RACISM AS "THE NATION'S CRUCIAL SIN"†: THEOLOGY AND DERRICK BELL

George H. Taylor⋆

INTRODUCTION

At the heart of Derrick Bell's work lies a conundrum. He argues that racism is permanent, and yet at the same time he insists that the struggle against racism remains worthwhile and valuable. A number of critics find Bell's thesis about racism's permanence to be so despairing that, on its own terms, it renders any meaningful possibility of action

† DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 125 (1987) [hereinafter BELL, AND WE ARE NOT SAVED]. The phrase comes from a passage in one of Bell's fictional chronicles and refers to a contention levied by the main protagonist in that chronicle, Ben Goldrich. While this Article concentrates on Protestant theology, the boundaries of this theological inquiry are expanded when we realize that Bell describes Goldrich as Jewish.

⋆ Associate Professor of Law, University of Pittsburgh School of Law. My thanks to Derrick Bell, Richard Delgado, and Jean Stefancic for their helpful comments on a prior draft.

against racism totally unavailing.[1] My goal, by contrast, is to try to make sense of the paradox that lies so deep at the core of Bell's work and assess how the possibilities of action can coexist with racism's perdurance. While a number of scholars in this post-civil rights era have turned to the social sciences to address why racism remains so persistent,[2] I want to draw upon possible insights from theology. Theological analysis may provide a separate source of insight into not only racism's persistence but what Bell calls its "permanence." And theology may illuminate how it is possible to acknowledge racism's permanence and still engage in action against it.

My reference to theology takes the form of an analogy drawn from Christian theology, in particular from the work of the twentieth century American Protestant theologian, Reinhold Niebuhr.[3] At the core of Niebuhr's depiction of Christianity too lies a paradox: sin is an inextricable structure of human life, and yet human action remains meaningful. As in Bell, the paradox is not overcome; the paradox of the juxtaposition of sin

1. *See*, *e.g.*, Leroy D. Clark, *A Critique of Professor Derrick A. Bell's Thesis of the Permanence of Racism and His Strategy of Confrontation*, 73 DENV. U. L. REV. 23, 24 (1995) ("Professor Bell's work propagates a damaging and dampening message. . . ."); john a. powell, *Racial Realism or Racial Despair?*, 24 CONN. L. REV. 533, 550 (1992) (arguing that Bell's thesis is "unsuccessful in avoiding despair").

2. *See*, *e.g.*, Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CAL. L. REV. 733 (1995); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Lu-in Wang, *The Transforming Power of "Hate": Social Cognition Theory and the Harms of Bias-Related Crime*, 71 S. CAL. L. REV. 47 (1997).

3. I will rely on Niebuhr's principal theological work, *The Nature and Destiny of Man*, as well as an earlier major work, *Moral Man and Immoral Society*. *See* REINHOLD NIEBUHR, MORAL MAN AND IMMORAL SOCIETY (1932) [hereinafter NIEBUHR, MORAL MAN AND IMMORAL SOCIETY]; 1–2 REINHOLD NIEBUHR, THE NATURE AND DESTINY OF MAN (Charles Scribner's Sons 1964) (1943) [hereinafter NIEBUHR, NATURE AND DESTINY OF MAN]. My analysis has benefitted from a most important new commentary on Niebuhr by theologian Langdon Gilkey. *See* LANGDON GILKEY, ON NIEBUHR: A THEOLOGICAL STUDY (2001) [hereinafter GILKEY, ON NIEBUHR]. One of the pleasures of my graduate education was the opportunity to attend Gilkey's class lectures on Niebuhr.

As my research was ending, I came across the only other article of which I am aware that probes a similar interest in the relationship between Niebuhr and the persistence of racism thesis. *See* Davison M. Douglas, *Reinhold Niebuhr and Critical Race Theory*, *in* CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 149 (Michael W. McConnell et al. eds., 2001). While the present Article, as the text goes on to discuss, considers the affinities between the paradoxes of sin and action and of racism and action, Douglas's attention lies in an element of that relationship: the support Niebuhr provides to an understanding of why racism persists. *See*, *e.g.*, *id.* at 151. Douglas concentrates more on Niebuhr's social theory; I will elaborate more the details of Niebuhr's theology. Douglas also discusses critical race theory in general, while my comments focus specifically on the work of Bell. These differences in our attention do nothing, of course, to undermine my appreciation for Douglas's insight into the relevance of Niebuhr for understanding critical race theory. His thesis helped confirm that I too might be on the right track.

and action is one that has challenged Christianity since its origins. My claim is that the dynamics of the relation between sin and action may illuminate the dynamics of the relation between racism and action.

It is not necessary to my argument that racism be shown to be *ontologically* sinful, sinful as an actual, ultimate fact. The argument therefore requires no belief in the veracity of the Christian doctrine of sin, although many may believe racism is indeed sinful as that term is understood doctrinally. My thesis is a more modest one: there is a *resonance* between the depiction of sin and the depiction of racism, a resonance at the level of *lived experience*. Whatever the ultimate reality of sin, its characterization of the experience of human life usefully illuminates the experience of racism; it helps capture the reality of that experience.[4] Further, the lived experience of what it means to understand sin and yet be able to act may usefully inform what it means to experience racism and yet also act. To argue for a *resonance* between sin and racism rather than some identity may as well be more true to Bell's work. As I will explore, Bell's religious background and religious faith permeate his work and provide him with a deep source of his resilience.[5] This faith, which commentaries on Bell have not sufficiently assessed, seems a key element of Bell's belief in the availability and merit of action despite racism's permanence. So the resonance seems very strong between Bell's call to action in the face of racism and the theological call to action in spite of sin. And yet despite the prevalence of religious vocabulary in Bell's writings, the topic of sin itself little appears, a point I shall also probe.[6] The theology of sin discussed here is therefore not necessarily Bell's own. Hence the argument is one of the resonance between racism and sin rather than their identity, and my subject is theology and Derrick Bell rather than Derrick Bell's theology.

Part I develops Bell's thesis that racism is permanent, an ineradicable structure in American life.[7] Bell's stance here is unrelenting and a direct and deep challenge to liberal notions of racial progress. This section draws out the social facts Bell provides about the status of Blacks in American society[8] and examines Bell's argument for the continuing

4. To be more formal, the analysis is then phenomenological—the experience as lived—rather than ontological—the experience in its more ultimate reality.

5. *See infra* text accompanying notes 289–308.

6. Of special interest, of course, are those points where Bell uses the term "sin," as in the passage referred to in this article's title. *See infra* note 310.

7. Like Bell, I restrict analysis to racism in American life rather than speculate on the condition of racism more globally.

8. Following Bell, I retain his primary emphasis on the divide between Blacks and Whites, rather than on the divides(s) between Whites and other people of color. Bell is certainly aware of the multiplicity of racial divides in this country. *See*, *e.g.*, DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 191 (1992) [hereinafter BELL, FACES AT THE BOTTOM] (discussing the internment of Japanese Americans during World War II). He is also very much aware of the multiplicity of oppressions that

disparity between the races, particularly the claim that Whites hold on to a property in Whiteness. Part II analyzes Bell's call for action despite racism's permanence. Part III develops Niebuhr's theology of the possibility of action despite sin. Niebuhr too criticizes the liberal—and liberal theological—belief in continuing progress; for Niebuhr, evil is not overcome. Part IV returns to Bell and assesses his religious orientation and the degree it may be receptive to Niebuhr's theology. Part of the assessment here will be whether Bell's stance is more existential rather than religious. Part V concludes by examining some of the larger implications of Bell's thesis: the continuation of deep structures that resist characterization simply as social constructions. Reference will be briefly drawn to the contributions of Bell and critical race theory to a movement beyond nonfoundationalism.[9] Because the Article intends to offer additional grounds for the comprehension of Bell's conundrum—that racism is permanent and yet must be continually fought—the goal is understanding, not criticism. I hence assume Bell's thesis throughout.

I. THE PROBLEM: RACISM'S PERMANENCE

A. *Bell's Thesis*

Bell's thesis is direct and searing: "[R]acism is an integral, permanent, and indestructible component of this society."[10] This thesis of "the permanence of racism" is asserted as the subtitle of his book, *Faces at the Bottom of the Well*[11]

individuals may undergo—"sexism, classism, homophobia, and other forms of oppressions"—and that, as "a good deal of the writing in critical race theory stresses . . . oppressions are neither neatly divorceable from one another nor amenable to strict categorization." *Id.* at 144–45; *see infra* text accompanying notes 331–37 (developing Bell's discussion of the divide between Black men and Black women). Nevertheless, Bell's predominant emphasis is on the divide between Blacks and Whites, and this Article replicates that emphasis.

As the Article will only begin to suggest, while a primary interest lies in developing the distinctive vantage point and insights that Bell offers, I am interested as well in what might be the distinctive vantage points, insights, and, indeed, theologies that might be offered by those of other racial backgrounds. *See infra* note 308. Richard Delgado, for instance, argues that one of the limitations of Bell's analysis is, precisely, its "binary" emphasis on the divide between Blacks and Whites, an emphasis that limits attention to the possibilities of more polycentric, collaborative action between peoples of various colors. *See* Richard Delgado, *Derrick Bell's Toolkit—Fit to Dismantle That Famous House?*, 75 N.Y.U. L. REV. 283, 306–07 (2000).

9. *See infra* text accompanying notes 385–96.

10. BELL, FACES AT THE BOTTOM, *supra* note 8, at xiii.

11. *See supra* note 8.

and is reiterated in the title of several of his articles.[12] In *Faces at the Bottom of the Well*,[13] Bell's position is emphatic and unremitting:

> —"[R]acism in America is not a curable aberration . . . ." (x)
>
> —"[T]he sources of racial problems . . . grow more intractable with time." (xii)
>
> —Black people will never gain full equality in this country." (12)
>
> —"[R]acism is a permanent component of American life." (13)
>
> —"[R]acism is a permanent part of the American landscape." (92)
>
> —"[O]ppression on the basis of race returns time after time—in different guises, but it always returns." (97)
>
> —"[R]acism is permanent, the ultimate betrayal . . . ." (108)
>
> —"[R]acism lies at the center, not the periphery; in the permanent, not in the fleeting . . . ." (198)

The message permeates Bell's corpus. While *Brown v. Board of Education*[14] mandated the end of state-sponsored segregation, no other decision is society "increasingly willing to commemorate, and less and less willing to follow."[15] The song "We Shall Overcome" remains a civil rights anthem, but "the contrary teachings of racial history, combined with the evermore troubling realities of the present, now intrude ever more rudely and insistently on the dream."[16] The repeated force of Bell's thesis pummels and washes over the reader with the intensity of an insistent stream.

---

12. *See, e.g.*, Derrick Bell, *Racism is Here to Stay: Now What?*, 35 HOW. L.J. 79 (1991) [hereinafter Bell, *Racism is Here to Stay*]; Derrick Bell, *The Racism is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide*, 22 CAP. U. L. REV. 571 (1993) [hereinafter Bell, *The Racism is Permanent Thesis*]. Also hard-hitting is the title of Bell's book prior to *Faces at the Bottom*, see *supra* note 8, which is called *And We Are Not Saved*. *See supra* note †. The title refers to a lament from Jeremiah: "The Harvest is past, the summer is ended, and we are not saved." *Id.* at 241. Yet while this lament highlights that racial justice has not occurred, a point distressing enough in itself, the tenor at this time in Bell's writing is not necessarily that racial justice will never occur.

13. In the succeeding quotations, citations to Bell's *Faces at the Bottom*, *supra* note 8, are provided in the text.

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

15. DERRICK BELL, AFROLANTICA LEGACIES 49 (1998) [hereinafter BELL, AFROLANTICA LEGACIES]; *see also id.* at 133 ("Because the mesh of racism is so woven into the nation's essential fabric, I am convinced we can never eradicate it."); *id.* at 134 ("[E]ven those gains we consider rock-solid can be taken away in a moment.").

16. Bell, *The Racism is Permanent Thesis*, *supra* note 12, at 572; *see also id.* at 573 ("[R]acism is an integral, permanent, and indestructible component of this society.").

The severity of Bell's indictment is perhaps most keenly reflected in his fictional chronicle, *The Space Traders*,[17] Bell's best-known[18] fable. There Bell offers the story of alien visitors to the United States who promise the country wealth, environmental decontaminants, and alternatives to fossil fuel.[19] The gifts will assure the country's prosperity for the foreseeable future.[20] There is only one catch. In return for the gifts, the space traders want to take home all of this country's Blacks.[21] After significant debate, the nation votes conclusively for the trade.[22] The country does not decide on the basis of what is moral or right but on the basis of protection of White self-interest.[23] Racism is so powerful and abiding a motivation that it overcomes resistance to a vote approving a deep injustice.[24] Bell reports that in his lecture audiences significant majorities agree that were such a vote actually to be taken, the result would agree with that in the fable.[25] And a number of Blacks have related to Bell that were the choice made available to them, they would choose to go. "Knowing what they know, they say, 'Better risk the unknown in space than face the certainty of racial discrimination here at home.' "[26] The trade presented in the fable is unsettling precisely because it is not so fantastical as it might first appear.[27]

17. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 158–94.

18. *See* Derrick Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 902 [hereinafter Bell, *Who's Afraid of Critical Race Theory?*] (so stating).

19. BELL, FACES AT THE BOTTOM, *supra* note 8, at 159–60.

20. *Id*. at 164.

21. *Id*. at 160.

22. *Id*. at 192.

23. *Id*. at 171, 174.

24. *Id*. at 185, 189.

25. Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 ST. LOUIS U. L.J. 393, 405 (1990). Admittedly, Bell's audiences are self-selective, but it is not clear how that cuts. Are they predisposed to be sympathetic to Bell's arguments, or are they predisposed in favor of a belief in racial progress? The racial composition of his audience may play a factor in this determination, but even here the correspondence is not uniform.

26. DERRICK BELL, GOSPEL CHOIRS: PSALMS OF SURVIVAL FOR AN ALIEN LAND CALLED HOME 32 (1996) [hereinafter BELL, GOSPEL CHOIRS]. The statement occurs in the context of another of Bell's fables, but the inference is that the statement is factual. In the original *Space Traders* fable, Bell has a character argue during the convocation of "The Anti-Trade Coalition": "Outside civil rights gatherings like this, the masses of [B]lack people—those you claim to represent but to whom you seldom listen—are mostly resigned to the nation's acceptance of the Space Traders' offer. For them, liberal optimism is smothered by their life experience." BELL, FACES AT THE BOTTOM, *supra* note 8, at 174.

27. *See* Derrick Bell, *Black History and America's Future*, 29 VAL. U. L. REV. 1179, 1191 (1995) [hereinafter Bell, *Black History and America's Future*]. Other commentators argue that the space trade is not at all fantastic but instead replicative of actual events in American history. *See, e.g.*, Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425, 429

B. *The Evidence*

Bell's thesis is undeniably forceful, but what evidence does Bell provide in support? Does Bell simply dismiss the changes in the laws and behaviors affecting Blacks? It is most significant for comprehension of the deep substance of his thesis that he does not. He acknowledges "[t]angible progress,"[28] particularly the removal of formal barriers that maintained segregation. We no longer see signs allocating public facilities by race.[29] Millions of Blacks are registered to vote and do vote. Nationally, several thousand Blacks have been elected to public office.[30] These are changes that "seemed at one time impossible to achieve."[31]

And yet . . . how deep-seated are these changes? To what degree are they fundamental rather than at the surface?[32] Has the structure of racism altered? Bell recognizes progress, and yet, he insists, "nothing has changed."[33]

What does Bell mean? His response occurs at two levels. First, despite the entrance of certain Blacks to the middle and professional classes,[34] the actual economic plight of Blacks as a class is no better than it was and may be worse. Second, the structure of racism persists. As to the first, the figures are dire: Black unemployment has been twice that of Whites; Black income has been a little over half that of Whites; joblessness

(1990) ("Not only have Blacks been enslaved, as the *Chronicles* sorrowfully notes, but other racial groups have been conquered and removed, imported for their labor and not allowed to participate in the society they built, or expelled when their labor was no longer considered necessary.") Olivas cites the Cherokee removal from Georgia, the importation of Chinese workers and then the Chinese Exclusion laws, and the importation of Mexican laborers under the Bracero Program. *Id.* at 430–39. *See also* Richard Delgado & Jean Stefancic, *Derrick Bell's Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color if the Price Were Right?*, 62 U. COLO. L. REV. 321, 323–24 (1991) [hereinafter Delgado & Stefancic, *Derrick Bell's Chronicle*]; Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?*, 97 YALE L.J. 923, 941 (1988) [hereinafter Delgado, *Derrick Bell and the Ideology of Racial Reform*] (discussing the removal of Japanese Americans during World War II). In the context of his fable, Bell also discusses the removal of Japanese Americans during this war. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 191.

28. BELL, AND WE ARE NOT SAVED, *supra* note †, at 5; *see also* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 165 ("Even the most determined pessimist must acknowledge the change in the racial landscape in the last century."); BELL, AND WE ARE NOT SAVED, *supra* note †, at 73 ("Much has changed.").

29. BELL, AND WE ARE NOT SAVED, *supra* note †, at 45, 170; BELL, FACES AT THE BOTTOM, *supra* note 8, at 5–6.

30. BELL, AND WE ARE NOT SAVED, *supra* note †, at 92.

31. *Id.* at 232.

32. *See, e.g.*, *id.* at 93 (discussing that changes such as increases in Black voting "are more cosmetic than real").

33. BELL, FACES AT THE BOTTOM, *supra* note 8, at 22.

34. Bell will argue that these individual advances in fact have relieved societal pressure for the advance of Blacks as a class. *See infra* text accompanying notes 66–67.

has ravaged not only individuals, but also their families and their larger communities;[35] one-third of young Black men are either in prison or in the hands of the criminal justice system;[36] more Black men are in prison than in college.[37] *Brown*'s[38] promise of integrated education remains unfulfilled.[39] Schools are now more segregated than they were three decades ago.[40] The courts are increasingly resistant to claims for racial redress.[41] In Bell's view, "we must acknowledge that many, perhaps a majority of [B]lack children are in worse shape today than at any time since the end of Reconstruction, perhaps since the end of slavery."[42]

These facts demonstrate the failures of change. *Why* then is it that for African Americans "nothing has changed"?[43] For Bell, the grave facts are not the legacy of slavery or evidence of some "intrinsic weakness" in Blacks themselves; rather, they are integral to a social system where the subordination of Blacks serves as a source of protection for the identity and social stability of Whites.[44] The permanence of racism thesis recognizes racism's "deepest roots."[45] Racism is not a lingering vestige of a historical past; it is a present, ongoing system of subordination.

