

June 1993

## Learning the Three I's of America's Slave Heritage - Symposium on the Law of Slavery: Theories of Democracy and the Law of Slavery

Derrick Bell

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

---

### Recommended Citation

Derrick Bell, *Learning the Three I's of America's Slave Heritage - Symposium on the Law of Slavery: Theories of Democracy and the Law of Slavery*, 68 Chi.-Kent L. Rev. 1037 (1992).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol68/iss3/3>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [dginsberg@kentlaw.iit.edu](mailto:dginsberg@kentlaw.iit.edu).

## LEARNING THE THREE "I's" OF AMERICA'S SLAVE HERITAGE

DERRICK BELL\*

The year is 1993. In a first-grade classroom in rural, Chester County, Pennsylvania, a 6-year-old boy and girl, the only black children in a first-grade class, are summoned to the front of the class by their white teacher. To show the children how slavery worked, the teacher holds a mock slave auction.

"Teacher put us up on a table. Acted like she was selling us," the little girl reported, adding that the teacher told her she would be sold for about \$10 as a house cleaner.

The little boy said that the teacher used him to demonstrate how slaves, their shirts stripped off their backs, were chained to a post before a flogging. "I would have big legs and strong muscles," the teacher told the boy and his classmates.

Later, when the classroom demonstration became public, the teacher apologized. She told reporters that she was trying to teach the children about black history. "I did not view it as racial. I wanted to teach the children about prejudice. I did not do it with malice or to embarrass anyone."

The mothers of the two children rejected the apology. They and many in the black community who picketed the school, wanted the teacher fired. A black high school student said she felt uncomfortable in class when teachers discussed slavery. "It's humiliating. Why do we have to be reminded of it?"<sup>1</sup>

The white teacher, though, had the right idea. Children do need to learn the history of slavery. It was her execution that was seriously flawed.<sup>2</sup> The unhappy incident illustrates that the parents, the teacher,

\* Visiting Professor of Law, New York University Law School. This article is based on the text of DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

1. Susan Weidener, *Mock Slave Auction in Class Backfires on Chesco Teacher*, PHILADELPHIA INQUIRER, Jan. 21, 1993, at A1.

2. In the antebellum period abolitionists often held a mock slave auction at meetings. The Rev. Henry Ward Beecher was particularly well-known for this theatrical tactic. For slaves and abolitionists the slave auction was perhaps the most hated symbol of the peculiar institution, because it embodied not only the dehumanization of slaves but also presaged the greatest personal tragedy of slavery: the destruction of families as close relatives were separated for life by the auctioneer's hammer.

the class, and Americans generally would benefit from a primer on the three I's of the nation's slave heritage: Information, Interpretation, and Inspiration.

*Information:* This Symposium on the law of slavery, serves the valuable role of presenting data about what remains an area of American history little known because the facts about—as opposed to the fact of—slavery have been systematically consigned to an era of our history that is deemed better forgotten. As a result, slavery, though dead, has never been buried. To this day, as the misguided slave auction reveals, the nation has not come to grips with the contemporary significance of its slavery origins. Blacks continue to feel the stigma of slavery while whites feel neither burden nor blame.

When I was growing up in the years before the Second World War, our slave heritage was more a symbol of dishonor than a source of pride. It burdened black people with an indelible mark of difference as we struggled to be like whites. Survival and progress of the race seemed to require moving beyond, even rejecting slavery. Childhood friends in a West Indian family who lived a few doors away often boasted, erroneously, as I later learned, that their people had never been slaves. My own more accurate—but hardly more praiseworthy—response was that my forebears included many free Negroes, some of whom had Choctaw and Blackfoot Indian blood.

In those days, self-delusion was both easy and comforting. Slavery was barely mentioned in the schools and seldom discussed by the descendants of its survivors, particularly those who had somehow moved themselves to the North. Emigration to the North, whether from the Caribbean islands or from the Deep South states—even though slavery had flourished in both the islands and in several Northern states—provided a geographical distance that encouraged and enhanced individual denial of our collective slave past. We sang spirituals but detached the songs from their slave origins. As I look back, I see this reaction as no less sad, for being so very understandable. Negroes were a subordinate and mostly shunned portion of a society that managed to lay the onus of slavery neatly on those whose forebears were slaves while simultaneously exonerating those who were slaveholders. All things considered, it seemed a history best left alone.

