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UNFINISHED BUSINESS

AND WE ARE NOT
SAVED

The Elusive Quest
for Racial Justice

By Derrick Bell

Basic Books

New York, N.Y.

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Reviewed by Michael E. Tigar

Professor Derrick Bell has written a powerful book that challenges us to understand the unfinished agenda for social justice of the civil rights movement.

The title is from the Old Testament book of Jeremiah: "The harvest is past, the summer has ended and we are not saved." The "harvest" represents the movement's legislated

and litigated victories. The salvation we have yet to achieve is a measure of how far we must go to fulfill the promise of equal protection of the laws.

Bell writes in a series of parables—hypotheticals, if you will—designed to illustrate the most important legal and social issues posed by the civil rights struggles of the past three decades.

For those of us who participated as lawyers in some of those battles, these stories are powerful reminders of the vision that guided us. The stories are also a valuable introduction for a new generation of lawyers.

Whether one agrees with Bell or not—and I mostly do—this book is challenging and interesting reading. The injustices that spawned the civil rights movement have not been cured and there is significant backsliding.

Residential segregation in some Northern cities has increased in the past decade. The disparity between



▲ Derrick Bell

black and white median income has widened. The *ABA Journal* has reported that minority entry into the legal profession has slowed. We are losing ground before the profession has even begun to reflect the society

as a whole.

If we heed some of Bell's cautionary words, we can—in the councils of the ABA, in law firm hiring, law student admissions and law faculty recruitment—give tangible evidences of having learned the lessons embodied in some of these parables.

We should also remember that although the Supreme Court admitted the first black lawyer to its bar in 1865, the ABA did not admit its first black member until 1943. Women were first admitted to law practice in 1869, but did not gain entry to the ABA until 1917.

LIBERTY FOR ALL

Bell reminds us that the legal battles for civil rights aided all Americans. To be sure, in those battles, courts and legislatures considered the meaning of the Civil War amendments. In those same battles, however, came renewed affirmations of the rights that any movement for

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change must defend: *New York Times v. Sullivan* proclaimed First Amendment limits on libel law in a case involving a civil rights advertisement; the NAACP cases upheld important associational freedoms and struck down restrictions on legal services to groups; cases reviewing convictions in Southern courts lent new meaning to the due process clause.

Claims for justice are, as these cases teach, indivisible. Bell's analytical words lead us to revisit this lesson and understand it anew.

Powerful voices have claimed that continued efforts to redress past discrimination are not only unwise but unconstitutional. Others have derided the Supreme Court's decisions on education, housing and employment as "lawless usurpations" and have even called the Civil Rights Act of 1964, in part, a "mob" act of coercion in areas best left to private choice.

In this renewed debate, all law-

yers will be asked to say where they stand. Bell's arguments deserve a thoughtful reading in that context. For this reviewer, the effort to trivialize the great victories of the past, and to slam the door on future change, denies the hard-learned lesson of recent history and traduces the constitutional compact.

When the Constitution was adopted, the Framers not only determined to recognize the "right of property" in human beings, but installed several provisions in the Constitution designed to put their choice beyond the power of change. For example, they forbade amendment of restrictions on slave trade regulation for 20 years.

For many years, the Civil War amendments were afforded a meager and grudging interpretation by federal judges. They denied that new rights or restraints on state power had been created. These judicial solecisms were repeated despite the

clearest evidence that the amendments and their implementing legislation were intended to be given broad effect.

Today's debate, to which this book is a notable contribution, is no less significant, and no less fraught with challenge and danger. Bell does not condemn the framers of the Constitution for their blindness to the horrors of slavery, although he lays bare some hypocrisy in their rhetoric. They saw only as far as their vantage point in history permitted.

He does suggest, and rightly so, that we are unworthy successors to the Framers unless we stand on their shoulders—as they intended and as their document permits—and see as far as we can.

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