Bell has come to identify this continuing system and structure of racism as dependent on the effects of a property right in Whiteness.[46] The

35. *See* BELL, GOSPEL CHOIRS, *supra* note 26, at 5. For an earlier statistical picture, see Bell's *Faces at the Bottom*, *supra* note 8, at 45–48.

36. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 15.

37. *See id*. at 150; s*ee also id*. at 151 ("[B]lack men are suffering a genocide-like demise from the work-force, from the family and, increasingly, from life itself.").

38. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

39. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 162.

40. *See* Greg Winter, *Schools Resegregate, Study Finds*, N.Y. TIMES, Jan. 21, 2003, at A14 (citing a new study by Harvard's Civil Rights Project); *see also* Gratz v. Bollinger, 123 S. Ct. 2411, 2443 n.4 (2003) (Ginsburg, J., dissenting) (observing that "[n]eighborhoods and schools remain racially divided" and citing, among other evidence, the Harvard study).

41. *See, e.g.*, BELL, AND WE ARE NOT SAVED, *supra* note †, at 59.

42. Derrick Bell, *Public Education for Black Children: A Future Role for Dramatic Crisis*, *in* QUALITY EDUCATION FOR ALL IN THE 21ST CENTURY: CAN WE GET THERE FROM HERE? 25, 30 (1994) [hereinafter Bell, *Public Education for Black Children*].

43. BELL, FACES AT THE BOTTOM, *supra* note 8, at 22.

44. *See infra* notes 46–56 and accompanying text.

45. BELL, GOSPEL CHOIRS, *supra* note 26, at 12.

46. To my knowledge, Bell first proposed the concept in *And We Are Not Saved*, which dates to 1987. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 172. Cheryl Harris later independently developed the concept. *See* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1713 n.9 (1993) (noting her separate generation of the idea). In his own presentation of the concept, Bell makes frequent reference to Harris. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at 9, 149; DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER 71 (1994) [hereinafter BELL, CONFRONTING AUTHORITY]; Derrick Bell, Brown v. Board of Education: *Forty-Five Years*

property right in Whiteness asserts an entitlement of priority, preference, and privilege over Blacks.[47] "[T]he set of assumptions, privileges, and benefits that accompany the status of being [W]hite can become a valuable asset that [W]hites seek to protect."[48] The advantages are economic, political, and psychological,[49] and they accrue to every White whether he or she seeks it or not.[50] Whiteness provides an underlying sense of individual and group identity; Whites "bond" on the basis of race.[51] A property in Whiteness offers a vested right in a superior status.[52] Blacks, by contrast, have a caste-like lower status; they are different, less worthy.[53]

Whites deal with racial issues by ultimately protecting their property right in Whiteness: they act not out of altruism or morality but in self-interest.[54] If White interests conflict with racial justice, White self-interest prevails.[55] As Bell has argued since at least 1980, racial change occurs only as a matter of "interest convergence": "The interest of [B]lacks in achieving racial equality will be accommodated only when it converges with the interests of [W]hites."[56] This is true even in such heralded decisions as

After the Fact, 26 OHIO N.U. L. REV. 171, 176 n.13 (2000); Derrick Bell, *Love's Labor Lost? Why Racial Fairness is a Threat to Many White Americans*, *in* LANI GUINIER & SUSAN STURM, WHO'S QUALIFIED 42, 46–47 (2001) [hereinafter Bell, *Love's Labor Lost*]; Derrick Bell, *Racism: A Major Source of Property and Wealth Inequality in America*, 34 IND. L. REV. 1261, 1270 (2001) [hereinafter Bell, *Racism*]; Derrick Bell, *Wanted: A White Leader Able to Free Whites of Racism*, 33 U.C. DAVIS L. REV. 527, 536 (2000) [hereinafter Bell, *Wanted: A White Leader*]; Bell, *Who's Afraid of Critical Race Theory?*, *supra* note 18, at 904–05; Derrick Bell & Linda Singer, *Making a Record*, 26 CONN. L. REV. 265, 270 n.21 (1993).

In earlier work such as *And We Are Not Saved,* Bell also uses a somewhat different vocabulary to describe Whiteness, appropriating Manning Marable's concept of the " 'ideological hegemony' of [W]hite racism." BELL, AND WE ARE NOT SAVED, *supra* note †, at 156 (quoting Manning Marable, *Beyond the Race Dilemma,* THE NATION, Apr. 11, 1981, at 428, 431).

47. See BELL, AFROLANTICA LEGACIES, *supra* note 15, at 9, 55.

48. Derrick Bell, *Revised Opinion in Brown v. Board of Education*, *in* WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID 185, 188 (Jack M. Balkin ed., 2001) [hereinafter Bell, *Revised Opinion*].

49. *Id*. at 185.

50. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 13.

51. Bell, *Wanted: A White Leader*, *supra* note 46, at 540 (citing bell hooks); *see also* BELL, FACES AT THE BOTTOM, *supra* note 8, at 155 ("all [W]hites are bonded—as bell hooks says—by rac*ism*") (emphasis added).

52. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 137.

53. *Id*. at 95.

54. *See, e.g.*, Derrick Bell & Preeta Bansal, *The Republican Revival and Racial Politics*, 97 YALE L.J. 1609, 1611–12 (1988) [hereinafter Bell & Bansal, *The Republican Revival*] ("racial reforms in law reflect less a late-blooming civic virtue than perceived changes in self-interest . . . .").

55. Bell, *Love's Labor Lost*, *supra* note 46, at 44.

56. Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980); *see also* BELL, FACES AT THE BOTTOM, *supra* note 8, at 53 ("[B]lacks gain little protection against one or another form of racial

Brown.[57] There, for instance, protection of the United States' image abroad during the Cold War was vital to the arguments in favor of the Supreme Court's ultimate holding.[58] The *Brown* decisions also reflect a second element of Bell's interest-convergence thesis: not only is a court's holding dependent on White self-interest, but so is its enforcement. *Brown II*'s holding that redress of segregated education should proceed not necessarily immediately but with "all deliberate speed"[59] is, says Bell, an "unprecedented deferral of a recognized constitutional right."[60] Further, not only is the *courts'* enforcement at stake because of White self-interest; so also does this self-interest spawn White resistance to the courts' original holdings.[61] Civil rights litigation has placed too much emphasis on winning a case and too little on its actual impact.[62] Even if a case is won, its goals will be ignored, circumvented, or negated if they challenge existing claims of White entitlement.[63] "[T]he traditions of racial subordination are deeper than the legal sanctions."[64] Any reforms that arise as a result of civil rights litigation must cohere with White self-interest.[65] Even though some individual Blacks may have advanced due to the abandonment of formal barriers, these advances may actually serve more general White interests. These advances ironically serve to enhance rather than undermine social

discrimination unless granting [B]lacks a measure of relief will serve some interest of importance to [W]hites.").

57. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

58. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 116–19 (citing, among other authorities, Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61 (1988)).

59. Brown v. Bd. of Educ., 349 U.S. 294, 301 (1955).

60. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 118.

61. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 108 ("If [a] self-interest approach is a valid explanation for the change in constitutional interpretation . . . then why wouldn't the same self-interest have to be present before that decision could be implemented?").

62. *Id*. at 54. Of additional interest here in Bell's attention to implementation is his appropriation—for his more progressive purposes—of analyses drawn from law and economics, a field stereotypically viewed to be conservative or libertarian. The most direct evidence of this appropriation arises in Bell's narrative, *The Racial Preference Licensing Act*, *see* BELL, FACES AT THE BOTTOM, *supra* note 8, at 47–64, where Bell creates a fictional scheme to tax enterprises that choose to remain discriminatory. *See id*. at 54 n.* (citing the work of law and economics scholars, Richard Posner and John J. Donohue).

63. *See* BELL, GOSPEL CHOIRS, *supra* note 26, at 53 (ignored); BELL, AND WE ARE NOT SAVED, *supra* note †, at 248 (circumvented); Bell, *Revised Opinion*, *supra* note 48, at 186 (negated).

64. BELL, AND WE ARE NOT SAVED, *supra* note †, at 191–92.

65. *See id*. at 63.

stability.[66] They serve as "proof" that racism is no more, is dead.[67] As Bell argues, "*[P]rogress* in American race relations is largely a mirage, obscuring the fact that whites continue, consciously or unconsciously, to do all in their power to ensure their dominion and maintain their control."[68]

Part of Bell's great frustration and deep disappointment is that his interest-convergence thesis suggests that Whites low on the economic ladder might have sought alliance with Blacks in similar conditions. That, however, has not occurred.[69] Rather than recognize and work together with similarly situated Blacks to redress the commonality of their plight, Whites at the economic bottom identify with Whites at the economic top and blame Blacks of a class similar to their own as the source of their problem.[70] There is no greater sign of the power of Whiteness as a property right. Whites not at the economic top act against their best interests.[71] Because of their racial bond, they place themselves " 'in the dominant circle—an area in which most hold no real power, but only their privileged racial identity.' "[72] Whiteness as a property right is an essential element of American social stability:

66. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 48; *see also id*. at 131–32 ("Instead of gaining access to real influence, it is more likely that we [Blacks who have gained some stature] are legitimizing a system that relegates us to an ineffectual but decorative fringe.").

67. BELL, AND WE ARE NOT SAVED, *supra* note †, at 48.

68. *Id*. at 159.

69. Bell explores this theme in his fictional narrative, *The Chronicle of the Amber Cloud*. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 162–65. In this Chronicle, the amber cloud's descent caused wealthy White adolescents to be stricken with the personality of poverty-ridden youth (such as lethargy, withdrawal, insecurity). An expensive cure was developed that the nation was willing to pay. But when the request came for non-White youths also to be treated, the nation refused. As Bell relates, this Chronicle "undermined [his] theory that progress for [B]lacks might evolve out of a national crisis endangering [W]hites as well as [B]lacks." *Id*. at 165.

70. *See* Bell, *Racism*, *supra* note 46, at 1270–71; *see also* Derrick Bell, *The Triumph in Challenge*, 54 MD. L. REV. 1691, 1693 (1995) [hereinafter Bell, *The Triumph in Challenge*] (claiming that the goal of racism is "to divide and alienate along racial lines those similarly subordinated as a means of maintaining the economic and political advantages held by well-off [W]hites").

71. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 8; *see also* BELL, AND WE ARE NOT SAVED, *supra* note †, at 254 ("The stark truth is that [W]hites as well as [B]lacks are being exploited, deceived, and betrayed by those in power."); Derrick Bell, *Racial Realism in Retrospect*, *in* REASON AND PASSION: JUSTICE BRENNAN'S ENDURING INFLUENCE 199, 206 (E. Joshua Rosenkranz & Bernard Schwartz eds., 1997) [hereinafter Bell, *Racial Realism in Retrospect*] (arguing that Justice Brennan's judicial opinions maintain that "[t]he constitutional rights that [B]lack people seek are also the rights a great many [W]hite people need. His labors sought to illuminate this obvious truth in the face of its rejection by so many [W]hites who fear that racial equality would diminish rather than enrich their lives.").

72. BELL, FACES AT THE BOTTOM, *supra* note 8, at 8 (quoting Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1380–81 (1988)).

> The barriers to moving beyond reliance on an out group for social stability are monumental in a nation where [W]hites of widely divergent stations are able to make common cause through their unspoken pact to keep [B]lacks on the bottom. No other aspect of social functioning has retained its viability and its value to general stability from the very beginning of the American experience down to the present day. Because of this fixation, I agree with Professor Jennifer Hochschild's assessment that racism is not an anomaly, but a crucial component of liberal democracy in this country. The two are historically, even inherently reinforcing. In effect, the apparent anomaly is an actual symbiosis.[73]

The progress of Blacks in the courts and in society has not advanced but been stymied. Bell's work directly challenges two liberal beliefs: first, that society (and the courts) progress in an inherent, evolutionary direction toward equality,[74] and second, that education—education about the plight of Black Americans—leads to change.[75] The evidence that Bell adduces demonstrates that the belief in evolutionary racial advance is but

---

73. Bell, *Racism*, *supra* note 46, at 1270 (citing JENNIFER L. HOCHSCHILD, THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION (1984)). As Bell writes:

> [W]e must address the reality that we live in a society in which racism has been internalized and institutionalized to the point of being an essential and inherently functioning component of that society—a culture from whose inception racial discrimination has been a regulating force for maintaining stability and growth and for maximizing other cultural values.

Bell, *Racism is Here to Stay*, *supra* note 12, at 88–89.

74. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 47. Sociologist Karl Mannheim described the liberal humanitarian utopian view as "the belief that reality moves continually towards an ever closer approximation to the rational," a belief that "sees the world moving in the direction of a realization of its [liberal] aims." KARL MANNHEIM, IDEOLOGY AND UTOPIA 223, 224 (Louis Wirth & Edward Shils trans., Harvest 1936).

75. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 150. Bell describes:

> our long-held belief [that] education is the key to the race problem. You know . . . education leads to enlightenment. Enlightenment opens the way to empathy. Empathy foreshadows reform. In other words, that [W]hites—once given a true understanding of the evils of race discrimination, once able to *feel* how it harms [B]lacks—would find it easy, or easier, to give up racism.

Id. For Mannheim, the liberal humanitarian utopia focuses on the power of the idea and its experience through education. *See* MANNHEIM, *supra* note 74, at 219, 228. The belief in education as a tool of reform is of course one shared by many who make education their profession.

"naive belief."[76] It is a belief that the evidence contests and refutes. And the character of Whiteness as a property interest has proven resistant to racial education: the pull of racial self-interest, bond, and power has been too strong. "[V]iewing racism as an amalgam of guilt, responsibility, and power—all of which are generally known but never acknowledged—may explain why educational programs [about race] are destined to fail."[77]

Racism is permanent. The progresses that have been achieved—the ending of formal racial barriers, the advances of certain individual Blacks in education and in material and social condition—were expected to signal racism's end, but they have not. Instead, they have exposed beneath this surface "a more sophisticated and more invidious vehicle for maintaining [W]hite dominance."[78] Even as many of "the exposed tentacles of the evil we fought" have been lopped off, "the true evil, the deeply felt need of so many [W]hites to maintain priority status over [B]lacks, [has] manifest[ed] itself in a myriad of new forms."[79] Bell discusses racism as akin to a gyroscope. Individual advances may occur, but the gyroscope always returns to its initial equilibrium. Our society, says Bell, is the "motivating force" of the gyroscope's movement, even as it seems "to operate by an internal energy source."[80] Bell invokes Bartok's opera, *Bluebeard's Castle*,[81] as a metaphor for the hazards facing American Blacks.[82] In the story, Judith marries Bluebeard and hopes to humanize him. She beseeches Bluebeard to let sunlight into his dark home, but he refuses. Because of her efforts to open up his home, he ends up locking her away.[83] In Bluebeard's protection of his dominance and domain, Bluebeard's response to Judith is similar to American society's to its Blacks: "*Nothing can enlight this castle*."[84]

---

76. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 134.

77. BELL, FACES AT THE BOTTOM, *supra* note 8, at 155; *see also* Bell, *Wanted: A White Leader*, *supra* note 46, at 540 ("[V]iewing racism as an amalgam of guilt, responsibility, and power, all of which are generally known but never acknowledged, may explain why educational programs undertaken by the leader I seek are destined to fail.").

78. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 128; *see also* Derrick Bell, *Lau, Litigation, and the Search for the Promised Land*, 76 GEO. L.J. 229, 233 (1987) ("[T]oppling rigid racial barriers may have been a prerequisite to recognizing that economic inequality is the most virulent ingredient of racism.").

79. Bell, *Racial Realism in Retrospect*, *supra* note 71, at 199.

80. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 58. Later in this work, Bell invokes parallel imagery as he appraises a "racial history that changes form but never alters its racial advantage for [W]hites." *Id.* at 168.

81. *See* BELA BARTOK, BLUEBEARD'S CASTLE (Columbia Records recording 1963, MS 6425).

82. *See* Derrick Bell, *Bluebeard's Castle: An American Fairy Tale*, *in* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 155–68.

83. *See id.* at 155–57.

84. *Id.* at 159.

II. THE POSSIBILITIES OF ACTION

As Bell is only too aware, his indictment that racism is permanent can have a shattering impact on readers and listeners who had hoped for racism's end. "If racism is permanent," he is asked, "then isn't struggle hopeless?"[85] How persist, how act when Bell's message appears to be one, as he himself writes, of "futility and defeat,"[86] "bleakness,"[87] and "despair,"[88] a "revelation[] of distilled woe?"[89] This is the conundrum at the heart of Bell's work and of this Article. Bell insists that racism is permanent, and at the same time he also insists "that something must be done, that action must be taken,"[90] that the fight against racism must continue to be waged.[91] How is action possible?

A. *The Virtues of Necessity*

As an initial matter, Bell's thesis of racism's permanence has the effect of an acid bath: it cleanses, it reveals the truth. An essential element of Bell's effort is "to make people *see*,"[92] to make them "see the racial world as it is."[93] His work *describes*; it describes what society has done and, given the structure of racism, what it is likely to do.[94] Bell's posture here reminds me of what philosopher Paul Ricoeur calls "the destructive hermeneu-

85. BELL, FACES AT THE BOTTOM, *supra* note 8, at xi.

86. BELL, AND WE ARE NOT SAVED, *supra* note †, at 248.

87. *Id.* at 249.

88. Bell, *Racism is Here to Stay*, *supra* note 12, at 91.

89. BELL, FACES AT THE BOTTOM, *supra* note 8, at 114. Bell acknowledges as well that critics have called his work "unremittingly despairing." *Id.* at xi.

90. *Id.* at 199.

91. See Bell, *Racism is Here to Stay*, *supra* note 12, at 91. The challenge is one that Bell continually puts to himself. *See, e.g.*, BELL, GOSPEL CHOIRS, *supra* note 26, at 4 ("My immediate challenge [in writing this book] was to transform this evidence of our increasingly dire plight into a written warning, one sufficiently clear to challenge us to action, but not so devastating as to encourage denial or suggest surrender.").

92. BELL, FACES AT THE BOTTOM, *supra* note 8, at 60.

93. *Id.* at 62. As Bell acknowledges, this truth-telling resonates with the role of an Old Testament prophet. *See, e.g., id.* at ix.