Then, after the Second World War, and particularly in the 1960s, slavery became—for a few academics and some militant Negroes—a subject of fascination and a sure means of evoking racial rage as a prelude to righteously repeated demands for “Freedom Now!” In response to a res-

urrection of interest in our past, new books on slavery were written, long out-of-print volumes were republished. The new awareness reached its highest point in 1977 with the television version of Alex Haley's biographical novel, *Roots*.<sup>3</sup> The highly successful mini-series informed millions of Americans—black as well as white—that slavery in fact existed and that it was awful. Not, of course, as awful as it would have been save for the good white folks the television writers had created to ease the slaves' anguish, and the evil ones on whose shoulders they placed all the guilt. Through the magic of literary license, white viewers could feel revulsion for slavery without necessarily recognizing American slavery as a burden on the nation's history, certainly not a burden requiring reparations in the present.

But the stigma associated with slavery refuses to fade, along with the deeply embedded personal attitudes and public policy assumptions that supported it for so long. Indeed, the racism that made slavery feasible is far from dead in the last decade of twentieth-century America; and the civil rights gains, so hard won, are being steadily eroded.

Because the real scope and significance of slavery in the nation's past remains repressed, most Americans cannot imagine much less concede that black people are now, as were our forebears when they were brought to the New World, objects of barter for those who, while profiting from our existence, deny our humanity. It is in the light of this fact that we must consider the haunting questions about slavery and exploitation contained in Professor Linda Myers' book, *Understanding an Afrocentric World View: Introduction to an Optimal Psychology*,<sup>4</sup> questions that serve as their own answer.

We simply cannot prepare realistically for our future without assessing honestly our past. It seems cold, accusatory, but we must try to fathom with her "the mentality of a people that could continue for over 300 years to kidnap an estimated 50 million youth and young adults from Africa, transport them across the Atlantic with about half dying unable to withstand the inhumanity of the passage, and enslave them as animals?"<sup>5</sup>

In our assessment, we cannot ignore the fact that Americans did not invent slavery.<sup>6</sup> The practice has existed throughout recorded history

3. JOHN HOPE FRANKLIN & ALFRED A. MOSS JR., *FROM SLAVERY TO FREEDOM* 425 (6th ed. 1988).

4. LINDA J. MYERS, *UNDERSTANDING AN AFROCENTRIC WORLD VIEW: INTRODUCTION TO AN OPTIMAL PSYCHOLOGY* 8 (1988).

5. *Id.*

6. On the origin of slavery in what became the United States, see DAVID B. DAVIS, *THE PROBLEM OF SLAVERY IN WESTERN CULTURE* (1966); A. LEON HIGGINBOTHAM, JR., *IN THE*

and Professor Orlando Patterson, a respected scholar, argues impressively that American slavery was no worse than that practiced in other parts of the world.<sup>7</sup> But it is not comparative slavery policies that concern me. Slavery as an example of what white America has done is both an explanation of the lack of concern for the dire circumstances in which so many blacks live, and a constant reminder of what white America might do.

The second "I" is Interpretation, or—more specifically—an interpretation of slavery in American law. Most Americans likely see little present significance in the fact that the Framers of this country's Constitution saw fit to recognize slavery.<sup>8</sup> Relatively few even know that while the Constitution is proclaimed as the model charter of individual freedom, that Constitution as originally written contained no less than ten provisions intended to recognize and protect property in slaves.<sup>9</sup>

How did this happen? Quite simply, the Constitution's Framers felt that a government committed to the protection of property could not have come into being without the race-based slavery compromises placed in the Constitution. It is surely so that the economic benefits of slavery made a successful Revolution possible, and the political compromises of black rights that began in Philadelphia played a very major role in the nation's growth and development.

But beyond its guilt-evoking potential, many will ask, does the history of slavery in this country have any value in analyzing contemporary

MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD (1978); EDMUND S. MORGAN, AMERICAN SLAVERY, AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA (1975); PETER H. WOOD, BLACK MAJORITY: NEGROES IN COLONIAL SOUTH CAROLINA FROM 1670 THROUGH THE STONO REBELLION (1974).

