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## Derrick Bell, Brown, and the Continuing Significance of the Interest-Convergence Principle

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Derrick Bell's

Enduring

Education

Legacy

*“Covenant  
Keeper”*

GLORIA LADSON-BILLINGS & WILLIAM F. TATE

*Editors*

“Covenant Keeper”



sj Miller & Leslie David Burns  
GENERAL EDITORS

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# “Covenant Keeper”

## Derrick Bell’s Enduring Education Legacy

Edited by Gloria Ladson-Billings  
and William F. Tate



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## CHAPTER FIVE

# Derrick Bell, *Brown*, AND THE Continuing Significance OF THE Interest-Convergence Principle

JAMEL K. DONNOR

*... optimism for the future must be tempered by past experience and contemporary facts.*

—DERRICK BELL (1976)

## DERRICK BELL AND THE INTEREST-CONVERGENCE PRINCIPLE

Partially developed as a scholarly rebuttal to fellow legal scholar Herbert Wechsler's (1959) assertion that the U.S. Supreme Court's rationale in *Brown v. Board of Education* in 1954 was based neither on "neutral principles" nor on a testable judicial doctrine, such as associational rights, Derrick Bell (1980), through his interest-convergence theory, contended that Wechsler's premise possessed a modicum of truth. According to Bell, "Wechsler's search for a guiding principle in the context of associational rights retains merit ... because it suggests a deeper truth about the subordination of law to interest-group politics with racial configuration" (p. 523).

A former attorney with the U.S. Department of Justice and the AACP's Legal Defense Fund during its school desegregation campaign, which was also part of the Black Civil Rights Movement of the 20<sup>th</sup> century, Bell acknowledged that after a quarter century of attempting to racially integrate public schools, the pace of reform had not only stalled but also reversed. Indeed, while "serious racial integration did not occur until the 1970s and was limited outside of the South" (Orfield & Lee, 2007, p. 4), public schools in the United States have been resegregating since the 1980s (Orfield & Eaton, 1996). According to The UCLA Civil

Rights Project (Orfield & Lee, 2007), American schools, which have been gradually resegregating for almost two decades, are “now experiencing accelerating isolation” (p. 3). For example, the “average White student attends schools where 77 percent of the student enrollment is White” (p. 24), while Black and Latino students attend schools where more than half of their peers are Black and Latino despite respectively constituting 16 percent and 24 percent of the total number of students enrolled in public schools (DeMonte & Hanna, 2014; U.S. Department of Education and U.S. Department of Justice, 2014).

For Bell, the *Brown* decision required a critical reappraisal and uncompromising reconceptualization of its “operant ideas” (Orfield & Eaton, 1996, p. xv), which also included the Supreme Court’s concomitant rendering of contradictory and obfuscatory verdicts in subsequent school desegregation cases. Specifically highlighting the permanence of racism and the role of exogenous factors such as fortuity and self-interest, Bell (1992) posited that the *Brown* decision could not be “understood without some consideration of the decision’s value to whites, not simply those concerned about the immorality of racial inequality, but also the economic and political advances at home and abroad that would follow abandonment of segregation” (p. 524). Stated differently, the U.S. Supreme Court’s decision to overturn more than 50 years of judicial precedent whereby state-government-enforced racial segregation (i.e., *de jure*) was the law of the land required the consideration of the case’s implications on the nation’s domestic and international political economic interests.

