

“THE LORD DON’T LIKE NO UGLY.”— RACISM IN AMERICA

And We Are Not Saved: The Elusive Quest for Racial Justice. By Derrick Bell. New York: Basic. Pp. 288. \$19.95.

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INTRODUCTION

The Bible warns us that “Where there is no vision the people perish: but he that keepeth the law, happy is he.”¹ Harvard Law Professor Derrick Bell’s *And We Are Not Saved* ensures that Black people will not perish at least for a very long time. Using the allegorical² visions or chronicles of Geneva Crenshaw, Bell, weaves a riveting, thought-provoking, evocative, enthralling and ugly tale about racism in America and the struggle of Black Americans to achieve racial equality in a society stained by the tears, sweat and blood of slaves. Like Shakespeare’s Lady Macbeth who cannot remove the bloodstains from her hands, the United States cannot cleanse itself of slavery’s stains.

This review is divided into several parts. The first section provides background information about the development of *And We Are Not Saved*. The second section contains an overview of Bell’s tales and describes his literary method which is more typical of literature than of a legal treatise on constitutional law. The next section is akin to qualifying the witnesses in a trial; it

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1. *Proverbs* 29:18.

2. To one inclined to be literary, Bell’s allegory offers an opportunity to look for more than one meaning in everything. Bell names his female soothsayer, Geneva. Other than being a neutral meeting place in Switzerland which hosts international conventions between disparate political figures, a Geneva cross is a red Greek or St. George’s cross on a white ground, used as a symbol by the Red Cross and as a sign of neutrality. A Geneva gown is a loose black academic or clerical gown with wide sleeves worn by Calvinist clergymen in Geneva. Calvinism is defined as the religious doctrines of John Calvin, which emphasized the supremacy of the Scriptures in the revelations of truth, the omnipotence of God, the sinfulness of man, the salvation of the elect by God’s grace alone, and a rigid moral code.

The women who come with the message for the future, Bell calls the Celestial Curia. “Celestial” means of, or pertaining to the sky or the heavens, or of, from, or suggestive of heavens, spiritual and divine. “Curia” comes from the Latin and one of its definitions is a royal court of justice. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed. 1975).

Bell’s work invites scrutiny given Geneva’s summons to the narrator.

Dearest friend, I have folded my wings for a little while and returned to this world. . . . Like the Crusaders of old, we sought the Holy Grail of “equal opportunity” and, having gained it in court decisions and civil rights statutes, find it transformed from the long-sought guarantee of racial equality into one more device that the society can use to perpetuate the racial status quo. . . . [¶] I have come back with a purpose. My mind is filled with allegorical visions that, taking me out of our topsyturvy world and into a strange and a more rationale existence, have revealed to me new truths about the dilemma of blacks in this country. To be made real, to be potent, these visions—or Chronicles, as I call them—must be interpreted.

BELL, AND WE ARE NOT SAVED 22 (1987).

describes Bell's Black legal titans—Geneva Crenshaw, a civil rights lawyer and her male law professor friend, who debate the implications of various civil rights strategies in light of Geneva's visions or chronicles. Section four summarizes each of the tales. Section five focuses on one tale, "The Chronicle of the DeVine Gift" and its impact on minority law professors as a vehicle for illustrating the power of the tales to scrutinize the application of a legal or policy question in a practical context. A critique of the tales follows in section six. In the final section, one finds the conclusion and recommendations about who would benefit from reading the book.

I. BACKGROUND

And We Are Not Saved had its genesis when the editorial board of the Harvard Law Review asked Bell to write the foreword to volume 99.³ What emerged was an unorthodox means of discussing jurisprudential matters in a language and format more usual in literature than in law.⁴ Bell's foreword, the precursor to the book, contained four chronicles⁵, which later appear in some form in the book. *The Civil Rights Chronicles*, as Professor Bell called them, sparked a flurry of commentaries among its readers.⁶ The dialogue which *The Chronicles* provoked is probably one of the factors that resulted in Bell's expanding his Article into the book which is the subject of this review.⁷

2. AN OVERVIEW OF BELL'S TALES AND HIS LITERARY METHOD

Bell's approach to analyzing constitutional law in *And We Are Not Saved* resembles a work of fiction rather than a legal treatise. Bell laces his book with visions and visionaries. Our first visionary is Geneva Crenshaw, a Black civil rights lawyer, who has a near-fatal accident when her car is forced off the road in Mississippi in the summer of 1964. Her physical injuries heal, but she remains in a mis-diagnosed coma for twenty years during which she experiences her chronicles. The second visionary is, [believed that Geneva has recovered and in response to her summons,] Bell's narrator, Geneva's Black male law professor friend, who visits her in a Virginia cottage where she relates her chronicles, and they try to interpret them. Only later the narrator

3. BELL, *supra* note 2, at xi. See also Greene, *A Short Commentary on the Chronicles*, 3 HARV. BLACKLETTER J. 60 (1986) (describing the selection process, and its confirmation of Professor Bell's stature and achievements as a scholar and teacher). Critics may attack Bell's use of fantasy in his book and foreword as lacking in intellectual rigor and for trivializing an enduring subject among members of the legal community, historians and policy makers. Such criticism lacks support given Bell's astute and novel analysis of the race issue and his use of footnotes to substantiate the points the narrator and Geneva Crenshaw make. Moreover, see Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 812 (1935), ("The law is not a science but a practical activity, and myths may impress the imagination and memory where more exact discourse would leave minds cold.").

