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A PROPHECY FOR EFFECTIVE SCHOOLING IN AN UNCARING WORLD

DERRICK A. BELL, JR.*

Abstract: In his Keynote Address, Professor Derrick A. Bell, Jr. recalled his prediction that the desegregation mandates of the *Brown v. Board of Education* decisions, though well-intended, would fail to provide black children with the equal education to which they were entitled. In similar fashion, he predicts in this article that, though the intentions of advocates for an adequate education for all students are commendable, such a goal does not appear feasible given the underlying racial barriers that continue to marginalize the black community. With this prediction, however, Bell acknowledges that the initiatives of those demanding an adequate education for all students will undoubtedly benefit some students, and that these initiatives must proceed regardless of the opposition they face.

No participant in a gathering entitled *Ensuring an "Adequate" Education for Our Nation's Youth: How Can We Overcome the Barriers?* can expect that such a task will be accomplished easily. Most, though, would not be willing to concede that it will be impossible to achieve their worthy goal. And yet, that is my prediction. I offer it along with two admonitions. First, even educational initiatives that eventually fail will benefit some children's schooling. Second, we must persevere in our efforts even as we recognize that the forces of opposition arrayed against us will prevail.

As the Biblical prophets learned, even Heavenly endowed truth is not welcome, nor even recognized, when it diverges from deeply held views and firmly fixed policy directions.¹ Although I am not endowed with Heavenly insight and prophetic powers, I identify with the Biblical prophets. They told those in positions of authority what they had learned from God. They knew they were right. They were almost always ignored and not infrequently persecuted. From that day to this,

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¹ See generally SHELDON BLANK, *JEREMIAH: MAN AND PROPHET* (1961); STEVEN M. FETKE, *MESSAGES TO A NATION IN CRISIS: AN INTRODUCTION TO THE PROPHECY OF JEREMIAH* (1983); J. ALEC MOTYER, *THE PROPHECY OF ISALIAH: AN INTRODUCTION & COMMENTARY* (1993).

there has been a suspicion regarding prophets. Indeed, according to Mark 6:4, Jesus observed that “a prophet is not without honor except in his own country, among his own relatives, and in his own house.”

During the heady period in the 1960s and 1970s, when the elimination of racial discrimination was a matter of “when” not “whether,” we refused even to consider that our hard-fought school desegregation policies might be well-intended, but far from realistic. Alas, President Bush is not the first leader who, facing disaster, insisted that we “stay the course”² and maintain our resolve—repeating the word resolve as a substitute for analysis, reconsideration, or simple mother wit.

From 1960 to 1968, I believed desegregating public school systems was the best means to achieve effective schooling for black children. During that period I worked first as a litigator handling and supervising hundreds of cases and later as a government administrator working to implement Title VI of the Civil Rights Act of 1964.³ In the mid 1970’s, having gained the time for reflection that a law teaching position provides, I concluded reluctantly that our integrationist ideals no longer meshed with those of the parents we represented. Often at great risk, those parents sought better schooling for their children, whether in desegregated or racially separate schools.

In a law review article that gained me few friends and a substantial amount of enmity, I argued that civil rights lawyers were misguided in requiring racial balance of each school’s student population as the measure of compliance and the guarantee of effective schooling.⁴ Predicting that the quality of schooling for most black children would not be achieved by school desegregation strategies focused on racial balance, I urged that educational equity rather than integrated idealism was the appropriate goal. In short, while the rhetoric of integration promised much, court orders to ensure that black youngsters received the education they needed to progress would have achieved more.

That insight was hardly prophetic, given the willingness of so many white parents to move to the suburbs or private schools to avoid desegregation.⁵ The Supreme Court’s 1974 decision in *Milliken v.*

² See Peter Baker, *Bush’s New Track Steers Clear of “Stay the Course,”* WASH. POST, Oct. 24, 2006, at A1 (arguing that the term “stay the course” was originally “meant to connote steely resolve,” but has “instead . . . become a symbol for being out of touch and rigid in the face of a war that seems to grow worse by the week”).

³ Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d (2000).

⁴ See generally Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

⁵ Even to this day, studies have shown that “the strongest predictor of white private school enrollment rates . . . [is] the percentage of students living in the district who are

Bradley allayed white middle-class fears that the school bus would become the Trojan Horse of their suburban Troys.⁶ Perhaps because school integration was experiencing setbacks, the *Serving Two Masters* article eased me out of the civil rights family.⁷ My status as the first black tenured on the Harvard Law School faculty, rather than strengthening my case, provided an explanation for my fall from grace. Critics viewed the article as further proof of the old saying that Harvard could mess up more black men than bad whiskey.