94. *See id.* at x ("[M]y conclusions about racism are less radical revelation than disquieting disclosure of what many know about the real roots of racism and prefer not to acknowledge."); Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373 (1992) [hereinafter Bell, *Racial Realism*] ("I speak here not of some new prophetic revelation. Rather, these are frequently stated, yet seldom acknowledged truths that we continue to ignore at our peril."). Although the last statement indicates some distance of Bell from the prophetic, perhaps the resonance recurs here in the prophet's disclosure of what humans, if attentive, should already have known.

tic,"[95] the destructive method of analysis and interpretation. The task is one of demystification;[96] the false idols must be broken.[97] The core of the method, though, is not skepticism but recognition of necessity.[98] "The *positive benefit*," writes Ricoeur, "of the ascesis required by a reductive and destructive interpretation [is] confrontation with bare reality, the discipline . . . of necessity."[99] The acid bath of Bell's thesis of racism's permanence lays reality bare; it strips away our illusions. To lay reality bare is a virtue unto itself. We now know and must acknowledge with what we are faced.[100]

But this virtue of necessity is only one part of its value. Once we sweep away the debris of the false idols, we can also assess what it may be possible yet to affirm. "[D]estruction . . . is a moment of every new foundation."[101] Confrontation with necessity is salutary. As Bell writes, "[W]e risk despair as the necessary price of much-needed enlightenment. Facing up to the real world is the essential prerequisite for a renewed vision, and for a renewed commitment to struggle based on that vision."[102]

---

95. PAUL RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR 237 (Charles E. Reagan & David Stewart eds., 1978) [hereinafter RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR]. More famously, Ricoeur calls this the hermeneutics of suspicion. *See* PAUL RICOEUR, FREUD AND PHILOSOPHY: AN ESSAY ON INTERPRETATION 33–35 (Denis Savage trans., 1970) [hereinafter RICOEUR, FREUD AND PHILOSOPHY].

96. *See* RICOEUR, FREUD AND PHILOSOPHY, *supra* note 95, at 34. In another vocabulary, the move here can be called deconstructive. *See, e.g.*, powell, *supra* note 1, at 535 ("It is when Bell is deconstructing formal equality and rights rhetoric that his arguments are most persuasive.").

97. *See* RICOEUR, FREUD AND PHILOSOPHY, *supra* note 95, at 27.

98. *See* RICOEUR, THE PHILOSOPHY OF PAUL RICOEUR, *supra* note 95, at 237.

99. RICOEUR, FREUD AND PHILOSOPHY, *supra* note 95, at 35 (emphasis added).

100. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 92 ("At the least . . ., understanding the true nature of racism would equip us to weather its myriad harms."). In a question and answer session following a lecture, Bell analogizes the experience of racism with that of alcoholism:

> Alcoholics survive precisely because they acknowledge that their disease is permanent, and that they must not only recognize it, they have to almost hail it, you see, in order to get past it. I think that is what we must do with racism. Because there is the potential, once you acknowledge how bad it is, not to accept it and to determine that you are going to do whatever you can . . . to oppose it.

Bell, *Public Education for Black Children*, *supra* note 42, at 43 (question and answer session).

101. RICOEUR, FREUD AND PHILOSOPHY, *supra* note 95, at 33 (citing MARTIN HEIDEGGER, SEIN UND ZEIT (1927)); *see also id.* at 27 ("It may be that extreme iconoclasm belongs to the restoration of meaning.").

102. BELL, FACES AT THE BOTTOM, *supra* note 8, at xi.

B. *Action as Protest*

Action that has faced the discipline of necessity takes three forms in Bell's work and life. The first is action as protest.[103] Action here recognizes reality—including the reality of racism—but challenges it, protests it, defies it, even as this action understands that it will likely end in defeat. "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."[104] The point of action as protest is not necessarily to win but to act with ethical integrity.[105] The action, whether it results in victory or defeat, has its own dignity. The virtue comes in the very acts of engagement, commitment,[106] and struggle.[107] The action provides its own satisfaction,[108] its own sense of affirmation[109] and rightness.[110] While the confrontation with reality may be despairing, the triumph comes in the continuation of the act, the maintenance of the struggle, the refusal to accede.[111] "In effect, then," Bell writes, "failure is inevitable, and there need be no failure."[112]

Further, although the act as protest may not result in policy change, it may have other benefits in addition to those it has for the actor. As the act calls others to account, it can expose the integrity or lack thereof of

103. The most well-known of Bell's own acts of protest was, of course, his decision in 1990 to take a leave of absence from Harvard Law School until the school hired a woman of color to a permanent faculty position. When two years had passed, the University required him, under University rules, to come back or lose his tenured position. Because the Law School hiring had not occurred, Bell refused. The University in turn refused to modify its position and ended Bell's Harvard career. Bell now teaches at the New York University School of Law. *See* DERRICK BELL, ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH 3–5 (2002) [hereinafter BELL, ETHICAL AMBITION] (recounting this protest).

104. *See id.* at 177.

105. *See id.* at 5 ("[M]y primary goal has been to live an ethical life. . . . That means I try to choose the ethical route even when defeat rather than success may wait at the end of the road.").

106. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 198 (citation omitted); Bell, *Racism is Here to Stay*, *supra* note 12, at 90 (citation omitted).

107. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 135.

108. *See* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 123.

109. *See* BELL, ETHICAL AMBITION, *supra* note 103, at 81.

110. *See id.* at 58.

111. *See* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 161 (citing ALBERT CAMUS, THE MYTH OF SISYPHUS AND OTHER ESSAYS (Justin O'Brien trans., 1955) [hereinafter CAMUS, THE MYTH OF SISYPHUS]). In Part IV.A, *infra*, I return to examine at greater length the existentialist character of Bell's work.

112. BELL, ETHICAL AMBITION, *supra* note 103, at 164.

others' actions; it can reveal hypocrisy.[113] The act of protest challenges its opponents—usually unsuccessfully—to confront the reality of their own position. Likewise, Bell requires of himself and other sympathizers that they too confront reality. More positively, protest may create a "magnetic field" that extends its power and influence beyond its original domain.[114] Others may be inspired by the protest to take up the cause or similar causes;[115] others, more modestly, may be moved to support those who engage in direct protest action.[116] And the act may inspire others to act in the future and find succor in the lineage of those who have gone before.[117]

C. *Action as Racial Realism*

The second form action takes in Bell's work and life is as "racial realism."[118] A hallmark of racial realism is the claim that the fight against racism should pay less attention to ethics and more to economics.[119] Racial realism acknowledges the present reality of Blacks' subordinate status and argues that only economic change will provide redress to poverty, joblessness, and other similar ills. It further claims that the traditional civil rights view that law, through effectuation of racial equality, would lift Blacks out of their economic condition has failed.[120] The prototypical example of Bell's realism is his long-standing resistance to *Brown*,[121] its enforcement, and its continued advocacy by the civil rights community.[122] From at least 1976, Bell has consistently—and, obviously, quite

113. *See* BELL, GOSPEL CHOIRS, *supra* note 26, at 183.

114. BELL, CONFRONTING AUTHORITY, *supra* note 46, at 130; *id.* at 120 ("[P]rotest generates a magnetic force.").

115. *See*, *e.g.*, *id.* at 71 (noting that his Harvard protest motivated some minority lawyers to pursue legal academic careers).

116. *See*, *e.g.*, *id.* at 3 (noting the continuing support he has received from various walks of life for his Harvard protest).

117. *See* BELL, ETHICAL AMBITION, *supra* note 103, at 136–37 (noting the value to his own efforts of the example of his predecessors in the fight against racism).

118. *See*, *e.g.*, Bell, *Racial Realism in Retrospect*, *supra* note 71; Bell, *Racial Realism*, *supra* note 94; Bell, *Divining a Racial Realism Theory*, *in* BELL, FACES AT THE BOTTOM, *supra* note 8, at 89–108.

119. BELL, FACES AT THE BOTTOM, *supra* note 8, at 98.

120. *See* Bell, *Racial Realism*, *supra* note 94, at 377–78.

121. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

122. *See*, *e.g.*, Derrick Bell, *Neither Separate Schools nor Mixed Schools*, *in* BELL, AND WE ARE NOT SAVED, *supra* note †, at 102–22 (quoting W.E.B. Du Bois's comment that "[B]lacks need neither segregated schools nor mixed schools" but rather education, W.E.B. Du Bois, *Does the Negro Need Separate Schools?*, *in* 2 THE SEVENTH SON: THE THOUGHT AND WRITINGS OF W.E.B. DU BOIS 408 (J. Lester ed., 1971)); Bell, *Revised Opinion*, *supra* note 48, at 187 (again citing Du Bois's comment); Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideal and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976) [hereinafter Bell, *Serving Two Masters*].

controversially—insisted that the educational focus for Blacks should not be on school integration but on quality education.[123]

Bell's writings provide some quite provocative models of how economic change could occur. Bell argues, for example, for recognition of "entitlement to basic needs—jobs, housing, health care, education, security in old age—as an essential property right of all."[124] Elsewhere, in his fictional narrative, *The Racial Preference Licensing Act*,[125] Bell proposes a plan of "[r]acial realism" that "does not assume a nonexistent racial tolerance, but boldly proclaims its commitment to racial justice through the working of a marketplace."[126] Relying on work in law and economics,[127] Bell's plan provides that business establishments that wish to discriminate should be permitted to do so, but must pay a tax, and the tax would go to support Black businesses and other efforts in the Black community.[128] In another story, *Racial Royalties*,[129] Bell proposes that companies that draw on "African American music, dance, dress and hairstyles, language, and so forth" would be charged a royalty fee that would be funneled into urban redevelopment.[130]

There is, of course, a certain self-admitted irony in Bell's advocacy of these actions as racial "realism." On the one hand, they do act on the basis of economics, not ethical pleadings, and Bell is quite emphatic that only economic acts will actually lead to the improvement of Black social conditions. The agenda within the Black and civil rights communities must, he argues, come to reflect this change in attention. And there is some possibility of economic action becoming effective on the basis of self-help,[131] including organized protests and boycotts.[132] But as Bell is also aware, his

123. *See* Bell, *Serving Two Masters*, *supra* note 122.

124. Derrick Bell, *Remembrances of Racism Past: Getting Beyond the Civil Rights Decline*, *in* RACE IN AMERICA 73, 81 (Herbert Hill & James E. Jones, Jr. eds., 1993) [hereinafter Bell, *Remembrances of Racism Past*].

125. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 47–64.

126. *Id*. at 47.

127. *See id*. at 54 n.*.

128. *See id*. at 48–49.

129. *See* BELL, GOSPEL CHOIRS, *supra* note 26, at 141–51.

130. *See id*. at 147–48.

131. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at xii ("Coalition building is an enterprise with valuable potential as long as its pursuit does not obscure the basic fact: nobody can free us but ourselves."); Derrick A. Bell, Jr., *Civil Rights Lawyers on the Bench*, 91 YALE L.J. 814, 814 (1982) [hereinafter Bell, *Civil Rights Lawyers*] (quoting Black activist, Preston Wilcox, "Nobody can free us but ourselves").

132. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at 53; Bell, *Civil Rights Lawyers*, *supra* note 131, at 814.

proposals will run into resistance, both from the civil rights community[133] and from Whites.[134] Bell remains serious about the goals of economic change, both on the basis of Black self-help and the possibility—even if remote—of support from working-class Whites.[135] More generally, Bell's efforts at racial realism are thought experiments that attempt both to raise the consciousness[136] of his readers and listeners and to urge the movement beyond failed, traditional approaches and the examination of any possibilities whose potential can be exploited.[137]

D. *Action as Writing*

These last reflections move us to the third form of action in Bell's work and life, the action undertaken by his writings[138] themselves. If racism is permanent, is there any point to Bell's labors to bring his writings before the public? Doesn't writing fail to maintain the discipline of necessity: the recognition of racism as indeed permanent? Doesn't writing assume the liberal conceit that Bell otherwise seems to criticize: that education will lead to enlightenment, enlightenment will lead to empathy, and empathy will lead to reform?[139] In part, Bell's response lies along lines already addressed: that he must be true to himself and faithful to the truth of his message: "We're a race of Jeremiahs, prophets calling for the nation to repent."[140] In part, though, Bell also acknowledges—throughout his

133. *See, e.g.*, BELL, FACES AT THE BOTTOM, *supra* note 8, at 54 (noting the civil rights community's likely strenuous objection to the Racial Preference Licensing Act).

134. *See, e.g.*, Bell, *Remembrances of Racism Past*, *supra* note 124, at 81 (noting resistance to the campaign for basic entitlements "from many [W]hites who will be its principal beneficiaries of its success").

135. Analogizing to the efforts undertaken by Jesse Jackson in his run for the presidency, Bell advocates an educational campaign whereby "working-class [W]hites [may be] willing to learn what [B]lacks have long known: that the rhetoric of freedom so freely voiced in this country is no substitute for the economic justice that has been so long denied to [W]hites as well as [B]lacks." *Id*. Bell on the same page expresses awareness consistent with his understanding of Whiteness as property, *see* Part I *infra*, that many White beneficiaries of his proposal will resist it. *See* Bell, *Remembrances of Racism Past*, *supra* note 124, at 81. In the text, I go on to suggest how Bell reconciles the "reality" of his proposal to the likelihood of its success.

136. *See, e.g.*, BELL, FACES AT THE BOTTOM, *supra* note 8, at 62.

137. *See id*. at 60.

138. For present purposes, Bell's lectures and other oral presentations should be understood to be included within the rubric of the not quite adequate term, his "writings."

139. *See id*. at 150.

140. *Id*. at 157. Other commentators have termed some of Bell's work a "jeremiad." *See, e.g.*, Marcus Bruce, *"The Promise of American Life": Derrick Bell, Critical Race Theory, and the American Jeremiad*, *in* FOLKWAYS AND LAW WAYS: LAW IN AMERICAN STUDIES 165 (Helle Porsdam ed., 2001) (discussing BELL, GOSPEL CHOIRS, *supra* note 26); Delgado & Stefancic, *Derrick Bell's Chronicle*, *supra* note 27, at 329 (claiming Bell's chronicle, *The Space Traders*, in BELL, FACES AT THE BOTTOM, *supra* note 8, at 158–94, "is a classic Jeremiad—a tale aimed at

work—that his message may fail. A few lines down from the sentence just quoted, Bell continues: "About the least dire fate for a prophet is that one preaches, and no one listens; that one risks all to speak the truth, and nobody cares."[141] And even if the prophet has listeners, prophecy may lead not to conversion but to resistance.[142] Elsewhere Bell recalls his late wife Jewel's admonition that "trying to teach the [W]hite folks" was folly.[143] Bell recognizes as well the quixotic character of fighting with words against structures of oppression and economic and political power.[144]

Yet there is a deeper purpose to Bell's writings also, one that does not reject the limitations just raised but carves out its own space nevertheless. This deeper purpose is comprised of three elements. First, as with other writings of a comparable perspective, Bell's stories can provide "understanding and reassurance" for those, such as many Blacks, who have walked a similar path.[145] Bell's truthtelling is the telling of *their* stories. These "counterstories" at the same time contest majoritarian stories and "strike a chord" with the ready listener.[146] The stories can provide a sense of "homeland" in readers' minds and hearts.[147] By contrast, for those readers, mainly White, who have not trod Bell's path, Bell's writings—particularly the fictional narratives—serve a second function. The narrative form invites readers to suspend judgment and belief, so that they may be more open to the reality

making a powerful group aware of its own iniquitous history and potential for more of the same"). Later we shall return to Bruce's claim that the jeremiad, and Bell's version of it, offers not simply condemnation but hope. *See infra* note 153.

141. BELL, FACES AT THE BOTTOM, *supra* note 8, at 157.

142. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 33. In another of his stories, Bell narrates the power of a minister's sermon in music but her audience's determination "not to be moved by it." BELL, GOSPEL CHOIRS, *supra* note 26, at 213.

143. *See* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 148 (referring to Bell's protests rather than his writings); *see also* BELL, *Trying to Teach the White Folks*, *in* BELL, GOSPEL CHOIRS, *supra* note 26, at 29–48 (fictional narrative); BELL, FACES AT THE BOTTOM, *supra* note 8, at 135 (narrating the incredulous response of his fictional character, Geneva Crenshaw, to his attempt to write an allegory that would shame Whites into proper action).

144. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at 34–35 ("[I]t sure is tough trying to resist oppression with words and ideas."); *id.* at 33 ("[I]t's hard to imagine how more of our writings [his and Geneva Crenshaw's] can halt or even hinder the hostile forces arrayed against our people.").

145. Bell, *Who's Afraid of Critical Race Theory*, *supra* note 18, at 910 (writing of the value of critical race writings more generally).

146. Richard Delgado, *Derrick Bell's Racial Realism: A Commentary on White Optimism and Black Despair*, 24 CONN. L. REV. 527, 530 (1992) ("It is no accident that Bell has a tremendous underground circulation and status in the minority community of color. We know that his message is true").

147. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 172. The sense of "homeland" also has a prospective quality, as I shall discuss below. *See infra* notes 151–57 and accompanying text.

of the views expressed,[148] even as their prior reality is disrupted.[149] The story may be revelatory: both as an unmasking—you claimed to hold to the truth of equality but did not—and as the announcement of a new truth.[150]

Does the possibility of an announcement of a new "truth" conflict with Bell's thesis that racism is permanent? It may well, and at this crux we (and Bell) confront the deepest dimensions of the abiding paradox in his work: that racism is permanent, but action is possible. At one level, Bell's writings demand that we confront what is. And yet at another level they open us to what may be.[151] Racism is elemental to "what is," but we do not know what "may be." Bell does not want to discard or escape his thesis of racism's permanence, and yet he has hopes for the future. This is an indissoluble tension. Bell's work has a "transformatively aspirational concern."[152] His work is disruptive both to challenge what is and to open the way for what may be.[153] He does not know what may be, but the disruption may spark revelation.[154] He does not intend, for instance, for his fictional proposal of a racial preference licensing law to be enacted, but the shock generated by its perspective may cause an opening beyond traditional views.[155] The shock may generate contemplation and exploration of new alternatives.[156] Bell wants to open the way for new, real, but yet unknown possibilities.[157]

148. *See* Bell, *Who's Afraid of Critical Race Theory*, *supra* note 18, at 902.

149. *See id.* at 899.

150. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at 155. Elsewhere I plan to develop this comment at much greater length. *See* George H. Taylor, *Bell's Narratives as Parables* (forthcoming 2005).

151. *See* Derrick Bell, *1995 Commencement Address–Howard University School of Law*, 38 HOW. L.J. 463, 470 [hereinafter Bell, *Commencement Address*] (expressing of the similarity between the artist and the protester that "the main creative urge" in both operates through "a medium that communicates a view of what is against a background of what might be").

