

REVIEW OF *FACES AT THE BOTTOM OF THE WELL*

by Willy E. Rice*

FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM. By Derrick A. Bell. Basic Books, 1992. Pp. xiv, 222. Hardcover, \$20.00.

I was reared in a West Central Alabama community called "The City of Druids."¹ As a young African-American, I witnessed numerous racist events and experienced many painful socioeconomic conditions in that community. Unexpectedly, a careful reading of Derrick Bell's fictional characters and allegorical stories in *Faces At the Bottom of the Well*² forced me to remember those experiences and circumstances.

I recall, for example, that Druid City — the present home of the celebrated *Alabama Crimson Tide* football team — was once the proud residence of the Imperial Wizard of the Alabama Knights of the Ku Klux Klan. The community also was the national headquarters of the Klan.³ I remember the KKK burning crosses, intimidating citizens, and damaging private property in my neighborhood.

More important, *Faces At the Bottom of the Well* compelled me to remember the prominent role that Klan sympathizers — *prosecutors, members of the Alabama State Bar, governors, legislators, and legal academicians* — played during my early childhood. Klan supporters enacted racist laws and worked diligently to "keep African Americans in their place"⁴ in my city of beautiful druids and throughout Alabama.

* Associate Professor of Law, Texas Tech University. B.A., University of Alabama at Tuscaloosa, 1970; M.A., 1972, Ph.D., 1975, University of North Carolina at Chapel Hill; Postdoctoral Fellow 1977, The John Hopkins University; J.D., University of Texas at Austin, 1982.

1. This is the community of Tuscaloosa, Alabama. While it is plausible that "descendants" of the ancient druids — Celtic priests appearing in Irish and Welsh sagas — once resided in Tuscaloosa, the origin of "Druid City" stems from the prevalence of druid trees rather than from a widespread belief in druidism.

2. DERRICK A. BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992) [hereinafter BELL].

3. See *Ex-Klansman on Trial in Murder of Youth*, N.Y. TIMES, May 16, 1989, at A17 (detailing the story of Klan victim mother's \$7 million judgment against the Klan); see also *Bergman v. United States*, 565 F. Supp. 1353, 1385 (W.D. Mich. 1983) (describing activities of a Klan informer in and around Tuscaloosa).

4. Cf. *United States v. Jefferson County Bd. of Educ.*, 372 F.2d 836, 866 (5th Cir. 1966) ("Negroes collectively are harmed when the state, by law or custom, operates segregated schools or a school system with uncorrected effect of segregation. . . . The unmalleable fact transcending in

Specifically, egregious laws prescribed that I and other African Americans attend a segregated, all-black Druid High School.⁵ Racist regulations prevented me and other minorities from receiving medical treatment beyond the second floor of the segregated, predominantly white, Druid City Hospital. And racist statutes encouraged Druid City businesses receiving federal grants and contracts to discriminate against highly educated African-American professionals.

In his book, Derrick Bell argues that African Americans “simply cannot prepare realistically for [their] future without assessing honestly [their] past.”⁶ This observation is correct, and I am indebted to Professor Bell for encouraging me to remember this truth. I also thank Professor Bell for forcing me to reconsider my formative years in Druid City, even though those years were plagued with racial violence, hostility, intimidation, and economic deprivation. On the other hand, I do not accept Professor Bell’s chilling assertion that “black people will never gain full equality in this country.”⁷ Without doubt, “racist structures [are] . . . embedded in the psychology, economy, society, and culture”⁸ of the United States. Additionally, African Americans “are three times more likely to have income below the poverty level than whites.”⁹ Furthermore, the American legal system continues to play a major role in the subjugation of African Americans.¹⁰ But I am convinced that the legal system — in conjunction with political reform and economic pressure — can help improve the socioeconomic conditions of economically depressed racial minorities.

Professor Bell, himself, admits that African Americans have made meaningful progress in an extremely hostile environment. He writes:

importance the harm to individual Negro children is that the separate school system was an integral element in the Southern State’s general program to restrict Negroes as a class from participation in the life of the community, the affairs of the State, and the mainstream of American life: *Negroes must keep their place.*”) (emphasis added).

5. *But see Lee v. Macon County Bd. of Educ.*, 616 F.2d 805, 807-08 (5th Cir. 1980) (A district court ordering integration despite 3,000 signatures in support of a petition to save Druid High School. “Under the district court’s order, Tuscaloosa was to achieve complete desegregation of its senior high schools in 1979-80 by sending all ninth and tenth grade students to the formerly all-black Druid High School and all eleventh and twelfth grade students to the formerly all-white Tuscaloosa High School.”).

6. BELL, *supra* note 2, at 11.

7. BELL, *supra* note 2, at 12 (emphasis omitted).

8. BELL, *supra* note 2, at x.

9. BELL, *supra* note 2, at 3.

10. *See generally* Steven Keava, *Unequal Partners: It’s Tough at the Top for Minority Lawyers*, 79 A.B.A. J., Feb. 1993, at 50 (discussing roadblocks unique to minority lawyers attempting to develop a client base); Talbot D’Alemberte, *Racial Injustice and American Justice*, 78 A.B.A. J., Aug. 1992, at 58 (discussing the difficulties faced by minorities within the judicial system); Lynne Duke, *Beyond Rodney King: Unequal Justice in America*, 4 *Emergence* 39 (1992) (discussing bias motivated conduct toward minorities within the criminal justice system).