My article was prompted by personal experience enhanced by reading and knowledge of the history of racial policies in this country. Like the prophets of old, I was criticized and shunned by associates with whom I had worked for many years.⁸ They remained committed to a goal that seemed both worthy and attainable. For a brief time, I was courted by conservatives who hoped to recruit a black civil rights lawyer to their campaign against school desegregation. They backed off when they realized that my stance was not based on opposition to integrated schools, but on a tardy realization that society's racism rendered meaningful school desegregation virtually impossible.

Unfortunately, my predictions have proven all too accurate.⁹ The enmity those predictions incurred is appropriate punishment for failing to heed those who made similar predictions much earlier. In the early 1930s, the National Association for the Advancement of Colored People (NAACP) initiated its strategy to end segregation by focusing its litigation efforts on the horrible disparities between black and white schools.¹⁰ In 1935, Dr. W.E.B. Du Bois, as close as we are likely to come to a Biblical prophet, commented on the separate school versus integrated school debate in a now-famous essay. Dr. Du Bois stated

black." SEAN F. REARDON & JOHN T. YUN, PRIVATE SCHOOL RACIAL ENROLLMENTS AND SEGREGATION (2002), available at http://www.civilrightsproject.harvard.edu/research/deseg/Private_Schools.pdf.

⁶ See 418 U.S. 717 (1974) (rejecting an inter-district plan to require the busing of public school children across district lines as a means to implement the mandates of the *Brown* decisions).

⁷ See, e.g., Nathaniel R. Jones, Correspondence, *School Desegregation*, 86 YALE L.J. 378 (1976) (criticizing Bell, *supra* note 4).

⁸ I am not aware of published criticisms of my article, and the associates who stopped inviting me to conferences will certainly not admit to doing so. Indeed, now thirty years later, some of them have forgiven me now that my predictions have proven accurate.

⁹ See generally, e.g., JONATHAN KOZOL, THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA (2005); Detrick A. Bell, Jr. *The Legacy of W.E.B. Du Bois: A Rational Model for Achieving Public School Equity for America's Black Children*, 11 CREIGHTON L. REV. 409, 419 (1977).

¹⁰ See generally, e.g., *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Pearson v. Murray*, 182 A. 590 (1936); *Hocutt v. Wilson* (N.C. Super. Ct. 1933) (unreported).

that “*the Negro needs neither segregated schools nor mixed schools. What he needs is Education.*”¹¹

Dr. Du Bois urged that the NAACP not commit itself to either separate or integrated schools. He lost that debate, but his views did not change. He saw a distinction between segregation, which reflected an unwillingness of blacks and whites to work, live, and cooperate with one another, and discrimination, which was inferior treatment based on race. But the NAACP and many blacks could see no distinction in the two terms. They rejected his contention that “oppression and insult [had] become so intense and unremitting that until the world’s attitude changes . . . volunteer union for self-expression and self-defense was essential.”¹²

Dr. Du Bois did not hold views simply for the sake of ideology, as he had earlier fluctuated on the integration-separation issue. During his early years at the NAACP, which he helped found and where he served as editor of the organization’s official publication, *The Crisis*, from 1910 until 1934, Du Bois attacked Jim Crow laws and generally inveighed against the establishment of black schools. Later, discouraged by the federal government’s failure to aid blacks during the Depression, Du Bois concluded that survival would require black self-help. Thereafter, he de-emphasized integration, explaining, “[N]o idea is perfect and forever valid. Always to be living and apposite and timely, it must be modified and adapted to changing facts.”¹³ Dr. Du Bois was unswerving in his commitment to racial reform, but given the realities of racial hostility, he was flexible as to how that reform might be accomplished.

¹¹ W.E. Burghardt Du Bois, *Does the Negro Need Separate Schools?* 4 J. NEGRO EDUC. 328, 335 (1935) (emphasis added). Dr. Du Bois warned that “[a] mixed school with poor and unsympathetic teachers, with hostile public opinion, and no teaching of truth concerning black folk, is bad.” *Id.* He added, “A segregated school with ignorant placeholders, inadequate equipment, poor salaries, and wretched housing, is equally bad.” *Id.* However, he conceded,

Other things being equal, the mixed school is the broader, more natural basis for the education of all youth. It gives wider contacts; it inspires greater self-confidence; and suppresses the inferiority complex. But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed school can offer.