152. Bell, *Who's Afraid of Critical Theory?*, *supra* note 18, at 906 (discussing critical race theory in general).

153. *See* BELL, GOSPEL CHOIRS, *supra* note 26, at 4 (analogizing what he hopes to produce in his efforts to those of gospel music, which has the potential "to touch and unite across barriers of race and class"). Marcus Bruce describes Bell's *Gospel Choirs* as a jeremiad that, like other jeremiads in American history, both engages in critique and calls for "a profound spiritual transformation of American society." Bruce, *supra* note 140, at 167.

154. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at 167 ("[T]here is the potential for self-revelation for Whites as well as Blacks."); *id.* (speaking of "the door of racial revelation").

155. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 60.

156. *See id.* at 62.

157. In the final pages of *And We Are Not Saved*, Bell offers a more optimistic conclusion than the prior despairing narratives would suggest. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 248–58. These pages have received significant criticism. *See, e.g.*, Mary E. Becker, *Racism and Legal Doctrine*, 67 TEX. L. REV. 417, 428 (1988) (criticizing that Bell

E. *Action: Not By Morality Alone*

Revelation of new possibilities is necessary, but more than revelation is required if change is to be actual and effective. New truths will be resisted.[158] Here we return to Bell's criticism of the liberal model—the assumed progression from education to enlightenment to empathy to reform.[159] The appeal to morality—that change should occur because it is the right thing to do—is insufficient.[160] In part Bell's response here is due to his experience with the failure of "morals-policing" laws, including *Brown*.[161] Compliance is not voluntary, and it is difficult to enforce.[162] Bell contends that society ultimately acts on the basis of self-interest[163] and power.[164] Racial realism acknowledges that change will not occur "until

here "turns wildly optimistic"); Delgado, *Derrick Bell and the Ideology of Racial Reform*, *supra* note 27, at 927 ("The gap between the bleak picture painted in the first part of the book and the rosy ending is puzzling."). Yet Bell's stance there can be reconciled with this larger emphasis in his work. What is most important about the passage is not its specific remedies, which the weight of prior pages would suggest are unworkable, but the call for a "Third Way" (between Black emigration and violent struggle). The "Third Way" calls for another route, some new future. As Bell admits, this appeal is "utopian," but the point is to proceed beyond failed options to something else that is as yet "difficult even to envision." BELL, AND WE ARE NOT SAVED, *supra* note †, at 255. This form of utopia should be contrasted to utopia as escape. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 172 (contrasting his fictional Afrolantica, which is a "reflection" of the world, with Camelots and Shangri-las, which are all "envisioned as escapes from the real world"). Paul Ricoeur develops the contrast between utopia, in its best function, as "exploration of the possible" and utopia as escape, "the completely unrealizable" in PAUL RICOEUR, LECTURES ON IDEOLOGY AND UTOPIA 310 (George H. Taylor ed., 1986) [hereinafter RICOEUR, LECTURES ON IDEOLOGY AND UTOPIA]. Bell's vision is utopian in the sense of "exploration of the possible."

158. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 143 ("The presentation of truth in new forms provokes resistance, confounding those committed to accepted measures for determining the quality and validity of statements made and conclusions reached, and making it difficult for them to respond and adjudge what is acceptable."); *see also* Bell & Bansal, *The Republican Revival*, *supra* note 54, at 1620–21 ("[F]aith in the intellectual solution may be as deserving of recognition as faith that our humanity will not always be subordinated because we are not [W]hite.").

159. BELL, FACES AT THE BOTTOM, *supra* note 8, at 150.

160. In one fictional narrative, Bell has a character chastise himself for having done what he had often criticized civil rights representatives for doing: "[H]e had tried to get [W]hites to do right by [B]lack people because it was right that they do so. . . . 'Crazy!' he mumbled to himself, at himself." *Id*. at 171.

161. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

162. *See* BELL, FACES AT THE BOTTOM, *supra* note 8, at 51.

163. *See*, *e.g.*, Bell & Bansal, *The Republican Revival*, *supra* note 54, at 1613 (expressing skepticism about "society's willingness to act out of virtue rather than self-interest").

164. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 171 ("[T]here seems no end to those who view power as license to abuse, sanction to exploit, invitation to demean. Will a

blacks become insistent or . . . political or economic conditions dictate [such change]."[165] Reliance on faith and hope is not enough; their fulfillment requires works.[166]

Over seventy years ago, the following statement appeared:

> It is hopeless for the Negro to expect complete emancipation from the menial social and economic position into which the white man has forced him, merely by trusting in the moral sense of the [W]hite race. . . . However large the number of individual [W]hite men who do and who will identify themselves completely with the Negro cause, the [W]hite race in America will not admit the Negro to equal rights if it is not forced to do so. Upon that point one may speak with a dogmatism which all history justifies.[167]

As is evident, the conclusion is one with which Bell agrees, and it is one that he has quoted favorably.[168] The statement appeared in 1932 under the hand of American Protestant theologian Reinhold Niebuhr. As we seek more completely to understand Bell's work, it is worthwhile to consider whether Niebuhr's theology—and the paradox it maintains between the permanence of *sin* and the possibility of action—can inform our comprehension of Bell's paradox—the permanence of *racism* and the possibility of action.

III. NIEBUHR'S THEOLOGY

Niebuhr's major theological work was produced during the 1930s and early 1940s.[169] It was written against the backdrop of—and responded to—the aftermath of World War I, the Depression, their resultant social and political unrest, and the sweep of history toward World War II. In his important new book on Niebuhr,[170] theologian Langdon Gilkey writes:

> In a turbulent epoch when evil often appeared to be dominant, Niebuhr's theology seemed to present the possibility of a social realism that maintained its moral nerve and did not become either cynical or despairing, even when self-interest appeared to

time ever come when those with power believe in and practice justice? . . . [B]oth history and our experiences support a pessimistic response.").

165. *Id*. at 167.

166. *See* Bell, *Public Education for Black Children*, *supra* note 42, at 37. I return to the theme of the interrelation of faith and works in Part IV, *infra*.

167. NIEBUHR, MORAL MAN AND IMMORAL SOCIETY, *supra* note 3, at 252–53.

168. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 160.

169. These books include *Moral Man and Immoral Society*, see *supra* note 3, published in 1932, and the two volumes of *The Nature and Destiny of Man*, see *supra* note 3, published, respectively, in 1941 and 1943.

170. *See* GILKEY, ON NIEBUHR, *supra* note 3.

> rule everywhere. Since the optimistic base for creative work for justice was now gone, the question was: How is it possible to have hope and to maintain the struggle for justice in a world so filled with self-interest?[171]

Three elements of this appraisal deserve our attention. First, we can easily sense a strong resonance between Niebuhr and Bell. Although each writes in a different historical moment, a similarity of themes predominates: evil and self-interest are perdurant, but, regardless, we must undertake the struggle for justice and the drive toward new possibilities. Niebuhr's theme is one of "social realism," Bell's is one of "racial realism." Second, as I now turn to discuss, Niebuhr's theology is a *political* theology. Third, as I will then discuss, it is a theology that—like Bell's work—criticizes the liberal assumption of optimism and inherent progress.

A. *A Political Theology*

Often the preoccupation of Christianity is viewed to be with the individual: his or her own individual sin, individual relation to God, and individual salvation in a life hereafter.[172] Niebuhr's focus is quite different. His paramount concern as a Christian theologian is *social* existence and *historical* meaning.[173] For Niebuhr, "[t]he obligations that faith entails are those that mainly involve the creation of justice and love in our own historical communities"; the primary result of sin is not distance from God "but injustice toward the neighbor in historical time."[174] At the heart of his thought is a "passion for social justice and for historical renewal"; his theology's aim is to provide "a foundation for creative action in the world."[175] Niebuhr's is therefore a political theology.[176]

Like Bell's fight against the prevailing liberal civil rights doctrine of his era, Niebuhr had to fight against the prevailing liberal theological and social doctrine of his own. Niebuhr, like Bell, contested what Niebuhr called the "modern optimism [in] a philosophy of history expressed in the idea of progress."[177] Liberal doctrine did not regard evil as a serious or

171. *Id*. at xi.

172. *See, e.g.*, *id*. at 204 n.3 (making the contrast).

173. *See id*. at 20. As Gilkey relates, Niebuhr also attends the individual dimension, but this is a less prominent consideration. *Id*.

174. *Id*. at 228.

175. *Id*. at 22.

176. *See id*. at 20.

177. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 24. Niebuhr goes on to describe this philosophy as one relating historical process to the innate unfolding of a

persisting problem.[178] Niebuhr, like Bell, argued that this optimism was seriously belied by the facts of the world around him. Liberalism's failure to attend the seriousness of evil also left it unable to function as a source of insight, understanding, or possible answer when the facticity and pervasiveness of evil could no longer be denied.[179] Niebuhr's theology intended to be more responsive, both to the existence of the problem of evil and to the ways it could be addressed.[180] Against liberalism, Niebuhr revived the concept of sin to understand the nature of evil. In a considerable transformation of classical doctrine, he reinterpreted the symbol of sin as relevant for social, not simply individual, life in order to make it pertinent to his world.[181] Ironically, as we shall see, Niebuhr found that liberal doctrine had underestimated the dimensions not only of the "daemonic misuse" we may make of human freedom but of human freedom itself.[182]

B. *Sin*

The doctrine of sin lies at the center of Niebuhr's thought.[183] For him, sin has two dimensions: vertical and horizontal.[184] The vertical

biological process. *Id.* In the opening pages of *Moral Man and Immoral Society*, Niebuhr's criticism of liberalism is scorching:

> Inasfar as this treatise has a polemic interest it is directed against the moralists, both religious and secular, who imagine that the egoism of individuals is being progressively checked by the development of rationality or the growth of a religiously inspired goodwill and that nothing but the continuance of this progress is necessary to establish social harmony between all the human societies and collectives.

NIEBUHR, MORAL MAN AND IMMORAL SOCIETY, *supra* note 3, at xii; *see also id.* at xviii ("Most of the social scientists are such unqualified rationalists that they seem to imagine that men of power will immediately check their exactions and pretensions in society, as soon as they have been apprised by the social scientists that their actions and attitudes are anti-social.").

178. *See, e.g.*, 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 23 (assessing that the "final certainty" of modern social theory "is its optimistic treatment of the problem of evil").

179. *See* GILKEY, ON NIEBUHR, *supra* note 3, at 78 ("[T]wentieth-century historical existence had challenged the liberal confidence in human rationality and morality and the liberal faith in historical progress, and had left as a consequence a vast spiritual vacuum.").

180. Davison Douglas observes that Niebuhr's views here had a notable impact on the work of Dr. Martin Luther King, Jr.: "Drawing on Niebuhr, King wrote in 1952 that liberalism 'vainly seeks to overcome injustice through purely moral and rational suasions. . . . Perfect justice will not come by a simple statement of the moral superiority of brotherhood in the world, for men are controlled by power, not mind alone.'" Douglas, *supra* note 3, at 159 (quoting Martin Luther King, Jr., *Reinhold Niebuhr's Ethical Dualism*, *in* 2 THE PAPERS OF MARTIN LUTHER KING, JR. 146 (Clayborne Carson ed., 1992)).

181. *See* GILKEY, ON NIEBUHR, *supra* note 3, at 23.

182. 1 NIEBUHR, THE NATURE AND DESTINY OF MAN, *supra* note 3, at 24.

183. *See* GILKEY, ON NIEBUHR, *supra* note 3, at 102.

184. *See, e.g.*, 1 NIEBUHR, THE NATURE AND DESTINY OF MAN, *supra* note 3, at 226.

dimension of sin consists of "man's rebellion against God, his effort to usurp the place of God."[185] Humans attempt to transmute their partial, finite values and selves into an ultimate good.[186] To this end, sin is manifested in the form of pride, self-love, and self-righteousness.[187] And it is manifested by humans universally.[188] The lurking, continuing, and destructive presence of sin in all of human life[189] is the testament of its depths and perdurance. Sin is not isolated as the property of the most wicked but is everyone's.[190] As is well known, the complication for Niebuhr here—as for the history of Christian doctrine—is how to explain that sin is universal without also concluding that it is an ineluctable component of our essential nature[191] and therefore outside the realm of individual responsibility.[192]

Niebuhr argues that sin cannot be understood apart from human freedom. "The essence of man is his freedom. Sin is committed in that freedom."[193] Freedom is wrongly used.[194] Sin is a defect in the will, and the will entails freedom; the defect lies in freedom, not in a destruction by

185. *Id*. at 179.

186. *See id*. at 122.

187. *See id*. at 188 (pride, self-love); *id*. at 200 (self-righteousness).

188. *See id*. at 242.

189. *See* GILKEY, ON NIEBUHR, *supra* note 3, at 200.

190. *See id*. at 108–09. In his book on Niebuhr, Gilkey illustrates this universality of sin through the experiences he—Gilkey—underwent for two-and-a-half years during World War II as a member of a civilian internment camp established by the Japanese in China. (He had been rounded up shortly after the beginning of the war while a teacher of English at a Chinese university.) Although the circumstances at the camp were trying, they were not in the same universe as the horrors experienced in the German concentration camps. For Gilkey, the real pathos were the sins of selfishness committed by camp residents (not the Japanese) over such issues as room reallocation. The sins were shocking precisely because the issues were so modest. *See id*. at 117–19. For a more comprehensive account, see LANGDON GILKEY, SHANTUNG COMPOUND (1966). When I attended Gilkey's Niebuhr lectures, see *supra* note 3, the most memorable class was the day Gilkey recounted some of his camp experiences as part of his larger discussion of sin. Despite the passage of time, Gilkey's description movingly displayed his continuing dismay and anger at his campmates' behavior, behavior that still brought tears to his eyes.

191. In part for this reason Niebuhr rejects any literalistic account of "original sin as an inherited taint" from Adam and Eve. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 260. Niebuhr finds value in an originalist account only because of its "representative rather than historical" character. *Id*. at 261. For Niebuhr, as Gilkey deftly phrases it, Adam and Eve are symbols, not causes, of the human condition. GILKEY, *supra* note 3, at 134.

192. *See* 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 242.

193. *Id*. at 17; *see also* 2 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 80 ("Where there is history at all there is freedom; and where there is freedom there is sin.").

194. *See* 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 16.

sin of the human essence.[195] Sin is universal but not necessary.[196] Niebuhr acknowledges that the relation between freedom and sin remains paradoxical, something that "cannot be fully rationalized."[197] Also unexplained is why humans have a "bias toward sin,"[198] or why each individual succumbs. For Niebuhr, the mystery of sin's origins remains.[199]

If sin's vertical dimension is the human effort to place oneself in the center, the horizontal dimension—the "moral and social dimension"—is injustice.[200] According to Niebuhr, "[t]he ego which falsely makes itself the centre [sic] of existence in its pride and will-to-power inevitably subordinates other life to its will and thus does injustice to other life."[201] Here Niebuhr's theology as political comes to the fore. Injustice is an "inevitable concomitant" of pride.[202] The will-to-power is both a form and instrument of the pride that is "sin in its quintessential form."[203] Niebuhr submits that, where there is unequal power, those in power will use whatever means needed to maintain it and will seek to justify those means as plausibly as they can.[204] Self-righteousness is "responsible for our most serious cruelties, injustices and defamations" against our fellow humans, as the "whole history of racial, national, religious and other social struggles" shows.[205] The self-righteousness extends to group identification, including, as Niebuhr says directly, group identification of Whites that has led to rejections of the claims of Blacks.[206]

Whether or not we view as adequate Niebuhr's account of sin—particularly the basis for its vertical dimension, its universality—two points are worthy of consideration. First, just as Niebuhr argues that we may understand the nature of sin only by understanding the nature of human freedom, so he also argues we may understand the nature of human freedom—the ability to act, the human "freedom of spirit"[207]—only by understanding the nature of human sin.[208] We recur to this interrelation

195. *See id.* at 242; *see also id.* at 269 ("[S]in is a corruption of man's true essence but not its destruction.").

196. *See id.* at 242.

197. *Id.* at 262.

198. *Id.* at 250.

199. *See* GILKEY, *supra* note 3, at 234–35.

200. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 179.

201. *Id; see also id.* at 223 ("The pride which makes itself the source and end of existence subordinates other life to its will and despoils it of its rightful inheritance.").

202. *Id.*

203. *See id.* at 192.

204. NIEBUHR, MORAL MAN AND IMMORAL SOCIETY, *supra* note 3, at 34.

205. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 200.

206. Reinhold Niebuhr, *Man, the Unregenerate Tribalist*, 24 CHRISTIANITY & CRISIS 133, 133 (July 6, 1964) [hereinafter, Niebuhr, *Man, the Unregenerate Tribalist*].

207. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 96.

208. *See id.* at 17.

when we turn to Niebuhr's discussion of the possibilities of action.[209] Second, even if we reject Niebuhr's theology or ontology, does the *experience* of sin he describes seem accurate or telling? Whatever its ontological or theological basis, does the experience he describes—the interrelation of sin and freedom, the pervasiveness of pride, will-to-power, and self-righteousness—seem true?[210] This, to me, is the most important question to ask in response to Niebuhr: does his work capture the *lived experience*? In turn, our question is whether the lived experience he does capture helps us understand what Bell means by the permanence of racism: something at once pervasive and yet also a matter of human responsibility.

C. *Guilt*

Irrespective of whether we accept the ontological or theological dimensions of Niebuhr's portrayal of sin, Niebuhr's account seems to present a problem on its own terms. As Niebuhr acknowledges, the claim that sin is universal seems to imperil the possibility of social judgment and action. How does one judge between individuals or between groups if everyone is characterized by sin?[211] Niebuhr answers by differentiating between sin and guilt. Guilt represents the actual consequences of sin in the historical, horizontal dimension.[212] And, Niebuhr argues, although there may be equality of sin, there is inequality of guilt:[213] "[T]hose who hold great economic and political power are more guilty of pride against God and of injustice against the weak than those who lack power and prestige."[214] The acts of those in power result in a greater number of unjust historical consequences. They are therefore more guilty.[215]

209. *See infra* text accompanying note 219.

210. *See, e.g.*, GILKEY, ON NIEBUHR, *supra* note 3, at 132–33 (describing how our actions may at once seem conscious and so free, and yet at the same time how "experience of ourselves (and especially of others!) shows that these actions are themselves pushed, driven, impelled, forced to be more self-concerned, more unjust and insensitive, more unloving, than we claim or want to think of ourselves as being").

211. *See* 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 220; *see also* GILKEY, ON NIEBUHR, *supra* note 3, at 112.

212. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 220–22. As Gilkey observes, part of the distinctiveness of Niebuhr's presentation lies in its emphasis on guilt as the *historical* consequence of sin, rather than, as for the earlier tradition, *transhistorical* consequence, "before God." *See* GILKEY, ON NIEBUHR, *supra* note 3, at 228.