7. ORLANDO PATTERSON, SLAVERY AND SOCIAL DEATH 76 (1982). Professor Patterson suggests:

The dishonor of slavery . . . came in the primal act of submission. It was the most immediate human expression of the inability to defend oneself or to secure one's livelihood . . . .

The dishonor the slave was compelled to experience sprang instead from that raw, human sense of debasement inherent in having no being except as an expression of another's being.

*Id.* at 78.

8. *But see* Paul Finkelman, *Slavery and the Constitutional Convention*, in BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY 188 (Richard Beeman et al. eds., 1987); DONALD ROBINSON, SLAVERY IN THE STRUCTURE OF AMERICAN POLITICS, 1765-1820 (1971); William Wiecek, "The Blessings of Liberty": Slavery in the American Constitutional Order, in SLAVERY AND ITS CONSEQUENCES 23 (Robert A. Goldwin & Art Kaufman eds., 1988); Sanford Levinson, *Slavery in the Canon of Constitutional Law*, 68 CHI.-KENT L. REV. 1087 (1993).

9. WILLIAM M. WIECEK, THE SOURCES OF ANTISLAVERY CONSTITUTIONALISM IN AMERICA, 1760-1848, at 62, 63 (1977). Professor Wiecek listed ten provisions in the Constitution that provided for slavery and protected slave owners. Paul Finkelman, *Slavery and the Constitutional Convention*, in BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY 188 (Richard Beeman et al. eds., 1987), identifies five provisions explicitly sanctioning slavery in the Constitution and ten provisions providing indirect protection of slavery.

social policies and legal doctrine? Constitutional apologists explain away recognition and protection of slavery in the original Constitution as a historical anomaly that occurred because: (1) most whites in the late eighteenth century (including the Framers) believed that Africans were a lesser order of humans, and (2) the dire need for a strong central government committed to the protection of property pushed the Framers to accept protection of even property in slaves . . . despite the realization by many of them that slavery was morally wrong. The rationale for many was the widespread expectation that slavery would soon die out on its own.<sup>10</sup>

It is clear that the fact of slavery in American law and the varying status of slaves presented dilemmas that allowed courts only the options of self-destruction or disgrace. Most chose the latter course with results that reflected the priority property held over both persons—and morality.<sup>11</sup> Reading those tortured opinions of the past, strikes sparks of familiarity about all too many current racial decisions. Just how much reliance can we place in assurances that American slavery is an artifact of history with no contemporary relevance? Unfortunately, history contains any number of post-slavery instances where black rights were sacrificed in order to protect the political or property interests of whites—or some of them.

The Constitution with its condemnation of Africans to slavery was written and adopted at the end of the eighteenth century. By the end of the nineteenth century, the citizenship rights won by the former slaves after the Civil War had been stripped of all but their ceremonial meaning in a series of political deals like the Hayes-Tilden Compromise in 1876. There, to settle a presidential election dispute that threatened a renewed civil war, the North, in order to secure the presidency for the Republican, Hayes, agreed to withdraw federal troops from the South, leaving the already hard-pressed blacks to the not too tender mercies of the former slave owners.<sup>12</sup>

By 1900, the U.S. Census reported that there were 8,833,994 Ne-

10. William Freehling, *The Founding Fathers and Slavery*, 77 AM. HIST. REV. 81 (1972).

11. ROBERT M. COVER, *JUSTICE ACCUSED: ANTI-SLAVERY AND THE JUDICIAL PROCESS* (1975).

12. For references to writings on the Hayes-Tilden Compromise, see DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* 32-33 (3d ed. 1992). See generally, *THE FACTS OF RECONSTRUCTION* (Eric Anderson & Alfred A. Moss, Jr. eds., 1991); CHARLES A. LOFGREN, *THE PLESSY CASE: A LEGAL-HISTORICAL INTERPRETATION* (1987); RAYFORD W. LOGAN, *THE BETRAYAL OF THE NEGRO* (1954); DONALD G. NIEMAN, *PROMISES TO KEEP: AFRICAN-AMERICANS AND THE CONSTITUTIONAL ORDER, 1776 TO THE PRESENT* (1991); 4 *RACE, LAW AND AMERICAN HISTORY 1700-1990: THE AGE OF JIM CROW: SEGREGATION FROM THE END OF RECONSTRUCTION TO THE GREAT DEPRESSION* (Paul Finkelman ed., 1992).