Id.

¹² THE EMERGING THOUGHT OF W.E.B. DU BOIS: ESSAYS AND EDITORIALS FROM “THE CRISIS” 199, 202 (Henry Lee Moon ed., 1972)).

¹³ W.E. BURGHARDT DU BOIS, DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT 303 (1968).

While civil rights advocates were celebrating in the wake of the Supreme Court's historic *Brown* decision in May 1954,¹⁴ Du Bois, then 86 years old, noted that “[n]o such decision would have been possible without the world pressure of communism,” which rendered it “simply impossible for the United States to continue to lead a ‘Free World’ with race segregation kept legal over a third of its territory.”¹⁵ He predicted accurately that the South would not comply with the decision for many years, or “long enough to ruin the education of millions of black and white children.”¹⁶

Dr. Du Bois was not alone in predicting a less-than-glowing future for the precedent in *Brown*. In addition to those committed to maintaining segregated schools at all costs, noted liberal constitutional scholar and Yale Law Professor Alexander Bickel was willing to brave the criticism of civil rights advocates.¹⁷ In 1970, he questioned the long-term viability of the *Brown* decisions, explaining:

This is not to detract from the nobility of the Warren Court's aspiration in *Brown*, nor from the contribution to American life of the rule that the state may not coerce or enforce the separation of the races. But it is to say that *Brown v. Board of Education*, with emphasis on the education part of the title, may be headed for—dread word—irrelevance.¹⁸

Even after slogging through fifteen years of trench warfare with some promise but precious little actual school desegregation, civil rights lawyers like me were annoyed with Bickel. Few of us at that time had any doubts that we would eventually prevail in eradicating segregation “root and branch” from the public schools. More than three decades later, Professor Bickel's heavily criticized prediction has become an unhappy but all-too-accurate reality.

My rehabilitation within the civil rights community took more than two decades. Then, I placed my civil rights credentials in jeopardy again by daring to suggest that black children would have been better served in education had the Court in *Brown I* rejected the petitioners' argu-

¹⁴ *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483 (1954).

¹⁵ W.E.B. DU BOIS, *THE AUTOBIOGRAPHY OF W.E.B. DU BOIS: A SOLILOQUY ON VIEWING MY LIFE FROM THE LAST DECADE OF ITS FIRST CENTURY* 333 (1968).

¹⁶ *Id.*

¹⁷ See generally ALEXANDER M. BICKEL, *THE SUPREME COURT AND THE IDEA OF PROGRESS* 150 (1970).

¹⁸ *Id.* at 150–51.

ments to overrule *Plessy v. Ferguson*.¹⁹ In my version of *Brown I*, while acknowledging the deep injustice done black children in segregated schools, the Court would note the many segregated schools in which students performed well because of the tremendous efforts of their parents and teachers. Recognizing the potential of black students when given equal resources, the Court would enforce strictly the ignored “equal” part of *Plessy*’s “separate but equal” standard.

In *Silent Covenants*, I imagined an opinion in which the Court would mandate equalizing black and white schools with norms to be determined through study of successful school systems across the country. School boards would have to add members from the black community in numbers reflecting the population of black students in the schools. An interracial committee would be created to monitor the equalization process and report violators to the courts for swift sanctions. All of this, I felt, might have made it harder for local politicians to gain popularity by arousing white fears of integration. Instead of the “all deliberate speed” mandate of *Brown II*,²⁰ financial pressures would soon force the now-integrated boards to begin on a far fairer process of school integration. In short, I was giving priority to educational substance rather than symbolic rhetoric enveloped in a swirl of white resistance that the Court would be powerless to contain.

Acknowledging this concern openly rather than in its private conferences, I had the Court in *Brown I* say:

The racial reform-retrenchment pattern so evident in this Court’s racial decisions enables a prediction that, when the tides of white resentment rise and again swamp the expectations of Negroes in a flood of racial hostility, this Court, and probably the country, will vacillate; then, as with the Emancipation Proclamation and the Civil War amendments, it will rationalize its inability and—let us be honest—its unwillingness to give real meaning to the rights we declare so readily yet so willingly sacrifice when our interests turn to new issues and more pressing concerns.