4. BELL, *supra* note 2, at xii.

5. Bell, *The Supreme Court 1984 Term—Foreword: The Civil Rights Chronicles* 99 HARV. L. REV. 4 (1985). "The Chronicle of the Celestial Curia" *Id.* at 17; "The Chronicle of the DeVine Gift" *Id.* at 39; "The Chronicle of the Amber Cloud" *Id.* at 57; "The Chronicle of the Slave Scrolls" *Id.* at 68.

6. See *Forum on Professor Derrick Bell's Civil Rights Chronicles*, 3 HARV. BLACKLETTER J. 46 (1986).

7. Bell, *The Civil Rights Chronicles Revisited: Comments and Introduction*, 3 HARV. BLACKLETTER J. 46, 48 (1986).

discovers that neither of them could have been in the abandoned cottage, which raises a question about whether he imagined the entire episode.

Bell also conjures up the vision of Geneva and the Celestial Curia. The Celestial Curia are two women, who appear at the Black Bicentennial Convention held to develop strategies for "our racial deliverance." The Curia attempt to offer solace to the dejected Blacks who read the chronicles at a fog-shrouded mythic convention site with a Great Hall, the sacred nucleus of the meeting place, which the narrator describes as a cross between a courtroom and a church. Bell fantasizes about a picture of the United States that achieves its professed but unfulfilled ideal as a nation that ensures justice for all.

Bell's goal is "to examine from a new perspective—beyond even the most exacting exegesis of case decisions—the civil rights movement since 1954 and the *Brown [v. Board of Education]*⁸ school decision: that is, to explain or justify what has happened, or not happened, and how black people (or some of us) feel about it."⁹ Measured against that standard, Bell succeeds in identifying the strategies used by diverse civil rights activists and in evaluating the Achilles' heel of each. But while Bell evaluates the success or failure of each plan to obtain racial justice in this country, necessarily, he discusses some of the reasons why white Americans allow racist policies and practices to continue¹⁰ and how the civil rights victories that have been won are eroded or destroyed again and again. The result is that *And We Are Not Saved* is a brilliant literary achievement.

Bell uses conventions which make his book appealing to lawyers, thespians, historians, politicians and lay people. From a lawyer's perspective, Professor Bell uses dialogue which resembles the Socratic teaching method lawyers gain familiarity with in law school. By using this device, Geneva and her law professor friend, our narrator, debate the implications and legal significances, if any, of each of the chronicles.

In dramatic terms, Professor Bell uses what looks like a version of the Greek chorus to elicit the import of each of the tales. Geneva recounts her vision and the narrator as a chorus with one voice suggests what it means. Our narrator's voice is later joined with the voices of the attendees at the Black Bicentennial Convention who fume, rant, and then sit in abject silence as they think about the chronicles' dismal message.

For historians, Bell offers a view of the Constitutional Convention and the impact of various court decisions which has Geneva travelling in her

8. 347 U.S. 483 (1954).

9. BELL, *supra* note 2, at xi.

10. Bell correctly focuses his work on justifying the development of civil rights strategies because the impetus behind these pursuits for racial justice—the fact that American society remains cloaked in the stench of racism—cannot be justified. Bell did not need to try to justify the unjustifiable. Nothing and no one can justify racism.

"Justify" means to demonstrate or prove to be just, right or valid. In theology, it means to free (man) of the guilt or penalty attached to grievous sin, and it is said to be available only through only of God. In the legal context, it means to demonstrate good reason for an action taken. See THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (W. Morris ed. 1975).

Bell introduces characters like the Colonel at the Constitutional Convention, in the first chronicle who offer colorable arguments on the necessity for racist policies and practices does not rise to a justification in any of these contexts.

mind's eye from the past to the present, and then leaves Geneva and our narrator speculating about the future.

For politicians, Bell sets out a way of analyzing events and decisions which suggests motives and impacts of various pieces of legislation and the policies implemented thereby. Bell encourages politicians to plumb the consequences of their positions to see if their non-Black constituents reap any benefits.

For lay people, Bell takes an emotionally riveting subject and in the conversations or debates, between Geneva and our narrator, articulates the factors which propel policy and lawmakers to offer explanations for racist programs.

His book tries to make the irrational rational, and in the process, to help all of us understand why we have travelled so far in two hundred years to achieve so little. On balance then, it is a tale of man's inhumanity to man in this country. It is a sad tale; it is an angry tale; it is a vicious tale; it is a futile tale. It reveals that a belief in the transformative power of law to effect permanent social change is misplaced. It discloses that to the extent Black people continue to appeal to legal institutions to seek redress, they legitimize a system which sustains itself by subordinating the interests of minority groups to that of the white majority. Nonetheless, given the alternatives of violent insurrection or a mass exodus of all Black people from the United States, it suggests that the tactics which resulted in advances, were later used against Black people to perpetuate the racial status quo, should be pursued again despite their failure to produce long-lasting results.