groes, representing 11.6 percent of the population.<sup>13</sup> Most blacks wherever they lived in the country had been disenfranchised either by statute or state constitutional amendment.<sup>14</sup> Segregation was widespread and in 1896, its "separate but equal" status, the ultimate oxymoron, gained Supreme Court approval in *Plessy v. Ferguson*.<sup>15</sup>

Now, with the twentieth century well into its final decade, formal segregation is ended. Judicial precedent and a plethora of civil rights statutes prohibit racial discrimination. Non-compliance is more the rule than the exception, but the Constitution's slavery provisions do seem unhappy reminders of a less enlightened era.

But are they? Racism is far from dead in modern America. Despite undeniable progress for many, no American of African descent is safe from discriminatory events ranging from unthinking insult to career and even life-threatening episodes. Even the most successful of us are haunted by the plight of our less-fortunate brethren who must struggle for existence in what social scientists call the "underclass." Burdened with life-long poverty and soul-devastating despair, they live their lives beyond the pale of the American Dream.

Moreover, as happened during the mid-1800s, promising racial reforms in the 1950s and 1960s have been eroded by racial barriers more subtle but for most African Americans hardly less discriminatory than the Jim Crow laws that a century earlier mandated segregation while giving legitimacy to deeply held beliefs in white supremacy. What no one predicted is that the semblance of equal opportunity, combined with a host of economic changes in the work force, would have a devastating effect on poor blacks, particularly those locked in the large inner-cities of our major urban areas.

But black people at every economic level are caught in a double bind. We are disadvantaged unless whites perceive that non-discriminatory treatment for us will be a benefit for them. In addition, even when non-racist practices might bring a benefit, whites may rely on discrimination against blacks as a unifying factor and a safety valve for frustrations during economic hard times.

Almost always, the injustices that dramatically diminish the rights

13. PETER BERGMAN, *THE CHRONOLOGICAL HISTORY OF THE NEGRO IN AMERICA* 327 (1969).

14. J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH 1880-1910* (1974); and 6 *RACE, LAW AND AMERICAN HISTORY 1700-1990: AFRICAN-AMERICANS AND THE RIGHT TO VOTE* (Paul Finkelman ed., 1992).

15. 163 U.S. 537 (1896).

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

Race consciousness of this character, as Professor Kimberlé Crenshaw suggests in her pathbreaking *Harvard Law Review* article, makes it difficult for whites “to imagine the world differently. It also creates the desire for identification with privileged elites. By focusing on a distinct, subordinate ‘other,’ whites include themselves in the dominant circle—an arena in which most hold no real power, but only their privileged racial identity.”<sup>16</sup>

The critically important stabilizing role that blacks play in this society, poses a major barrier in efforts to gain racial equality. Throughout history, politicians have used blacks as scapegoats for failed economic or political policies. Before the Civil War, rich slave owners persuaded the non-slaveholding whites to stand with them against the danger of slave revolts—even though the existence of slavery condemned whites unable to afford slaves to serious economic disadvantage.<sup>17</sup> After the Civil War, poor whites fought social reforms and settled for segregation rather than see those formerly enslaved blacks get ahead.<sup>18</sup> Most labor unions preferred to allow the plant owners to break their strikes with black scab labor rather than allow blacks to join their unions.<sup>19</sup>

The “them against us” racial ploy—always a potent force in economic bad times—is working again as whites as disadvantaged by high status entrance requirements as blacks, fight to end affirmative action policies that, by neutralizing class-based entrance requirements and requiring widespread advertising of jobs once awarded via the old-boys network, have likely helped far more whites than blacks. And today, as through much of the 1980s, and into the 1990s, millions of Americans—

16. Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1381 (1988).

17. MORGAN, *supra* note 6.

18. Derrick Bell, *The Racial Imperative in American Law, in THE AGE OF SEGREGATION: RACE RELATIONS IN THE SOUTH, 1890-1945*, at 3 (Robert Haws ed., 1978).