[T]he racism that made slavery feasible is far from dead in the last decade of the twentieth-century America; and *the civil rights gains*, so hard won, are being steadily eroded. Despite *undeniable progress for many*, no African Americans are insulated from incidents of racial discrimination.¹¹

Undeniably, significant civil-rights gains would not have occurred if anti-discrimination laws had not been enacted. And socioeconomic progress would have been deferred if courageous and highly skilled civil-rights lawyers had not won landmark cases in the federal courts.

Also, the notion that the enactment of federal civil-rights laws can foster racial progress is found in the chapter on "The Racial Preference Act."¹² There, Professor Bell suggests that Congress should enact a licensing act that would formally recognize racial discrimination. Under the act, racist employers, proprietors of public facilities, and owners and managers of dwellings could discriminate for a fee. The money generated "would be placed in an 'equality fund' used to underwrite black businesses, to offer no-interest mortgage loans for black home buyers, and to provide scholarships for black students seeking college and vocational education."¹³

Although Professor Bell argues that racial inequality is permanently embedded in the United States, evidence suggests that he truly does not accept this view. A careful reading of *Faces* suggests that Professor Bell is actually frustrated with the speed at which racial inequality is being dismantled. Without doubt, a call for a Racial Preference Act adds credence to the view that the author believes racial discrimination — if not racist beliefs — can be eradicated eventually.

Further evidence of Derrick Bell's *impatience* rather than *hopelessness* is found in the comment of one of his fictional characters. At one point, Geneva Crenshaw, the lawyer-prophet asks:

[W]hat principle is so compelling as to justify continued allegiance to *obsolete civil rights strategies* that have done little to prevent . . . the contemporary statistics regarding black crime, broken families, devastated neighborhoods, alcohol and drug abuse, out-of-wedlock births, illiteracy, unemployment, and welfare dependency?¹⁴

Throughout *Faces at the Bottom of the Well*, Professor Bell stresses that current civil-rights enforcement schemes are cumbersome and ineffective.¹⁵ He is correct. Over the past decade, I have advanced the same

11. BELL, *supra* note 2, at 3 (emphasis added).

12. *Id.* at 47.

13. *Id.* at 48-9.

14. *Id.* at 59-60 (emphasis added).

15. *See, e.g., id.* at 2 ("Judicial precedent and a plethora of civil rights statutes formally prohibited racial discrimination. *Compliance was far from perfect. . .*") (emphasis added); *Id.* at 13

argument in several law-review articles.¹⁶ But it appears that the civil-rights community is not listening. Therefore, at this juncture I want to reiterate what I have stated before: Given the ineffectiveness of present enforcement schemes, Congress should amend current civil-rights statutes to encourage the administrative enforcement of individual rights. "Experience with . . . comparable state and local agencies repeatedly has shown that the administrative process is [effective,] quicker and fairer."¹⁷

If Congress acts, I am certain that Professor Bell and those of us who share his concern will see fewer African-American faces at the bottom of the well.

("For too long, we have worked for substantive reform, then settled for weakly worded and *poorly enforced legislation*. . .") (emphasis added); *Id.* at 49 ("Recalling the Civil Rights Act of 1964 and its 1991 amendments, [it must be remembered] that while the once-controversial public-accommodation provisions in the original 1964 act received unanimous judicial approval in the years of its adoption, even three decades later the act's protective function . . . had been undermined by both *unenthusiastic enforcement* and judicial decisions construing its provisions ever more narrowly.") (emphasis added).

16. See generally Willy E. Rice, *Judicial and Administrative Enforcement of Individual Rights Under the National Labor Relations Act and Under the Labor-Management Relations Act Between 1935 and 1990 — An Historical and Empirical Analysis of Unsettled Intercircuit and Intracircuit Conflicts*, 40 DEPAUL L. REV. 653 (1991) (discussing the need for major labor law reforms to ensure the rights of employees under the National Labor Relations Act of 1935 and the Labor Management Relations Act of 1947); Will E. Rice, *Judicial and Administrative Enforcement of Title VI, Title IX and Section 504: A Pre- and Post-Grove City Analysis*, 5 REV. LITIG. 219 (1986) (calling for more effective administrative enforcement of federal anti-discrimination laws); Willy E. Rice, *Judicial and Administrative Enforcement of Fair Housing Laws: An Analysis of Some Unexamined Problems that the Fair Housing Amendments Act of 1983 Would Eliminate*, 27 HOW. L.J. 227 (1984) (hereinafter Rice, *Enforcement of Fair Housing Laws*) (arguing that racial discrimination in private housing is best redressed through legislation requiring administrative hearings rather than private litigation).

17. See Rice, *Enforcement of Fair Housing Laws*, *supra* note 16, at 274 quoting 112 Cong. Rec. 18402 (1966) (statement of Rep. Conyers).