213. *See* 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 225; *see also* GILKEY, *supra* note 3, at 112.

214. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 225; *see also id.* at 223.

215. *See* GILKEY, ON NIEBUHR, *supra* note 3, at 113–14.

> White men sin against Negroes in Africa and America more than Negroes sin against [W]hite men. Wherever the fortunes of nature, the accidents of history or even the virtues of the possessors of power, endow an individual or a group with power, social prestige, intellectual eminence or moral approval above their fellows, there an ego is allowed to expand. . . . Its horizontal expansion involves it in an unjust effort to gain security and prestige at the expense of its fellows.[216]

If we want to pursue justice, we can choose between historical actors and align ourselves with those having the least guilt.[217]

D. *Possibilities of Action*

As we come to understand the functioning of power and self-righteousness in the world, we recognize the operation of the horizontal dimension of sin and the injustices it creates. Challenge of and resistance to these injustices signify one real measure of the possibilities of action in this world. Do we humans have a capacity, though, not just to protest the unjust but to determine the just and work toward its behalf? What is our capacity to know and do good?

In his response to these questions, Niebuhr returns to his juxtaposition of freedom and sin and his claim that liberal doctrine had underestimated the capacity of both.[218] He argues, "Both the majesty and the tragedy of human life exceed the dimension within which modern [i.e. liberal] culture seeks to comprehend human existence."[219] It is the human spirit's "yearning for the infinite" that is "the source of both human creativity and human sin."[220] Humans are sinful but not solely sinful. Freedom is the basis of sin, but sin is not the whole of freedom.[221] The lessons here are several. First, the fact that sin is not the sum of human existence keeps alive the possibility of meaningful earthly action; earthly existence is not simply or solely evil.[222] Second, this creativity is part of our earthly freedom: the human capacity for imagination, invention, and breakthrough, in issues ranging from the sciences to the arts to government to social relations.[223]

---

216. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 226.

217. *See id.* at 112.

218. *See* 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 24.

219. *Id.* at 122; *see also id.* at 124 ("Man is not measured in a dimension sufficiently high or deep to do full justice to either his stature or his capacity for both good and evil . . . .").

220. *Id.* at 122.

221. *Id.* at 17.

222. *See* GILKEY, ON NIEBUHR, *supra* note 3, at 84.

223. *See, e.g.*, *id.* at 200.

Third, this creativity and freedom coexist with sin, and the *realism* of social action must confront the capacities for human sin—power, self-righteousness—in human action. Contrary to liberalism, social reform will not occur principally due to "the power of education and moral suasion"[224] but will require employment of politics and power.[225] Niebuhr calls for the use of boycotts, for instance.[226] He is cognizant that groups in power will not surrender their power voluntarily.[227] Recall Niebuhr's comment on the prospect for racial reform: "[T]he [W]hite race in America will not admit the Negro to equal rights if it is not forced to do so. Upon that point one may speak with a dogmatism which all history justifies."[228] Niebuhr acknowledges the inevitability in human social action of pressure, tension, and conflict. Acknowledgment of these methods does not and should not make them normative, but, Niebuhr adds, "neither will we ease our conscience by seeking to escape from involvement in them. We will know that we cannot purge ourselves of the sin and guilt in which we are involved by the moral ambiguities of politics without also disavowing responsibility for the creative possibilities of justice."[229] The creative possibilities are ours, and we must accept responsibility for their development. So doing, though, will also require us to act with realism, in recognition both of the use of power by those in positions of dominance and of the need for exertions of power in response.

The final element of the human yearning for the infinite brings out the full extent of human freedom. Thus far, the analysis of social realism might suggest that the pursuit of social "justice" is simply a matter of power versus power. Yet missing is a claim of some deeper notion of the good that can undergird the claim that action is indeed undertaken on behalf of the "just" cause. And it is this deeper notion of the good that Niebuhr's theology especially wants to articulate. As Gilkey comments, integral to Niebuhr's argument is a "dialectic of realistic social analysis on the one hand and transcendent grounds for judgment and hope on the other."[230] Niebuhr wants to establish what it means to labor—in this world, realistically, with the ambiguous tools necessary—"for higher justice" and will do so "in terms of the experience of justification by

224. NIEBUHR, MORAL MAN AND IMMORAL SOCIETY, *supra* note 3, at 253.

225. *See, e.g.*, *id.* at xxiii. Recognition of the inextricable role of power in society, instead of the sufficiency of moral suasion, is part of the critique of liberalism. *See* MANNHEIM, *supra* note 74, at 225.

226. *See* NIEBUHR, MORAL MAN AND IMMORAL SOCIETY, *supra* note 3, at 254.

227. *See id.* at 253.

228. *Id.* For further elaboration of Niebuhr's assessment of American racism, see *infra* notes 358–68 and accompanying text.

229. 2 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 284.

230. GILKEY, ON NIEBUHR, *supra* note 3, at 23.

faith."[231] Faith in a transcendent God,[232] a sense of "dependence on an ultimate source of being,"[233] provides "a transcendent source of meaning."[234] This transcendent source grounds human creativity and freedom[235] and at the same time acts as a source of judgment and criticism on all human action as to the finitude of its perspective, errancy, and sin.[236] In the face of the storms and failures of human existence, including the lack of success in the pursuit of social justice, this transcendent source provides an "assurance of meaning,"[237] an assurance that meaning and goodness do exist both in general and for us each. It acts as a source of renewal and hope[238] that provides sustenance for our return to the world of action.[239]

E. *The Persisting Paradox*

Niebuhr has no doubt that the interrelation he describes between the pervasiveness of sin and the possibilities of human action—between "fate and freedom"—remains paradoxical.[240] And Niebuhr recognizes that our tendency would be to reject the paradox precisely because it seems nonrational and absurd.[241] He asks us to consider, though, the limits of human rationality and to be open to the possibility "that a rationally irresolvable contradiction may point to a truth which logic cannot contain."[242] This response is, of course, open to at least two objections: that he has not provided a good justification for going beyond reason and that his rationale opens the way to the propounding of any multiplicity of absurd or paradoxical beliefs. Niebuhr's defense is quite a simple one: is not the paradox between sin and freedom that he describes more encompassing of the facts of our experience than any non-paradoxical account? Loyalty must be to "all the facts," to the "complexity in the facts of experience."[243] Think of physicists' understanding of quantum mechanics or of light's being both a wave and a particle. The underlying nature of either

231. 2 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 284.

232. *See, e.g.*, 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 136.

233. *Id.* at 131.

234. GILKEY, ON NIEBUHR, *supra* note 3, at 151.

235. *See, e.g.*, *id.* at 200.

236. *See, e.g.*, *id.* at 17.

237. *See id.* at 54.

238. *See id.* at 18; *see also id.* ("a permanent principle of renewal").

239. *See, e.g.*, *id.* at 11 (describing Niebuhr's claims of "a confidence in transcendence that supported a renewed and restrengthened moral commitment").

240. *See* 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 262.

241. *Id.*

242. *Id.*; *see also id.* at 125 ("Man is thus in the position of being unable to comprehend himself in his full stature of freedom without a principle of comprehension which is beyond his comprehension.").

243. *Id.* at 263.

is not clear—indeed it seems illogical—yet physicists find quantum mechanics experimentally workable and light's character as wave and particle experimentally verifiable.[244] Niebuhr's theology is not experimentally verifiable, but like nuclear physics, grants priority first to experience, not the bounds of logic. Again: "a rationally irresolvable contradiction may point to a truth which logic cannot contain."[245]

As throughout the discussion of Niebuhr, it is not necessary here to assert the truth of the ontology or theology that Niebuhr presents. The concern is much less with the theological "categories or forms" that Niebuhr brings to bear than with the "content or materials" of this understanding—sin and freedom—which arise from experience.[246] Gilkey asserts that the "mystery" Niebuhr discusses "is *constitutive* of real existence . . . and thus is a part of our experience. As a consequence, these paradoxes turn out to make more sense of the contradictions and puzzles of actual experience (which puzzles also arise from this relation) than do the coherent systems that delight the mind."[247] What Gilkey asserts, I ask as a question. Whether or not we agree with Niebuhr's theology or ontology, do we find his understanding of human experience "very close to the history we all continue to experience each day"?[248] We can ask this question of ourselves, and for the purposes of this Article, ask it more precisely of Bell's work, a subject to which I now return.

244. *See*, *e.g.*, BRIAN L. SILVER, THE ASCENT OF SCIENCE (1998) (describing physicists' understanding of light as wave and particle, *id.* at 393–95, and summarizing the experimental validity of quantum mechanics, *id.* at 398–99). Writing of quantum mechanics, Silver asserts:

> It works every time, but it flouts common sense. . . . How can thousands of scientists use a theory that has irrational features to it? Because where theoretical results can be compared with experimental observations, one can only pray that all theories were as reliable. No scientist would dream of stopping using quantum mechanics because he doesn't understand its foundations.

Id. at 398. Silver goes on to disparage contemporary efforts to analogize from quantum mechanics to the social sciences and humanities, including religion. *Id.* at 399–40. My appropriation of the example of quantum mechanics is, I hope, somewhat different. As the text proceeds to suggest, the point is not to exclude methods of analysis simply because we cannot capture within our logic their foundations.

245. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 262.

246. GILKEY, ON NIEBUHR, *supra* note 3, at 127–28 (making the differentiation between sources, not the difference in emphasis).

247. *Id.* at 172.

248. *Id.* at xii.

IV. BELL, THEOLOGY, AND BEYOND

What are the possible resonances between Niebuhr and Bell's portrayals of human existence? Does Niebuhr's discussion of the paradox between sin and action help us to understand better Bell's paradox between action and racism's permanence?

A. *Bell's Existentialism*

An initial question is whether Bell's work is properly situated within a religious framework. Does the vocabulary of existentialism perhaps better capture Bell's argument?[249] Bell does refer several times to the work of the French existentialist, Albert Camus, and cites Camus for two basic points. First, Camus warns that we must proceed "'with weapons in our hands and a lump in our throats.'"[250] On the one hand, we must go forward; any attempt not to act and to remain "pure" will lead to the hurt of others. On the other hand, we must act, even though action may well cause injury to those we had hoped to assist.[251] As we shall return to later, Bell emphasizes the necessity but also the humility of action.[252] Second, and the point to which I want to draw much greater attention here, Bell also refers positively to Camus' contemporary appropriation of the myth of Sisyphus. In that myth, of course, the gods condemned Sisyphus to spend every day rolling a rock up a hill, only to have the rock fall to the bottom, requiring Sisyphus to begin his labors endlessly yet again.[253] For Bell and Camus, what is particularly notable in Sisyphus is his conscious adoption of his destiny. As he turns to go back down the hill and resume his effort, "'he is superior to his fate. He is stronger than his rock.'"[254] To similar effect, Bell elsewhere cites Camus as someone who maintained the necessity of struggle even though defeat was certain.[255] In Camus' words,

249. I later respond to the potential objection that religion and existentialism may be overlapping categories. *See infra* notes 283–88 and accompanying text.

250. BELL, CONFRONTING AUTHORITY, *supra* note 46, at 113 (quoting ALBERT CAMUS, THE REBEL: AN ESSAY ON MAN IN REVOLT 8 (Anthony Bower trans., Vintage 1978) (1951) [hereinafter CAMUS, THE REBEL].

251. BELL, CONFRONTING AUTHORITY, *supra* note 46, at 113–14 (citing CAMUS, THE REBEL, *supra* note 250, at 286–87).

252. *See infra* text accompanying note 328.

253. *See* CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 88–91.

254. BELL, CONFRONTING AUTHORITY, *supra* note 46, at 161 (quoting CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 89). A similar quotation appears in Bell, *Commencement Address*, *supra* note 151, at 470. To my knowledge, Bell refers to Camus' *Myth of Sisyphus* in only one other passage, where his fictional character, Geneva Crenshaw, criticizes the story narrator that "there is a Sisyphean element that is missing from your current formulation." BELL, AFROLANTICA LEGACIES, *supra* note 15, at 140.

255. BELL, FACES AT THE BOTTOM, *supra* note 8, at xiv. In this passage Bell goes on to quote from Albert Camus, ALBERT CAMUS, RESISTANCE, REBELLION, AND DEATH 26 (Justin

"[t]he struggle itself toward the heights is enough to fill a man's heart."[256] The struggle may end in defeat—the rock will again roll down the hill—but the triumph comes in the struggle itself.[257] Meaning derives from engagement and commitment, not the end result.[258] This is reminiscent of Bell's emphasis on action as protest,[259] what Camus calls "revolt"[260] or "rebellion."[261]

Perhaps the most resonant linkage between Camus and Bell surfaces in Camus' *The Plague*,[262] a work that Bell, to my knowledge, does not cite. In that book, a fictional town is overwhelmed with the plague and, to contain the spread of the epidemic, the town is quarantined; no one may enter or leave.[263] (The book, first published in 1947, is at one level an allegory of the Nazi occupation during the years of World War II.[264]) The inhabitants experience exile, deprivation, and great suffering, including innumerable deaths.[265] The primary certitudes of the novel's protagonists are, first, that they must face their plight and not shut their eyes to it.[266] Second, they must fight the plague and save as many as possible from dying and from prolonged separation from those outside the town.[267] Third, they must fight although victory is never lasting; the plague means "[a]

O'Brien trans., 1960) [hereinafter CAMUS, RESISTANCE, REBELLION, AND DEATH]. An identical reference to Camus appears in Bell, *The Racism is Permanent Thesis*, *supra* note 12, at 584. On both these pages in Bell's work, he also cites to a similar end Franz Fanon's paradoxical argument that racist structures are permanent and yet resistance should be maintained, citing FRANZ FANON, WHITE SKIN, BLACKS MASKS (1967). I am aware of only two other places in Bell's corpus where he cites Fanon, both on separate propositions than the argument here. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 141 (noting Fanon's advocacy of a "spiritual rebirth" through commitment to social revolution); BELL, AND WE ARE NOT SAVED, *supra* note †, at 207 (noting Fanon's acknowledgment of "the political implication in the [B]lack man's attraction for [W]hite women").

256. CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 91.

257. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 135.

258. BELL, FACES AT THE BOTTOM, *supra* note 8, at 198.

259. See *supra* Part II.B.

260. *See, e.g.*, CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 40 ("revolt gives life its value").

261. *See, e.g.*, CAMUS, THE REBEL, *supra* note 250, at 22 ("In our daily trials rebellion plays the same role as does the '*cogito*' in the realm of thought: it is the first piece of evidence. . . . I rebel—therefore we exist.").

262. ALBERT CAMUS, THE PLAGUE (Stuart Gilbert trans., Modern Library 1948) [hereinafter CAMUS, THE PLAGUE].

263. *Id*. at 59.

264. *See e.g.*, PHILLIP THODY, ALBERT CAMUS: A STUDY OF HIS WORK 34 (1957) (so stating).

265. *See* CAMUS, THE PLAGUE, *supra* note 262, at 65 (exile), 151 (exile and deprivation), 272 (exile and suffering).

266. *Id*. at 156.

267. *Id*. at 122.

never ending defeat."[268] The plague never dies but at best simply becomes dormant and may arise again.[269] Fourth, and most soberingly as Camus extends the allegory, the plague is not just a force external to us but one "that each of us has . . . within him; no one, no one on earth is free from it."[270] Even those who seek to heal can nevertheless cause injury.[271] The tale to be told, Camus writes:

> could not be one of a final victory. It could be only the record of what had had to be done, and what assuredly would have to be done again in the never ending fight against terror and its relentless onslaughts, despite their personal afflictions, by all who, while unable to be saints but refusing to bow down to pestilences, strive their utmost to be healers.[272]

The meaning of the plague is "[j]ust life, no more than that."[273] As in Bell's work, the affliction is societally pervasive and seemingly inextricable.[274] Battle must be waged against the pestilence, and the struggle will never be finally victorious.[275] As Bell's own appropriation of Camus marks directly, Bell's thesis has a patently Sisyphean, existentialist quality.

And yet Bell's and Camus' existentialism also diverge. Camus engages in rebellion not only against human social conditions; his rebellion is ultimately "metaphysical": a protest against the human condition in an anonymous universe.[276] The universe is anomic: meaning-less and heartless, not intentionally cruel but rather indifferent. The universe is "divested of illusions and lights," and humanity finds itself there "an alien, a stranger."[277] The condition of humanity, caught between the need for meaning and the "silence of the world," is "absurd."[278] Because the universe has no meaning, the only proper understanding of it is one of nihilism. And yet Camus wants to declare nevertheless that "it is possible to find the means to proceed beyond nihilism."[279] The act of rebellion

268. *Id*. at 118.

269. *Id*. at 278.

270. *Id*. at 229.

271. *Id*. at 227. This and the prior quotation come from the mouth of Tarrou, a priest.

272. *Id*. at 278. The quotation comes from the book's final page.

273. *Id*. at 277.

274. I set aside until later the question of whether Bell would ascribe either to himself or other Blacks the sin of racism. *See infra* notes 310–37 and accompanying text.

275. See CAMUS, THE REBEL, *supra* note 250, at 278.

276. *Id*. at 23.

277. CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 5; *cf*. ALBERT CAMUS, THE STRANGER (Stuart Gilbert trans., 1946).

278. CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 21.

279. *Id*. at v; *see also* CAMUS, THE REBEL, *supra* note 250, at 302 (section entitled "Beyond Nihilism").

understands the terms of the universe but does not accept them; rebellion is an act of defiance.[280] Battle must be waged against the indifference of the universe and against the human sufferings within it, even if the task is one only of reducing the number of evils committed and sufferings undergone, not changing the universe's ultimate meaninglessness. [281] "[S]truggle implies a total absence of hope (which has nothing to do with despair), a continual rejection (which must not be confused with renunciation), and a conscious dissatisfaction (which must not be compared to immature unrest)."[282] Human action causes no rents in the weave of the universe's anomic fabric but can still have its own integrity and merit.

When Bell, by contrast, finds value in action as protest, his vocabulary is not simply existentialist, but religious. Even as he reiterates that protest will likely lead to defeat, he talks of it as "a kind of spiritual salvation"[283] that "can bring an inner triumph of the spirit."[284] In it "there is the salvation of spirit, of mind, of soul."[285] In part, Bell's conviction is that if we cannot control the fate of others, acting with integrity is an effort to take care of our own "soul."[286] Yet there is something more. Unlike Camus' existentialism, which expresses defiance in the face of what is viewed to be the ultimate meaninglessness of the world, Bell expresses a belief that even if his protest defies the realities of the social world, it comports with the truths of a more far-reaching world.[287] Bell remains existentialist,

280. *See* CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 41.

