

related to those suggested by the term "sensibility" as well. It seems to me that Black has a basically classical sense of the range of human possibility, rather than a modernist one. For example, in one of these essays Louis Armstrong appears as an artist-hero whose struggle against the constraints of society provides an example for us to admire. But, as Black suggests, the struggle against constraints occurs within a framework set by society. He speaks of his attraction to jazz, apparently a modernist art form, in terms of its allegiance to tradition.⁷

In another forum I would raise questions about the ability of classical sensibility to edify under modern circumstances, and about the adequacy of that sensibility as an account, even a partial one, of human possibility. For the present, though, a different point seems more pertinent. Edifying discourse, and its commendation, have been around for a long time. One might have expected the need for such commendation to have diminished. Yet it obviously has not. That in turn suggests that the attempt to solve problems of the unjust deployment of power by means of edification and humane imagination cannot succeed.

AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE. By Derrick Bell.¹ New York, N.Y.: Basic Books, Inc. 1987. Pp. xii, 288. \$19.95.

COMPASSION VERSUS GUILT AND OTHER ESSAYS. By Thomas Sowell.² New York, N.Y.: William Morrow & Co. 1987. Pp. 246. \$15.95.

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It is fortunate that I had to read these two books together. The great, not to say excessive, pleasure I derive from reading my soulmate, Thomas Sowell—for example, "The streets of New Delhi are far better paved than the streets of New York. . . . Some Third

7. I confess that I do not know what exactly to make of the abstract painting by Black, entitled "A Quarter-Inch Plate Glass Window in a Color Storm," that he uses for the cover of the book.

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World governments simply buy what they want and beg for what they need"—surely should not go unpunished, and there can be no sin for which reading Professor Derrick Bell is not, for me, adequate punishment. The disagreement between the two eminent black scholars could not be more basic or total. Most fundamentally, Sowell believes that America is a great country, probably the world's best: "We need only see the hunger in Africa, the blood in Lebanon, or the Berlin wall to realize how lucky we are. Even among free nations, America is blessed." Bell, like his Marxist Critical Legal Studies colleagues on the Harvard Law faculty—which he nonetheless criticizes as too conservative and eager to avoid controversy—believes that the country could hardly be worse. "America's continuing commitment to white domination," he begins by telling us, makes it an "all-too-real world of racial oppression." America's "white society," the book ends as it began, is a society of "moral corruption" where "only the most powerful or wealthy whites are able either to insist on or to pay for lives free of exploitation" and where "whites as well as blacks are being exploited, deceived, and betrayed by those in power." The need, therefore, is for a "restructured society" and a changed "structure of government."

The central message of Sowell's book is that "there are no real solutions in politics—only tradeoffs." The central message of Bell's book is that a utopian "just and humane society" is achievable if only we reject "the conviction that the mainstays of existence are money rather than morality and cunning rather than compassion" and share his commitment to "racial and economic equality." Sowell believes that "the civil rights approach [has] already done its work" and the need now is for "new approaches to other serious problems of the black community—of which massive teenage pregnancy and violent crime are among the most devastating." Bell, specifically denouncing Sowell, believes, despite suggestions that the "common thread in all civil rights strategies is eventual failure" and that "civil rights programs are worthless opiates," that there is need for a "new legal theory that will persuade courts to provide protection for blacks."

Sowell brings a clear, hardheaded, and helpful perspective to everything he discusses, whether or not one agrees with his conclusions, and writes with verve and wit. Bell's book, at least from the perspective of one for whom America has been a land of limitless opportunity, is a whining litany of arrant and pernicious nonsense written in a childish prose. As a sort of irritability bonus, it also makes clear, like many liberal tracts, how difficult it is for a truly

good, courageous, and selfless person to carry on in a world populated by his moral inferiors.⁴ The only value I can see in Bell's book is that it illustrates, as clearly as possible, that there really are the "deep thinkers" Sowell rails against, embittered academics who, despite their own positions of advantage and influence, contend that America is a grossly unjust society in need of drastic restructuring and who peddle what Sowell calls the "key feature of Communist propaganda," "the depiction of people who are more productive as mere exploiters of others."