3. THE CHARACTERS

Notwithstanding the cynicism which permeates the book, Bell's work succeeds because of his characters. Bell establishes the qualifications and credibility of his characters just like litigators qualify their witnesses in a trial. Crenshaw and the narrator are veteran lawyers of the civil rights movement. Both of them fought in the trenches of the courtrooms in the North and the South for minorities access to the political and legal processes. Apart from this practical experience, the narrator's status as a Black law professor presumptively establishes him as a legal authority who can reflect on the history of the civil rights movement with some detachment. Likewise, Geneva would have been a law professor but for the fact that she was in a coma for twenty years. Because she was out-of-it, so to speak, she does not speak with the jaundiced view of someone who has not had any time to think about "what it all means" because he or she is embroiled in fighting one legal battle after another.

a. *Our Narrator, A Black Male Law Professor*

Bell's narrator, a Black law professor, plays a central role in the success of the book. First, as an educated man who survived the battles of civil rights litigation, the narrator can comment on the efficacy of courtroom victories and with the objectivity of a law professor and scholar, he ascertains their value as tools for aiding Black people. In addition, the narrator with the insight that comes from experience occupies the "minority seat" on his law faculty which means he remains seated at faculty meetings even when his white colleagues

enrage him, so that they will not replace him with a Black neo-conservative who would use the position as another forum in which to spout the white-racist rhetoric that obtains a spurious legitimacy because it emanates from a Black mouth.¹¹

b. *Geneva Crenshaw, Our Mythical Visionary*

We first learn about Geneva Crenshaw when our narrator allows his mind to wander at the Black Bicentennial Convention. The convention had the potential for being a memorable gathering of the country's best-known Black leaders. But because the harmony of the Convention begins to disintegrate in the clash of disparate views,¹² the narrator daydreams to escape his frustration and boredom of listening to repetitious statements about how to ensure our racial deliverance. In his reverie, the narrator expresses his longing for the "conciliating presence of Geneva Crenshaw."¹³

So when the narrator first introduces us to Geneva she fits her name; she is a conciliator, and it foreshadows the consensus that the desolate attendees at the Black Bicentennial Convention reach in the closing moments of the meeting. Moreover, Geneva's strikingly tall, well over six foot frame, makes her like most mythic heroes or heroines, larger than life.¹⁴

Geneva's intelligence and effectiveness as an advocate also prompt additional interest in her character. The narrator says:

Geneva's intelligence and accomplishments made her a definitive example of W.E.B. DuBois's expectations for those blacks he designated the "Talented Tenth," the exceptional individuals who would save the race. It was the great black thinker's hope in 1903 that, by "developing the Best of this race . . . they may guide the Mass away from the contamination and death of the Worst, in their own and other races."¹⁵

She is, to the narrator, the embodiment of the great nineteenth century abolitionists Harriet Tubman and Sojourner Truth, even resembling photographs he had seen of these stern Black women, who both fought and spoke for their

11. BELL, *supra* note 2, at 14. See *infra* notes 29-30 and accompanying text.

12. The narrator offers some interesting points on why Black people cannot agree about which racial deliverance strategy to pursue. He says:

It did not help that I understood our basic problem all too well. [We] veterans of the racial struggle, have willingly risked life and career and, in so doing, have escaped the fate of most blacks whose lives are narrowly walled in by racism. By our actions, we have already gained a large measure of personal independence and overcome society's built-in racial impediments. That is, we have achieved the essence of freedom, the ideal on which our society is based. We value the hard-won ability to work through problems, to implement approaches that we find right, and to hell with anyone, white or black, who disagrees or urges a different course.

We came here because we want the same thing for other blacks, and, viewing ourselves as the leaders or at least representatives of other blacks, we willingly join civil rights organizations and attend conferences like this one. But, unconsciously, at some point our personal independence comes into conflict with the requirements of a consensus that could give a large group strong and meaningful direction. In the end, while we seek and sincerely want consensus, the need to sacrifice the hard-gained independence of personal action proves too high a price to pay. Not recognizing either inner conflict or its unconscious resolution, each of use has a personal investment in our strategy. Thus is agreement rendered impossible and conflict inevitable.

BELL, *supra* note 2, at 17-18.

13. *Id.* at 17.

14. *Id.* at 18.