281. *See* CAMUS, RESISTANCE, REBELLION, AND DEATH, *supra* note 255, at 73.

282. CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 23; *see also id.* at 26 ("the absurd is the contrary of hope"), 67 ("Being deprived of hope is not despairing."). When Bell says that Camus sees in the myth of Sisyphus courage and liberation "rather than hopelessness," BELL, CONFRONTING AUTHORITY, *supra* note 46, at 161, this must be understood to be a power at the level of human action—its integrity, its limited effectiveness—not at the level of some more ultimate meaning.

283. Bell, *Wanted: A White Leader*, *supra* note 46, at 541.

284. BELL, FACES AT THE BOTTOM, *supra* note 8, at xii.

285. BELL, ETHICAL AMBITION, *supra* note 103, at 177.

286. *See id.* at 63 ("All we have to do in life is save our souls.") (citing Alice Walker); *id.* at 154 (citing Tracy Chapman, *All That You Have is Your Soul*, on CROSSROADS (Elektra 1989)). In another passage, Bell recounts a conversation with his fictional character, Geneva Crenshaw, where Crenshaw reminds Bell of a Biblical message, although not exactly so told in the Gospels. The disciple Peter expressed to Jesus his despair that the people would ever understand Jesus's message. "At this point, Jesus put his hand on Peter's shoulder and said: 'Peter. Save thyself. The rest are mine.'" BELL, AFROLANTICA LEGACIES, *supra* note 15, at 170–71.

287. *See, e.g.*, BELL, ETHICAL AMBITION, *supra* note 103, at 4 (claiming that his protest actions have "enriched my life and provided me with the perhaps unrealistic but no less satisfying sense that I was doing God's work").

but as I now turn to explore, his existentialism has a more strongly religious component.[288]

288. Bell's religious existentialism joins a well-known variant of existentialism, whose major figures include the nineteenth century Danish theologian, Soren Kierkegaard, *see, e.g.*, SOREN KIERKEGAARD, FEAR AND TREMBLING AND THE SICKNESS UNTO DEATH (Walter Lowrie trans., 1954) and the twentieth century American theologian, Paul Tillich, *see, e.g.*, PAUL TILLICH, THE COURAGE TO BE (1952). Niebuhr's theology can also be described as existentialist. *See* GILKEY, *supra* note 3, at 74. A biographer discusses Niebuhr's "Sisyphean perspective." *See* RICHARD WIGHTMAN FOX, REINHOLD NIEBUHR: A BIOGRAPHY 217 (1985).

Although it would take us too far from our main topic to describe in any great detail Camus' views on Christianity that keep his own existentialism relentlessly one of religious critique, a summary of his criticisms is relevant both for honing the character of his own existentialist posture and for illustrating how Bell's religion differs from the religion that Camus challenges. Camus develops at least four overlapping criticisms of Christianity:

1. He rejects the religious stance that looks for salvation in another, nontemporal world, rather than seeking to act in this one. *See, e.g.*, CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 113 ("[I]f there is a sin against life, it consists perhaps not so much in despairing of life as in hoping for another life and in eluding the implacable grandeur of this life."); CAMUS, THE REBEL, *supra* note 250, at 306 (arguing as "the only original rule of life today: to learn to live and to die, and, in order to be a man, to refuse to be a god. At this meridian of thought, the rebel thus rejects divinity in order to share in the struggles and destiny of all men."); CAMUS, RESISTANCE, REBELLION AND DEATH, *supra* note 255, at 73 ("If Christianity is pessimistic as to man, it is optimistic as to human destiny. Well, I can say that, pessimistic as to human destiny, I am optimistic as to man.").
2. He rejects the religious avowal that any positive mark on humanity comes from God's grace rather than from human action, which Christianity describes as inherently sinful. *See, e.g.*, CAMUS, RESISTANCE, REBELLION, AND DEATH, *supra* note 255, at 72 ("I was not the one who said that man was incapable of saving himself by his own means and that in the depths of his degradation his only hope was in the grace of God."); CAMUS, THE PLAGUE, *supra* note 262, at 116 (arguing that no one believes in an all-powerful God as "proved by the fact that no one ever threw himself on Providence completely").
3. He rejects the Christian notion of sin. *See, e.g.*, CAMUS, THE MYTH OF SISYPHUS, *supra* note 111, at 30 (observing that for Kierkegaard "sin is what alienates from God. The absurd, which is the metaphysical side of the conscious man, does not lead to God. Perhaps this notion will become clearer if I risk this shocking statement: the absurd is sin without God."); *id.* at 113 ("There are words I have never really understood, such as 'sin.'"); CAMUS, RESISTANCE, REBELLION, AND DEATH, *supra* note 255, at 73 ("I feel rather as Augustine did before becoming a Christian when he said: 'I tried to find the source of evil and I got nowhere.'").
4. Perhaps most profoundly, Camus rejects a God who permits evil and allows deep human suffering to occur. *See, e.g.*, CAMUS, THE REBEL, *supra* note 250, at 24 ("The metaphysical rebel is . . . not definitely [i.e., not necessarily] an atheist, as one might think him, but he is inevitably a blasphemer. Quite simply, he blasphemes primarily in the name of order, denouncing God as the father of death and as the supreme

B. *Bell's Religiosity*

It has long been apparent in Bell's writings that religion has been a signal part of his life and work,[289] and this has become increasingly overt in books such as *Gospel Choirs*[290] and *Ethical Ambition*.[291] Bell has

outrage."); *id.* at 303 ("Even by his greatest effort man can only propose to diminish arithmetically the sufferings of the world. But the injustice and the suffering of the world will remain and, no matter how limited they are, they will not cease to be an outrage."); CAMUS, RESISTANCE, REBELLION, AND DEATH, *supra* note 255, at 71 ("I continue to struggle against this universe in which children suffer and die."); CAMUS, THE PLAGUE, *supra* note 262, at 196–97 ("until my dying day I shall refuse to love a scheme of things in which children are put to torture"). For someone such as Camus writing in the aftermath of the Holocaust and World War II, the immediacies of evil and the sufferings and deaths they caused were certainly a most stark source of reflection, as those events should continue to be for us all.

In sum, Camus writes that humans must choose between one of two possible worlds: either "the sacred" or "the world of rebellion"; he adds, "[t]he disappearance of one is equivalent to the appearance of the other." CAMUS, THE REBEL, *supra* note 250, at 21. This choice between one of two alternatives is one that Bell and Niebuhr reject. I leave their more detailed rejoinders to Camus largely to the main body of the text, and the comparison offered there is indirect. Let me offer three more direct responses here. First, recall that Niebuhr's is a *political* theology: he wants to consider how human action is meaningful for ends in this world, not for some life beyond. *See supra* text accompanying notes 173–76. Second, Bell cites Tillich positively for the proposition that the situation of faith is now (or should be) one where there is no longer "belief in an all-knowing deity" and yet a "'courage of confidence'" can be invoked "under which genuine belief can be sustained despite circumstances tending to destroy it." BELL, ETHICAL AMBITION, *supra* note 103, at 42 (citing TILLICH *supra*). Third, as we have seen, for both Bell and Niebuhr evil is not something that simply happens to humans or something of which they are simply hosts (as they would be of a plague). They emphasize the volitional character of human evil; evil is a human act, something for which humans bear responsibility. In Niebuhr's terms, sin is a function of human freedom. *See supra* text accompanying note 193. It should bear noting that my brief presentation of Camus' views on Christianity and the potential responses to them by Bell and Niebuhr does not attempt to adjudicate between these figures.

For more extended engagement with Camus about his response to Christianity, see ALBERT CAMUS, *The Unbeliever and Christians*, *in* RESISTANCE, REBELLION, AND DEATH, *supra* note 255, at 67. The quotations above from this book come from the pages of this essay.

289. *See*, *e.g.*, BELL, FACES AT THE BOTTOM, *supra* note 8, at 145 ("I and other minority teachers are encouraged, even inspired in our scholarly pioneering by the Old Testament's reminder that neither the challenge we face nor its difficulty are new."); *see also* Bruce, *supra* note 140, at 174 ("There has always been an otherworldly or spiritual dimension to [Bell's] writing.").

290. *See supra* note 26.

291. *See supra* note 103.

documented his religious upbringing in the Protestant Black church[292] and his continuing religious faith.[293] He describes himself as Christian, but his faith is not cabined by traditional Christian doctrine.[294] Bell finds Christian literalism to "trivialize the depths of [the Bible's] meaning and the universality of its message."[295] The depth of biblical meaning fortifies rather than waters down or destroys belief. For Bell, "God is there, even if not in the form I had long imagined."[296] This faith that takes on the challenges of contemporary criticism is one that Bell also locates in Niebuhr.[297] Bell's religiosity is finally something not so much a matter of doctrine but something located in the heart: a deep-seated faith, a core affect, a guiding belief.[298] Bell's drawing upon the music and message of the spirituals and gospel hymns,[299] what he has often called a "theology in song," is particularly revealing of his faith.[300] This music provides a "spiritual nourishment . . . a universality that is capable of touching all who hear and needs its comfort, its consolation."[301] The message in the music is one of the sustenance that faith provides: "We've come this far by faith."[302] "I don't believe He brought me this far, to leave me."[303] " 'Twas grace that

292. *See*, *e.g.*, BELL, ETHICAL AMBITION, *supra* note 103, at 77; BELL, CONFRONTING AUTHORITY, *supra* note 46, at 15.

293. *See*, *e.g.*, BELL, ETHICAL AMBITION, *supra* note 103, at 75–93 (chapter entitled *Evolving Faith*); *id*. at 88 (describing some of his continued religious practices).

294. *See id*. at 79.

295. *Id*. at 85.

296. *Id*. at 88.

297. *Id*. at 85.

298. *See*, *e.g.*, *id*. at 77 ("Just as there are those who are religious but have little faith, there are those who claim no religion and yet have concepts of living that define real faith."). Bell's faith provides him an "emotional fuel." *Id*.

299. *See*, *e.g.*, BELL, ETHICAL AMBITION, *supra* note 103, at 78 (noting this reliance). Bell's recourse to the spirituals and gospel hymns is most overt in *Gospel Choirs*, a book that could be described as an ode to this music. Quotation of the music permeates the text. *See* BELL, GOSPEL CHOIRS, *supra* note 26, at 1, 4, 17, 27, 28, 29, 49, 60, 73, 74, 91, 103, 115, 141, 145, 152, 164, 171, 174, 188, 203, 206, 209, 210, 212, 213.

300. BELL, AND WE ARE NOT SAVED, *supra* note †, at 252; BELL, ETHICAL AMBITION, *supra* note 103, at 79; Bell, *Black History and America's Future*, *supra* note 27, at 1191; Derrick Bell, "*Here Come de Judge*": *The Role of Faith in Progressive Decision-Making*, 51 HASTINGS L.J. 1, 16 (1999) [hereinafter Bell, "*Here Come de Judge*"]; Bell, *Who's Afraid of Critical Race Theory*?, *supra* note 18, at 909.

301. BELL, GOSPEL CHOIRS, *supra* note 26, at 3 (writing specifically of gospel music); *see also* BELL, ETHICAL AMBITION, *supra* note 103, at 79 ("The message in the spirituals is universal.").

302. BELL, GOSPEL CHOIRS, *supra* note 26, at 203 (quoting Albert A. Goodson, *We've Come This Far by Faith*, *in* SONGS OF ZION 192 (1981)); *id*. at 213–14 (same).

303. BELL, FACES AT THE BOTTOM, *supra* note 8, at 88 (same); BELL, GOSPEL CHOIRS, *supra* note 26, at 60 (quoting James Cleveland, *I Don't Feel No Ways Tired*, *on* REV. JAMES CLEVELAND: A TRIBUTE TO THE KING (Malaco Records, MAL 2009 CD), disc 1); *id*. at 73 (same); Bell, *Racial Libel as American Ritual*, 36 WASHBURN L.J. 1, 17 (1996) (same).

brought me safe thus far;/ And grace will lead me home."[304] "There are some things I may not know,/There are some places I can't go,/But I am sure of this one thing/That God is real."[305] A life of faith requires of each individual: "Keep your hand on the plow. Hold on."[306] Bell's spirituality[307] seems a key to understanding how for him human action remains vital and viable despite racism's permanence.[308]

304. BELL, FACES AT THE BOTTOM, *supra* note 8, at 127–28 (same); BELL, GOSPEL CHOIRS, *supra* note 26, at 28 (quoting John Newton, *Amazing Grace*, *in* SONGS OF ZION, 211 (1981); *cf.* RICHARD DELGADO, THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE 57 (1995) (noting the narrator's comment that Rodrigo should entitle the last section of a paper "*Amazing Grace*").

305. BELL, GOSPEL CHOIRS, *supra* note 26, at 188 (quoting Kenneth Morris, "*Yes, God is Real*," *in* SONGS OF ZION 201 (1981).

306. BELL, ETHICAL AMBITION, *supra* note 103, at 92 (traditional spiritual); Bell, *Black History and America's Future*, *supra* note 27, at 1191 (same); Bell, "*Here Come de Judge," supra* note 300, at 16 (same).

307. Two points deserve attention here. First is the priority granted to spirituality instead of to religious denominationalism or doctrine. The focus is on the experience of an individual's relationship to the transcendent and the sustenance that this relationship of faith and grace brings. Conceptual categorization of this relationship in theological terms remains secondary. Second, as I shall briefly return to, *see infra* note 393, this move toward spirituality seems one of the significant innovations of critical race theory as a progressive social theory.

308. This point is also emphasized by Marcus Bruce: "[T]o define Bell's work as primarily a 'racial critique' is to miss his call for a profound spiritual transformation of American society." Bruce, *supra* note 140, at 167. Bruce additionally quotes an interview where Bell says that *Gospel Choirs* "addresses the 'spiritual nature of life' and offers gospel music to committed activists as a 'source of strength' and a means to develop a 'faith in something beyond our present situation.'" *Id.* at 173 (quoting Derrick Bell, *The Booklist Interview*, BOOKLIST, Feb. 15, 1995, at 952). The dual function in Bell of critique as well as exhortation is integral to what Bruce types Bell's "American Jeremiad." *Id.* at 167.

Although I can but note the point here, it would be interesting to develop internal to critical race theory how different religious backgrounds might act as a relevant variable in understanding different critical stances. For example, recall Bell's fable of the *Space Traders*, *see* BELL, FACES AT THE BOTTOM, *supra* note 8, at 158. As discussed previously, *see supra* notes 17–27 and accompanying text, the narrative avows that Whites would trade the nation's Blacks to space traders for promised wealth. By contrast, Richard Delgado and Jean Stefancic have written an alternative fable to this chronicle, *see* Delgado & Stefancic, *Derrick Bell's Chronicle*, *supra* note 27, and in that alternative, the outcome is not the dire one that Bell predicts. The account includes the following statement from a religious denomination opposed to the trade:

> All men and women are sons and daughters of one God. We condemn this trade. As Jesus said, "As you did it to one of the least of my brethren, you did it to me." This trade would sully a great nation. On judgment day, the Lord will not look kindly on those who voted for it.

Id. at 325 (quoting *Matthew* 25:40). My question is whether the religious tradition(s) of Delgado and Stefancic differ from Bell's and whether that difference is a factor in the di-

C. *Bell and Niebuhr*

In assessing the possible analogies between the analyses of Bell and Niebuhr, our initial question was whether it was proper to place Bell's work within a religious framework at all. Having now a better sense of Bell's religiosity, we can turn more directly and precisely to the potential relevance of Niebuhr for understanding Bell. To what degree does Niebuhr's discussion of the paradox between sin and action help us to understand better Bell's paradox between action and racism's permanence?

Bell's response to Niebuhr's claim of the universality of sin (sin's vertical dimension) is complex. In part, as we have just discussed, Bell's religion is more spiritual than doctrinal, so development of theological categories such as sin may not be of particular interest. In part too, Bell's attention is quite evidently directed elsewhere, to what Niebuhr called sin's horizontal dimension, the appearance of evil and injustice in the world. We return to this point later.[309] More generally, Bell's writings explicitly employ the term "sin" only rarely,[310] although he fairly frequently uses the term "evil," particularly to characterize slavery and racism.[311] Bell's invocation of racism as an "evil" may not seem surprising, but it reinforces his point that racism is not something superficial, occasional, or a matter of perception but rather something deep and perduring. Bell

verging orientation of the stories. *See also* R. Randall Rainey, S.J., *After We're Healed: Imagining a Social Order Based Upon a Justice That Reconciles*, 34 ST. LOUIS U. L.J. 471 (1990) (criticizing, from a Roman Catholic perspective, Bell's despairing vision).

309. See *infra* text accompanying notes 338–41.

310. The most prominent mention of the term comes in the passage quoted in this article's title: racism as "the nation's crucial sin." BELL, AND WE ARE NOT SAVED, *supra* note †, at 125. Recall that there the reference was to a belief of Ben Goldrich, a protagonist in one of Bell's fictional chronicles. Elsewhere in Bell's texts, the reference to "sin" is even more anecdotal. *See, e.g., id.* at 78 ("I did not want the Senator to get out of paying for all his sins by drowning himself.") (statement by Geneva Crenshaw in a fictional narrative); *id.* at 139 (the "sin of showing up the rest of society") (statement in the narrative about Ben Goldrich); Bell, *The Triumph in Challenge*, *supra* note 70, at 1695 ("the sin of Sodom and Gomorrah").

