FROM INTEREST CONVERGENCE TO SOLIDARITY

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Derrick Bell suggested in 1980 that the struggle for racial equality experiences victories only at moments where the gains to minorities are seen as “neutral” gains to all—especially whites. Any step taken towards racial equality must be in white people’s interests in order to be politically and legally attainable in America. If a policy that advances racial equality (such as affirmative action) is perceived as benefitting blacks or other people of color at the expense of whites, it is highly unlikely to succeed.

Affirmative action has survived precisely because it was reframed over the last few decades as a diversity policy rather than one that benefitted racial minorities to alleviate their disadvantage. In 2003, Professor Bell declared that Grutter v. Bollinger, the case that consolidated this reframing, was a “definitive example of my Interest-convergence theory.” Equal Protection doctrine prior to this moment had established that affirmative action could not, consistent with equal protection, be premised on the goal of promoting racial equality by remedying societal discrimination and its historical effects. The appeal to diversity in Grutter made racial equality a side effect (if, indeed, it is in fact an effect at all!) of affirmative action, rather than its goal. The goal, characterized as universal, is to achieve diversity—racial and otherwise—because diversity provides benefits to institutions, corporations, and white individuals, and not just to those persons who are admitted to an institution pursuant to a race-conscious affirmative action program.

And indeed, over the last few years, diversity talk has been dominated by the “business case for diversity,” rather than the justice-based moral imperatives for it. In the private sector workplace, the take-home point is that businesses will make more money if they hire more minorities. In public law schools, the diversity claim is that students will learn more and become better able to lead America in warfare, global trade, and government, if they are surrounded by a variety of people.

Professor Bell was critical of the diversity thinking that saved affirmative action in 2003. Indeed, for Bell, one of the most depressing features of the interest-convergence narrative was the following: steps toward racial equality, which would be beneficial to blacks and other minority groups, could only be taken if also beneficial to whites. But, these steps were necessarily limited precisely because any successful step toward racial equality was achieved because of its benefits to whites. If our starting point is a racially unequal society in which whites are more advantaged than blacks and other groups, any step that benefits both whites along with other disadvantaged groups will simply reinforce the unequal starting point. If racial inequality is to be undone, we need to give more benefits to the unjustly underprivileged, and this has to mean giving none to the already advantaged or, more sensibly, taking away privileges that the advantaged groups hold undeservedly.

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2 Derrick Bell, Diversity’s Distractions, 103 COLUM. L. REV. 1622, 1624 (2003) [hereinafter Diversity’s Distractions].


4 See DERRICK BELL, SILENT COVENANTS 159 (1992) (“History teaches us that such victories are not permanent and are subject to change with only that recognition that we should have at their adoption.”).
At the same time, Professor Bell tried hard to convince his readers that racial equality is good for white people, and not just in the moral sense. Of course, he has always argued that racial equality—however we define it concretely—is what justice requires, a moral imperative. But his recent writings were doing more; they were trying to convince us that beyond justice, there was something in racial equality for whites, at least some whites.

Bell pointed out in *Diversity's Distractions* that standardized tests, such as the SAT and LSAT, fail to predict performance in college or law school. More troublingly, these tests tended merely to predict the socio-economic status of the test-taker. Bell noted that children of high-income parents can afford coaching in test-taking strategies which can improve student scores by as much as 400 points. If taken as true, then everybody who scores low on these tests—not only blacks—are harmed by colleges and professional schools' continued reliance upon these scores. In concluding, Professor Bell wrote:

> It may be that challenges by civil rights and community groups calling attention to the inaccuracies and unfairness of standardized tests will lead to their revision or even abandonment. If that effort is successful, it will not be the first time that civil rights campaigns initiated to remedy racial barriers resulted in reforms that worked to the benefit of all.6

He then noted that “these reforms provide more advances for whites than for blacks.”7

Here, I read Professor Bell as trying to cultivate something non-depressing, even bordering on optimistic, out of the interest convergence thesis: solidarity. If the interest convergence thesis is descriptively correct, the only means available to those who wish to advance racial equality is to articulate its benefits to whites. In other words, the convergence of interests between racial minorities and the least advantaged whites has to be articulated as a basis for solidarity. This articulation may be the only way to break past patterns of racial progress which have proven so limited.

In paying tribute to Professor Bell, we should reflect on how to make the most of what remains possible in a world governed by the interest convergence story. A more egalitarian society—not merely a more diverse one—will benefit most, but not all, of its inhabitants. Maybe it is not possible to ensure that “everyone” wins, but perhaps we can work on the ninety-nine percent.

While interest convergence is a necessary condition of solidarity, solidarity moves beyond interest convergence. What happens after the moment of recognizing shared interests is that the parties or groups whose interests converge begin to regard themselves as members of a common enterprise, members who defend each other even in circumstances when their individual interests are no longer at stake. Most importantly, people whose interests converged at Moment A support each other at Moment B when their interests no longer converge, and at Moment C when their interest may conflict. That is solidarity. The failure of racial progress in the United States is not simply due to the constraints that emanate from interest convergence. Rather, racial inequality appears permanent because the convergence of interests has failed to transform interest-bearers into a community of solidarity.

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5 See *Diversity's Distractions*, supra note 2, at 1630.

6 *Id.* at 1633.

7 *Id.*