15. *Id.* at 20.

cause.¹⁶ “Apparently oblivious of her stunning looks, highlighted by a smooth, ebony complexion, she was proud of her color and her race at a time when middle-class Negroes (as we then insisted on being called) were ambivalent about both.”¹⁷ Not offended by the narrator’s comment that she resembled Sojourner and Harriet, Geneva says, “I’ve seen those pictures, and were I given to vanity, I would hardly find the resemblance complimentary. But those women had an inner vision that enabled them to defy the limits on their lives imposed by the world around them. I try to be a good lawyer, but my devotion, too, is to an inner vision that makes me feel close to old Harriet and Sojourner—so your thinking I resemble them is not only a compliment, it is an honor.”¹⁸

As a result, Bell prepares the reader to accept Geneva’s statement twenty years later that her “mind is filled with allegorical visions that . . . have revealed to me new truths about the dilemma of blacks in this country. To be made real, to be potent, these visions—or Chronicles, as I call them—must be interpreted.”¹⁹ Thus, Bell gains commitments from his readers to participate in Geneva’s accounts of her Chronicles and to aid in their interpretation.

4. SUMMARY OF GENEVA’S VISIONS

In Bell’s book, Geneva first recounts “The Chronicle of the Constitutional Contradiction.” Here Geneva travels back through time to the Constitutional Convention of 1787 where she unsuccessfully uses her oratorical skills to persuade the convention delegates to delete the slavery compromises from the Constitution. Here, Bell examines the original contradiction in the Constitution of the United States which lies at the heart of Black people’s efforts to seek legal redress.

In “The Chronicle of the Celestial Curia,” Geneva describes the Curia sisters as two Black women dressed in lamé robes who speak in harmonic unison. While the Curia agree in their “criticism of suffering and injustices being visited by the system on the exploited groups, and were appalled by the uncaring stance of the upper classes who justify their superior status by reason of their ability, merit, and skill, and ignore the role of economic class, contacts, and luck.”²⁰ The Curia Sisters sit on a dais which contains three throne-like chairs reminiscent of that of a federal appellate courtroom. The Curia member on the left advocates disruptive resistance whereas the member on the right urges a massive exodus by the nation’s colored peoples and a new beginning in some more receptive land. In the final pages of the book, Geneva discloses that the vacant middle chair suggests another option, what metaphysicians call The Middle Path. The chronicle serves as a tool for assessing the transformative ability of law to effect social change.

In “The Chronicle of the Ultimate Voting Rights Act,” Geneva saves the life of a bigoted, white, southern politician who sponsored a bill to reapportion the state’s legislative districts and thereby make it impossible for Blacks to gain election to the state legislature or any statewide office. Bell employs the

16. *Id.* at 19.

17. *Id.* at 18.

18. *Id.* at 19.

19. *Id.* at 22.

20. *Id.* at 52.

tale to question, among other things, the efficacy of the judicial system as a means of safeguarding the rights Blacks secure in the statehouses.

Bell uses the next story, "The Chronicles of the Sacrificed Black School Children" to discuss the benefits of desegregation to white school districts throughout the nation. On the day the schools were to be desegregated all Black children disappear, and Geneva and the narrator speculate about the consequences. The tale questions the viability of other methodologies for improving the quality of education for Black children which civil rights activists abandoned in favor of desegregation through racial balance.

The next vision, "The Chronicles of the Black Reparations Foundation," has one of the world's richest men give the bulk of his wealth, about twenty-five billion dollars, to a foundation. The foundation is to compensate Blacks, who because of the impediments of slavery and the continuing disadvantages of racism, can not escape poverty. It reveals that safeguarding the present economic structure would, in all likelihood, force white people to object to any scheme designed to improve the economic status of Blacks. Hence, the tale sparks a dialogue between Geneva and the narrator on the judicial system's recognition of reverse discrimination as a limitation on the legal remedies available to rectify racial discrimination.

In the following tale, "The Chronicle of the DeVine Gift," Geneva is a Black law professor at a major law school. Geneva receives the DeVine Gift which makes it possible for her to identify and recruit other minority candidates who join the faculty. The recruitment program works well until Geneva, with the help of the DeVine Gift, finds the Seventh Candidate. This candidate has impeccable credentials, but the law school Dean refuses to hire him because the Dean has to preserve the school's status as a predominately white institution. This tale explores the limits of affirmative action and the use of tokenism and quotas in employment and housing.

In "The Chronicle of the Amber Cloud," white adolescents whose parents are wealthy, change drastically in appearance and behavior. First, their skins take on a yellowish hue, and second, the youths become lethargic, suspicious, withdrawn and helplessly insecure. In sum, their behavior replicates that of many minority children found in ghettos, barrios, and reservations. When a cure is found, legislators limit its administration to the afflicted white youths. Consequently, Bell debunks the notion that a common crisis or extraordinary peril could eliminate racial prejudice.

"The Chronicle of the Twenty-Seventh Year Syndrome" reveals an ailment which strikes down Black women who (1) hold at least one degree beyond the bachelor's and have earned an average of thirty-five thousand dollars per year over the three years prior to their twenty-seventh year; (2) completed their twenty-seventh year of life; and (3) had neither ever been married or entertained a *bona fide* offer of marriage to a Black man. The women can be spared if a Black man is willing to make a *bona fide* offer of marriage to them. Here, Bell examines the professional relationship between Geneva and the narrator—and by extension—the impact racism has on the Black family and the resultant precarious relationship between Black women and Black men.