311. *See, e.g.,* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 112 (describing how his law school text on race and racism treated racial discrimination "as the evil it is rather than a subject . . . examined 'neutrally'"); BELL, AND WE ARE NOT SAVED, *supra* note †, at 34 ("evil" of slavery), 37 (same), 41 (same), 42 ("evil of racial discrimination"), 44 ("evil of racism"), 77 ("racial evils"); Bell, *Black History and America's Future*, supra note 27, at 1190 ("evils of racism"); Derrick Bell, *Judge A. Leon Higginbotham, Jr.'s Legacy*, 53 RUTGERS L. REV. 627, 632 (2001) [hereinafter Bell, *Judge Higginbotham's Legacy*] ("continuing evils of racism"); Bell, *Revised Opinion*, *supra* note 48, at 185 ("the evil of racism"); Bell, *The Racism is Permanent Thesis*, *supra* note 12, at 586 (racism as an "evil[] we cannot end"); *id.* at 587 ("evil of racism"); Bell, *The Triumph in Challenge*, *supra* note 70, at 1693 (the "real evil, racism"); Bell, *Wanted: A White Leader*, *supra* note 46, at 543 (racism as an "evil[] we cannot end"); Bell & Bansal, *The Republican Revival*, *supra* note 54, at 1612 ("the evils of slavery and segregation").

excoriates the *Brown*[312] Court, for example, because the reprehensible educational segregation that the Court there held unconstitutional "is a manifestation of the *evil* of racism the depths and pervasiveness of which this Court fails even to acknowledge, much less address and attempt to correct."[313]

At the few points where Bell's work more directly discusses the question of the universality of sin, it is typically critical. Commenting on another legal scholar's statement that imperfection and evil are a heritage shared by all of humanity, Bell remarks: "I have often heard similar explanations, and they have never eased either the pain or bitterness of racist policies condoned in a nation that boasts endlessly of its equality and justice."[314] Similarly, he finds woefully insufficient "confessions of guilt" by those who have engaged in racial oppression; these confessions do nothing to solve the real economic problems Blacks are facing.[315] For Bell, the claim of sin's universality becomes a vehicle for acquiescence, accommodation, and inaction, and this message must not be accepted. Similarly, Niebuhr differentiates sin from guilt.[316]

Elsewhere Bell seems not simply to criticize but in two senses to reject the universality of sin as applied to racism. First, not every White engages in racism at least as an intentional action. Although all Whites do benefit from racism, Bell writes, "I know that not all [W]hites are evil or guilty in any normative sense."[317] Second, when Bell rejects Black responsibility for racism, sin seems not universal but an attribute of power: "[T]he fact that, as victims, we suffer racism's harm but, as a people, cannot share the responsibility for that harm, may be the crucial component in a definition of what it is to be [B]lack in America."[318] Yet even though these statements appear to take away from Niebuhr's account of sin as universal, they align with Niebuhr in portraying sin and racism as deep structures, something more implacable than specific individual actions. They may also suggest an element of universality in the sense of the tainted effects of power no matter by whom it is held. This theme comes

312. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

313. Bell, *Revised Opinion*, *supra* note 48, at 185 (emphasis added).

314. Derrick Bell, *Preaching to the Choir: American as It Might Be*, 37 UCLA L. REV. 1025, 1032 (1990) (reviewing KENNETH L. KARST, BELONGING TO AMERICA (1989)).

315. BELL, GOSPEL CHOIRS, *supra* note 26, at 47.

316. *See supra* Part III.C.

317. Bell, *Wanted: A White Leader*, *supra* note 46, at 540; *see also* BELL, FACES AT THE BOTTOM, *supra* note 8, at xvi ("not all [W]hites are racist").

318. BELL, FACES AT THE BOTTOM, *supra* note 8 at 155; *see also* BELL, AND WE ARE NOT SAVED, *supra* note †, at 257 ("[W]e find courage in the knowledge that we are not the oppressors. . . ."); Bell, *Wanted: A White Leader*, *supra* note 46, at 541 (same). In other statements, Bell suggests that Blacks bear responsibility to the extent of refusing to adopt a stance of subordinancy. *See* BELL, AFROLANTICA LEGACIES, *supra* note 15, at xi.

across most clearly in Bell's fable *The Citadel*,[319] where we learn only at the end of the story that the oppressive power wielded by the rulers was held by those with "dark skins and thick hair" and used against others, the "lowlanders," who were "fair-skinned, straight-haired people." Further, generations earlier, the situation had been reversed.[320]

Additional suggestive meditations in Bell's work about the universality of sin appear in his reflections on his own activism. As Bell emphasizes repeatedly, he has been constantly aware that his own actions may not only end in defeat or in unanticipated consequences, but in harmful results: "Each action intended to help some will unintentionally harm or disadvantage others who, as a result of our well-intended efforts, will feel—and may well be—less well off."[321] One of the most vivid and poignant examples of this dilemma arose as a result of Bell's protest against Harvard Law School's failure to hire to its permanent teaching ranks a woman of color. As Bell recounts, Regina Austin, a Black law professor, was then visiting at Harvard, and Bell's actions were interpreted as in part advocacy on behalf of Austin. Bell had not consulted in advance with Austin about his protest, which a number of minority women law faculty resented, and Bell acknowledges the view that the publicity and backlash surrounding his protest may in fact have eliminated Austin's ability to gain a permanent position at Harvard and added significantly to the pressures Austin had to face that year.[322] Bell also grants that despite his good intentions, "[i]t is not difficult to find my failure to consider the effect of my protest on Regina Austin both selfish and sexist."[323] He as well recognizes that in the eyes of some, his actions may have delayed the hiring of women of color for more years to come.[324] Bell defends his actions but

319. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 61–80. In his earlier book, *Confronting Authority*, *see supra* note 46, Bell presented *The Citadel* in small sections that introduced each chapter. *See id*. at 1–3, 9–10, 27–28, 49–50, 67–68, 81–82, 93–94, 101–02, 125–26,145–47, 165.

320. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 80; BELL, CONFRONTING AUTHORITY, *supra* note 46, at 165 (same). In the latter work, the excerpt concludes the book.

321. BELL, CONFRONTING AUTHORITY, *supra* note 46, at 7; *see also* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 62 ("Our most unselfish work may turn out to do harm as great as the injustices we tried to end."); BELL, CONFRONTING AUTHORITY, *supra* note 46, at xii, 185 (same); BELL, FACES AT THE BOTTOM, *supra* note 8, at 198–99 ("our actions . . . may indeed, despite out best efforts, be of more help to the system we despise than to the victims of that system whom we are trying to help"); Bell, *Public Education for Black Children*, *supra* note 42, at 47–48 ("What we have to do, [B]lack and [W]hite who are concerned, is to recognize our potential in this society for doing harm even as we seek to do good.") (question and answer session).

322. *See* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 114–19 (relating these events).

323. *Id*. at 116.

324. *Id*. at 118. Lani Guinier, who became the first Black woman hired to the permanent Harvard Law School faculty, reports that she did reject an invitation to teach at the law school as a visiting professor in 1992, two years after Bell's protest began. The

knows that they also caused pain and may have led to some unwanted consequences.[325]

Elsewhere in his work, Bell frequently recurs to a statement made to him by Reverend Peter Gomes on Bell's move in 1980 from Harvard to become a dean at the University of Oregon School of Law. Gomes told Bell that as a dean he would be an evil; he would find himself rewarding those he should disappoint and disappointing those he should reward. The task was to become a "necessary evil."[326] As in his comments about his protests, the insight in these statements may in part be existentialist: action is necessary but if undertaken may lead to the evil of injuring others we had wanted to assist.[327] In part the message may also be an insistence on humility.[328] The insight may be as well that in order to act for social justice, tools such as power must necessarily be employed.[329] It is unclear whether Bell would say that, as a social actor, he must necessarily employ means that are sinful (sin in the horizontal dimension), and it is additionally unclear whether he would also acknowledge that this employment

school was still embroiled in the issue and, she relates, "I was loath to walk into the middle of it." She finally accepted an offer to teach as a visiting professor during 1996, was soon after invited to join the faculty on a permanent basis, and joined the faculty in 1998. *See* Nancy Waring, *Lani Guinier: Present and Visible*, *available at* http://www.law.harvard.edu/alumni/bulletin/backissues/spring99/article3.html (last visited Mar. 24, 2004).

325. *See* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 114–19. In these pages, Bell's comments on his protest may sometimes appear defensive. During the early 1990s, when I heard Bell introduce a lecture with some comments on what had happened to Austin, it was apparent that his uppermost response was one of great sorrow about her pain.

326. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 139–40; BELL, ETHICAL AMBITION, *supra* note 103, at 159–60; Bell, *Judge Higginbotham's Legacy*, *supra* note 311, at 633; Bell, *Public Education for Black Children*, *supra* note 42, at 47–48 (question and answer session); Andrea McArdle, *An Interview with Derrick Bell, in* ZERO TOLERANCE 243, 250 (Andrea McArdle & Tany Erzen eds., 2001) [hereinafter McArdle, *Interview*].

327. *See* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 113. In this paragraph, which precedes his discussion of the repercussions of his protest on Regina Austin, Bell quotes Camus' statement that we must proceed "with weapons in our hands and a lump in our throats." *Id*. (citation omitted); *see supra* text accompanying note 250.

328. *See, e.g.*, BELL, ETHICAL AMBITION, *supra* note 103, at 155–64 (chapter entitled *Humility's Wisdom*); BELL, FACES AT THE BOTTOM, *supra* note 8, at 198.

329. *See, e.g.*, McArdle, *Interview*, *supra* note 326, at 250 (quoting Bell that the message he tries to convey to students is that "[a]s lawyers working in the system they are evil, but with real care and even more real humility, they can from time to time be a necessary evil."). In a number of other contexts, Bell has surveyed the potential abuse of power enabled by the attorney role. Civil rights attorneys, for example, may have had one goal—integration—while their clients had another—equal education. *See* Bell, *Serving Two Masters*, *supra* note 122. For a more recent comment on this problem, see Bell, *Ethical Ambition*, *supra* note 103, at 161. Bell has also commented on how advocacy by civil rights attorneys, including himself, has led more to advancement of their professional careers than to improvement in the lives of their clients. *See, e.g.,* BELL, GOSPEL CHOIRS, *supra* note 26, at 54.

demonstrates sinfulness in the vertical dimension as well. Somewhat suggestive of the latter are statements such as: "Power in the hands of the reformer is no less potentially corrupting than in the hands of the oppressor."[330]

One of the areas internal to the Black community where Bell has consistently shown attention to possible "sinfulness" concerns the relationship between Black men and Black women.[331] Bell relates of his own education on this subject: "For a long time, I thought race and sex were separate agendas, but I have slowly come around to agreeing with my women students—[W]hite as well as [B]lack—who have been telling me for years that we [B]lacks must deal with sexism and patriarchy in our communities before we can address effectively the continuing evils of racism."[332] Bell both acknowledges that there is Black male chauvinism[333] and insists that the problem cannot be reduced to or condoned as a repercussion of the effects of racism on Black men. "[O]ne can't define right by circumstances. Abuse is abuse."[334] His critique of Black male actions is very

330. BELL, ETHICAL AMBITION, *supra* note 103, at 159 (stated in the context of discussing Gomes's remark); *see also* BELL, CONFRONTING AUTHORITY, *supra* note 46, at 7 ("While striving to do the Lord's work, we will look to many of our adversaries and some of our friends like the Devil incarnate."). In this quotation, it is unclear whether the point here is one only of appearance or of actuality. More generally, Bell is not sanguine about the abuse of power that might occur in any future Black-run society. "A [B]lack Camelot is not necessarily what you'd get. . . . Look at Haiti and any number of African countries." BELL, FACES AT THE BOTTOM, *supra* note 8, at 30.

331. This subject has received continuing attention in Bell's work. *See, e.g.*, BELL, *The Entitlement*, *in* GOSPEL CHOIRS, *supra* note 26, at 188–202 (discussing sexual entitlement therapy); BELL, *The Race-Charged Relationship of Black Men and Black Women*, *in* AND WE ARE NOT SAVED, *supra* note †, at 198–214; Bell, *The Sexual Diversion: The Black Man/Black Woman Debate in Context*, *in* SPEAK MY NAME: BLACK MEN ON MASCULINITY AND THE AMERICAN DREAM 144–54 (Don Belton ed., 1995); BELL, *Women to the Rescue, in* GOSPEL CHOIRS, *supra* note 26, at 152–63; *cf.* BELL, *Shadow Song*, *in* GOSPEL CHOIRS, *supra* note 26, at 91–102 (discussing heterosexism).

332. BELL, GOSPEL CHOIRS, *supra* note 26, at 154–55. In some of the conversations with his fictional character Geneva Crenshaw, Bell acknowledges his need for enlightenment on the topic, as in the following response to the narrator by Crenshaw: "[S]ome things seem never to change. White folks want to run everything. And you want to act stupid about women." BELL, AND WE ARE NOT SAVED, *supra* note †, at 176. For similar statements by Crenshaw, see, for example, *id.* at 69 ("I resent your generalizations about [B]lack women."); *id.* at 114 ("Thought you would taunt me into forgetting my question, did you? *Black woman, emotional*—my foot!"). Bell's own attitude toward Black women also arose, of course, in his protest over Harvard Law School's failure to hire to the faculty any women of color. *See supra* notes 322–25 and accompanying text.

333. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 204 ("Black men . . . can be male chauvinists in some of the worst ways imaginable, as a whole cadre of Black women writers have been reporting to the world for years.") (citation omitted).

334. BELL, GOSPEL CHOIRS, *supra* note 26, at 161. To the charge that many Black men are "abusive and macho" because under the current economic system they cannot find jobs, Geneva Crenshaw replies: "Such abuse deserves excoriation, not defense!" *Id.* at 14;

direct and unremitting. And Bell has little doubt about the difficulty of creating significant change in this context.[335] Yet at the same time, Bell does not treat the problem as "universal" in the sense of ineluctable, a matter of human nature. According to Bell, through education and change of will and attitude, Black male chauvinism can be reduced.[336] The issue again seems one more of guilt—sin in the horizontal dimension of the social arena—than of sin in the vertical, universal dimension.[337]

Whatever the final assessment of Bell's attitude toward the universality of sin, there is little question that in his thesis of racism's permanence, he is quite in accord with Niebuhr about the manifestation of sin and guilt on the horizontal plane. As we have seen, Bell asserts the need to accept "the dilemmas of committed confrontation with evils we cannot end."[338] He is persistent in his claim that those in power believe that their "redemption may be gained without surrendering or even acknowledging spoils obtained through the most pernicious evil."[339] As for the possibilities of his own action, Bell, like Niebuhr, maintains that his faith requires of him work in this world. A person's faith must be a "living, working faith."[340] One of the most oft-cited Biblical passages in Bell's work is the following from the book of James: "So faith by itself, if it has no works, is dead."[341] Moreover, as already noted, Bell also accepts, as part of being a "necessary evil," the need to act for social justice by employment of realist tools such as power.

One additional question remains about any possible affinity between Bell's and Niebuhr's practices in the world of action. Would Bell resist a

see also id. at 198 ("Blaming racism does no good—though racism has undoubtedly contributed to stresses that lead to negative behavior.").

335. *See, e.g., id*. at 161 ("Seems gettin' [W]hite folks to give up their racist ways may be a piece of cake compared to what you're taking on [i.e., the relationship between Black men and Black women].").

336. *See id*. at 156 ("It's not a question of nature. . . . It's one of mind, of will. I mean, my own sense of what a man is and what he should expect of women has evolved over time.").

337. For Bell the need to stem the corrosive effects of Black male chauvinism relates not only to the merits of the change on their own terms. Black women must also be freed from this oppression because "[B]lack people must come to realize that our greatest strength—our survival hope, if you will—is [B]lack women." *Id*. at 154–55; *see also* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 46 (reiterating his "belief that [B]lack women will ultimately save our people").

338. BELL, FACES AT THE BOTTOM, *supra* note 8, at 198.

339. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 166.

340. BELL, CONFRONTING AUTHORITY, *supra* note 46, at 162.

341. BELL, ETHICAL AMBITION, *supra* note 103, at 13 (quoting *James* 2:14); *see also* BELL, AFROLANTICA LEGACIES, *supra* note 15, at 58–59; BELL, AND WE ARE NOT SAVED, *supra* note †, at 44; BELL, CONFRONTING AUTHORITY, *supra* note 46, at 108; BELL, GOSPEL CHOIRS, *supra* note 26, at 101.

relationship with Niebuhr on account of the ways in which the latter's political theology could be applied, including by Niebuhr himself? As we have seen, due to Niebuhr's account of the universality of sin, Niebuhr exempts no social entity or individual from criticism.[342] On the other hand, on the horizontal plane of social action Niebuhr differentiates between levels of guilt and argues a lesser evil should fight against a greater.[343] Because of this complex stance, Niebuhr is appealed to as an authority by figures across the political spectrum: from progressives criticizing the existing order to conservatives defending policies as the lesser of present evils.[344] On the horizontal plane of his own time, Niebuhr was a cold warrior, strongly anti-communist.[345] Niebuhr objected strenuously to communism's "utopianism," which allowed its leaders to employ any means in the short-term for the prospect of reaching the ideal goal. Communist utopianism failed "to acknowledge the perennial moral contradictions on every level of historical advance."[346] The question raised back to Niebuhr is whether his realist ethic would ratify, under the guise of being the lesser evil, policies such as the use of atomic bombs, the war in Vietnam, or more contemporary American foreign policies.[347] In part the question is what policies did Niebuhr himself endorse,[348] and in part what did and does his realist ethic permit, regardless of Niebuhr's own beliefs.[349] On one side of the debate are those who argue that Christian realism provided " 'the religious rationale for the military foreign policy

342. *See supra* text accompanying notes 185–90.

343. *See supra* text accompanying notes 211–17.

344. *See, e.g.,* CORNEL WEST, PROPHETIC FRAGMENTS 144 (1988) (noting the range of political views claiming Niebuhr's legacy); Thomas C. Berg, *Church-State Relations and the Social Ethics of Reinhold Niebuhr*, 73 N.C. L. REV. 1567, 1567 (1995) (same).

345. *See, e.g.,* RONALD H. STONE, PROFESSOR REINHOLD NIEBUHR: A MENTOR TO THE TWENTIETH CENTURY 238 (1992) ("The role of Niebuhr in leading American liberals to oppose communism is well known."); WEST, *supra* note 344, at 144 ("[T]here should be little doubt that the Christian realism of Niebuhr led him to adopt an exemplary Cold War liberal perspective in the post-World War II period.").

346. REINHOLD NIEBUHR, CHRISTIAN REALISM AND POLITICAL PROBLEMS 37–38 (1953).

347. *See* COLM MCKEOGH, THE POLITICAL REALISM OF REINHOLD NIEBUHR: A PRAGMATIC APPROACH TO JUST WAR 150 (1997) (raising the question).

348. Niebuhr's stance on the use of atomic bombs is complex, but he does not offer a blanket condemnation of their employment. *See id.*; *see also* Campbell Craig, *The New Meaning of Modern War in the Thought of Reinhold Niebuhr*, 53 J. HIST. IDEAS 687, 691 (1992). Niebuhr did object to the war in Vietnam. *See* MCKEOGH, *supra* note 347, at 172 n.21 (discussing in detail the development of Niebuhr's position); STONE, *supra* note 345, at 238.

