

# BOOK REVIEW

## Lessons from Reconstruction for Libertarians: Betrayal and Illusion in the Struggle for Equality

NO EASY WALK TO FREEDOM: RECONSTRUCTION AND THE RATIFICATION OF THE FOURTEENTH AMENDMENT. By James E. Bond.<sup>†</sup> Westport, Connecticut: Praeger Publishers, 1997. Pp. 1, 295.

*Reviewed by Henry W. McGee, Jr.\**

The demon of caste must be destroyed.<sup>1</sup>

Charles Sumner

The men who controlled Tammany Hall and the other city governments in the earlier part of this century would have considered it laughable, if also a pretty lousy Protestant joke, had they been told that preferential treatment of the Irish poor and lower middle classes was un-American and brought into question the qualifications of worthy Irish-Americans who had succeeded solely by their merits and work ethic.<sup>2</sup>

Orlando Patterson

Slavery, and its antidote Reconstruction, are recurrent themes in American consciousness and its unresolved dilemma over the fates of people of African descent. The celebrated revolt on the slave ship

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1. See ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877 232 (citing Charles Sumner).

2. ORLANDO PATTERSON, THE ORDEAL OF INTEGRATION: PROGRESS AND RESENTMENT IN AMERICA'S "RACIAL" CRISIS 168 (1997).

*Amistad*, depicted in both contemporary cinema and opera,<sup>3</sup> has brought to recent popular attention the cruel oppression and ceaseless struggle of Africans to free themselves and their progeny from the curse of racism, and to escape the unique bonds of caste which they alone have inhabited in the past and present of American history. Reconstruction, a failed attempt to translate formal emancipation into real equality, has also enjoyed the fresh attention of such disparate events as the Schomburg Center's Summer 1997 exhibit on Reconstruction, curated by Eric Foner,<sup>4</sup> and the same year's publication of important research on the work of Reconstruction legislators by a "card-carrying" libertarian,<sup>5</sup> Seattle University School of Law's Dean James Bond, in his book entitled *No Easy Walk to Freedom*.<sup>6</sup>

No easy walk indeed! With regard to the struggles of the newly freed slaves, Dean Bond's study of the Reconstruction legislatures endorses the views of contemporary historians. These historians do not blame the freedman for failure to forge lasting instruments of liberation, instruments that might have transformed the formal equality

3. The director of *Schindler's List* has turned his attention to the other "holocaust"—the destruction of millions of Africans who were transported to the "New World" to build the nations of North and South America. His film about the successful uprising by slaves who slaughtered their kidnappers and won their freedom before the U.S. Supreme Court was widely praised on most "ten best" movie lists of 1997. On November 29, 1997, just before the film opened, the Lyric Opera Company of Chicago staged the world premiere of *Amistad*, an opera composed by Anthony Davis in collaboration with his sister Thulani Davis, and stage directed by the acclaimed Broadway director George C. Wolfe. The Davis siblings had earlier collaborated on the opera, *X: The Life and Times of Malcolm X*. See generally HOWARD JONES, *MUTINY ON THE AMISTAD* (1988) (which, among the many books about the incident, exhaustively examines court transcripts, journals, and other documents about the revolt).

4. THE EXHIBITION AT THE SCHOMBURG CENTER FOR RESEARCH IN BLACK CULTURE, THE NEW YORK PUBLIC LIBRARY, June 20-Nov. 1, 1997, was prefigured by an illustrated history of Reconstruction: ERIC FONER AND OLIVIA MAHONEY, *AMERICA'S RECONSTRUCTION: PEOPLE AND POLITICS AFTER THE CIVIL WAR* (1995).

5. For a recent account of one version of libertarian thought, see CHARLES MURRAY, *WHAT IT MEANS TO BE A LIBERTARIAN: A PERSONAL INTERPRETATION* (1997). One reviewer of the book, University of Chicago Divinity School's Jean Bethke Elshtain, leniently described Murray's view as being based on "far too lofty and ambitious an account of human nature" and said Murray's book

radically understates the role government has *always* played in enabling and constraining the market; it traffics in edifying but politically unfeasible and philosophically simplistic nostrums; it understates our capacity for evil and underplays our calling to do good that goes much beyond Murray's rather anemic representation of a public good. This is a heartfelt document and as clear a statement of a modified version of libertarian philosophy as one is likely to encounter. But it falls short—way short—as a workable public philosophy.

Jean Bethke Elshtain, *Pass the Torts*, COMMONWEAL, May 23, 1997 at 24-25.

6. JAMES E. BOND, *NO EASY WALK TO FREEDOM: RECONSTRUCTION AND THE RATIFICATION OF THE FOURTEENTH AMENDMENT* (1997).

promised by emancipation into a social order free of the stigmatizing racial oppression upon which American slavery, segregation, and racial oppression has been premised. Diligently researched and written, the book is of significant interest because of the coincidence of the author's empathy with Afro-Americans<sup>7</sup> and his unwavering and unequivocal affirmation of racial equality, principles which comfortably coexist with his political conservatism. Regrettably, however, his principled conservatism overlaps and sometimes embraces the very arguments that have traditionally and persistently been mounted to maintain the "out-caste" status of Americans of African descent.

Dean Bond argues in his final chapter that the strategies of the liberal establishment and the American left—which, despite fierce and heartfelt resistance by American conservatives, partially desegregated the United States in the post-World War II epoch—are profoundly misguided.<sup>8</sup> He views ameliorative strategies such as affirmative action, which seek to erode imbalances of power and maldistributions of resources between racial groups, as counter-productive, if not altogether morally wrong and even racist.<sup>9</sup> Dean Bond believes that the group focus of affirmative action programs misses individualism's point. He argues that dismantling the official infrastructure of racial

7. This Article will describe Americans of African descent variously as "Blacks" and "Afro-Americans," depending on context. The author has sometimes used "Negroes" when speaking of Afro-Americans in the pre-*Brown* epochs, and only rarely "colored." Both for aesthetic reasons, and for the reasons suggested by Charles C. Moskos and John Sibley Butler in the preface to their *All That We Can Be: Black Leadership and Racial Integration the Army Way* (1996), the author increasingly prefers "Afro-American" to "African American." Cf. PATTERSON, *supra* note 2, at x-xi, who agrees with Moskos and Butler, but goes further and declares that "Afro-Americans are not a 'race' in any meaningful sense, but an aggregate of 33 million people that is better described as an ethnic group if one must speak of the entire collectivity." *Id.* Professor Patterson argues that "the time has come to abandon the terms *black* and *white* in reference to Americans." *Id.* "They are linguistically loaded terms and emphasize the physical, which is precisely what we want to get away from in interethnic relations." *Id.* For a penetrating discussion on how Latinos have become entangled in the web of American racism and racial classifications, see Berta Esperanza Hernandez-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 N.Y.U. L. REV. 882 (1997).