It is to avoid still another instance of this outcome that we reject the petitioners’ plea that the Court overturn *Plessy*

¹⁹ See generally *Plessy v. Ferguson*, 163 U.S. 537 (1896); DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (2004).

²⁰ See *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955) (rejecting the NAACP’s petitions urging an order requiring immediate school desegregation and authorizing delays to resolve administrative problems).

forthwith. Doing so would systematically gloss over the extent to which *Plessy*'s simplistic "separate but equal" form served as a legal adhesive in the consolidation of white supremacy in America. Rather than critically engaging American racism's complexities, this Court would substitute one mantra for another: where "separate" was once equal, "separate" would be now categorically unequal. Restructuring the rhetoric of equality (rather than laying bare *Plessy*'s white-supremacy underpinnings and consequences) constructs state-supported racial segregation as an eminently fixable aberration. And yet, by doing nothing more than reworking the rhetoric of equality, this Court would foreclose the possibility of recognizing racism as a broadly shared cultural condition.

Imagining racism as a fixable aberration, moreover, obfuscates the way in which racism functions as an ideological lens through which Americans perceive themselves, their nation, and their nation's other. Second, the vision of racism as an unhappy accident of history immunizes "the law" (as a logical system) from antiracist critique. That is to say, the Court would position the law as that which fixes racism rather than that which participates in its consolidation. By dismissing *Plessy* without dismantling it, the Court might unintentionally predict if not underwrite eventual failure. Negroes, who, despite all, are perhaps the nation's most faithful citizens, deserve better.²¹

I so enjoyed writing an opinion that no Supreme Court would likely even consider, much less ever issue, I overlooked the fact that like the actual *Brown I* decision, it was an opinion that much of white America would not accept or implement, or would not do so for very long. And, if issued, its harsh truth about the racial barrier even to adequate schooling for black children in racially separate schools would have increased the vehemence of its condemnation.

Vehement opposition does not alter truth. A serious, non-nonsense assessment of racial history with emphasis on decades-long experience in implementing the mandates of the *Brown* decisions and the multiple efforts to enforce state constitutional provisions guaranteeing the provision of equal, adequate, and effective schooling leads

²¹ BELL, *supra* note 19, at 26–27.

to a more honest conclusion. Seeking government and judicial support is a task doomed to great effort for modest success that slowly evaporates long before achieving real compliance.²²

When policymakers do not perceive it is in their immediate economic and political self-interest to respond substantively to our demands for meaningful support for the children who need it most, they opt for programs of limited pedagogical value or promises they do not intend to keep. While the pressures we exert on them should continue, we who are concerned about preparing all children for the far-from-sanguine world we are bequeathing to them must recognize the daunting obstacles we face.

This country has been devising and implementing policies of neo-colonialism over the last several years. Enabling corporations to pursue overseas profit at the expense of domestic stability has led to devastating economic, political, and social ramifications.²³ These policies are undermining the future in ways no terrorist can equal while at the same time increasing the danger of terrorism.

The damaging significance of these policies for black people is twofold. First, blacks, already excluded in many levels of the job market and marginalized in the rest, will find ever fewer jobs in competition with whites where employers, for any number of reasons, prefer whites.²⁴ Second, as public concern and anger over the steadily worsening job situation finally gains more attention than the latest sports or celebrity story, politicians will quickly devise and disseminate arguments that adverse conditions are the result of affirmative action or other policies intended to remediate for past racial discrimination.

²² Full disclosure requires that I acknowledge that as Director of the Western Center on Law and Poverty, I helped finance and otherwise support the litigation in *Serrano I*, in what is generally regarded as the first of the modern-era education finance litigation decisions. See generally *Serrano v. Priest*, 487 P.2d 1241 (1971). In 1971, the California Supreme Court ruled education a fundamental right under the state constitution and remanded for trial. See *id.* In *Serrano II*, the same court affirmed the lower court's finding that the wealth-related disparities in per-pupil spending generated by the state's education finance system violated the equal protection clause of the California Constitution. See generally *Serrano v. Priest*, 557 P.2d 929 (1976). Three decades of subsequent history and litigation of these cases are summarized by the National Access Network at http://www.schoolfunding.info/states/ca/lit_ca.php3 (last visited Oct. 28, 2006).

²³ See generally, e.g., Clarence Lusane, Essay, *Persisting Disparities: Globalization and the Economic Status of African Americans*, 42 HOW. L.J. 431, 434 (1999).

