Colodny, *The Search for Alternatives*, Nat'l Guardian, July 10, 1965, at 7. For a more complete development of the politics of despair *vis-a-vis* blacks, see S. WILLHELM, *supra* note 46, at 270-327.

69. See Dean Bell's concluding remarks, *supra* (page 15, last sentence of third-to-last paragraph).

serve an important societal function. In fact, you might say that if blacks did not exist, whites would have invented them.

*Voice from audience:* They did invent them!

*Question:* What is the function of racism in a modern society?

*Willhelm:* There is a big debate over the autonomy of racism. Some argue that it is a reflection of economic forces, a component of the capitalistic system. Others contend that it is a force in its own right and not a reflection of the dynamics of capitalism.

Clearly, it has to be dealt with in the capitalist system, and if the economy is now forcing blacks out, racism is a force that will push whites to exterminate blacks. In that event, blacks will be like the Indians, free only to go to their ghettos, reside there, and not resist. They will then be tolerated until, of course, some sort of economic resource is discovered on the ghetto-reservations.

*Question:* What will the role of Afro-Americans be in the future class/race struggle?

*Bell:* I think that if there is ever to be full empowerment of blacks in this society, it will come out of not easily predictable factors. Perhaps the emerging Third World will finally become a factor. I can say that as in the past, whites with power will do what all empowered people do, which is whatever is necessary to maintain their position, or give up only as much of it as they must to insure their survival.

The improvement that some blacks are realizing today in higher education is the result of blacks before us insisting that life would be neither normal nor nice unless there was some change in the patterns of admission and hiring. The changes that came were not permanent. There are fewer blacks on American college campuses today than four or five years ago. But those opportunities which we insist on, and are willing to take risks for, will be available.

It is not enough that civil rights lawyers win this point or another in court. Unless those they represent are willing to insist on obtaining even court-ordered opportunities, those opportunities will be withheld, or granted only in token or symbolic portions.

Whether or not blacks ever really overcome is not a problem for me. I think all of us are, in a sense, like Moses, perhaps destined never to see the promised land, but committed to working toward that goal. Moses is a revered biblical figure not because he reached his goal. He didn't. We remember Moses because he

never quit working toward that goal.

*Question:* Don't you do black people and their history a serious disservice by taking so passive an approach toward their progress? You seem to adopt an almost religious passivity by urging us to accept what is, hope for outside events that will influence whites out of self-interest to grant blacks what blacks have been working for over time. And instead of freedom, you offer us Moses.

*Bell:* I hope you are not hearing passivity in my remarks. First, I do not think Moses was passive. He revolted against the Egyptians who had adopted him, took the side of his people and after many trials, led them out of bondage. And, as you recall, the Israelites were hardly easy folks to lead. They were forever complaining, worrying, worshipping the nearest idol, and showing anything but faith in Moses and his God.

We are like Moses in that the struggle away from America's racial bondage is not enlightened by a clear path toward where we should go. Most of us do not want simply the chance to emulate the lifestyles and outlooks of the whites who have oppressed us these many years. We do not, in short, want to be integrated in the society as it is. So, we are moving toward something we cannot even visualize.

It is difficult to visualize what the ideal American society will be. It is particularly difficult to imagine how we are going to change conditioning which from the beginning placed top priority on protecting the property of those vested with it as though that vestment had come from God. All of us are inflicted by this conditioning, at least in part.

And yet we see people in great need, and want to do something about it. You see that life chances not just for blacks but for many whites as well should be better. And you wonder how to get them to at least see how bad their situation is. And somewhere you determine that when you die, you want to have it said that even at the end you were trying to make things better. That, to me, is not passive.

*Question:* Is there any basis for Professor Fordham's optimism in the face of these gloomy predictions by the other panelists?

*Fordham:* I just want to emphasize again that we should take the predictions of social scientists with a grain of salt. For example, the social scientists who drew up the rationale for *Brown* in 1954 operated on the premise that their assumptions were cor-

rect. Now thirty-five years later, we are trying to get out of that bind. We are locked into the integration goal even though black people are headed in a quite different direction.

I don't think it's a good thing for people at the community level to pay too much attention to what social scientists say because our driving force to be rid of racism is our strength, and with this in place, undiluted by the pessimistic guessing of experts, there will always be possibilities.

*Spiegelman:* I want to return to Alan Freeman and Derrick Bell's suggested need for coalitions. We have not talked very specifically about the role of other minority groups, and we have not mentioned women at all. To what extent are coalitions against oppression which are made up not just of one group, but of all groups, feasible?

*Bell:* I certainly agree that women have serious problems with discrimination. But the movement, while trying to be inclusive, is essentially a white women's movement. And they are the mothers, sisters, and wives of the white men who hold the power. Thus, their oppression is different and they can address it differently.

The tendency, I fear, is that women ride the coattails of the black movement as they did with abolition. Women worked hard to end slavery. They sacrificed, went to jail, and some died for the abolition cause. But immediately after abolition and long before the former slaves were able to take care of themselves, the women broke away to promote their own equal rights movements.