8. BOND, *supra* note 6, at 251-72.

9. [A]dvocates of the [Equal Protection Clause of the Fourteenth Amendment] would have condemned governmentally mandated affirmative action programs. Such programs embody the very evil which those advocates insisted it was designed to prevent. . . .

The late Justice Thurgood Marshall, ironically echoing racist criticism of the Freedmen's Bureau, once cited [demands for preferential treatment] as evidence that the framers of the Fourteenth Amendment endorsed race-conscious programs to ameliorate the condition of black Americans.

BOND, *supra* note 6, at 265. Cf. A. L. Higginbotham, Jr., *Breaking Thurgood Marshall's Promise*, N.Y. TIMES MAGAZINE, Jan. 18, 1998, at 28.

discrimination is not only a necessary but also a sufficient condition for equal opportunity, and that in time it will be accompanied by a change of heart among white and nonwhite Americans alike.<sup>10</sup> Many of the positions he holds, except for his thoughtfully expounded views of the efforts and fate of the freedmen, have long since been staked out by sectors of the American political and social order which can hardly be thought "minority" friendly.

Nonetheless, Dean Bond's book is undeniably sympathetic to the freedmen's quest, and unequivocal in its view that Reconstruction failed not through the incompetence and venality of the various post-Civil War southern state legislatures, but precisely because of the implacable opposition and unremitting racial prejudice of the vanquished South (abetted by racism and indifference in the victorious North). If Dean Bond entertains some sympathy for the southerners who endured the turmoil of the Civil War and its aftermath, his book condemns without cavil or reservation the guerrilla warfare carried out against the institutions of racial liberation created in the aftermath of Appomattox Court House. He laments the failure of Reconstruction, which Eric Foner, the leading contemporary historian of the epoch describes as,

[a] disaster whose magnitude cannot be obscured by the genuine accomplishments that did endure. For the nation as a whole, the collapse of Reconstruction was a tragedy that deeply affected the course of its future development. If racism contributed to the undoing of Reconstruction, by the same token Reconstruction's demise and the emergence of the blacks as a disenfranchised class of dependent laborers greatly facilitated racism's further spread, until by the early twentieth century it had become more deeply embedded in the nation's culture and politics than at any time since the beginning of the antislavery crusade and perhaps in our entire

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10. As to the need for reconciliation, not recrimination, Dean Bond's appeal for genuine changes of heart on an individual basis parallels similar calls by prominent Afro-American intellectuals. C. Eric Lincoln, William Rand Keenan, Jr., Professor of Religion and Culture Emeritus at Duke University, has written:

The ideal change, and the change most likely to endure, is reconciliation. It may also be the most painful, because reconciliation calls upon all parties to make real sacrifices rather than gestures of good will. Something has to give, and something has to be given by all parties, including some very cherished conventional notions about who is responsible, and for what. Effective racial reconciliation will require the sacrificial spirit of Abraham, the tenacity of Moses, the wisdom of Solomon, and the unshakable faith that being American is worth what it takes to save America.

C. Eric Lincoln, *A Task That Remains: Racial Reconciliation*, CIVIL RIGHTS JOURNAL 9, 10 (Fall 1997). Cf. HARLON L. DALTON, *RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES* (1995).

history. The removal of a significant portion of the nation's laboring population from public life shifted the center of gravity of American politics to the right, complicating the tasks of reformers for generations to come. Long into the twentieth century, the South remained a one-party region under the control of a reactionary ruling elite who used the same violence and fraud that had helped defeat Reconstruction to stifle internal dissent. An enduring consequence of Reconstruction's failure, the Solid South helped define the contours of American politics and weaken the prospects not simply of change in racial matters but of progressive legislation in many other realms.<sup>11</sup>

*No Easy Walk to Freedom* is a much-needed reminder about the causes for the failure of the First Reconstruction and its denouement in the resuscitation of white supremacy. Reconstruction's aftermath was predicated on the assumed genetic inferiority of Africans, or on the arguably more benign view that their permanent disqualification from equal citizenship was grounded in an inescapably inferior cultural predisposition—with underlying biological implications that would have done the Soviet geneticist Lysenko proud.<sup>12</sup>

Dean Bond's painstaking and thorough review of the Reconstruction legislatures is remarkable, and constitutes a groundbreaking vantage point on a most decisive era in the fate of democracy in the

11. FONER, *supra* note 1, at 604 (1989.)

12. Trofim Lysenko was a Stalin-era Soviet "scientist" who was the proponent of the theory that acquired characteristics could be inherited. This proposition remained an official doctrine of Soviet biology until 1964.

Typical is the following excerpt from a book by a Northerner, James F. Rhodes, who was simultaneously an abolitionist and a racist, quoting Louis Agassiz, who he called "one of the most distinguished men of science in America":

We know of the existence of the negro race, with all its physical peculiarities, from the Egyptian monuments, several thousand years before the Christian era. Upon these monuments the negroes are so represented as to show that in natural propensities and mental abilities they were pretty much what we find them at the present day—indolent, playful, sensual, imitative, subservient, good-natured, versatile, unsteady in their purpose, devoted and affectionate. From this picture I exclude the character of the half-breeds, who have, more or less, the character of their white parents. Originally found in Africa, the negroes seem at all times to have presented the same characteristics wherever they have been brought into contact with the white race . . . . While Egypt and Carthage grew into powerful empires and attained a high degree of civilization; while in Babylon, Syria, and Greece were developed the highest culture of antiquity, the negro race groped in barbarism and *never originated a regular organization among themselves.*

James F. Rhodes, *A Policy of Injustice*, 6 JAMES F. RHODES, HISTORY OF THE UNITED STATES FROM THE COMPROMISE OF 1850 TO THE FINAL RESTORATION OF HOME RULE AT THE SOUTH IN 1878, 1904-1906, 35-42, *reprinted in* RECONSTRUCTION, 43 (Staughton Lynd ed.) (1967).