²⁴ See *id.* at 434–39. See generally DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (1991); SIDNEY M. WILLHELM, *WHO NEEDS THE NEGRO?* (1970).

The already barely hidden hostility against blacks will then become more open and destructive.²⁵

The media has properly given attention to the massive protest marches urging a fair immigration policy, but there has been far less focus on the policies of NAFTA and other programs. These programs opened foreign markets in nations whose peoples, unable to compete, felt that survival depended on reaching this country in any way possible. And while this is a nation of immigrants, most immigrants have been granted a kind of whiteness that enables them and their grantors to further subordinate African Americans.²⁶ Increasingly, it is an oddity to find a working-class African American employed in even a low-level, low-paying job.²⁷

²⁵ See generally WILLHELM, *supra* note 24. Professor Willhelm, a sociologist who has studied and written about racial issues asserted more than three decades ago that slavery and segregation rested on the need to exploit black labor. But whites now produce wealth through the exploitation of technology, and I am sure today he would add continuing job bias, the importation of foreign labor, and the out-sourcing of manufacturing jobs that helped many blacks and whites gain middle-class status as sources of this white wealth.

Not needing black labor, Willhelm maintained the society felt free to offer them "equal opportunity." But, he warned, the myth of equality within a context of oppression simply provides a veneer for more oppression. Blacks are increasingly being disgorged from the labor force as surplus in the modern, computerized economy. The redundancy of blacks in the marketplace, and the growing socioeconomic gap places the continued existence of black life in America at risk. Outcasts in the labor market, and poverty-stricken in the midst of plenty, predictable future ghetto uprisings, born of frustration, could provide the excuse for police and other officials to eliminate blacks who resist military rule over their communities. And, warns Willhelm, regardless of class, all blacks will be viewed as and treated like the enemy. For an overview of Professor Willhelm's views, see Sidney Willhelm, *The Supreme Court: A Citadel for White Supremacy*, 79 MICH. L. REV. 847 (1981) (reviewing DERRICK A. BELL, JR., *RACE, RACISM AND AMERICAN LAW* (2d ed. 1980)); Derrick Bell, *A Hurdle Too High: Class-Based Roadblocks to Racial Remediation*, 33 BUFF. L. REV. 1, 10-12, 22-34 (1984).

²⁶ See generally NOEL INGNATIEV, *HOW THE IRISH BECAME WHITE* (1995); ROEDIGER, *supra* note 24; HOWARD WINANT, *RACIAL CONDITIONS: POLITICS, THEORY, COMPARISON* (1994).

²⁷ David Wessel, *Racial Discrimination Is Still at Work*, WALL ST. J., Sept. 4, 2003, at A2. In a controlled experiment involving 350 different employers, students posing as job applicants applied to low-wage, entry-level positions throughout the Milwaukee area. *Id.* They found that "the disadvantage carried by a young black man applying for a job as a dishwasher or a driver is equivalent to forcing a white man to carry an 18-month prison record on his back." *Id.* Additionally, while acknowledging a criminal background cut white applicant chances by half, acknowledging a criminal background cut a black applicant's chances by two-thirds. *Id.* This result is particularly disturbing because of the increasing number of black males projected to carry criminal backgrounds in the coming generation. *Id.* Wessel adds that "[s]tereotypes among young black men remain so prevalent and so strong that race continues to serve as a major signal of characteristics of which employers are wary." *Id.* (internal quotations omitted).

Well, you may ask, if the future for African Americans is as dire as I and other scholars suggest, why do most ignore the threat and continue in one way or another to pursue the American Dream? There is no easy answer to a question with so many dimensions. One component is the psychic damage done by unofficial long-term exclusion. None of us are immune, not even those who fight to end racism or try hard to describe it, understand it, and write it down. Boston College Law Professor Anthony Farley views the quest for racial equality as an almost romantic longing for acceptance. He writes:

Everybody, at some level believes in it. It's a deeply seductive image. The image that we all want, as oppressed people, is an image of our masters finally loving us and recognizing our humanity. It is this image that keeps prostitutes with their pimps, the colonized with their colonizers and battered women with their batterers. Everybody dreams of one day being safe.²⁸

In an analogy to F. Scott Fitzgerald's novel, that is almost too revealing in its implications, Professor Farley writes about this phenomenon with great clarity. He suggests that