"The Chronicle of the Slave Scrolls" depicts a transformed Black community whose members attend healing sessions which cause them to surpass whites in every area except sports and entertainment. The tale explodes the

myth that if Blacks merely pulled themselves up by their bootstraps and adopted assimilationists strategies, like their white immigrant counterparts, their success and acceptance in America would be assured. Rather, the white Americans in the tale conclude that it is un-American for a minority group to gain so much advantage over the majority in a majoritarian society. Whites subvert and pervert the legal system to impose limits or quotas on the number of Blacks who get hired, thereby foreclosing the possibility of too many Blacks being selected despite their qualifications.

In the final fantasy, "The Chronicle of the Black Crime Cure," Blacks stop committing crimes and consequently almost destroy the crime industry. The Black Crime Cure caused thousands of people to lose their jobs as police forces shrink, court schedules diminish, and prisons close. Manufacturers who provided weapons, uniforms, and equipment of all forms to law enforcement agencies face bankruptcy. When those in power realize the threat the disappearance of Black crime has on their privileged status, the cave in which was the sole source of the crime cure stones is mysteriously blown up, and the site becomes a landfill.

The fantasies Geneva Crenshaw recounts in her chronicles allow Geneva and her male law professor friend to analyze the benefits and detriments of various civil rights strategies. They concluded that because of the civil rights advocates' successes in Congress, courthouses, statehouses and the White House, more benefits accrued to the members of the White dominant society than to the Blacks who fought the civil rights battles. For example, as Bell points out in "The Chronicle of the Celestial Curia," the fourteenth amendment may have been enacted to give Blacks the rights of citizens, but for most of its early history, people used it "to nurture railroads, utility companies, banks, employers of child labor, chain stores, money lenders, aliens, and a host of other groups and institutions."²¹ The pattern of finding civil rights gains usurped by the majority causes the narrator to assert that "[o]ur lawyers . . . are reluctant to believe that vindication of even the most basic rights for blacks actually requires a perceived benefit to whites."²²

5. AN ASSESSMENT OF THE IMPACT OF "THE CHRONICLE OF THE DIVINE GIFT" ON BLACK LAW PROFESSORS

The debates which the tales foster between Geneva and the narrator are poignant and depressing in their veracity.²³ Readers identify with the legal and policy arguments each character makes and with the characters themselves. By way of illustrating the power inherent in the tales to analyze a legal issue and to review its impact in a practical context, this section of the review focuses on the limits of affirmative action in American law schools by discussing the plight of Black law professors who teach in white law schools.²⁴ Given

21. *Id.*, at 64 (quoting Bittker, *The Case of the Checker-Board Ordinance: An Experiment in Race Relations*, 71 YALE L.J. 1387, 1393 (1962)).

22. *Id.* at 62.

23. See Book Note: *The Battleground of Experience*, 101 HARV. L. REV. 849 (1988) (review of D. BELL, AND WE ARE NOT SAVED (1987) (suggesting that Bell's experiential approach moves us as no standard liberal or leftist legal analysis can, even though the book contains shades of critical legal theory)).

24. I can attest to the accuracy of Bell's assessment since for the past four years I have taught at white law schools, and I graduated from two white law schools.

the similarities between the shorter piece in the Harvard Law Review and five of the chronicles which appear in the book, the comments of various law professors throughout the country remain apropos here.

Most minority law professors can identify with "The Chronicle of the DeVine Gift" and its disclosures about the limits of affirmative action in legal education. In that fantasy, Geneva succeeds with the help of the DeVine Gift in recruiting five other minority faculty members to the major law school where she was teaching. Then, she finds a Seventh Candidate whose academic credentials are impeccable. He was the top student at a competitor law school; he had edited the law review and written a superb student note. After clerking for a federal court of appeals judge and a United States Supreme Court Justice, he had joined a major New York City law firm where, after three years of work the firm rated his work "splendid;" he was in line for early election to partnership.²⁵ Nonetheless, the Dean at the law school refused to hire the Seventh Candidate because the law school had to retain its image as a white school.²⁶ One legal scholar characterizes racism among white law faculty members as "cognitive dissonance":

At first, the white professor feels good about hiring the minority. It shows how liberal the white is, and the minority is assumed to want nothing more than to scrape by in the rarefied world they both inhabit. But the minority does not just scrape by, is not eternally grateful, and indeed starts to surpass the white professor. This is disturbing; things weren't meant to go that way. The strain between former belief and current reality is reduced by reinterpreting the current reality. The minority has a flaw. Pass it on.²⁷

Unfortunately, too many of the white professor's white colleagues believe that scholar's assessment that "the minority [law professor] has a flaw," and they do pass it on.

Another law professor responded this way after reading the precursor to the book:

Derrick Bell's *Chronicles* was the joyful affirmation of a deep part of myself that I had always been afraid to voice. The affirmation was two fold (sic). First, the voice I had suppressed, which had condemned itself to preface every sentence with an answer to the accusation: "Who are you to tell us anything?" found expression. Secondly, the fear which had suppressed the voice, found perspective in Dean Bell's contextual review of a constitutional history premised on a heritage of contradictions between "professed ideals and . . . established practices."