United States, a period of time which approaches the importance of the Civil War itself and its prelude, the American Revolution. His book closes by considering the relationship between Reconstruction and its twentieth century analog—a Second Reconstruction, an era generally thought to have commenced after the Second World War (and the defeat of the more extreme racist politics of Nazi Germany) with President Truman's desegregation of the armed forces.<sup>13</sup> Eventually, the military was to mount affirmative opportunity strategies to combat racial discrimination, a policy that produced such leaders as General Colin Powell.<sup>14</sup> In the same year as the military's desegregation came the Supreme Court's 8-1 decision in *Shelley v. Kraemer*<sup>15</sup> and the landmark *Brown v. Board of Education of Topeka, Kansas*.<sup>16</sup> These cases and their lineage constitute other hallmarks of the hard won—and continually contested—successes of this Second Reconstruction period.

The lessons Dean Bond draws from the travails of the freedmen and his interpretation of Reconstruction are sometimes curious. For example, although he emphasizes that the freedmen did not ask to be

13. BOND, *supra* note 6, at 251-72.

14. Affirmative action also produced Clarence Thomas. See Higginbotham, *supra* note 9, at 28, 29. According to Judge Higginbotham, Justice Thomas said in 1983, "[b]ut for affirmative action laws, God only knows where I would be today." *Id.* at 29. General Powell has acknowledged the debt he owes to affirmative action policies, a fact noted by President William J. Clinton in a now famous exchange with Professor Abby Thernstrom, coauthor with her husband Stephen Thernstrom of *America in Black and White: One Nation Indivisible* (1997), in the first of televised "Town Hall" meetings on race relations in Akron, Ohio. See Clifford Alexander, *Colin Powell's Promotion: The Real Story*, N.Y. TIMES, Dec. 23, 1997 at A3. Interestingly, Clinton's observation was challenged by Clifford Alexander, President Carter's Secretary of the Army. Secretary Alexander argued that Powell and several other Black colonels received their first stars, but not through "an Army- or Cliff Alexander-invented affirmative action plan." *Id.* Alexander goes on, however, to relate that as a condition of approving white officers who were waiting to be promoted, he ordered the promotions board to

look back at the early records of the eligible black colonels to see if their ratings in past years had been in any way influenced by the prejudices of the rating officers. . . . If such inconsistency was found, the board was instructed to eliminate the unfair rating and judge the people, both black and white, only by fair and equitable criteria.

The boards followed my directives, and the result was equity and fairness. Black people with sterling records emerged on those lists. Yes, Colin Powell was like his white fellow generals—no better, no worse. He did not get anything extra—but more important, his white colleagues did not get anything extra either.

Affirmative action plans are tools to create a more inclusive workplace, and they should not be confused with preference programs.

*Id.* Despite this largely definitional dispute, it seems clear that special efforts were made by the Army to see that Black officers of merit received promotions that might have been denied them under normal processes not designed to bring about racial integration.

15. 334 U.S. 1 (1948) (invalidating racially restrictive covenants in the sale of real estate).

16. 347 U.S. 1 (1948).

treated differently than whites by the law,<sup>17</sup> he gives insufficient attention to their demands for a number of compensatory and remedial measures that would not be available to whites no matter what their social or economic situation. The freedmen leadership argued not only for antidiscrimination legislation to bring about formal equality between black and white Americans; they also demanded economic benefits, including land, to compensate them for the terrible disadvantage they suffered as a result of their enslavement.<sup>18</sup> Something more than legal change was necessary, they and their allies believed, in order to overcome the advantage that whites enjoyed during nearly two and

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17. See generally BOND, *supra* note 6, at 251-72.

18. For example, "The great mass of Negroes in South Carolina at the end of the Civil War hoped and expected that freedom meant that each would soon be settled upon his own plot of earth. Indeed, to the Negro agrarian, freedom without land was incomprehensible. 'Gib us our own land and we take care ourselves,' a Union officer quoted as the sentiment of the mass of country Negroes in the spring of 1865." JOEL WILLIAMSON, *AFTER SLAVERY: THE NEGRO IN SOUTH CAROLINA DURING RECONSTRUCTION* 54 (1975). The prophecy was fulfilled with a terrible vengeance. The freedmen eventually failed to get either land or political equality.

a half centuries of racial privilege.<sup>19</sup> As Professor Eric Schnapper has pointed out:

From the closing days of the Civil War until the end of civilian Reconstruction some five years later, Congress adopted a series of social welfare programs whose benefits were expressly limited to blacks. These programs were generally open to all blacks, not only to recently freed slaves, and were adopted over repeatedly expressed objections that such racially exclusive measures were unfair to whites. The race-conscious Reconstruction programs were enacted concurrently with the fourteenth amendment and were supported by the same legislators who favored the constitutional guarantee of equal protection. This history strongly suggests that the framers of the amendment could not have intended it generally to prohibit affirmative action for blacks or other disadvantaged groups.<sup>20</sup>

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19. The contrast between blacks and whites seems very evident. African-Americans have been citizens since the Fourteenth Amendment, but they show no signs of becoming white. If African-Americans did become white, as the Italians and the Jews did, there wouldn't be any point to whiteness anymore. And there is a point to whiteness. Nathan Glazer reminds us that when those earlier European immigrants were Americanizing—becoming more like the white Americans who were already here—black Americans were being educated separately in most of the United States and hardly anyone talked about their becoming like white Americans:

Many forces combined to keep things this way. Racist ideology can be fairly self-perpetuating, but it sometimes suited industrial capital, for one thing, to play white against black unions, as Henry Ford did so successfully. And, for another, everywhere in the South poor whites could reassure themselves that, while they might be having a hard time, at least they weren't niggers. With whiteness, as with American Express, membership has its privileges.

K. Anthony Appiah, *The Multiculturalist Misunderstanding*, N.Y. REV. OF BOOKS, Oct. 9, 1997 at 30. See generally K. ANTHONY APPIAH AND AMY GUTTMANN, *COLOR CONSCIOUSNESS: THE POLITICAL MORALITY OF RACE* (1996). There is growing, if grudging, recognition among whites that their race in and of itself gives them an advantage over nonwhites. See generally Margaret Talbot, *Getting Credit for Being White*, N.Y. TIMES MAGAZINE, Nov. 30, 1997, at 116 (discussing the proliferation of courses on "whiteness" in American colleges and universities). According to Talbot, "Whiteness scholars say they want to examine what it means to be white in this country because they want to purge themselves of any remnants of racism. The goal, as they would put it, is to 'problematize' whiteness." *Id.* See also ALICE MCINTYRE, *MAKING MEANING OF WHITENESS: EXPLORING RACIAL IDENTITY WITH WHITE TEACHERS* 14-15 (1997):

The lack of self-reflection about being a white person in this society distances white people from investigating the meaning of whiteness and prohibits a critical examination of the individual, institutional, and cultural forms of racism. . . .