Bell's concern is, as his subtitle states, "the quest for racial justice" and "the salvation of racial equality." Why, he asks, has *Brown's* "promise of racial equality escaped a fulfillment that thirty years ago appeared assured?" The answer, of course, is that *Brown's* promise has not escaped fulfillment; it has been not only completely fulfilled but fulfilled beyond any contemplation that was possible at the time. The "racial equality" before the law promised by *Brown* and its immediate successors has been made a reality by effective constitutional and statutory prohibitions of discrimination against blacks by government, state or federal, or government-supported institutions. Bell's inquiry as to the cause of the low socio-economic status of many blacks today is, therefore, entirely misdirected.

Going beyond the promise of *Brown*, the law now prohibits even private discrimination against blacks in places of public accommodation, employment, and housing. The fifteenth amendment's guarantee of the franchise to blacks has been made a reality by the enactment of drastic but highly effective measures. Finally, mostly by judicial decision—albeit clearly unwarranted decisions⁵—but also by federal statute,⁶ the law has gone "beyond"

4. For example, the long-suffering Bell found himself "wearied" from an "unhappy session" with his "mainly white faculty" colleagues who do not share his "background and outlook on racial matters." "At a younger age," he "would have reacted dramatically" to their rejection of his proposal to confine a conference solely to questions of race "by filling the room with angry accusations and then departing in a rage." Now, however, he realizes his white colleagues might be eager to replace him with "another black" more willing to "denigrate [his] race in ways many whites believe true but dare not publicly assert."

Bell describes himself as a "veteran of the racial struggle" who "willingly risked life and career," and values his "hard-won ability to work through problems . . . and to hell with anyone who disagrees or urges a different course." He was "serious about using [his] life well, showed real courage in the courtroom, and seemed always worried about principles rather than self in [his] decisions." His major failing, it seems, was his slowness in making a much-desired pass at his beautiful fictional heroine, but, he explains, in typical crackling dialogue, "I always try to be a gentleman." Surely the best line in the book is his heroine's response, in another connection, "Tell me you're not serious!"

5. *E.g.*, *United Steelworkers v. Weber*, 443 U.S. 193 (1979) (Title VII of the 1964 Civil Rights Act does not prohibit discrimination against whites); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (Title VI of the Civil Rights Act of 1964 and the Constitution do

prohibiting discrimination against blacks to permitting or even requiring racial discrimination meant to advantage blacks.

The mistaken premise of Bell's lament is that a promise of racial equality before the law is a promise of equal outcomes in all endeavors for all racial groups regardless of other factors. The promise was, to the contrary, that racial groupings would thereafter be legally irrelevant, that the law would no longer know any individual's race. Bell is pleading for a regime different from, if not the opposite of, the one promised by *Brown*; he wants a regime in which the law *must* take account of each individual's race. As Sowell repeatedly stresses in *Compassion Versus Guilt* and has often pointed out elsewhere,⁷ there is no reason to expect that members of different racial or ethnic groups will achieve equal results or be evenly distributed in all areas or any area in the absence of racial discrimination: "Huge group differences are the rule rather than exception everywhere in the world, and regardless of whether there is much discrimination, little discrimination or no discrimination." "People who go on to higher education from different social or ethnic backgrounds," for example, "do not specialize in the same mix of subjects. The Japanese and the Hispanics specialize in a drastically different mix of subjects whether you compare Japan with Hispanic countries or Japanese Americans with Hispanic Americans."

Insofar as Bell's argument is based on the contention that racial discrimination has not been eliminated or greatly reduced since *Brown*—that there are "patterns of contemporary racial discrimination . . . close in intent to, if different in form from, those practiced in earlier times" and "increasing viability of concepts of white superiority"—he is not only obviously mistaken but perversely mistaken. Such assertions can only be seen as the professional activist's ploy of urging that his area of professional concern is in need of ever-increasing attention and of seeing every improvement in that area as a reason to insist that things are getting worse. There is obviously all the difference in the world in terms of "racial justice" or "racial equality" between a requirement that police officers be white and a requirement that all applicants for police officer positions pass minimum competency tests, even though one effect of such tests is to disqualify a disproportionate number of blacks.⁸

not prohibit discrimination against whites); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (Title IV of the 1964 Civil Rights Act restrictions on compulsory integration and busing do not apply to the South).

