Bell’s Blues
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Blues is an impulse to keep the painful details and episodes of a brutal experience alive in one’s aching consciousness, to finger its jagged grain, and to transcend it, not by the consolation of philosophy but by squeezing from it a near-tragic, near-comic lyricism.¹

Ralph Ellison, _Shadow and Act_.

What is wrong with Derrick Bell? What has happened to him? Has his loss of his position at Harvard² driven him over the edge? In urging that we adopt Racial Realism,³ has he taken on the man-

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¹ Ralph Ellison, _Shadow and Act_.78 (Vintage, 1972).

² In April 1990, Professor Derrick Bell announced that he was taking an unpaid leave of absence from Harvard Law School in protest over the school’s failure in its 150-year history to hire a woman of color in a tenured or tenure-track position. See Fox Butterfield, _Harvard Law Professor Quits Until Black Woman is Named_, NY Times A1 (Apr 24, 1990). His decision was accompanied by student protests at the school in support of his stance and in vocal opposition to Harvard’s claim that it had found no qualified candidates. See Fox Butterfield, _Harvard Law School Torn by Race Issue_, NY Times A20 (Apr 26, 1990). In 1991, Professor Bell remained on leave for the same reasons. In 1992, Professor Bell requested a renewal of his leave of absence as the continued failure of the law school to add a woman of color to its faculty constituted an ongoing violation of the commitment to affirmative action, an unjustified rejection of eminently qualified candidates, and a diminution of his status as a member of the faculty. See unpublished letter of Professor Derrick Bell to Dean Robert Clark, Harvard Law School, February 26, 1992 (on file with U Chi L Rev). See also Fox Butterfield, _Professor Steps Up Fight with Harvard_, NY Times A12 (Feb 28, 1992). Harvard Law School declined his request on the ground that it would violate the University’s policy that restricts leaves of absence to two years. Professor Bell’s appeal of the decision to the Harvard Corporation was denied and his tenure was terminated on July 1, 1992. _Harvard Law Notifies Bell of Dismissal for Absence_, NY Times A19 (Jul 1, 1992). He is presently a visiting professor at New York University Law School. Id.

³ Derrick Bell, “Divining a Racial Realism Theory,” in _Faces at the Bottom of the Well: The Permanence of Racism_ 89 (Basic Books, 1992). See also Derrick Bell, _Xerces and the Affirmative Action Mystique (A Tribute to Professor Arthur S. Miller)_ , 57 Geo Wash L Rev 1595 (1989); Derrick Bell, _Racial Realism_, 24 Conn L Rev 363 (1992). Racial Realism, like legal realism, rejects judicial formalism—a formalism that exclusively focuses on traditional anti-discrimination measures as the means of attaining racial justice. Racial Realism argues that this quest for racial equality will be continually frustrated by forms of racial subordination that adapt to each new prohibition on discrimination (pp 98-101). The tenets of Racial Realism are as follows: there has been “no linear progress in civil rights,” but
tion of Booker T. Washington, who urged Blacks during a period of virulent racist oppression to abandon any challenge to the white power structure and cede political rights for Blacks? Is Bell advocating Black separatism as a curative for white supremacy? What is all this talk of emigration to a Black nation? Is he saying all whites are bad? And why is he writing more of these far-fetched stories instead of good, solid law review articles? Who, pray tell, is he talking to? Has he despaired, given up, lost hope?

After reading Derrick Bell’s latest collection of legal chronicles—a form he mastered and influenced by building on the hypothetical question as a favorite pedagogical device of the Socratic method—I imagine that these questions and many others are provoked by Bell’s work. But I am less worried by Bell’s book than many, for as a student of Bellsian jurisprudence, I find this new work tremendously hopeful, not despairing—potentially regenerative, not dark. This is so even though the book offers no clear prescriptions. Nor does it temper its stark portrayal of current pathologies of racial subordination in which whites, even if poor, are hypnotically entranced with a sense of superiority, secured by gazing down on Blacks as the subordinated other (dedication page)—an aspect of what Bell earlier identified as a property interest in whiteness. Rather, I locate the transformative potential of the book in Bell’s own journey from a place of determined referents and fixed positions into a world of dialectics, of contradictions, of the same thing that makes you laugh and makes you cry, of blues people living on the razor’s edge of despair and affirmation.