. . . What is necessary for white teachers is an opportunity to problematize race in such a way that it breaks open the dialogue about white privilege, white advantage, and the white ways of thinking and knowing that dominate education in the United States.

*Id.*

20. E. Schnapper, *Affirmative Action and the Legislative History of the Fourteenth Amendment*, 71 VA. L. REV. 753, 789 (1985). See generally, C.L. Livingston, *Affirmative Action on Trial: The Retraction of Affirmative Action and the Case for Its Retention*, 40 HOW. L.J. 145 (1996).



There is a striking and disconcerting coincidence between Dean Bond's view of the relationship between the Privileges and Immunities Clause, State's rights, and federalism that faintly (and quaintly) echoes Calhoun and is likewise discouragingly close to the view of *Brown*-era nullificationists.<sup>21</sup> But befitting Dean Bond's experience as a civil rights volunteer who fought for racial equality in the South during the sixties, his book has nothing in common with the traditional view of Reconstruction entertained by most Americans between the end of the nineteenth century and World War II. As Eric Foner has written, by the turn of the century for the majority of the white South,

it had become axiomatic that Reconstruction had been a time of "savage tyranny" that "accomplished not one useful result, and left behind it, not one pleasant recollection." Black suffrage, wrote Joseph Le Conte, who had fled South Carolina for a professorship at the University of California to avoid teaching black students, was now seen by "all thoughtful men" as "the greatest political crime ever perpetrated by any people."

Few interpretations of history have had such far-reaching consequences as this image of Reconstruction. As Francis B. Simkins, a South Carolina-born historian, noted during the 1930s, "the alleged horrors of Reconstruction" did much to freeze the mind

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21. Charles L. Black, Jr., has confessed that the figure of the South Carolinian apologist for slavery and states' rights, John C. Calhoun, haunted his recent book as much as did that of Abraham Lincoln. CHARLES L. BLACK, JR., *A NEW BIRTH OF FREEDOM: HUMAN RIGHTS NAMED AND UNNAMED* 79-80 (1997).

Until I placed . . . Calhoun's 1833 Senate speech alongside the result in the *Slaughterhouse Cases*, I had thought Calhoun to be simply a rather unappealing antiquity. He believed human slavery was a positive good. The energies of his later years went into strengthening the position of the slave States, with a view to protecting slavery. He espoused and expounded the doctrine of nullification of national laws by individual States. He regarded secession from the Union as the right of any State. He thought that all the national powers set forth in the Constitution should be "strictly construed."

. . . If anything can be settled by history and acquiescence, it is settled that state secession is not lawful. Some heady talk of "nullification" did surface some decades ago, but it never really got anywhere. "Strict construction" of the national powers was far from prevailing or nearly prevailing even in Calhoun's own century, and now has no principled constituency. . . . Once in a couple of decades, the Supreme Court may test these waters, but nobody can think that the oceanic mass of national legislation is going to be reduced to a "strict-construction" puddle; after all, the banks want a *national* law that protects due-on-sale clauses in mortgages, and everybody wants the national government to act against crime in the streets, and so on, *ad infinitum*. We actually have a fully empowered *national* government; I don't know why some people think that is a bad thing.

*Id.* at 81-82 (footnote omitted).

of the white South in unalterable opposition to outside pressures for social change and to any thought of breaching Democratic ascendancy, eliminating segregation, or restoring suffrage to disenfranchised blacks. They also justified Northern indifference to the nullification of the Fourteenth and Fifteenth Amendments. Apart from a few white dissenters like Simkins, it was left to black writers to challenge the prevailing orthodoxy. In the early years of this century, none did so more tirelessly than former Mississippi Congressman John R. Lynch, then living in Chicago, who published a series of devastating critiques of the racial biases and historical errors of Rhodes and Bowers. "I do not hesitate to assert," he wrote, "that the Southern Reconstruction Governments were the best governments those States ever had." In 1917, Lynch voiced the hope that "a fair, just, and impartial historian will, some day, write a history covering the Reconstruction period, [giving] the actual facts of what took place."<sup>22</sup>

Dean Bond's research responds in important ways to Congressman Lynch's hopes. Examples of southern intransigence are a dreary refrain of Dean Bond's book. He relates that, in Tennessee, the last state to secede and the first readmitted to the Union, Blacks organized a State Convention of the Colored People of Tennessee to adopt measures "to . . . secure the 'political liberty and equality . . . of the black man.'"<sup>23</sup> Frustrated by the inaction of the pre-Reconstruction legislature, an 1865 convention organized by blacks appointed a central committee to struggle for civil rights. Despite the Civil Rights Act and the Freedmen's Bureau Bill, the Committee persisted in its efforts to get favorable state legislation to permit Negro testimony in the

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22. FONER, *supra* note 1, at 609-10. He goes on, This rewriting of Reconstruction's history was accorded scholarly legitimacy—to its everlasting shame—by the nation's fraternity of professional historians. Early in the twentieth century a group of young Southern scholars gathered at Columbia University to study the Reconstruction era under the guidance of Professors John W. Burgess and William A. Dunning. Blacks, their mentors taught, were "children" utterly incapable of appreciating the freedom that had been thrust upon them. The North did "a monstrous thing" in granting them suffrage, for "a black skin means membership in a race of men which has never of itself succeeded in subjecting passion to reason, has never, therefore, created any civilization of any kind." No political order could survive in the South unless founded on the principle of racial inequality. The students' works on individual Southern states echoed these sentiments. Reconstruction, concluded the study of North Carolina, was an attempt by selfish politicians, backed by the federal government . . . to Africanize the State and deprive the people through misrule and oppression of most that life held dear.

*Id.* at 609.