19. HERBERT HILL, *BLACK LABOR AND THE AMERICAN LEGAL SYSTEM* (1977); WILLIAM B. GOULD, *BLACK WORKERS IN WHITE UNIONS: JOB DISCRIMINATION IN THE UNITED STATES* (1977).



white as well as black—face steadily worsening conditions: unemployment, inaccessible health care, inadequate housing, mediocre education, and pollution of the environment. The gap in national incomes approaches a chasm of crisis as those in the top fifth now earn more than their counterparts in the bottom four-fifths combined.

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

This “racial bonding” by whites—as Bell Hooks puts it<sup>20</sup>—means that black rights and interests are always vulnerable to diminishment if not to outright destruction. The willingness of whites over time to respond to this racial rallying cry, far more than the failure of liberal democratic practices (re black rights) to coincide with liberal democratic theory, explains blacks’ continuing subordinate status. This, of course, is contrary to the philosophy incorporated in Gunnar Myrdal’s massive mid-century study, *The American Dilemma*. Myrdal and two generations of civil rights advocates accepted the idea of racism as merely an odious holdover from slavery, “a terrible and inexplicable anomaly stuck in the middle of our liberal democratic ethos.”<sup>21</sup> No one doubted that the standard practices of American policy making were adequate to the task of abolishing racism. White America, it was assumed, *wanted* to abolish racism.

20. BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 54 (1984).

21. GUNNAR MYRDAL, *AN AMERICAN DILEMMA* (1944).

[T]he Negro problem in America represents a moral lag in the development of the nation and a study of it must record nearly everything which is bad and wrong in America . . .

[H]owever, . . . not *since Reconstruction has there been more reason to anticipate fundamental changes in American race relations, changes which will involve a development toward the American ideals.*

*Id.* at xix.

Forty years later, in *The New American Dilemma*,<sup>22</sup> Professor Jennifer Hochschild examined what she called Myrdal's "anomaly thesis," concluding that it simply cannot explain the persistence of racial discrimination;<sup>23</sup> rather, the continued viability of racism demonstrates "that racism is not simply an excrescence on a fundamentally healthy liberal democratic body, but is part of what shapes and energizes the body."<sup>24</sup> Under this view, "liberal democracy and racism in the United States are historically, even inherently, reinforcing; American society as we know it exists only because of its foundation in racially based slavery, and it thrives only because racial discrimination continues. The apparent anomaly is an actual symbiosis."<sup>25</sup>

The permanence of this "symbiosis" ensures that civil rights gains will be temporary and setbacks inevitable. Consider: In this last decade of the twentieth century, color determines the social and economic status of all African Americans, both those who have been highly successful and their poverty-bound brethren whose lives are grounded in misery and despair. We rise and fall less as a result of our efforts than in response to the needs of a white society that condemns all blacks to quasi-citizenship as surely as it segregated our parents and enslaved their forebears. The fact is that, despite what we designate as progress wrought through struggle over many generations, we remain what we were in the beginning: a dark and foreign presence, always the designated "other." Tolerated in good times, despised when things go wrong; as a people, we are scapegoated and sacrificed as distraction or catalyst for compromise to facilitate resolution of political differences or relieve economic adversity.

Here, I suggest, is the place to insert the third "I" of slavery: Inspiration.

Beyond the despair of the conclusion that racism is a permanent part of American society, there is the reassuring reminder that our forebears—though betrayed into bondage—survived the slavery in which they were reduced to things, property, entitled neither to rights nor to respect as human beings. Somehow, as the legacy of our spirituals makes clear, our enslaved ancestors managed to retain their humanity as well as their faith that evil and suffering were not the extent of their destiny—or of the destiny of those who would follow them. Indeed, we owe our

22. JENNIFER L. HOCHSCHILD, *THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION* (1984).

23. *Id.* at 203.

24. *Id.* at 5.

25. *Id.*

existence to their perseverance, their faith. In these perilous times, we must do no less than they did: fashion a philosophy that both matches the unique dangers we face, and enables us to recognize in those dangers opportunities for committed living and humane service.