6. Public Works Employment Act of 1977, Pub. L. No. 94-369, 42 U.S.C. § 6710 (1982).

7. *E.g.*, CIVIL RIGHTS: RHETORIC OR REALITY? 16-21, 155, 228-30 (1984).

8. See *Washington v. Davis*, 426 U.S. 229 (1976).

The burden of being white should not be so great, despite Bell's efforts, to require countenancing his argument that the two requirements are "close in intent" and different only "in form."

One could make the different argument, of course, that fulfillment of the promise of *Brown* does not adequately address the problems of blacks—more accurately, of the black underclass, defined largely in terms of single-parent, female-headed homes—as the persistence of those problems in very severe form clearly indicates. Bell's argument in terms of broken promises enables him to avoid considering any possible reason for the problems of the black underclass other than past or present racial discrimination, but the argument is questionable on both factual and policy grounds. It does not appear that the problems of the black underclass today are in any direct sense due to past or present racial oppression. Slavery ended over a century ago and segregation by law almost a quarter of a century ago with passage of the Civil Rights Act of 1964. As Sowell points out, most of today's blacks were born after the *Brown* decision, and nearly half since the Act. Two of the principal problems of the black underclass today are, Sowell notes, teenage pregnancy and crime, and these have increased in recent years as racial discrimination has decreased. The success of many recent Asian immigrants and West Indian blacks, again as Sowell has noted, is a continuing and serious embarrassment to the argument that discrimination is the main cause of blacks' problems.

More important, the case for doing what can be done to improve the present condition of the black underclass should not depend crucially on the extent, if any, to which that condition can be traced to past discrimination. Lawyers, like Bell, naturally think in terms of remedying past wrongs, and insofar as courts are seen as the principal actors, as they are by Bell, a "remedy" rationale is probably necessary: the compulsory school integration (busing) and "affirmative action" decisions all purport to be "remedying" past wrongs.⁹ The deplorable condition of the black underclass is not any less of a serious social problem, however, if it is not primarily due to past discrimination. Looked at simply as a matter of social policy, the only question is what, if anything, can be done to improve that condition.

American society should do what it can to help the black underclass, not because its plight is the result of past wrongs, but because it is, in any event, a blot on American society and inconsistent with the maintenance of a healthy, prosperous, and secure nation.

9. See L. GRAGLIA, *DISASTER BY DECREE* (1976); Graglia, *The "Remedy" Rationale for "Affirmative Action,"* SUFFOLK U.L. REV. (1988) (forthcoming).

The courts, which Bell relies on to perform further constitutional "miracles," should play no more role in dealing with this problem than they should in any other area of policymaking in a democratic system of government. The Supreme Court's efforts in the racial area, from *Dred Scott* through the *Civil Rights Cases* and up to today's busing decisions, have often been disastrous. The Court's doctrinaire policymaking in other areas, from its decisions hobbling law enforcement to its decisions removing much of the stigma from illegitimacy,¹⁰ have probably been even more harmful to the black underclass than to American society in general.

Each of Bell's ten chapters begins with a vision or "Chronicle" related by "Geneva Crenshaw," a fictional former lawyer-colleague of Bell's in NAACP Legal Defense Fund civil rights litigation. A woman of "impressive intelligence," "stunning looks," and "keen wit," she was "proud of her color and her race" even in the "pre-'black is beautiful' period." She was "an excellent advocate—as more than one Southern white attorney who refused to shake her hand learned at some expense to his case and his psyche." After each Chronicle, Geneva and Bell enter into a discussion, with Geneva generally taking a position even more despairing and disparaging of whites, if possible, than Bell's. The sum of her wisdom on racial matters is, as she states at the beginning, that her "worst fears have been realized" and "equal opportunity" (quotation marks in the original) has been transformed from a "guarantee of racial equality into one more device that the society can use to perpetuate the racial status quo." That oppression is oppression everyone knows. It takes a social critic of Bell's perception, however, to see that equality of opportunity is also oppression. Bell's paragon lives in a world where blacks "have always been able to outsmart white folks," but where unfortunately you could not "win an argument with a white man by proving you were smarter than he was," views that would be somewhat less acceptable if the racial references were reversed.