23. BOND, *supra* note 6, at 16 (quoting ALRUTHEUS A. TAYLOR, *THE NEGRO IN TENNESSEE, 1865-1880*, 21 (1941)).

courts, but conceded that "this act shall not be so construed as to give colored persons the right to vote, hold office or sit on juries."<sup>24</sup> Although later in the session the legislature guaranteed many civil rights for Blacks, it refused to enfranchise them. Dean Bond notes,

Conservatives had resisted and protested every one of these developments, regarding each in turn as the camel's nose of racial mongrelization and social degradation. For example, [one representative] opposed the Negro testimony bill, explaining that "the two races could not and ought not to live together with equal rights and privileges." He was sure "that the Negro, if given a portion of his rights, would strive to win full equality with the whites." Consequently, [he] urged that blacks should be colonized outside the United States "in some place congenial to their nature."<sup>25</sup>

In South Carolina, Dean Bond reports that its freedmen rejected State's rights claims designed to perpetuate white domination, and "exalted the Declaration of Independence rather than the Constitution."<sup>26</sup> Eventually they demanded more than the natural and civil rights guaranteed by the Fourteenth Amendment, remaining, in Dean Bond's phrase, "rooted in that single, simple color-blind principle of nondiscrimination."<sup>27</sup> He reports that in the end they asked "'for no special privileges or peculiar favors'" but only for "'even-handed Justice."<sup>28</sup>

Nonetheless, the state legislature dashed such expectations with a Black Code consigning the former slaves to permanent inequality. Though the subsequent Reconstruction legislature ratified a constitution regarded today as "progressive," whites rejected it as based "on a triangular foundation of ignorance, repudiation, and miscegenation."<sup>29</sup> This rejection culminated in violence and intimidation as a result of which Black militias were eventually disarmed and left to the horrors of the Ku Klux Klan. In the end, Federal troops withdrew in obsequence to the 1877 compromise. As Dean Bond aptly described this scene, "[l]ike a rope of sand, South Carolina's Republican Party did dissolve; and its Black supporters drowned in a sea of white supremacy."<sup>30</sup>

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24. *Id.* at 17 (quoting Acts, 34th Tenn. Gen. Ass., Adj. Sess. 1865-66, ch. 59).

25. *Id.* at 17.

26. *Id.* at 128.

27. *Id.*

28. *Id.* at 129 (citations omitted).

29. BOND, *supra* note 6, at 131.

30. *Id.* at 137.

In one way or another, Blacks suffered the same fate in each of the Confederate states. In Alabama, though the Reconstruction legislature ratified the Fourteenth Amendment, it refused to pass a public accommodations act. Eventually, according to Dean Bond, "prejudice, fraud, and violence" sealed the fate of black Alabamians who "would not be heard from again until a tired Rosa Parks refused to move to the back of a Birmingham bus."<sup>31</sup> Similarly, in North Carolina, the legislature ratified a new constitution in 1868, and subsequently ratified the Fourteenth Amendment, but failed to pass legislation that would ensure "legal equality."<sup>32</sup> Dean Bond suggests that even Black legislators backed away from laws to ensure social equality, a compromise that black delegates made

in order to secure protection against the reign of terror that the Klan had already begun to inflict upon blacks and their friends. . . . That blacks had to [concede legislation which would guarantee equal treatment] in order to obtain police protection from a legislature sympathetic to their needs only dramatized how narrowly those who favored equal protection viewed its scope.<sup>33</sup>

The ferocity of southern resistance to emancipation was starkly evident in Texas with the election in 1873 of a white governor who called for the elimination of 40,000 Negro voters he described as simple and ignorant.<sup>34</sup> Legal disenfranchisement was reinforced with the kind of horrific attacks that occurred a year after the election when a band of whites invaded a freedmen's quarter of Houston, slaughtering some twenty-five inhabitants amidst laughter and jokes, and during which carnage, according to a newspaper account, "they disembowel[ed] and quarter[ed] the poor victims, hanging them by the legs like hogs."<sup>35</sup>

One shocked newspaper correspondent noted that the mass lynching:

. . . excited no comment from any of the ministers, no notice was taken of it in any of the congregations, save by a few men who, with glad and eager looks, left their pews, and a few women who, with smiles gave each other knowing nods.

. . . [The Negroes were] slain in the broad open daylight of the Sabbath morning, within the incorporate limits of the

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31. *Id.* at 114.

32. *Id.* at 64.

33. *Id.* at 65.

34. *Id.* at 224.

35. BOND, *supra* note 6, at 224.

20,000 inhabitants, and not an official raised his hand to prevent it, or to arrest the perpetrators of the deed; not a citizen raised his voice in protest.<sup>36</sup>

Dean Bond reports that in Georgia, "all the known Negro members" were expelled in 1868 by the state legislature on the theory that the right to vote did not include the right to hold office.<sup>37</sup> After military rule was reimposed in 1870, the purged Blacks were restored, but they never saw a legislative agenda that would grant them equal civil and political liberty.<sup>38</sup> A Union general in Georgia reported to General Sherman that "I don't like to be always sort of wet nurse to the negroes . . . if with a majority in each branch favorable to them, they cannot pass measures for their protection they had better suffer for a time."<sup>39</sup> Thus, Dean Bond concludes that, "Reconstruction had little impact on Georgia, which never really slipped from the control of native whites. They systematically and successfully employed violence to reinforce their authority and return the freedmen to peonage."<sup>40</sup>

Dean Bond's account reaffirms the now classic view of W.E.B. Du Bois about the Reconstruction experience. In 1909, in a paper Du Bois read at the annual meeting of the American Historical Society in New York, he reported that the Reconstruction legislatures democratized government and gave birth to the South's public school system.<sup>41</sup> The constitutions drafted by the Negro legislatures remained undisturbed for decades by successive white lawmakers, who on the one hand disparaged the work of earlier black legislators, but on the other hand used these very same legislative fruits of freedman's labor to return Blacks to a situation just short of formal enslavement. According to Dr. Du Bois:

Paint the "carpet-bag" governments and negro rule as black as may be, the fact remains that the essence of the revolution which the overturning of the negro governments made was to put these black men and their friends out of power. Outside the curtailing of expenses and stopping of extravagance, not only did their successors make few changes in the work which these legislatures and conven-

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36. *Id.* at 224-25.

37. *Id.* at 243.

38. *Id.* at 244.

39. *Id.* at 244-245.

40. *Id.* at 245.

41. The paper was subsequently published as "Reconstruction and Its Benefits" in the *American Historical Review* Vol. XV (July, 1910). W.E.B. Du Bois, *Reconstruction and Its Benefits* (1910), reprinted in *RECONSTRUCTION* 4 (Staughton Lynd ed.) (1967).

tions had done, but they largely carried out their plans, followed their suggestions, and strengthened their institutions. Practically the whole new growth of the South has been accomplished under laws which black men helped to frame thirty years ago. I know of no greater compliment to negro suffrage.<sup>42</sup>

As to the fabled corruption of the Reconstruction legislatures, W.E.B. Du Bois's trenchant observation describes the reality well: "There was one thing that the white South feared more than negro dishonesty, ignorance, and incompetency, and that was negro honesty, knowledge, and efficiency."<sup>43</sup> The legacy of Reconstruction's failure is evident today, even after undeniable changes in the nation in the intervening century. To change slightly what is perhaps the most prophetic aphorism of Du Bois, "the problem of the [twenty-first] century [will be] the problem of the color line."<sup>44</sup> Despite Constitutional amendments, and mountains of legislation, the American caste system remains too much in place.