The goal of this chapter is to discuss the continuing significance of Derrick Bell’s interest-convergence theory as an analytical tool for explaining contemporary racial inequity in American education. Indeed, Bell’s enduring contribution to the proliferation of Critical Race Theory (CRT) remains his departure from traditional legal theory and conventional Civil Rights practices by being the first legal scholar to establish a “scholarly agenda that placed race at the center of intellectual inquiry” in constitutional theory (Crenshaw, 2002, p. 1345). To assist me in my stated goal I examine the Supreme Court’s decision in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) using Bell’s convergence of interest theory. Addressing the issues of public school integration and race, this case exemplifies Bell’s (2004) foundational premise that civil rights victories, such as equal educational opportunity, are “fleeting even when enunciated in terms of permanence” (p. 4). For instance, in *Parents Involved in Community Schools v. Seattle School District No. 1* the Supreme Court determined that the Seattle School District’s voluntary public school integration program was unconstitutional, because it unfairly forced White students to “compete for seats at certain high schools that use race as a deciding factor in many of its admissions decisions” (*Parents v. Seattle School District No.1*, 2007, Section II, p. 10, ¶ 2). More important, the high Court’s decision to strike down voluntary school integration is illustrative of Bell’s

(1980) second theoretical presupposition that posits that public policies and laws established to foster racial equality are permissible until it “threatens the superior societal status of middle and upper class whites” (p. 523).

## CHAPTER OUTLINE

This chapter consists of three sections. The first section presents a synopsis of Derrick Bell’s interest-convergence principle. The second section summarizes the Supreme Court’s decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, while the third section analyzes the aforementioned and explains the continuing significance of Derrick Bell’s convergence of interest thesis in understanding contemporary racial inequity in American education.

## THE GENESIS OF THE INTEREST-CONVERGENCE THESIS

Rather than myopically cling to the narrow focus of measuring societal and racial progress according to the rate of interracial contact in public schools initially championed by *Brown*’s supporters, Derrick Bell sought a wider and more nuanced understanding of the landmark decision’s limited impact and subsequent retrenchment. According to Bell (2004), “I continued to view *Brown* as basically a positive decision, but as the years passed, my understanding of the complexity of race in America and our efforts to remedy its injustices raised new doubts” (p. 4). Utilizing a multifocal approach consisting of “political history as legal precedent” (Bell, 1980, p. 523), and a positivistic frame (i.e., realism), Bell concluded that the “interest of blacks in achieving racial equality will only be accommodated only when it converges with the interests of whites” (p. 523)—hence the convergence of interest principle. For Bell (1992),

history is an aid in identifying the continuing problems of race. History has thus far given little hope that any lasting solutions will be found soon. It is not that the white majority is rigidly opposed to enjoyment by blacks of rights and opportunities that whites accept as a matter of course; it is rather that for a complex[ity] of racial reasons, whites are not willing to alter traditional policies and conduct that effectively deprive blacks of these rights and opportunities. (p. 7)

Accordingly, in viewing the American judicial system as an “instrument for preserving the status quo and only periodically and unpredictably serving as a refuge of oppressed people” (Bell, 1995, p. 302), one is better positioned to understand, critique, and respond to the fluidity of White racism, and the multiplicity of racial inequity.

## The Problem With *Brown*

As previously mentioned, *Brown* was a unique case (Dudziak, 2004). Meaning, not only did the decision “depart from the normal rule in American law that where a right has been violated, there is a remedy” (p. 39), it iconoclastically revealed “how government and political institutions influence and interact with each other, and how features of politics and institutional structure influence the creation and development of constitutional doctrine” (Balkin, 2004, p. 1537). According to historian James T. Patterson (2001),

[t]he [*Brown*] decision cut through a tissue of lies that white Southerners and others had woven to maintain the subservient status of black people. It offered the possibility of a long-awaited change that other political institutions—the Congress, state legislatures—seemed wholly incapable of producing. And it suggested that the Court ... would henceforth interpret the Constitution in light of changing circumstances, not a fixed document whose meaning had always to be found in the intent of the Founding Fathers. (p. 69)

In summary, the *Brown* decision not only expanded American jurisprudence by highlighting the doctrinal limitations of normative constitutional theory (Dudziak, 1987; Balkin, 2004), it also heightened the political and societal significance of the U.S. Supreme Court (Klarman, 2004).