In the first Chronicle, Geneva attempts unsuccessfully to convince the 1787 Philadelphia Convention not to compromise with slavery—ignoring that the choice was not between abolishing and permitting slavery, which would have continued in the South in any event, but between forming or not forming a stronger Union. In the ensuing discussion, Bell cites statistics meant to show the poor economic condition of blacks relative to whites. Other statistics could be cited, of course, to show that much of the disparity is due to the

10. *E.g.*, *Levy v. Louisiana*, 391 U.S. 68 (1968).

greater prevalence of female-headed families among blacks¹¹ and that in some respects the situation of blacks has greatly improved: for example, between 1940 and 1983 the longevity gap between whites and blacks decreased from 11.1 years to 3.9 years as black longevity increased much more rapidly than white longevity.¹²

There is no doubt, nonetheless, that the situation of the black underclass is extremely serious, or to repeat, that addressing that situation should be a matter of high national priority. It is of no help at all, however—indeed, it is both preposterous and harmful—to insist, as Bell does, that the source of the problem is “white policy makers’ racial motivations,” and that “the country’s contemporary leaders who, having every reason to know that we are not inferior, seem determined to maintain racial dominance even if that aim destroys us and the country.” It is in fact nothing other than the preaching of race hatred and irresponsibility.

The second Chronicle is devoted to showing that civil rights victories by blacks actually have been of greater benefit to whites. It puts forth the basic Marxist proposition that there is a “much-needed transformation of an industrial nation’s social structure that, as presently organized, espouses liberty for the individual but prospers through the systematic exploitation of the lower classes,” to which Bell makes his standard contribution, “particularly those who are not white.” “[S]uffering and injustices [are] being visited by the system on the exploited groups,” but “exploited working-class whites—lulled by a surfeit of sports, sex, and patriotic fervor—readily acquiesce in so oppressive a system.”

To deal with this situation, Geneva suggests the clever strategy of seeking to “convince the upper classes and their representatives that their selfish interests can best be protected by an even greater-than-usual lack of concern for the plight of the working classes and the poor.” The resulting elimination of “the present social programs, which even now manage only to stave off starvation while keeping the masses too weak to recognize their true status,” may serve finally “to incite [the] radical reform that is so clearly necessary.” Conservatives who “wage a ceaseless campaign against the liberal orientation of the Supreme Court’s decisions” are foolish, therefore, not to recognize that “a conservative and uncaring Supreme Court” might actually be best for blacks.

That the “upper classes” in this country are keeping “the

11. See, e.g., Besharov & Quin, *Poverty & Welfare—Another Look: IV, Not All Female-Headed Families Are Created Equal*, 89 THE PUBLIC INTEREST 48 (1987).

12. Eberstadt, *Economic and Material Poverty in the U.S.*, 90 THE PUBLIC INTEREST 50, 53 (1988).

masses" on the edge of starvation and therefore too weak to begin the revolution may not be clear to readers unversed in Marxist doctrine, but Bell corroborates Geneva's insightful analysis by citing Arthur S. Miller, professor emeritus of constitutional law and an equally insightful analyst.¹³ According to Miller, Bell notes, the Warren Court's civil rights decisions were actually "profoundly conservative and protected the economic and political status quo by responding to the pleas for justice by blacks and other severely disadvantaged groups just enough to siphon off discontent." Bell has "no doubt" that "reforms resulting from civil rights litigation invariably promote the interests of the white majority," which apparently somehow takes the edge off the accomplishment. Even the *Brown* decision was possible, Dr. W.E.B. DuBois pointed out, only because of "the world pressure of communism." Small wonder, then, that Bell avoids "patriotic fervor" and has little enthusiasm for expenditures for national defense.