The task is less daunting than it might appear. From the beginning, we have been living and working for racial justice in the face of unacknowledged threat. Thus, we are closer than we may realize to those in slavery who struggled to begin and maintain families even though at any moment they might be sold, and separated, never to see one another again. Those blacks living in the pre-Civil War North, though deemed "free," had to live with the ever-present knowledge that the underground railroad ran both ways.<sup>26</sup> While abolitionists provided an illegal network to aid blacks who escaped slavery,<sup>27</sup> Southern "slave catchers" likely had an equally extensive system that enabled them to kidnap free blacks from their homes or the streets, and spirit them off to the South and a life in bondage.<sup>28</sup> In *Prigg v. Pennsylvania*,<sup>29</sup> the Supreme Court asserted that masters or their agents had a constitutional right of "self-help" to seize fugitive slaves and return them to the South as long as they could accomplish their mission without a "breach of the peace." In reality, this decision constitutionalized the kidnapping of free blacks, if it could be done quietly enough so that the surrounding white community would not be disturbed.

In those times, racism presented dangers from without that were stark and terrifying, but they were hardly more insidious than those blacks face today in our inner cities—all too often from other blacks. Victimized themselves by an uncaring society, some young blacks vent their rage on victims like themselves, thereby perpetuating the terror that once whites had to invoke directly. We should not be surprised that a society that once legalized slavery and authorized pursuit of fugitive slaves with little concern about the kidnapping of free blacks, now views black-on-black crime as basically a problem for its victims and their communities.

26. See Julie Winch, *Philadelphia and the Other Underground Railroad*, 111 PA. MAG. HIST. & BIOGRAPHY 3 (1987), reprinted in 2 ARTICLES ON AMERICAN SLAVERY: SLAVE TRADE AND MIGRATION, DOMESTIC AND FOREIGN (Paul Finkelman ed., 1988).

27. LEVI COFFIN, REMINISCENCES OF LEVI COFFIN, THE REPUTED PRESIDENT OF THE UNDERGROUND RAILROAD (1876); 6 ARTICLES ON AMERICAN SLAVERY: FUGITIVE SLAVES (Paul Finkelman ed., 1989); LARRY GARA, THE LIBERTY LINE: THE LEGEND OF THE UNDERGROUND RAILROAD (1961); WILLIAM STILL, THE UNDERGROUND RAILROAD (1872).

28. See ROBINSON, *supra* note 8, at 286 (discussing the Fugitive Slave Act of 1793, that while including severe penalties for those assisting escaping slaves, "prescribed no penalties for those who sought to kidnap and re-enslave freed Negroes").

29. 41 U.S. (16 Pet.) 539 (1842).

In the context of such a history, played out now as current events, is a long continuum of risks faced and survived, our oppression barring our oppressors from actually experiencing the freedom they so proudly proclaim. As the late Harvard historian, Nathan Huggins, points out in *Black Odyssey*, a book about slavery from the point of view of the slaves:

Uncertainty, the act of being engaged in an unknown and evolving future, was their common fate. In the indefinite was the excitement of the possible . . . . That sense of possibility and that dream have infected all Americans, Africans no less than Europeans . . . . *Yet the dream has been elusive to us all, white and black, from that first landfall [at Jamestown where the first twenty Africans landed].*<sup>30</sup>

Huggins argues that Americans view history as linear and evolutionary and tend to see slavery and racism as an aberration or pathological condition: "Our national history has continued to amplify the myths of automatic progress, universal freedom, and the American dream without the ugly reality of racism seriously challenging the faith."<sup>31</sup> Those who accept these myths, consider our view that racism is permanent to be despairing, defeatist, and wrong. In so doing, they overlook the fact that the "American dogma of automatic progress fails those who have been marginalized. Blacks, the poor, and others whom the myth ignores are conspicuously in the center of the present, and they call for a national history that incorporates their experience."<sup>32</sup>

Such a new narrative, and the people who make it, among whom are included those who pursue equality through legal means, must find inspiration not in the sacrosanct, but utterly defunct, glory of ideals that for centuries have proven both unattainable and poisonous. Rather, they must find it in the lives of "an oppressed people who defied social death as slaves and freedmen, insisting on their humanity despite a social consensus that they were 'a brutish sort of people'."<sup>33</sup> From that reality, Huggins takes hope rather than despair. Knowing there was no escape, no way out, the slaves nonetheless continued to engage themselves. To carve out a humanity. To defy the murder of selfhood. Their lives were brutally shackled, certainly: but *not without meaning despite being imprisoned.*<sup>34</sup>

We are proud of our heroes, but we must not forget those whose lives were not marked by extraordinary acts of defiance. Though they lived and died as captives within a system of slave labor,

30. NATHAN HUGGINS, *BLACK ODYSSEY* 244 (Vintage Books ed. 1990) (emphasis added).

31. *Id.* at xvi.