This sensibility—of joy and pain, light and dark, experienced not sequentially but simultaneously in each note, each phrase—is central to blues. Gayl Jones’s review of Sherley Anne Williams’s

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5 This theme is explored in the chapter entitled “The Afrolantica Awakening” (pp 32-46).


poem about legendary blues singer, Bessie Smith, notes that the power of the poem lies in its uses and expansions of a blues tradition to create a "Multiple-Voiced Blues," a "poetic biography and collective blues dialogue containing fragments of experience (event and speech), abrupt changes (thematic and structural), shifts in perspective (first to third), hesitations, repetitions, worrying the line." At its best, *Faces at the Bottom of the Well* similarly speaks of light and dark in multiple voices, filtering experiences of both a personal and collective nature, sharply shifting in perspective, hesitating, repeating and "worrying the line."

In this book, even more directly than in *And We Are Not Saved*, Bell has put his own story on trial in an effort to open terrain, to extend the discourse beyond the base assumptions and precepts of the civil rights struggle. He is still searching for the road to freedom, but here Bell probes alternative paths and even, in some instances (albeit implicitly), roads not taken. This book is Bell in dialogue with the analytical system of which he himself was a product and one of its best exemplars. In a sense it is both an internal and external discourse—Bell in conversation with the white power structure, Bell in conversation with the Black community, particularly its talented tenth, and Bell in conversation with himself. His own intellectual landscape has become the subject matter of his inquiry and a site of struggle. And yet the tale has

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* Derrick Bell, Jr., *And We Are Not Saved: The Elusive Quest for Racial Justice* (Basic Books, 1987).
* In an encounter related in the chapter entitled "Divining a Racial Realism Theory," Bell is asked by the character Erika Weschler, "you're old enough to be one of those civil-rights-lawyer types who believe it's enough to rely on law to secure rights for your people. Am I right?" He answers, "that's what I was—once. For years I believed law was the answer, and I still teach law, including civil rights law. Now, though, I'm convinced that racism is a permanent part of the American landscape. The problem is that as soon as I express the view that racism cannot be vanquished by the enactment and vigorous enforcement of strong civil rights laws, most people conclude that I have given up, surrendered, or, worse, sold out" (p 92).
* The talented tenth, as described by W.E.B. Dubois, refers to the "exceptional" sector of the race, those who have education and training denied to the majority and must therefore assume social leadership. See W.E.B. DuBois, *The Talented Tenth*, in W.E.B. DuBois, *Writings* 842-61 (Library of America, 1986). Bell also refers to the idea of the talented tenth in his parable entitled "A Law Professor's Protest" where Harvard University's president urges the adoption of the "Du Bois Talented Tenth black faculty recruitment and hiring program" (p 132).
more than individual significance, for through Bell’s exploration of his dreams and nightmares, we wander through familiar landscapes and experience recognition at many turns. In his laying open of himself, we are put in touch with ourselves. In this way the book is both intensely personal and yet is communal to the core.

Bell’s use of shifting perspective and self as subject of interrogation evokes the blues form which deploys the highly individual voice of the artist, as commentator and participant in shared history and present condition, to connect with, mirror, affirm, and transform the collective as an act of both individual and community self-definition. Blues form rests “on the particularized, individual experience rooted in a common reality . . .,” in which “[t]he classic song [] itself internalizes and echoes, through the statement/response pattern, the thematic relationship between individual and group experience which is implied in these evocations of social and political reality.”

It affirms that “[s]elf-definition is defining self in recognized kinship with others.”

This book centers around the possibility of change—the changing self, changing one’s mind, changing our mind, about responding to changed and changing conditions in the material world with new or re-examined theories and objectives in the quest for freedom and liberation. In dismissing myths and false hopes and in grappling for ideological ground upon which to root struggle, Bell illustrates through critiques of positions to which he himself subscribed that rigorous self-examination and criticism at both the personal and collective level is the way, indeed the only way, to true liberatory struggle. This message, illustrated by Bell’s dialogue with Geneva Crenshaw and other new characters, is particularly pertinent to Blacks but is equally relevant to all who reject the profound injustices inherent in the current order.

This book does not offer answers. Indeed, in some of its omissions or glancing treatment of certain issues, it may only provoke more questions. One such question arises from Bell’s reference to the criticism levelled against some blackwomen writers for portraying “the Black man” in a negative light: in his chapter on “The

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14 Gayl Jones, Liberating Voices at 39 (cited in note 9).
15 In And We Are Not Saved, Bell introduces a heroine, Geneva Crenshaw, whose dialogues with Bell provide the mechanism through which a range of racial dilemmas and issues are explored. Geneva is a striking, proud, blackwoman lawyer who constantly challenges Bell’s ideas about achieving racial justice through civil rights law by relating a series of allegorical chronicles (pp 13-25).
Rules of Racial Standing,” he argues that Blacks who criticize other Blacks are granted enhanced standing and legitimacy on racial issues (pp 114-17). While he rejects the equation of blackwomen’s critiques with Black neo-conservative positions, acknowledging that the truth of blackwomen’s writing is “evident,” he argues that blackwomen need to “make clearer the point that much of this ill-treatment is the result of black male frustration with having constantly to cope with the barriers of racism” (p 117).