To "explain just how disillusioned some of us have become," Bell quotes a speech by Supreme Court Justice Thurgood Marshall, "our best-known legal advocate," at Howard University, his alma mater, in which he spoke "frankly and bitterly of what he and his fellow civil rights lawyers had failed to achieve." People often say to Marshall, "We've come a long way" and "You ought to go around the country and show yourself to Negroes; and give them inspiration." He responds, "For what? Negro kids are not fools. They know when you tell them there is a possibility that someday you'll have a chance to be the o-n-l-y Negro on the Supreme Court, those odds aren't too good." Any notion that the appointment of Marshall to the Court would provide a "role model" for blacks, as a standard argument for "affirmative action" would have it, was, therefore, clearly without basis. At least one more black on the Court, it seems, will be necessary for that purpose. Marshall undoubtedly would still find it useful to point out to young blacks, however, that their chance then would be to be one of "o-n-l-y" two blacks on the Court and that the odds, therefore, still "aren't too good." Perhaps a guarantee of four or five seats for blacks would be sufficient to reduce Marshall's bitterness at the treatment he has received.

Geneva believes that the need is for greater "creative protest" and that reliance on civil rights litigation has actually harmed blacks by keeping them from "attacking the real causes of our

13. See, e.g., A. MILLER, TOWARD INCREASED JUDICIAL ACTIVISM: THE POLITICAL ROLE OF THE SUPREME COURT (1982). See also *Is the Constitution Out of Date?*, 73 A.B.A. J. 52 (1987) (discussion with D. Bell, A. Miller, and L. Graglia).

subordinate status.” She does not specify the “real causes,” however—presumably “white racism”—or how the recommended attack is to be carried out; the idea, common in contemporary academia, seems to be, revolt first, think later, because, after all, things can’t get any worse. The prudent Bell, however, rejects “talk of revolution” as unrealistic, agreeing with a NAACP official in the 1930s who “urged blacks to eschew violence not on any moral or pacific grounds but because it would be futile.” Despite his earlier apparent agreement that “litigation efforts do more harm than good,” Bell argues for staying with litigation “until a better option presents itself,” even though doing nothing at all would seem a “better option” than following a harmful course. Lest one think that there is little left to litigate in the name of “civil rights,” Bell suggests a campaign against at-large or multimember districts, “the technique that has supplanted the white primary as the favorite means of discriminating against black voters.” One is tempted to favor the abolition of multimember districts at once if that will give Bell one less thing to complain about and the courts one less miracle to perform, but there is little reason to think, unfortunately, that any improvement in the condition of the black underclass would result. To the extent that it would give political power to people likely to be influenced by Bell, the opposite of improvement will result.

The third Chronicle, “The Racial Limitation on Black Voting Power,” proposes the “Ultimate Voting Rights Act.” Under the Act, “every voter who casts a ballot in a primary or general election will receive a hundred-dollar state tax rebate to cover travel and other expenses,” and nontaxpayers will receive payment in cash. “For the poor or the working class,” Bell imagines, “registration and voting is expensive, time-consuming, and often traumatic,” involving “perhaps the loss of two days’ wages.” The only difficulty Bell sees with this refinement of the democratic process is the anticipated “fierce opposition . . . by many politicians who fear they might not be able to control these new voters”—independent souls, apparently, despite the fact that they must be bribed to vote.

The Act would also provide for “racial proportionate representation,” which would guarantee to blacks a percentage of elective offices equal to their proportion in the population. Blacks are discouraged from voting, according to one of Bell’s characters, “because they know they’re outnumbered from the start,” which “may be majoritarian democracy, but it ain’t fair and therefore it ain’t American.” Racial proportionate representation would encourage blacks to vote because it would enable them to fulfill “their desire to

elect their people to participate in the governance of this country." Only blacks can represent blacks because there are, in Bell's view, "many issues"—none specified—"where the interests of voters diverge along racial lines." On Bell's assumption, however, that blacks don't vote because they are outnumbered, the need would seem to be, not for proportional but for equal representation by race, which could be achieved by giving each black eight or nine votes. It would seem, therefore, that Bell's proposal should be called the "Penultimate Voting Rights Act."