The same thing has happened in post-World War II movement. You have a phenomenon quite like drafting in auto racing. Blacks lead the way with women following close behind, riding in the slip stream. When they reach a curve, the women, with the additional speed generated by having less wind resistance to overcome, are able to swing into the lead.

We certainly see the practice at work in the academic area, where so much of the affirmative action performance has been on behalf of white women because they tend to have qualifications that are superior to those of minority candidates. So, for reasons like these, I have some doubt as to how much linking of arms can be expected at the point where women can get ahead by asserting the advantages of being middle-class and white.

*Question:* The question remains: What can be done?

*Willhelm:* There is a formidable answer to that question in a



very perceptive but generally ignored book by Martin Luther King, *Where Do We Go from Here: Chaos or Community?*<sup>70</sup> It is a book that is totally ignored and yet it contains a most perceptive interpretation of the black experience in America. King warns that those who challenge the existing economic system, if they become a real threat, will be liquidated. And, of course, this has happened.

A great deal of credit goes to the state's police power in getting rid of these threats. The direct and indirect harassment of groups is one of the real barriers to the forming of coalitions. It is not simply internal problems of the groups or dissention among groups based on differing interests. There is also the interference and disruption promoted from without.

*Question:* How do you perceive the cries of whites who are asked to make sacrifices on behalf of affirmative action?

*Bell:* First, I understand what they are really saying. The screams of outrage are those of a betrayed class, quite like those that reverberated across the land in the wake of the *Brown* decision. I believe those expectations include at the very least that none of them, as individuals, should ever have to suffer *any* loss to remedy the centuries of racial injustice without which this country would be a very different place, and perhaps would not exist at all.

In other words, the mass of white people had agreed at some point after Reconstruction ended that they would not challenge seriously the economic arrangement and, in return, the power structure would never take the side of all blacks against all whites.

Now, of course, I do not think the Court or the country took the side of blacks in the *Brown* decision, but whites who relied on segregated schools and public facilities (as their share of a division that gave a few whites most of the power and money) felt cheated, double-crossed, and they demanded revenge, less against the betrayers who were white than against those blacks who dared seek advantage from decisions and later statutes that promised to protect the exercise of their most basic rights of citizenship.

I do not think you can discuss the fairness of affirmative action, as many scholars want to do, in a vacuum and without regard to the political and social history that culminated in *Brown*. Indeed, had there been meaningful compliance with *Brown* and the

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70. M.L. KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* (1967).

Civil Rights statutes of 1964 and 1965, there would have been no need for affirmative action policies.

Critics of affirmative action like to wrap themselves in the flag of meritocracy. But such otherwise praiseworthy allegiance is suspect in a society where anti-meritocratic policies are widely accepted. At least after wars which we win, there is general support for veterans' benefits including cash bonuses, job preferences, and special government benefits not available to those who did not serve their country in a time of trial. G.I. Bills are dramatic instances of the reparations aspect of affirmative action programs that many find obnoxious. But in terms of widespread acceptance of preference, the clearer examples are job seniority as a basis for promotion and retention and tenure in the educational establishment as perhaps the ultimate form of job protection. There is something terribly wrong with the mental stability of those who claim, "Blacks should get jobs in my plant on the basis of their merit, but I want to be promoted in my job based on seniority," or academics who view selection of new teachers on merit as the *sine qua non* of quality in the university but insist that tenure is necessary and defensible.

There are, of course, contradictions here. Both seniority and tenure systems are seen as serving worthwhile functions in our country. Seniority provides stability and discourages favoritism in the workplace by bringing predictability in upgrading and promotion actions. Similarly, tenure supposedly increases scholarly production by linking academic freedom with lifetime job security. If we teachers really believed in merit hiring, we would not allow the asserted but far-from-proved protection of tenure to prevent us from presenting ourselves periodically at the front entrances of our academies, and there taking on in intellectual combat all challengers for our positions. Of course, we are not even considering so risky a test of our competence or our commitment to meritocracy.

But if we adopt and adhere to non-meritocratic policies throughout our work force and our education system, why is there such opposition to similar and far more justifiable affirmative action policies for blacks and other minorities? At bottom, it is the sense that blacks should not be advanced at the expense of whites, that the exceptional blacks must be "let in," but their numbers will be small and their presence will legitimate the sys-

tem's equality while justifying retention of the great mass of blacks in the subordinated status to which they were intentionally condemned by overtly discriminatory policies now revoked but the effects of which continue their debilitating work.

*Question:* I assume that the goal is to unite the lower classes in the Marxist mold. But once that is achieved, how will we avoid the racism that we hear about in Russia?

*Bell:* I do not believe that Marxism is the answer, particularly in this country. It does provide a methodology for delineating the problems of capitalism, but I simply don't believe it provides a better answer either as an ideal society in which to live, or as a society in which racism would be excluded.

I am not sure what must happen to end the grip of racism that so subverts the lives of blacks and dehumanizes whites. But as George Fredrickson's book, *White Supremacy*,<sup>71</sup> illustrates, we must alter our total reliance on an economic system that assumes, first, that the rewards of the winners will include the exploitation of the losers, and, second, provides a subordinated group—usually designated by race—as the societal doormats on whom the losers can vent their frustrations and thereby feel that they are winners, too.

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71. See *supra* note 25.