349. The objection raised was that Niebuhr's ethic would allow acts such as the atomic bombings at the end of World War II or the Vietnam War "to be possibly justified (if the evil faced was judged great enough, if the values threatened outweighed those sacrificed, if no alternatives were available)." MCKEOGH, *supra* note 347, at 150 (describing the objection taken).

that created the contemporary American empire.' "[350] and that it remained "complacent about democratic processes in advanced industrial society."[351] On the other side are those who maintain it stayed "as critical of the cynicism and amorality and conservatism of post-war Realists as it was of the illusions and moralism of pre-war liberals, pacifists and idealists."[352]

We cannot resolve that debate here, but some relevant consequences devolve from the very fact of the debate's continuance. The debate illustrates the different choices that can be drawn from Niebuhr's political theology and ethic, and that insight is elemental to Niebuhr's realism. Niebuhr recognizes that religion has been rightly subject to the charge of having a "fanatic zeal," and he wants to adopt the critique to fanaticism in any form. Fanaticism itself is the "more universal human corruption."[353] Niebuhr warns that humans "are infected by a universal inclination to make more of themselves than they thought" and therefore should be "distrustful of their own virtue" and "skeptical about their apprehension of the truth."[354] In an insight challenging for all historical periods, including our own, Niebuhr admonishes: "The self-deception of the righteous, whether godly or godlesss, is the chief engine of evil in the world."[355] Just as for Bell, the task Niebuhr sets is one that urges action in the world rather than removal from it, that understands that its action may require the use of power to fight other power, but also appreciates that its actions must be undertaken as a "necessary evil,"[356] with humility, self-awareness, and self-criticism. The continuing challenge, of course, is that these stances

350. STONE, *supra* note 345, at 238 (quoting theologian John M. Swomley, Jr.); *see also* WEST, *supra* note 344, at 149 (arguing that "Christian realists . . . were much concerned with the limits of U.S. power, [y]et they could easily justify quick and often brutal U.S. military intervention in order to insure the appropriate balance of power").

351. RICHARD WIGHTMAN FOX, REINHOLD NIEBUHR: A BIOGRAPHY 220 (1985).

352. MCKEOGH, *supra* note 347, at 145. McKeogh states: "[T]o place Niebuhr within the conservative realist orthodoxy would be unwarranted." *Id.*; *accord* STONE, *supra* note 345, at 241–42. Stone states:

> A sympathetic reading of Reinhold Niebuhr's writing finds him urging a cautious policy of statecraft, the upbuilding of the developing world, a nuclear partnership, a decrease in American reliance on military power, outright rejection of U.S. policy in Vietnam, and a struggle to criticize and replace the political leadership responsible for it.

Id.

353. REINHOLD NIEBUHR, PIOUS AND SECULAR AMERICA 143–44 (1958).

354. *Id.* at 144.

355. *Id.*

356. *See supra* text accompanying note 326.

are easier to voice than to implement rigorously in practice, as internal criticism and external objection and debate may reveal.[357]

The most salient place to examine Niebuhr's application of his method lies in his approach to American racism, and let me conclude this inquiry into Niebuhr's practice by amplifying his position here. As previously noted, Bell positively cites Niebuhr's insight that Whites will not grant Blacks equal rights as a matter of morality but only if forced to do so.[358] It is notable that this statement appeared in Niebuhr's early work *Moral Man and Immoral Society*, which dates to 1932,[359] long before the civil rights movement gained national prominence. Black civil rights remained an issue of significant attention also in Niebuhr's later work. He argued there that the disparity in rights and economic success between Whites and Blacks was not simply a vestige of past wrongs but a difference reinforced in our contemporary period.[360] White Americans have had "a complacent self-satisfaction" about American democracy,[361] believing that our country would solve problems of racial justice over time simply as a matter of our "moral idealism."[362] But the effort to provide Blacks equal citizenship "was bound to prove more difficult than even the most realistic idealists imagined," for humans remain "unregenerate tribalist[s]."[363] Because of the stubbornness of these "tribal prejudices," the struggle for racial justice would be long and arduous.[364] Niebuhr's formulation here, of course, recalls

357. Cornel West's assessment of Niebuhr is suggestive of at least one type of progressive response, one that differentiates the merits of a realist method from its specific implementation in Niebuhr's hands: "Since I believe that the religious insights of Christian realism—its sense of the tragic, rejection of perfectionism, and sober historicist orientation—are valuable and indispensable, I locate the blindness of Niebuhr and other Christian realists in two matters: Europeanist bias and skewed social analysis." WEST, *supra* note 344, at 152.

358. *See supra* text accompanying note 167.

359. *See supra* note 3. Prior to joining the professoriate in the late 1920s, Niebuhr had been for thirteen years a minister in Detroit, *see* STONE, *supra* note 345, at 23, and while there had been "a pioneer on racial issues." John C. Bennett, *Niebuhr's Ethic: The Later Years*, 42 CHRISTIANITY & CRISIS 91, 95 (April 12, 1982).

360. Reinhold Niebuhr, *The Negro Minority and Its Fate in a Self-Righteous Nation*, 35/59 SOCIAL ACTION/SOCIAL PROGRESS 53, 58 (September/October 1968) (combined issue of two different periodicals) [hereinafter Niebuhr, *The Negro Minority*]. Niebuhr does not exempt the churches from this indictment: "[T]he churches, as Negro Christians long ago ruefully admitted, have been the most segregated communities in the South, and for that matter, in the nation." NIEBUHR, PIOUS AND SECULAR AMERICA, *supra* note 353, at 82.

361. Niebuhr, *The Negro Minority*, *supra* note 360, at 55.

362. *Id*. at 60–61.

363. Niebuhr, *Man, the Unregenerate Tribalist*, *supra* note 206, at 133.

364. *Id*. at 134. Ronald Stone, a Niebuhr biographer, claims that "Niebuhr's realism led him to expect 'slow erosion of racial prejudice.' " STONE, *supra* note 345, at 236 (quoting NIEBUHR, PIOUS AND SECULAR AMERICA, *supra* note 353, at 82). This expectation of erosion, even if slow, would seem contrary to Bell's stance that racism is permanent. It is true that Niebuhr maintained that some prejudices, for example about Black "cultural backwardness," would be "cured" by the forms of equal opportunity he saw the courts

Bell's characterization of Whiteness as a property right.[365] Niebuhr endorsed the civil rights activities of Martin Luther King, Jr.,[366] and he urged that it was grossly mistaken for the country to prioritize military expense in the "futile war" in Vietnam particularly while at the same time the needs of the black community were not being met.[367] Niebuhr wrote, "After almost two centuries of broken promises and pledges our debt to our Negro minority is immense and obvious, and its burden lies heavy upon our conscience."[368]

Having discussed possible points of comparison between Bell and Niebuhr on the horizontal plane of social action, one last source of potential resemblance remains, and that lies on the vertical plane of their respective faiths. If Niebuhr finds in his faith a transcendent ground of meaning,[369] so does Bell. Bell frequently quotes the following passage from Patricia Williams:

> "[B]lacks always believed in rights in some larger, mythological sense—as a pantheon of possibility. It is in this sense that [B]lacks believed in rights so much and so hard that we gave them life where there was none before; held onto them, put the hope of them into our wombs, mothered them, not the notion of them; we nurtured rights and gave rights life. . . . This was the story of Phoenix; the parthenogenesis of unfertilized hope."[370]

---

mandating at the time. *See id*. at 81. But the larger phrase from which Stone quotes begins: "If we must rely chiefly on the slow erosion of racial prejudice . . . ." *Id*. at 82. The point is that change, if it occurs, will be slow, not immediate. There seems no necessary expectation of continued erosion, a hesitation that Niebuhr's comments elsewhere about the human propensity to act as an "unregenerate tribalist" may reinforce. Admittedly, it is complicated to draw inferences from passages written several decades ago in a very different historical period.

365. *See supra* note 46 and accompanying text.

366. *See* STONE, *supra* note 345, at 235 ("Niebuhr referred to King as the outstanding Protestant leader of his day, [W]hite or [B]lack. In Niebuhr's estimation, King combined idealism and realism appropriately; in Niebuhr, King found concepts that made sense of the heartrending struggle of the civil rights movement.").

367. Niebuhr, *The Negro Minority*, *supra* note 360, at 64.

368. *Id*.

369. *See* notes 230–39 and accompanying text.

370. BELL, FACES AT THE BOTTOM, *supra* note 8, at 25 (quoting Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, *in* A LESS THAN PERFECT UNION: ALTERNATIVE PERSPECTIVES ON THE UNITED STATES CONSTITUTION 64 (Jules Lobel ed., 1988)); *see also* BELL, ETHICAL AMBITION, *supra* note 103, at 176; BELL, GOSPEL CHOIRS, *supra* note 26, at 185–86; Bell, *Who's Afraid of Critical Race Theory?*, *supra* note 18, at 900; Bell & Bansal, *The Republican Revival*, *supra* note 54, at 1619. In a subsequent book which draws on her essay, Williams's wording is somewhat changed. *See* PATRICIA WILLIAMS, THE

At first glance, the statement of "an unfertilized hope" appears existential, not religious.[371] As Bell writes of Williams' statement, "[O]ur belief in our rights gives them life and thus keeps alive our humanity whether or not those rights ever materialize."[372] As we have often seen of Bell, the emphasis is on the "committed struggle."[373] The context seems existentialist because there is victory regardless whether there is outward success and no matter whether the world—and the meaning of the world—is indifferent. Struggle can bring "an inner triumph of the spirit even as, outwardly, one suffers defeat after defeat."[374] Bell argues that Blacks possess "the power of ourselves. It is the power of right. It is the power that comes when we recognize that our salvation—not in Heaven, but right here on Earth—comes from a sense of pride in our self-worth."[375] Racism is permanent, but in action and the unfertilized hope, meaning is there.

Yet for Bell this struggle is ultimately grounded in some deeper sense of meaning. It is Bell's faith that has provided him sustained nourishment and hope in the face of the frustrations of working for social reform. He writes:

> I have relied on my faith. Particularly in hard times, my Christian faith provides reassurance that is unseen but no less real. It never fails to give me the fortitude I need when opposing injustice despite the almost certain failure of my action to persuade those in authority to alter their plans or policies. For me it is my most powerful resource.[376]

Bell gleans from the spirituals that enslaved ancestors retained a faith, a faith that was their only "property."[377] The faith was that "evil and suffering were not the extent of their destiny—or of the destiny of those who would follow them."[378] This seems Bell's faith also. He relies, he says, on what Protestant theologian Paul Tillich has described as "a faith beyond

---

ALCHEMY OF RACE AND RIGHTS 163–64 (1991) [hereinafter WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS].

371. As it may indeed be for Williams. Williams writes, "For [B]lacks, the prospect of attaining full rights under law has been a fiercely motivational, *almost* religious, source of hope ever since arrival on these shores." WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS, *supra* note 370, at 154 (emphasis added).

372. BELL, GOSPEL CHOIRS, *supra* note 26, at 185–86.

373. *Id*. at 186.

374. BELL, FACES AT THE BOTTOM, *supra* note 8, at xii.

375. BELL, AFROLANTICA LEGACIES, *supra* note 15, at 24.

376. BELL, ETHICAL AMBITION, *supra* note 103, at 76.

377. Derrick Bell, *Victims as Heroes: A Minority Perspective on Constitutional Law*, *in* THE UNITED STATES CONSTITUTION: ROOTS, RIGHTS, AND RESPONSIBILITIES 163, 177 (A.E. Dick Howard ed., 1992).

378. BELL, FACES AT THE BOTTOM, *supra* note 8, at 195.

the unbelievable."[379] Despite the permanence of racism and life's defeats, action and life have meaning, a transcendent meaning. "I am convinced," Bell writes, "that there is something real out there in America for [B]lack people."[380] This faith is a power that he knows has been essential for many in the Black community's struggle for racial justice, and one that he continues to urge as available and necessary to sustain future work.[381] In the tension between Bell's thesis of racism's permanence and his call for continued action, understanding Bell's faith provides a final key to comprehending why this tension is a paradox and not a contradiction. His faith holds out a hope that both hews to Bell's realism[382] and requires humility[383] in acting upon it.[384]

CONCLUSION

Although Bell seems to maintain some distance from Niebuhr's understanding of sin's vertical dimension, its universality, he and Niebuhr appear much more to share a sense of the operation of sin in the horizontal dimension, in the earthly world of action where social justice is sought.

379. BELL, ETHICAL AMBITION, *supra* note 103, at 77 (referencing TILLICH, THE COURAGE TO BE, *supra* note 288, at 172).

380. Bell, *Racial Realism*, *supra* note 94, at 378; Bell, *Racism is Here to Stay*, *supra* note 12, at 92 (same).

381. *See, e.g.*, BELL, AFROLANTICA LEGACIES, *supra* note 15, at xiii ("The righteous must rely on their faith and champion justice even in a seemingly lost cause."); BELL, AND WE ARE NOT SAVED, *supra* note †, at 196 ("[Y]ou . . . are looking for a third approach militant enough to meet the reality of our condition and yet humane enough to equate with the religious faith that helped sustain us through so many bad times."); BELL, GOSPEL CHOIRS, *supra* note 26, at 11 ("We need a foundation for new tactics that speaks directly to today's crisis, one that also encompasses the vehicles of faith and steadfastness that have served us so well in past struggles.").

382. *See* Bell, *Public Education for Black Children*, *supra* note 42, at 37 ("[N]either hope nor faith can make the impossible real.").

383. *See supra* text accompanying note 328. Recall the importance of this humility in Niebuhr also: "[W]e cannot purge ourselves of the sin and guilt in which we are involved by the moral ambiguities of politics . . . ." 2 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 284.

384. Bell's approach can then be described as utopian. *See* BELL, AND WE ARE NOT SAVED, *supra* note †, at 255 (advocating a "utopian" "Third Way"); *cf.* WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS, *supra* note 370, at 154 (discussing the "moral utopianism with which [B]lacks regard rights"). But it is utopian in the careful sense described earlier as the "exploration of the possible," not as escape or "the completely unrealizable." *See supra* note 157 (quoting RICOEUR, LECTURES ON IDEOLOGY AND UTOPIA, *supra* note 157, at 310). When this approach retains its humility, it also avoids Niebuhr's criticism of utopian ideologies such as communism, which he argued "fail[ed] to acknowledge the perennial moral contradictions on every level of historical advance." NIEBUHR, CHRISTIAN REALISM AND POLITICAL PROBLEMS, *supra* note 346, at 37–38.

And they share as well a confidence in the transcendence of meaning. For each, "[b]oth the majesty and tragedy of human life"[385] far exceed the liberal portrayal of human existence. And for each, the interrelation of sin and action or of racism and action remains paradoxical. Each seems to suggest, though, "that a rationally irresolvable contradiction may point to a truth which logic cannot contain."[386] As throughout, the issue for us is less one of ontology than of experience. Niebuhr's portrayal of the *experienced* interrelation of sin and freedom seems to illuminate the *experienced* interrelation of racism and action. Diminution of the tension in either of these interrelations will fail to capture the veracity of their tensions and of the paradoxical experiences they describe.

The lessons Niebuhr and Bell provide are both substantive and methodological. Substantively, they contend that human existence is comprised of seemingly deep structures. Their assertion of these deep structures challenges certain contemporary norms, particularly those that maintain that human values are plastic, simply social constructions that are nonfoundational, caught within the boundaries of particular cultures.[387] The deep structures asserted in Bell and Niebuhr—structures of both good and evil—break these boundaries and contest nonfoundationalism. Human existence is not simply a "blank slate,"[388] with which we are free to do as we choose. One of the great contributions of Bell and the larger project of critical race theory of which he is a member is their criticism of nonfoundationalism in law.[389] Against the claim of some in critical legal studies that "rights" are but social constructions that society can decide to grant or to take away,[390] critical race theory argues that "rights" characterize something more fundamental—a "truth," a " 'really-out-there' object[],"[391] "a 'real' reality out there"[392]—that provides an anchor, something that can

385. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 122.

386. *Id*. at 262.

387. *See, e.g.*, RICHARD RORTY, PHILOSOPHY AND THE MIRROR OF NATURE (1979). Mannheim reminds us that the presence of these deep structures also challenge liberal ideals: "[T]he deepest driving forces of the liberal ideas of the Enlightenment lay in the fact that it appealed to the free will and kept alive the feeling of being indeterminate and unconditioned." MANNHEIM, *supra* note 74, at 229.

388. *See* STEVEN PINKER, BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE (2002) (arguing that there are biological constraints imposed on human behavior). My allusion to Pinker does not necessarily presuppose any agreement with the biological constraints he proposes.

389. As previously intimated, *see supra* note 308 (discussing Richard Delgado's and Jean Stefancic's alternative to Bell's fable of the *Space Traders*), further elaboration of the varying strands within critical race theory would reveal differences as to whether racism is "permanent" or instead a deep structure within American society as we now know it but not necessarily permanent.

390. *See, e.g.,* Mark Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23 (1993).

391. Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 751 (1994).

392. *Id*. at 753.

be held onto, during the storm.[393] Methodologically, Bell and Niebuhr argue that it is only through critique—through confrontation, rather than avoidance, of the deep structures of human existence—that any real possibility of redemption is rendered available.[394] This conjunction of critique and a redemptive vision is also a dominant thread of critical race theory as a whole.[395] Niebuhr and Bell alert us that there may be more to "[b]oth the majesty and tragedy of human life"[396] than we have recently supposed.

393. More particularly, while many conservatives have obviously long maintained "spirituality" as an ethos, Bell and some trends within critical race theory have helped to revive "spirituality" as a progressive possibility. For other emphases on spirituality within critical race theory, see, for example, ANTHONY E. COOK, THE LEAST OF THESE: RACE, LAW, AND RELIGION IN AMERICAN CULTURE (1997). Compare DELGADO, THE RODRIGO CHRONICLES, *supra* note 304, at 151 (quoting Rodrigo's observation that some of the narrator professor's recent writings "have had almost a—how shall I put it—spiritual quality").

394. I have previously quoted similar sentiments expressed by the hermeneutic philosopher Paul Ricoeur. *See supra* text accompanying notes 95, 101. This conjunction of critique and restoration of meaning is a hallmark of his work. For example, in the work quoted, *Freud and Philosophy*, Ricoeur confronts whether meaning can survive the challenge to consciousness placed on it by the reductive hermeneutic of Freud.

395. *See, e.g.*, Harris, *supra* note 391, at 743 ("Despite the difficulty of separating legal reasoning and institutions from their racist roots, [critical race theory's] ultimate vision is redemptive, not deconstructive."). Bell quotes and discusses favorably this passage. *See* Bell, *Who's Afraid of Critical Theory*, *supra* note 18, at 899.

396. 1 NIEBUHR, NATURE AND DESTINY OF MAN, *supra* note 3, at 122.