In the "Chronicle of the Sacrificed Black Schoolchildren," compulsory school racial integration, one of the greatest of "civil rights" victories, one would think—it wasn't the whites, after all, who urged the courts to order racial busing—turns out, of course, to be just another example of white mistreatment of blacks. A compulsory school integration plan that would make each school in a district fifty percent black by busing would undoubtedly be resisted by white parents, Bell notes, with claims that it would "destroy academic standards, generate discipline problems, and place white children in physical danger." Bell does not deny the validity of any of these concerns, but he is nonetheless of the opinion that the real source of opposition to busing by whites is simply "resentment and sense of lost status"—the source of opposition by middle-class blacks, and indeed most blacks, presumably lies elsewhere.

Whites have foolishly failed to realize just how good for them, at least economically, court-ordered busing really is. It typically produces, Bell points out, such benefits as increased teacher salaries, the purchasing of school buses, new school construction, increased availability of federal and state funds, additional tax revenues for school boards, and annexations. It also produces very substantial attorneys' fees—for example, \$2,000,000 might be paid to the school board's attorneys and \$300,000 to the "civil rights attorneys," who, according to Bell, "come under heavy criticism" for collecting fees from school districts for the service of suing them, even though, as his example illustrates, they typically are grossly underpaid. In short, Bell concludes, "virtually every white person in the city would benefit directly or indirectly" from court-ordered busing. The more costly and wasteful the busing, on this analysis, the more it advances the economic interest of whites, who, for some reason, resist learning this despite repeated experience. Economics, it seems safe to say, is not Bell's strong suit.¹⁴

14. Neither, it seems, is law. Asked by Geneva whether he would, as a judge, permit a high-quality all-black school to survive a "desegregation plan," Bell states that he would have to "check the case law carefully for binding precedents," indicating, I'm afraid, that he really

In another Chronicle, Ben Goldrich, Jewish and “one of the world’s richest men,” responds to the “righteous need of blacks and the sorry hypocrisy of whites” by proposing to establish a \$25 billion Black Reparations Foundation to bring “economic justice” to blacks. Unfortunately, Goldrich’s generosity makes him, according to Bell, a “traitor to his class,” because it threatens the “long-standing arrangement, no less fixed because it is unspoken, that whites are to be taken care of first in this society—on the on-going assumption that they, not blacks, are America’s chosen ones.” Whites, therefore, make Goldrich “atone for his sin of showing up the rest of society” by cruelly frustrating implementation of his magnanimous plan. “[B]lack people, many of them crying,” offer Goldrich support, but end up singing “Nobody Knows the Trouble I’ve Seen.”

Another Chronicle explains that “affirmative action” in law school faculty hiring is actually a scheme not to expand but to limit opportunities for blacks. A hypothetical black who, on the basis of his credentials as described by Bell, would have been the best candidate in the country for a faculty position,¹⁵ was rejected by the dean of “one of the oldest and finest law schools in the country” because of the need to avoid a “predominantly minority faculty,” even though the faculty would actually have been only twenty-five percent minority. Bell’s hypothetical dean, apparently not a man of great subtlety—and oblivious to the danger of lawsuits—explained to Geneva that “a law school of our caliber and tradition simply cannot look like a professional basketball team.” The chief qualification for such positions, this illustrates, is “a white face, preferably from an upper-class background.” The control of faculty hiring by such bigots would seem to make it difficult to explain how leading law schools came to have so many faculty members—and, indeed, deans—who are Jewish and not of upper-class backgrounds, unless it is they who are now acting to keep blacks out.

Of all the fantasies in Bell’s book, surely none is more fantastic than the notion that one of the worries of today’s law school deans is the danger of, as he puts it, “surfeits of superqualified minority job applicants.” The fact is that law schools, particularly leading law schools, actively pursue, hire, and grant tenure to blacks who

believes, despite all his experience in the area, that law has something to do with court decisions on race and the schools.

15. “The top student at our competitor school, [presumably Yale], he had edited the law review and written a superb student note. After clerking for a federal court of appeals judge and a U.S. Supreme Court Justice, he had joined a major New York City law firm where, after three years of work they rated ‘splendid,’ he was in line for early election to partnership.”

would not be given a moment's consideration if they were white. "White law teachers," Bell is willing to go so far as to concede, "aren't bigots in the redneck, sheet-wearing sense"—it's reassuring to know that his Harvard colleagues, many famous for their burning egalitarianism, are not members of the Ku Klux Klan—but they hate to see blacks do well, because they want to "ensure their domination and maintain their control." Bell's actual complaint seems to be that although most law schools feel compelled by political and other pressures—which Bell's purpose is to increase—to hire a few blacks despite their lack of the usual qualifications, the sense of urgency tends to decline after the first few such hires.