As George M. Fredrickson recently observed,

In the history of the United States only one minority has been consistently thought of as a "race" in the full and invidious sense—African-Americans. Hostilities toward other groups, such as American Indians, Asians, Mexicans, Irish, Italians, and Jews, have often been intense and have led in some cases to widespread violence and deplorable injustices. But cultural intolerance has usually played a greater role in provoking their mistreatment than a strong belief in their natural incapacities. Most other persecuted minorities were eventually considered candidates for assimilation and were denounced and abused when they chose to remain culturally distinctive. Blacks, on the other hand, were regarded for centuries as inherently unassimilable because, as subhuman, they lacked a developed or refined human culture and were deemed incapable of having one. Consequently, every effort was made to keep them from taking a full part in American society.

...  
... [Though change had occurred by the close of the 1960s,]  
many believe that progress since the 1970s has slowed or stalled and

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42. *Id.* at 64-65.

43. *Id.* at 60.

44. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* xxxi (1903) (Bantam Classic ed. (1989)). The opening words of the book read, "Herein lie buried many things which if read with patience may show the strange meaning of being black here at the dawning of the Twentieth Century. This meaning is not without interest to you, Gentle Reader; for the problem of the Twentieth Century is the problem of the color line." *Id.*

that there are current signs of regression toward greater segregation and economic or cultural deprivation. . . .

Relatively uncontroversial is the proposition that African-Americans as a group have not been as successfully integrated into the mainstream of American life as the architects of the civil rights reform hoped and expected that they would be.<sup>45</sup>

Writing about how Latinos have benefited from the second Reconstruction, but at the same time had their hopes dashed by attempts to frustrate their progress, Professor Gary Orfield has correctly identified the pernicious role of American conservatives in checking the progress of people of color, arguing that the Second Reconstruction's civil rights movement "generated a counterreaction that has dominated politics for decades."<sup>46</sup>

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45. George M. Fredrickson, *America's Caste System: Will It Change?*, N.Y. REV. OF BOOKS, Oct. 23, 1997, at 68. The observation is a recurrent and dreary refrain in American scholarship on race relations. Cf. ALLAN H. SPEAR, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO* 229 (1967)

From its inception the Negro ghetto was unique among the city's ethnic enclaves. It grew in response to an implacable white hostility that has not basically changed. In this sense it has been Chicago's only true ghetto, less the product of voluntary development within than of external pressures from without. Like the Jewries of medieval Europe, Black Chicago has offered no escape. Irishmen, Poles, Jews, or Italians, as they acquired the means had an alternative: they could move their enclaves to more comfortable environs or, as individuals, leave the enclaves and become members of the community at large. Negroes—forever marked by their color—could only hope for success within a rigidly delineated and severely restricted ghetto society.

*Id.*

46. Gary Orfield, *Latinos' Rights Is the Big Loser*, LOS ANGELES TIMES, Dec. 15, 1997, at B5. According to Professor Orfield,

Though the civil rights revolution is far from complete, the emergence of a large black middle class and many black political leaders is evidence of a very important historical change. The central ideas were the removal of the barrier of race, the reconstruction of institutions defined by race and the opening of opportunity for those historically excluded. These revolutionary changes, however, generated a counter-reaction that has dominated politics for decades.

. . . .  
 . . . Recently revealed documents prove that President Nixon pursued an intentional campaign of racial polarization through fierce attacks on civil rights policies. Two Nixon administrations and the three terms of Reagan and Bush aimed to reverse civil rights policies and to turn the federal courts in a conservative direction.

. . . .  
 . . . [T]he judges they appointed (a substantial majority of all [current] federal judges) set about to dismantle civil rights policies aimed at restructuring opportunity within major institutions; politicians in some key states began referendums or legislative campaigns to eliminate civil rights policies, and Congress decided to balance the budget and grant tax cuts by gutting programs critical to the working poor. . . .

The Rehnquist court assailed civil rights policies from many directions. Its decisions seriously limited affirmative action, leading to an intense political debate about the legitimacy of any race-conscious policies. Three major school desegregation cases

Dean Bond recognizes that the civil rights revolution is yet a work in progress.<sup>47</sup> His lament, however, is that liberal reactions in the face of the Second Reconstruction's counter-revolutionary response by Nixon, Reagan, Bush policy-makers have betrayed the legacy of the freedmen.<sup>48</sup> His position is that contemporary liberal efforts are the ill-conceived result of insisting on far more than equality, such as demands for affirmative action, which Dean Bond mistakenly styles as no more than racially premised preferences.<sup>49</sup> The Reconstruction legislatures, he points out, sought to create "color-blind" political if not social orders, and so he concludes that their original intentions are violated by contemporary Afro-Americans asking for anything different, anything more.<sup>50</sup> In fact, an underlying theme of Dean Bond's book is to extol the virtues of formal racial equality and to

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expanded local authority to send students back to inferior neighborhood schools and to reduce the educational components of desegregation remedies. . . . The Supreme Court recently narrowed its interpretation of voting rights. . . .

*Id.*

This right-wing war on people of color has not gone unnoticed in the Latino community. Republican leadership in antiimmigration and antiaffirmative action ballot initiatives in California has led to increasing alienation of Hispanic voters, a group that has, until recently, been more divided than Blacks about which party has their interests at heart. As an editorial about a Washington State antiaffirmative action initiative declared in the SEATTLE TIMES,

In California, many Republican consultants warn of political suicide due to policies on affirmative action and immigration that send an uncaring message to the state's fastest-growing democratic group, Hispanics.

Quick, somebody show Republicans in this state the latest census reports and trends. As I-200 proponents spout platitudes about freedom and colorblind societies, they appear oblivious to the fact this measure alienates women and fast-growing minority populations.