32. *Id.* at xiii.

33. *Id.* at lvi.

34. *Id.* at lxxiv.

they produced worlds of music, poetry, and art. They reshaped a Christian cosmology to fit their spirits and their needs, transforming Protestantism along the way. They produced a single people out of what had been many . . . Their ordeal, and their dignity throughout it, speaks to the world of the indomitable human spirit.<sup>35</sup>

Perhaps those of us who can admit we are imprisoned by the history of racial subordination in America can accept—as slaves had no choice but to accept—our fate. Not that we legitimate the racism of the oppressor. On the contrary, we can only *de*legitimate it if we can accurately pinpoint it. And racism lies at the center, not the periphery; in the permanent, not in the fleeting; in the real lives of black and white people, not in the sentimental caverns of the mind.

Armed with this knowledge, and with the enlightened, humility-based commitment that it engenders, we can accept the dilemmas of committed confrontation with evils we cannot end. We can go forth to serve knowing that our failure to act will not change conditions and may very well worsen them. We can listen carefully to those who have been most subordinated. In listening, we must not do them the injustice of failing to recognize that somehow they survived as complete, defiant, though horribly scarred beings. We must learn from their example, learn from those whom we would teach.

If we are to extract solutions from the lessons of the slaves' survival, and our own, we must first face squarely the unbearable landscape and climate of that survival. We yearn that our civil rights work will be crowned with success, but what we really want—want even more than success—is meaning. "Meaningfulness," as Stanford psychiatrist Dr. Irvin Yalom tells us, "is a by-product of engagement and commitment."<sup>36</sup> This engagement and commitment is what black people have had to do since slavery: making something out of nothing. Carving out a humanity for oneself with absolutely nothing to help—save imagination, will, and unbelievable strength and courage. Beating the odds while firmly believing in, *knowing* as only they could know, the fact that all those odds are stacked against them.

Both engagement and commitment connote service. And genuine service requires humility. We must first recognize and acknowledge (at least to ourselves) that our actions are not likely to lead to transcendent change and, may indeed, despite our best efforts, be of more help to the system we despise than to the victims of that system whom we are trying

35. *Id.*

36. IRVIN YALOM, M.D., *LOVE'S EXECUTIONER AND OTHER TALES OF PSYCHOTHERAPY* 12 (1989).

to help. Then, and only then, can that realization and the dedication based on it lead to policy positions and campaigns that are less likely to worsen conditions for those we are trying to help and more likely to remind the powers that be that out there are persons like us who are not only not on their side but determined to stand in their way.

Now there is more here than confrontation with our oppressors. Continued struggle can bring about unexpected benefits and gains that in themselves justify continued endeavor. We can recognize miracles we did not plan and value them for what they are rather than always measure their worth by their likely contribution to our traditional goals. As a former student, Erin Edmonds, concludes, it is not a matter of choosing between the pragmatic recognition that racism is permanent no matter what we do, or an idealism based on the long-held dream of attaining a society free of racism. Rather, it is a question of *both, and*. *Both* the recognition of the futility of action—where action is more civil rights strategies destined to fail—*and* the unalterable conviction that something must be done, that action must be taken.<sup>37</sup>

This is, I believe a more realistic perspective from which to gauge the present and future worth of our race-related activities. Freed of the stifling rigidity of relying unthinkingly on the slogan "we shall overcome," we are impelled to both live each day more fully *and* to examine critically the actual effectiveness of traditional civil rights remedies. Indeed, the humility required by genuine service will not permit us to urge remedies that we may think appropriate and the law may even require, but that the victims of discrimination have rejected.

That, I suggest, is the real Black History, all too easily lost in political debates over curricular needs. It is a story less of success than survival through an unremitting struggle that leaves no room for giving up. We are all part of that history, and it is still unfolding.

37. Erin Edmonds, Civil Rights According to Derrick Bell (unpublished manuscript).