It is interesting to contemplate the effect of Bell's—and Justice Marshall's—message on his and other black law students. The "danger" that nondiscriminatory hiring by major law faculties—or even the desperate "affirmative action" hiring that is actually taking place—will produce law faculties that look like professional basketball teams is, unfortunately, one that law deans are not likely to have to face for a long time. Bell's teaching that whites will not permit black success (and the praise of white liberals for books like this) can only serve to lessen the likelihood of such success.

The rest of the book is more of the same. The final two *Chronicles* tell of blacks becoming extraordinarily industrious, studious, and law-abiding—indeed, "out-achieving whites in every area save sports and entertainment"—by studying the history of slavery in certain scrolls and swallowing certain magic stones. Because whites are "threatened by black initiative and comforted by black indolence," however, they quickly act to reverse these developments by banning the teaching of slave history and destroying the stones. "Black enterprise was no match for the true basis of majoritarian democracy," which, as Harvard law professor Bell understands it, is "white economic and military power."

Many people think that the total cessation of criminal activity by blacks would be a great boon to the nation. Such naive folk lack, like opponents of busing, Bell's economic sophistication. They fail to recognize the economic importance to the nation of the "crime industry." The effect of the "Black Crime Cure" in Bell's *Chronicle* was catastrophic: "Thousands of people lost jobs as police forces were reduced, court schedules cut back, and prisons closed. Manufacturers who provided weapons, uniforms, and equipment of all forms to law enforcement agencies were brought to the brink of bankruptcy. Estimates of the dollar losses ran into the hundreds of millions." All in all, according to Bell's astounding economic model, used earlier to analyze busing, the road to prosperity would

seem to require not the lessening but the increase in criminal activities by blacks—and, presumably, by everyone else. *Miranda* and *Mapp* may have a value which few people suspected.

It is only fair to note, however, that my view of Professor Bell's book is not unanimously held by leaders of the academic profession. According to the dust jacket, no less a personage than Erwin Griswold, former Dean of Harvard Law School and Solicitor General of the United States, believes that the book is "a stimulating mine of ideas, well worthy of the careful consideration of all thoughtful Americans." Paul Brest, Dean of Stanford Law School, believes that Bell's book "makes an illuminating and gripping contribution to legal scholarship." Diane Ravitch of Columbia Teachers College believes that Bell is "one of the most original and brilliant thinkers in America today," whose "reflections on civil rights are astonishingly perceptive."¹⁶ These appraisals of Bell's book by persons of such eminence clearly establish either that I am entirely mistaken in considering it a piece of mindless left-wing ranting or that Sowell's "deep thinkers" are so common and so entrenched in American institutions of higher education as to raise the question whether such institutions, as presently staffed, do more harm than good.

To go too quickly from reading Bell to reading Sowell—from wails of embittered, hate-filled self-pity to stern exhortations to self-reliance and individual responsibility—is to risk the intellectual bends. In addition to being an economist, Senior Fellow at the Hoover Institution, and one of the nation's most prolific and provocative scholars, Sowell is a syndicated newspaper columnist. *Compassion Versus Guilt* is a collection of some of his columns, mostly from 1984 to 1987. Born in Harlem and on his own by the age of seventeen, Sowell has known homelessness, hunger, and poverty, never graduated from high school, and was a Marine Corps pistol instructor. This might therefore be prescribed as the ideal regimen for the training of all youth, except that to become a Thomas Sowell, unfortunately, it is probably also necessary to be a genius. In any event, Sowell's intimate acquaintance with the nature of reality should be a *sine qua non* to the training of every would-be social critic.