*I-200 Will Spur Backlash Against Republican Party*, SEATTLE TIMES, Dec. 22, 1997, at B4. Similar sentiments were voiced by LOS ANGELES TIMES columnist George Skelton. George Skelton, *A Wake-Up Call for GOP About a Wide-Awake Giant*, LOS ANGELES TIMES, Dec. 15, 1997, at A3. He quotes veteran Republican party consultant Stu Spencer as saying that the GOP is committing "political suicide" and "dooming itself to 'permanent minority status in California.'" *Id.* "We are dramatically losing market share of the fastest growing segment of the electorate. . . . Our party has a sad—and politically self-defeating—history of alienating immigrant groups." *Id.* According to Skelton, the number of Latino voters continues to grow at the same time that "they have been voting increasingly Democratic." *Id.* See also John Cassidy, *The Melting-Pot Myth*, THE NEW YORKER, Jul. 14, 1997, at 40. "Among mainstream conservatives, being pro-immigration is an easy way to establish one's free-market credentials, but it also provides ample opportunities for making invidious comparisons between allegedly industrious immigrants and allegedly lazy African-Americans. Social conservatives like Pat Buchanan use the antiimmigration card to attack multiculturalism, inflame nativist prejudice, and win over Reagan Democrats." *Id.*

47. See generally BOND, *supra* note 6, at 251-72.

48. *Id.*

49. *Id.*

50. *Id.*



praise the Reconstruction legislatures as among its most fervent proponents. Whatever their degree of oppression, he argues, Reconstruction Blacks sought only formal equality.<sup>51</sup>

Of course, equality was ruthlessly, insistently, and for decades denied them, but that, to Dean Bond, does not suggest that these patient methods were wrong—only that they were premature. America, in his view, was not ready for racial equality. Demented by racism, it was unable to respond to the challenge of Reconstruction. He quotes a contemporaneous student of Reconstruction whose thinking helps explain the inordinate length of the uneasy walk to freedom for the Afro-American that his book addresses:

Psychologically and sociologically, for the Southerner to have accepted the equality of the Negro after 1865 would have been an admission of guilt, not only for the injustice of the slave system but also for the disaster of a war which cost the lives of 600,000 white boys. The face-saving new article of faith had to be a racist social status which would continue the freedman "in his place"—his place of inferiority.<sup>52</sup>

But such a situation does not obtain, in Dean Bond's view, after the Second Reconstruction. His argument is this: if there is now scattered and isolated resistance to racial equality and antidiscrimination legislation, there are nonetheless an overwhelming majority of whites who are reconciled to equal status for Afro-Americans (and who hold only residual fears that the current equity balance might be reversed—fears that much more commonly characterized white attitudes in the post-Civil War era).<sup>53</sup> Afro-Americans, Bond says, who advocate antidiscrimination measures that exceed formal equality run the risk of provoking white resentment among otherwise sympathetic whites. For Afro-Americans to do this is to espouse an unprincipled and self-interested support of race-conscious laws and policies directed at what Dean Bond considers the melting vestiges of white racial bias. In his view,

[M]any Americans, on the cusp of an approaching millennium, imagine a future with a smaller national government and reinvigorated state and local governments; a future with less overt judicial intervention in the legislative process at all levels; and a future in which the law takes no account of a person's race, but respects every person's natural rights to life, liberty, and the pursuit of happiness.

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51. *Id.*

52. BOND, *supra* note 6, at 3.

53. *Id.* at 251-72.

That future cannot come to pass, however, until the United States Supreme Court begins to re-imagine the Fourteenth Amendment in light of the dreams and aspirations of the freedmen who embraced it so enthusiastically. . . . Looking about for some guide on the dangerous and uncertain journey before them, the freedmen . . . reached out for the eternal truths of the Declaration of Independence.

They saw those truths revealed in the three great clauses of Section 1 of the Fourteenth Amendment. And they believed that the implementation and enforcement of those simple commands would transport them to the promised land in which they imagined all white Americans lived. Just as the American revolutionaries demanded nothing more than the rights of Englishmen, the freedmen demanded nothing more than the rights of white Americans.<sup>54</sup>

In closing his book, Dean Bond cites the example of Justice Clarence Thomas, whom he regards as the Supreme Court's most articulate spokesperson for the dreams of the freedmen: "the singularly authentic voice of those men and women, whose simple but eloquent pleas still call us . . . to fulfill that contract . . . guaranteeing all persons their inalienable rights to life, liberty, and the pursuit of happiness."<sup>55</sup>

But Justice Thomas's view is that there is a "moral and constitutional equivalence" between laws designed to subjugate a race and those that distribute benefits on the basis of race in order to foster some current notion of equality.<sup>56</sup> He says that "Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law."<sup>57</sup> Elsewhere Thomas declares that race-conscious legislation, whether stigmatizing and oppressive or simply designed to foster equality, is bound to "undermine the moral basis of the equal protection principle."<sup>58</sup>

There is neither space in this essay nor patience in this author to tarry further with Justice Thomas's perverse beliefs or with Dean Bond's irrelevant propositions that the freedmen were proponents of limited government. Suffice it to say that Dean Bond's thesis would put the freedmen, in the current political arena, on issues of states'

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54. *Id.* at 269-70.

55. *Id.* at 270.

56. *Id.*

57. *Id.*

58. *Id.* at 271.

rights, somewhere between the views of the Schylla and the Charybdis of the U.S. Senate, Orrin Hatch and Jesse Helms.

Yet, if the freedmen had been prescient enough to know how states' rights and states'-rights arguments would be used as a shield behind which their progeny were effectually re-enslaved, they might have had the same suspicion and contempt, held by the overwhelming majority of Afro-Americans today, of right-of-center political positions. Dean Bond powerfully and poignantly demonstrates that efforts at formal equality were savagely resisted and eventually rejected by conservative politicians and political movements, and that the freedmen were utterly betrayed by the great compromise of 1877 and its brutal aftermath.<sup>59</sup> Since he knows how Blacks were oppressed by slavers, segregationists, nullificationists, and other reactionary political philosophies which thrived under the banner of states' rights, why would he entrust the future of Afro-Americans, with whom he so plainly empathizes, to more of the same?

While law has been a powerful force in the cementing of the caste system, it is but one force among many. Social custom and practice reinforced by violence have, through history, been just as important in the subjugation of blacks as were cases such as *Plessy v. Ferguson* and its successors. The difference between the two Reconstructions may be as follows: after the First Reconstruction ended, a minutely calibrated and all-encompassing regime of racial discrimination was cemented into place, an epoch that one writer has termed "worse than slavery."<sup>60</sup> These laws reinforced racial prejudices against the freedmen, prejudices enduring long after they had been officially repealed. The reaction to the Second Reconstruction has certainly lacked the Thermidorian aspects of the reaction to the First. But widespread antidiscrimination laws passed during the Second Reconstruction have not led to widespread elimination of the racial attitudes upon which the balance of black liberation most surely hinges.