Moreover, public schools were selected as the site for abolishing state-supported racial segregation because of their symbolic value internationally, and its purported preparatory role domestically. Internationally, *Brown* was central to the United States’ war against Communism (Bell, 1980; Dudziak, 1988, 2004; Gaines, 2004; Klarman, 2004). According to Dudziak (2004), U.S. State Department files from the period reveal that segregation provided “grist for the Communism propaganda mills, and raise[d] doubts even among friendly nations as to the intensity of our devotion to the democratic faith” (p. 34). In particular, public school racial segregation was “singled out for hostile foreign comment” (p. 34). Domestically, public education became further imbued with the American Dream (Hochschild, 1995). For African Americans especially, education has been synonymous with political, economic, and existential freedom (Anderson, 1988). In delivering the unanimous decision, Chief Justice Earl Warren wrote,

education is perhaps the most important function of state and local governments. Compulsory school attendance law and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities. ... It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity, where the

state has undertaken to provide it, is a right which must be made available to all on equal terms. (*Brown v. Board of Education of Topeka*, 1954)

Ironically, the Supreme Court's edict did not call for immediate school desegregation. In fact, the high Court's ensuing decision on implementation in *Brown v. Board of Education* 1955 (i.e., *Brown II*) was vague and gradualist. More important, the *Brown* decisions radicalized and emboldened Whites to develop a set of reactionary ideas and oppositional tactics that persist in the 21<sup>st</sup> century.

### *Parents v. Seattle School District No. 1*

Decided by the narrowest of margins, five to four, the U.S. Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) determined that the district's voluntary integration policy, which considered race among a myriad of factors for assigning students to oversubscribed and top-performing high schools, was unconstitutional. Citing the plaintiffs' injury claim of "not being forced to compete for seats in certain high schools" (*Parents Involved in Community Schools v. Seattle School District No. 1*, 2007, Section II, p. 10, ¶ 2), the Court's majority determined that the integration policy did not employ race as part of an "expansive project to achieve exposure to widely diverse people, cultures, ideas, and viewpoints" (Section III, Subsection A, ¶ 4), but rather as a "determinative standing alone for some students" (Section III, Subsection A, ¶ 4). Because the city of Seattle has never operated a racially de jure segregated public school system, the Supreme Court viewed the district's good faith effort to offset the pernicious effects of housing segregation as "fatally flawed" (Syllabus, Subsection 1, p. 4). Writing for the Court's majority, Chief Justice John Roberts remarked,

dividing people by race is inherently suspect because such classifications promote notions of racial inferiority and lead to a politics of racial hostility, reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin, and endorse race-based reasoning and the conception of a nation divided into racial blocs, thus contributing to an escalation of racial hostility and conflict. (Section 2, p. 4)

For the affirming justices (Roberts, Scalia, Thomas, Alito, and Kennedy), upholding the Seattle school district's integration policy was "reminiscent of that advocated by the segregationists in *Brown v. Board of Education*, 1954" (Section II, p. 25, ¶ 1). As noted by the Chief Justice,

[b]efore *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin. ... For schools that never segregated on the basis of race, such as Seattle, ... the way to achieve a system of determining admission to the public school on a nonracial basis is to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race. (Syllabus, p. 24, ¶ 2)

Viewing itself as the arbiter for defining racial equality in the United States, the Supreme Court not only declared the utilization of colorblind practices in pupil placement assignments as the solution for racial inequality in public education, more significantly, it also framed the practice of using race as a tool for promoting racial equity in education as inimical.