A related part of my response to the *Chronicles* was my immediate identification with Geneva Crenshaw. After a few moments of ruminating, I realized that she was fictional. But her fictional essence was very familiar, drawn from my littered recollections of spent, half-mad, serious-but-not-taken-seriously black women (and men) whose literate qualifications exceeded the uses to which society could envision them put; whose existence never quite left sufficient impression on the larger world to change the course of things directly, but whose accomplishments are felt in mythic ripples.²⁸

Here, the reader observes that Bell's Geneva, whose talents lie fallow for

25. BELL, *supra* note 2, at 143.

26. *Id.* at 144.

27. *Id.* at 158 (quoting Letter from Richard Delgado to Linda Greene April 24, 1985 (copy on file with Professor Bell)).

28. Williams, *A Brief Comment, with Footnotes, on the Civil Rights Chronicles*, 3 HARV. BLACK-LETTER J. 79 (1986) (footnote omitted).

twenty years because a group of White racists forced her car off the road in Mississippi as she was driving to a voting rights meeting, touches a responsive cord in minority law professors who learn that if they are too competent their white counterparts will destroy them.

Others involved in legal education gained courage or inspiration from *The Civil Rights Chronicles* to lament on the plight of minority law professors in predominantly white law schools and to urge resistance²⁹ or the avoidance of cooptation within such a system.³⁰ In fact, Professor Henry W. McGee, Jr. observed several things: One, that with a few exceptions, most law faculties have one or no minority instructors;³¹ two, as enrollments of Black college students declined in the 1980's (citation omitted) a corresponding reduction in the number of Blacks going on to law school is an increasing possibility;³² three, the minority law professor must strive to preserve his self-identity while maximizing his effectiveness to impact the national domestic agenda, in light of conditions imposed by his predominantly white surroundings;³³ and four, race is such a

powerful determinant of personal fate in the United States; a brutal and ine-

29. See Austin, *Resistance Tactics for Tokens*, 3 HARV. BLACKLETTER J. 52 (1986). Austin states:

Reading Derrick Bell's *Chronicles* was a thrilling experience because I felt that I was participating in an intellectual exchange with other Black folks. . . .

The *Chronicles* made me feel the chill of the intellectual isolation of my token existence in a way that I have not for some time. Being a token is like being in solitary confinement, in a prison no one can enter even with the best behavior. The jailers are my colleagues who use insult as a disciplinary device. They zing and zap with abandon. The wounds heal, and the scars are the stories I swap in whispered tones and sardonic laughter with the other Black and working class women of the Law School (the cleaning ladies, the secretaries and the students). . . .

I could go on. Any token could. I cannot imagine sharing my scholarly ideas with such people. But then, they cannot imagine that I have any ideas to share. They may be right, but for the wrong reasons. Whether I am smart, or whether Black people have an activist rather than an intellectual tradition is beside the point as far as I am concerned. My intellectual muteness if not the product of my acquiescence in their beliefs in my inferiority, but of my rejection of those very beliefs. Quite simply, responding to their abuse is a full-time job. It takes vigilance, cleverness and a great deal of self-constraint. Although it would often be more expedient to blast some idiot out rather than to employ one's wiles in exacting revenge, my resistance has to be measured. I am a tenured professor, and I know that there are other minority folks who are more vulnerable than I am. They often need what little protection I can provide through diplomatic moves on their behalf. Moreover ranting and raving, while useful, has its limits and varying one's tactics keeps the enemy off guard. Thus, the best form of resistance is often covert, unsuspected and guerrilla-like. What I have in mind is the token's equivalent of poisoning the master's coffee.

Id. at 52-53.

30. McGee, *Symbol and Substance in the Minority Professoriat's Future*, 3 HARV. BLACKLETTER J. 67, 72 (1986).

Coopt traditionally means, "to elect as a fellow member of a board or committee, or to appoint summarily." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (2d ed. 1975). However, in the Black community it means something else. Rather, it conjures up a vision of a person who has been deluded into believing that he belongs to the dominant group when in fact he does not.

31. McGee, *Symbol and Substance in the Minority Professoriat's Future*, *supra* note 30, at 67, 67 n.3 (1986) (citing an interview with Noel J. Austin, Associate Director of the Association of American Law Schools (Feb. 28, 1986)). Austin points out that in 1984-85, there were 381 minority professors known to the Association of American Law Schools out of 5,728 full-time law teachers. The 1983-84 figure was 364 out of 6,773 and the 1982-83 proportion was 337 out of 5728. The minority professor category includes Asians, American Indians, Blacks, and Hispanics/Latinos.