Orlando Patterson persuasively observes,

To argue that we should begin to solve the problem of "racial" exclusion by assuming a color-blind world is to assume away the very problem that we are trying to solve . . . . The simple truth,

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59. BOND, *supra* note 6, at 251-72.

60. In his review of Taylor Branch's *Pillar of Fire: America in the King Years, 1963-65* (1997), Alan Wolfe observes, "[a]s horrible as slavery was, slaveholders could at least claim that the Constitution gave them sanction. That was no longer possible after passage of the Fourteenth Amendment. In this one way was segregation worse than slavery, for its practitioners not only showed enormous disrespect for human life but in the process corrupted the supreme law of the land." Alan Wolfe, *Climbing the Mountain*, N.Y. TIMES BOOK REV., Jan. 18, 1998, at 12, 13.

the simple reality, is that "racial" categorization is a fact of American life, one that we can do away with only by first acknowledging it. . . .<sup>61</sup> Nothing is more hypocritical than people who have acquired their status largely by virtue of their ancestry and good fortune, or whose parents benefited from the massive postwar "affirmative action" program in suburban housing subsidies that explicitly excluded Afro-Americans, or who now earn incomes and exercise power out of all proportion to their modest talents, moralizing about fairness and merit.<sup>62</sup>

The freedmen, in their fond hopes for democracy, fought for a color-blind United States, a dream that became for many of their descendants a nightmare of violence and deprivation of every imaginable sort. Their demands for a race-neutral political order were resoundingly rejected by North and South alike. Despite the heroism that Dean Bond chronicles, for nearly a century afterwards the faith of the freedmen in the Declaration of Independence was mocked. After the Second Reconstruction, the heirs of the freedmen's legacy—and their white allies—have learned well the lessons of the post-Reconstruction epoch. Legal measures facilitate social change, but more is required to realize a just social order. Formal equality is one instrument of emancipation, but equality in fact must be the final and ultimate goal of a democratic order.

Dean Bond's unspoken supposition is that fundamental changes, both structural and social, have occurred in the attitudes and perspectives of white Americans with respect to nonwhites in general and Afro-Americans in particular.<sup>63</sup> Where true, these changes are due

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61. ORLANDO PATTERSON, *supra* note 2, at 163.

62. *Id.* at 9.

63. For a considered view that things racial are better than they are worse, see John J. Dilulio, *State of Grace*, NATIONAL REV., Dec. 22, 1997, at 62. Dilulio informs the reader (presumably without wishing it were thus) that, "[i]f Black America were a separate nation, it would easily be one of the richest nations in the world, both financially and socially." *Id.* His view is important, since, though it is consonant with conservative thought generally, which holds that Blacks have come far indeed, he is a critic of those who trumpet the story of racial progress for not documenting "how far millions of blacks have yet to go; what, if any moral or spiritual obligations Americans of whatever racial or ethnic heritage have to the least of these our brethren; and what changes in social policy might assist individual, private, and charitable efforts to make us truly 'one nation, indivisible.'" *Id.* at 64. See also Richard Bernstein, *Racism Is (a) Entrenched? Or (b) Fading?*, N.Y. TIMES, Nov. 8, 1997, at A11.

The optimistic tradition . . . may represent a new turn in the scrutiny of race in America. While many points of view have always competed for attention, it is probably fair to say that the pessimistic tradition—or at least the view that the country is doing badly in its efforts to bring about true racial justice—has predominated for several decades. Now, judging from the recent flood of new books, a troubled optimism has risen more strongly than ever before.

to complex and sustained efforts, nearly all of which were wrought by political movements with which he at once profoundly sympathizes and simultaneously disapproves. Bond welcomes the expansion of social or political space for nonwhites. But he paradoxically laments the legal or political or social strategies and forces which wrought what he regards as a transformation of the national ethos. In one spectacular, even preposterous irony, he lionizes Clarence Thomas instead of Thurgood Marshall, the latter of whom, to borrow from Bond's observations about Justice Thomas, is in fact "the authentic voice" of modern day Afro-Americans.<sup>64</sup> Led by Thurgood Marshall, Afro-Americans obtained some measure of relief as they sought freedom from the yoke of racial segregation. Bond welcomes change, but perhaps yearns for a return to an America that had to transform itself to create the polity of which he presently approves.

The struggle today is between conflicting hegemonic paradigms in which concepts of racial equality and "meritocratic" imperatives clash against the reality of racially-premised domination. The clashing perceptions of reality that plague the nation owe themselves to a de facto segregated social and economic order, to the altogether different life experiences of whites and Blacks.<sup>65</sup> That said, the memory of organized and officially sanctioned racial discrimination is too recent to convince most Afro-Americans, except the Clarence Thomases and the Ward Connerlys<sup>66</sup> among us, that antidiscrimination laws can

*Id.*

64. See BOND, *supra* note 6, at 270.

65. Hardly a week goes by without a press account of how differently blacks and whites react to the same stimuli.

Two weeks before the country celebrates the memory of the Rev. Dr. Martin Luther King Jr. with a national holiday, the debate over what to call the new high school in . . . increasingly diverse but still predominantly white [Riverside, California] illustrates just how much race continues to divide and haunt the land. . . .

. . . .  
. . . [T]he local newspaper . . . quoted two white residents who said they were afraid that if the school was named after Dr. King their children would have a harder time getting into college because their high school would be perceived as black. . . .

The board's decision [to name the school after Dr. King] made the black people and their supporters shout Hallelujah. It made many of the whites, but not all, walk away as though they were leaving a funeral.

Indeed, in some ways, the contrast in black and white was even more stark here than the reactions after the first trial of O. J. Simpson.

Don Terry, *Mostly White City Honors Dr. King, Amid Dissent*, N.Y. TIMES, Jan. 7, 1998, at A9.

66. Ward Connerly is the negro developer and longtime crony of California Governor Pete Wilson who headed the organization which successfully campaigned for the California anti-affirmative action Proposition 209.

alone undermine structural and institutional racism, ingrained for so many centuries.

The trench warfare of individualized antidiscrimination has had its successes, but also has left the privilege that whites enjoy as a group essentially intact. And as Afro-Americans have been enslaved as a group, disenfranchised as a group, and "out-casted" as a group, group analysis and group remedies are crucial to real, fundamental change. The creation of a race-neutral, race-blind social and economic order will require more than the platitudinous incantation of the rhetoric of antidiscrimination in the service of the status quo.