The Great Gatsby is the Great American Novel for a reason. Gatsby believed in the green light and that was his undoing—rich girls don't marry poor boys. And yet the compound where Daisy lived was across the bay. At night, it was marked by a green light on its pier—far away, but not Gatsby felt unattainable.²⁹

Concluding the novel, Fitzgerald wrote:

Gatsby believed in the green light, the orgiastic future that year by year recedes before us. It eluded us then, but that's no matter—tomorrow we will run faster, stretch out our arms farther And one fine morning—

So we beat on, boats against the current, borne back ceaselessly into the past.³⁰

²⁸ BELL, *supra* note 19, at 199 (quoting Anthony Paul Farley, *Thirteen Stories*, 15 *TOURO L. REV.* 543, 621 (1999)).

²⁹ *Id.* (quoting Farley, *supra* note 28, at 621). See generally F. SCOTT FITZGERALD, *THE GREAT GATSBY* (Charles Scribner's Sons 1953) (1925).

³⁰ BELL, *supra* note 19, at 199 (quoting FITZGERALD, *supra* note 28, at 182).

“Well,” Farley suggests, “that’s what we do, we’re borne back ceaselessly into the past. Gatsby doesn’t get it . . . [and neither do] we, the intellectuals. We actually produce the seductive literature of the green light.”³¹ In our anxiety to identify, we are attracted to the obvious and the superficial, the least worthy characteristics of the dominant group. It is that unconscious component of quest that gives even hard-earned progress a mirage-like quality. The decision in *Brown I* and all the civil rights recognitions that came before—for they were far more mere acknowledgments of racial injustices than meaningful remedies—appeared more real than they could possibly be. We hardly noticed that any advances merely marked those periods when policymakers realized that remedies for racial injustice and the Nation’s needs coincided. Fortuity was more important than any national commitment to “freedom and justice for all.”

Fortuity is a fair-weather friend, but like the weather, it is capable of prediction. The lawyers for the University of Michigan Law School did just that by linking the values of diversity with interests of value to corporations and the armed services.³² Professor Robert Gordon offers encouragement in this likely life-long process when he reminds us that:

Things seem to change in history when people break out of their accustomed ways of responding to domination, by acting as if the constraints on their improving their lives were not real and that they could change things; and sometimes they can, though not always in the way they had hoped or intended; but they never knew they could change them at all until they tried.³³

Here is an explanation that transcends understanding and rises to the status of prophetic insight. It acknowledges the harsh truth that life seems to favor those in power, while it seldom rewards good works with triumphs. As James Russell Lowell put it: “Truth forever on the scaffold. Wrong forever on the throne.”³⁴ Defeat, disgrace, and sometimes death are often the fate of the righteous who must rely on their faith that truth and justice were worth championing, even in a lost cause.

³¹ *Id.* (quoting Farley, *supra* note 28, at 621).

³² See *Grutter v. Bollinger*, 539 U.S. 306, 308 (2003).

³³ See BELL, *supra* note 19, at 200 (quoting Robert W. Gordon, *New Developments in Legal Theory*, in *THE POLITICS OF LAW* 413, 424 (David Kairys ed., 2d ed. 1990)).

³⁴ James Russell Lowell, *The Present Crisis*, in 3 *THE HARVARD CLASSICS: ENGLISH POETRY* 1447, 1449 (Charles W. Eliot ed., 1910).

It is both necessary and reassuring to question what we do as we continue doing something. We cannot know whether our actions are a help or a harm—and that, of course, is not the test. Our lives gain purpose and worth when we recognize and confront the evils we encounter—small as well as large—and meet them with a determination to take action even when we are all but certain that our efforts will fail.

Garry Wills notes that determination to take action in his review of *At Canaan's Edge*, the third volume in Taylor Branch's biography of Martin Luther King, Jr.³⁵ Wills remembers what a farmer marching from Selma to Montgomery responded when one of the organizers asked whether he thought the marchers would be able to win in Montgomery. The farmer said, "We won when we started."³⁶ I doubt that the farmer had any advanced academic degrees, but his answer reflected an understanding of life, its risks, and the value of outcomes that cannot be measured in victories or defeats. For in rising to challenges that touch our souls, there is no failure. Rather, there is the salvation of spirit, of mind, of soul.

³⁵ See generally Garry Wills, *An American Iliad*, 53 N.Y. REV. OF BOOKS 20 (2006) (reviewing TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965-68* (2006)).

³⁶ *Id.* at 26.