"Deep thinkers who look everywhere for the mysterious causes

16. More predictably, Duncan Kennedy, Professor of Law, Harvard University, and a founder of the Critical Legal Studies school of jurisprudence, thinks that the book is "full of legal insight," "has a lot to say about the lives of minority people," and is a "witty, elegant, tragic meditation on white attitudes toward blacks." Mary Frances Berry, Geraldine R. Segal Professor of American Social Thought, University of Pennsylvania, and member of the United States Civil Rights Commission, thinks that Bell "explains persuasively how justice for blacks can be obtained only if the society is restructured to establish justice for all."

of poverty, ignorance, crime, and war," Sowell states in his title essay, "need look no further than their own mirrors." Prosperity requires civilization, he argues, the overcoming of ignorance and selfish and barbaric impulses. Those who would share their good fortune with others must, therefore, "share the sources of that good fortune—the skills, values, and discipline that mean productivity"; those whose need is to "ease their burden of guilt should seek professional help, at their own expense." Largely sharing Sowell's view of the world, I find his a much more promising prescription for our social ills than Bell's insistence, directly to the contrary, that poverty is the result of racial hatred and injustice and therefore can be lessened only by a fundamental moral, economic, and political restructuring of American society.

By applying the basic economic precepts that all benefits have costs and human beings are self-interested creatures who respond to incentives, Sowell is able to aid our understanding of a wide variety of policy issues. At the very least, his perspective serves to remind us that we have no choice but to live within the constraints of a world of limited resources and, therefore, unavoidable competition—something that political leaders and intellectuals in their eagerness to do good are tempted to forget. Nothing better illustrates Sowell's ability to inform and provoke in very brief compass than his essays on welfare. In "Subsidizing Egos," he notes that "one of the curious features of the modern welfare state is how often its unskilled and so-called 'menial' work is done by foreigners." Despite suggestions that "jobs are plentiful only for people with hi-tech skills, the cold fact is that thousands of poorly educated Mexicans cross the border every week and go right to work. How can people new to the country and its language constantly keep finding jobs that elude native-born Americans?" In Europe, too, millions of "guest workers" fill such jobs, leading Sowell to the profound and important conclusion: "Welfare state spending is sold politically as 'compassion' for the unfortunate. But these vast expenditures do not protect people from hunger as much as they protect their egos from having to earn their own food by doing whatever work matches their capabilities."

Sowell returns to this subject in "Work and Output," noting that in California's vast agricultural areas, the people "working in the fields under the hot sun are usually Mexicans," but the panhandlers who approach him in San Francisco and Los Angeles have almost invariably been "young, healthy-looking whites with middle-class accents." "To give them money would be," in Sowell's startlingly fresh perspective on the proposed constitutional right to wel-

fare, "to say that they are somehow better than the Mexicans who have to earn their living by helping to feed the rest of society and by keeping hotels and offices clean." The country does not just "*somehow*" have wealth "which we should all share—and 'fairly,'" as some "deep thinkers on university campuses" seem to think. There is a "connection between work and output that the magic word 'compassion' " does not cause to disappear: "Factory workers will have to put in more time on the job, in order that more welfare mothers can sit home and watch soap operas The food that is so nobly handed out in soup kitchens or so efficiently 'administered' as food stamps was all grown by somebody toiling somewhere."

Is it morally justifiable that "some must work even harder, so that others don't have to work at all?" Sowell's answer is clear: "At one time, people who didn't work were called 'bums.' Today they have been sanctified as 'the homeless.'" That is not gentle or comforting language, and it is not surprising that champions of compassion, such as Bell, find it offensive. But comfort, as Sowell, the son of a maid, knows more clearly than most, comes at a cost, and he has earned the right to insist that the comfort of the unproductive not come at the expense of people like his mother.

Though Sowell is blunt, he is not bitter; he does not write, like Bell, from a profound discontent. Indeed, his book could be read for its humor, as in the essays "Another Crisis," on the alligators biting people's feet "problem," and "The Case of the Fascinating Customer." And there simply is no understanding the media without Sowell's "Political Glossary," defining "a matter of principle," for example, as "a political controversy involving the convictions of liberals" and an "emotional issue" as "a political controversy involving the convictions of conservatives." A "people's republic," to take just one more, is "a place where you do what you are told or get shot," and "national liberation movements" are "organizations trying to create people's republics."