32. McGee, *supra* note 30, at 67.

33. *Id.* at 69.

luctable aspect of the social order which cannot be refuted, regardless of the number of minority faculty appointments that are made . . . [that] minority faculty members must come to grips with this reality, as well as recognize that they themselves, through their positions, may be playing a role in legitimizing a legal system whose hegemonic function vindicates and supports a social and political order in which non-whites are subjugated."³⁴

If then, the yoke of racism in this country burdens these minority members who are educated and part of a very small, and some would say, elite group, what help or hope is there for the masses? The short answer is: "Very little to none." But the larger question is: "Why?" The next section explores and examines, against the backdrop of Bell's book and his assessment of the thirty year odyssey for racial justice in the United States, the bleak prospects of achieving racial equality in America in the future.

6. A CRITIQUE OF THE TALES

What accounts for the peculiar burden of being Black in America? If Black law professors who teach at predominately White schools feel weighed down by the yoke of racism, why is it so and what can be done about it? Succinctly put, the institution of slavery and the concept of Black people as property vitiates the dignity of the United States Constitution and its stated goals and objectives. The flawed constitution adopted by the framers casts a pall over most, if not all, efforts to promote racial equality in America. It recognizes and preserves property interests over liberty and freedom, even though it gives lip service to the noble ideals of "liberty and justice for all." For example, Bell's Colonel, one of the framers of the Constitution in "The Chronicle of the Constitutional Contradiction," recognizes three classes of people whose relative status inspired the compromises found in the Constitution: (1) landlords, (2) landless, masterless men and (3) alien slaves. I prefer to call the three groups: (1) property owners, (2) the propertyless (most, if not all, of whom were white males), and (3) those who are themselves characterized as property. As explained by the Colonel, the framers sought to reconcile the competing interests of the majority of delegates, who were slave owners and whose rights had to be protected with the interests of others, who knew that their goal was to draft a constitution, that could be ratified by the states and of thereby save the nation from anarchy and bankruptcy.

With the establishment of a Black subclass, poor Whites identified with and supported the policies of the upper class, and White large landowners were willing to grant to poor Whites a larger role in the political process.³⁵ The coalition of Whites, both rich and poor, polarized White Americans against Black Americans in such a way that any perceived political or economic advantage, which is conferred on Black people today in a effort to compensate them for past discrimination, leads to vigorous attacks in the courts or in the legislatures.

The ugliness of Bell's tales suggests that the vested property interest White people have in being White means that the White dominant society will only operate to protect its privileged status by subjugating others and that all racial deliverance strategies are doomed to fail. If true, and there is no reason

34. *Id.* at 72.

35. BELL, *supra* note 2, at 40.

to doubt the validity of the conclusion on the record so far, it is the American dilemma; it is the American shame. The shame dehumanizes both master and slave. "Slavery" wrote Thomas Jefferson, "brutalizes slave owner as well as slave and worst of all, tends to undermine the 'only firm basis' of liberty, the conviction in the minds of the people that liberty is 'the gift of God.' . . . I tremble for my country when I reflect that God is just; that his justice cannot sleep forever." ³⁶ Bell's reiteration of Thomas Jefferson's assessment of the American dilemma reveals *And We Are Not Saved's* frail remnant of hope which rests in the blighted consciousness of racist America.

The book effectively peels away the shrouds of mystery which cloak the ostensible achievements Blacks in the United States have made over the past three decades. It exposes the reasons why civil rights legislation gained passage and why purportedly favorable court decisions emerged. While it may be true that certain White legislators and judges were moved "to do the right thing" or to implement the unfulfilled promise of the American ideals of racial equality and justice for all, the White America Bell depicts is a White America of conspirators who throw a proverbial crumb at the Black masses to quell race riots, protests, marches, sit-ins and boycotts and the like. Against this tapestry, Bell's Black Americans can remain only cynical and dejected. The civil rights activists, who fought so valiantly through the 50s and 60s and drifted rudderless in the 70s, (recall that many of the so-called Black leaders of the civil rights movements were slain) can view this book as an assessment of their efforts, or, more pointedly, an assessment of their failure.

Derrick Bell is well-qualified to analyze and evaluate the civil rights movement. As the first Black, tenured Harvard law professor and as a veteran of the civil rights movement, Bell can speak with the authority of one who has been in the trenches. His analysis has more credibility than an analysis by an outsider and nonparticipant in the struggle would otherwise have. As one of the founders of the National Conference of Black Lawyers, a group which seeks to promote racial justice through social activism, Bell continues to take unpopular stances among the White majority, breaking with tradition in an effort to sensitize people to racism or sexism in its various guises, whether subtle or blatant. Within the past year, Professor Bell staged a sit-in, which is conduct more characteristic of a bygone era, in his Harvard Law School office to protest a denial of tenure to a White woman on the Harvard Law School faculty.