## THE CONTINUING SIGNIFICANCE OF INTEREST-CONVERGENCE THEORY

As previously discussed, the problems with the *Brown* decision(s) were manifold. In addition to its obfuscation and emphasis on incrementalism, *Brown* also provided White people with the liminal entry point necessary to limit its impact and justify its abolishment (Donnor, 2011a, 2011b; Klarman, 1994). According to Bell (2004),

[w]hen the *Brown* decision was followed by civil rights laws, mostly motivated by black activism that highlighted the continuing racism that undermined our Cold War battles with the Soviet Union, policymakers and much of white society easily reached the premature conclusion that America was now fair and neutral. With implementation of the moderate civil rights laws [and *Brown*], the trumpets of “reverse discrimination” began sounding the alarm. (p. 186)

Indeed, since the mid-1970s, as federal courts started enforcing school desegregation orders, White people also started winning racial equal protection lawsuits in public education, which, in conjunction with initial evasion tactics such as interposition and freedom-of-choice plans, led to *Brown*'s demise (Bonastia, 2012; Kairys, 2004, 2006; Klarman, 1994, 2004; Patterson, 2001; Orfield & Lee, 2007).

A reason for Whites people's success in the aforementioned is due to their simultaneous anastrophe of *Brown*'s spirit and appropriation of the Black Civil Rights Movement's narrative (Hall, 2005). According to Hall,

the [White] conservative movement reinvented itself in the 1970s, first by incorporating neoconservatives who eschewed old-fashioned racism and then by embracing an ideal of formal equality ... positioning itself as the true inheritor of the civil rights legacy. Reworking the civil rights movement narrative for their own purposes, these new “color-blind conservatives” ignored the complexity and dynamism of the movement. (p. 1237)

A vital rhetorical construct of the Black Civil Rights Movement's narrative, color-blindness was central to defeating public policies and social practices that distributed societal opportunities and resources according to an overtly expressed

White supremacist doctrine. Ironically, colorblindness has metastasized into a political tool for liberals, social conservatives, and members of the far right to repeal landmark legislation such as *Brown* (Brown et al., 2003; Cokorinos, 2003; Higginbotham, 2013; Lopez, 2014).

In addition to framing authoritarian policies that promote racial inclusion and attempt to remediate the legacy effects of racism as unfair, colorblindness constructs Whites as the expressed victims of the aforementioned. For example, the parent organization in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) contended that the Seattle school district's voluntary integration program caused undue harm and was injurious because it limited student and parental choice of school. In the program's only year of operation, "80.3%" (*Parents Involved in Community Schools v. Seattle School District No. 1, Brief for Respondents*, 2006, p. 9) of the total number of ninth graders were assigned their first choice of school, compared to "80.4%" (p. 9) when the program was abolished. In other words, the Seattle School District's voluntary integration plan did not interfere with a student's choice of preferred school (p. 9). Furthermore, disaffected families could have pupil placement assignments overridden for "psychological" and medical reasons (*Parents Involved in Community Schools v. Seattle School District No. 1*, 2007). Finally, the policy arguments advocating the abolishment of the Seattle School District's voluntary integration program are not novel, but rather part of an anti-desegregation movement in Seattle dating back to the 1970s (Donnor, 2011a, 2011b; *Parents Involved in Community Schools v. Seattle School District No. 1, Brief for Respondents*, 2006).

As the policy platform upon which interest-convergence theory remains central for understanding contemporary racial inequity in education, colorblindness not only serves as the signpost illuminating defenders of the status quo of race neutrality, it also represents the strategic tool of choice for absolving the beneficiaries of systemic racism. Because political history allows for a comprehensive understanding of the continuities and discontinuities of racial inequity, interest-convergence theory is not only a viable framework for measuring "racial progress," it is also useful for conceptualizing new pathways for racial justice. In moving beyond "racial fortuity" *Brown* and interest-convergence theory teaches its adherents that the pursuit of abstract principles (e.g., equality) is not only vulnerable to cooptation from defenders of the status quo, but is also limited in scope. According to Bell (2004),

Just as the *Brown* decision's major contribution to the freedom struggle was the nation's response to the violent resistance of its opponents, so we who were its intended beneficiaries can learn from the myriad [of] ways in which the relief we deserved was withheld. *Brown* in retrospect, was a serious disappointment, but if we can learn the lessons it did not intend to teach, it will not go down as a defeat. (p. 193)<sup>1</sup>

## NOTE

1. Thank you, Derrick Bell.

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