As a constitutional law professor and legal scholar, Bell's review of the historical premises of the constitution and its political, economic and philosophical underpinnings has a kind of veracity which his medium of fictional tales belies. The novelty and readability of his approach should not delude people into concluding that his work lacks substance and legal significance. For today's Black underclass, Bell confirms what they know: the American dream is a myth. The attempts of the Black intelligentsia to assimilate in White American society have failed, and the Black underclass knows that it is more lucrative to participate in the subculture of selling stolen goods or contraband than to strive to achieve the promise of education because the attain-

36. BELL, *supra* note 2, at 28 ((citing DONALD ROBINSON, *SLAVERY IN THE STRUCTURE OF AMERICAN POLITICS: 1765-1820* at p. 92, (1971), quoting from T. JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* (T. Abernethy, ed. 1964)).

ment of a collection of degrees or certificates fails to insulate any Black person in from discriminatory treatment—recall the treatment of Black law professors by their white peers discussed earlier.³⁷ Necessarily, some readers will therefore be inclined to conclude that Bell's book is autobiographical and that his unnamed narrator, who is also a Black, male law professor at a predominately White law school, is really Bell himself or Bell's alterego. Resolution of this question is unessential to appreciating the text and its independent validity.

One can wonder though why Professor Bell used a Black female as the other central character in his work and whether his portrayal of Black women as exemplified by Geneva Crenshaw is subject to attack. As for me, I would rather give credit to Bell's egalitarianism. My own response to Geneva, like that of Professors Williams and Austin discussed earlier, is one of strong identification.³⁸ She is the archetypal Black woman whose strength and intestinal fortitude is legend. She is observed from afar by Black men who determine she is aloof and sexually unattainable because she is more free than they are. Her increased freedom is rooted in the illusion of her greater access to a piece of the American dream. This freedom stems from her femaleness and the historical sexual exploitation of Black women by white men who used her loins to increase their property by having her give birth to additional slaves. White males find her less threatening, and as a result, White males offer her educational and employment opportunities denied to Black men thereby making of her the breadwinner for Black families and co-emasculator with them of Black men.

White males foster emasculation of Black men by insidious laws and practices which make it more prudent for an unemployed Black male to abandon his wife and children so that they can qualify for welfare rather than to stay and see his offspring go hungry. Such phenomena weaken the fiber of the Black family unit and promote dependency on White bounty in a way which is not too unlike the paternalistic relationship which existed between the master and the slave.

White males who escaped service in Viet Nam and whose counterparts sent Black males, in disproportionately high numbers to fight and die in a war of Black people against Browns and Yellows on behalf of Whites, thereby killed off the mates that the Black women in Bell's "Chronicle of the Twenty-Seventh Year Syndrome" otherwise could have married. Other forms of Black genocide include the unabated sale of addictive drugs in the Black community which by all accounts is a multibillion dollar industry. Opiates provide blessed forgetfulness to Blacks who discern the futility of their existence and in their drug-induced dreams see America with a kind of clarity that eludes them in their more sober interludes.

Another species of genocide is Black on Black crime a result of the powerlessness of being Black in America and an inability to combat the real source of one's impotence. A legal system which fails to impose identical sanctions on Blacks who kill other Blacks as opposed to the kinds of punishment imposed on Blacks who kill whites, implies that a Black life is worth less than a White life. Hence, the poignancy of Bell's "Chronicle of the Black

37. See *supra* notes 23-34, and accompanying text.

38. See *supra* notes 28-29, and accompanying text.

Crime Cure" unmasks the crucial role Black crime plays in the economic system. And with Bell's revelation, the last vestiges of hope that the eradication of Black crime is all that is necessary to secure the deliverance of Black people fades.

Bell's book will therefore remain a testament of the odyssey of civil rights activists towards racial justice. His account preserves an assessment of the failed strategies which were used in the past and can serve to prevent subsequent advocates of racial justice from pursuing futile gameplans for achieving racial equality. Despite Geneva's suggestion that Blacks should continue to pursue racial equality by using the same devices that have been employed before, with the continued hope that White America will one day fulfill its promise embedded in the constitution, the book's inability to offer new, concrete suggestions as to what strategies or tactics could succeed in the future engenders despair and frustration in readers who ask: "What's the point? And now what?" But perhaps, demanding solutions is too much to require of Professor Bell, Geneva or the narrator.

CONCLUSION

In sum, *And We Are Not Saved* makes an important contribution to American legal scholarship and to the literature concerning the history of racism in the United States of America. It evaluates the civil rights struggle over the last thirty years and asks all Americans to reassess the extent to which this country can and will embrace its professed ideals of liberty and equality for all. I recommend the book to lawyers, historians, social scientists, judges, and lay people as a thoughtful and provocative work complete with footnotes which uses a novel approach to exploring hard legal and policy issues.

Bell's characters sing a song which harmonizes with the melodies deep within the breasts of the descendents of slaves in this country. His characters also bellow against the injustices which subjugate Black people and other minorities in this country. Black people hear the refrains; we hear Jeremiah's lament that we are not saved;³⁹ and we intone just like Mamie the Black woman who raised the racist, white, state senator in "The Chronicle of the Ultimate Voting Rights Act" did: "The Lord don't like ugly."⁴⁰ And we continue to hope that White Americans heed the Lord's warning and come to know that Mamie is right: "The Lord don't like *no* ugly."

39. "The harvest is past, the summer is ended, and we are not saved." *Jeremiah* 8:20.

40. BELL, *supra* note 2, at 81.