But this assessment fails to acknowledge the extent to which the truth told by blackwomen about dysfunction in Black male-female social relations is not merely the product of racism, but of racial patriarchy and the intersections and interface between race and gender oppression. Thus, a more nuanced view would expose the combined role of racial and gender subordination and the particularly corrosive effect of patriarchy in the Black community that constrains appropriate gender roles and distorts gender relations. Under definitions of manhood confined to the ability to secure and guarantee economic well-being for self and family, Black men are forever condemned to something less than “true manhood.” Nor can blackwomen be “true” (private sphere) women, fulfilling images of female dependency, since the economic, political and social system is grounded on Black men and women’s marginalization, denying well-being and security to all. The problem then is not what blackwomen are saying, but what race, gender and class oppression are doing to all of us.

Another unanswered question is what Bell intend in his argument that Racial Realism calls for “more discussion on economics” (p 98). This is certainly a central part of any viable analysis, but one hungers for more of Bell’s own perspective and critique of cap-

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16 See Kimberlé Crenshaw, Whose Story is It Anyway: Feminist and Antiracist Appropriations of Anita Hill, in Toni Morrison, ed, Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality 404 (Pantheon, 1992) (describing intersectionality as expressive of the reality of blackwomen who are uniquely situated within gender and racial hierarchies of power so that “the particular location of black women . . . is . . . in some senses unassimilable into the discursive paradigms of gender and race domination”).

17 Because of the combined and reinforcing patterns of gender, race and class hierarchies, this requires, as Mari Matsuda suggests, that we learn to “ask the other question”: when examining racism we must ask where is the patriarchy in this; when examining patriarchy, we must ask where is the racism in this. See Mari Matsuda, Beyond Race Alone: The Intersection of All Forms of Subordination, Plenary Address at the Wisconsin Conference on Critical Race Theory, University of Wisconsin at Madison (Nov 10, 1990).
italism as an economic system oppressive of Black people as well as his view of such prescriptions as "black capitalism."  

Bell does not provide solutions as much as he points toward a method of interrogation. Bell embraces seeming contradictions, raises dilemmas, initiating a dialectical mode of inquiry. This derives from his reading of Frantz Fanon, who argued, according to Bell, "two seemingly irreconcilable points. . . .[the first] that racist structures [are] permanently embedded in the psychology, economy, society and culture of the modern world. . . .[b]ut, on the other hand, . . . urged people of color to resist psychologically the inheritance they had come into" (px).  

Similarly, Bell exposes a most perplexing paradox: although elimination of existing deprivation and subordination of Blacks and many whites will require a working alliance between them, the possibility of such cooperation is nullified because Black subordination and white self-esteem have been inexorably linked. Thus, "even the poorest whites" are "mesmerized into maintaining their unspoken commitment to keeping us where we are, at whatever cost to them or to us" (dedication page). Immediately, Bell adopts both an internal and external perspective: in describing Blacks as the "faces at the bottom of the well," Bell articulates the external view of white dominance; yet, in describing this reality, the problem is posed internally for Black people, as this illusion of interclass white unity "keeps us where we are at whatever cost to them or us" (dedication page, emphasis added). This double-voiced, multiple view continues throughout, sometimes within the

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18 My own view is that black capitalism is a non-starter unless one's objectives are to duplicate neo-colonial models. For a critique of black capitalism as a form of domestic neo-colonialism, see Robert L. Allen, *Black Awakening in Capitalist America* 17-20, 211-45 (Anchor Books, 1970) The market has never been neutral, beginning with the first day that a human being was sold as property.  

19 Fanon arguably goes further to argue that resistance by the colonized, including violent struggle, is not only inevitable but necessary to restore humanity and eliminate cultural oppression and racial subordination. See Frantz Fanon, *The Wretched of the Earth* (Grove, Farrington trans, 1963).  

20 Bell could also have identified the legitimate fears of Blacks of such alliances. Bernice Johnson Reagon, scholar of African-American music, civil rights worker and founder of the blackwomen's a cappella singing group, Sweet Honey in the Rock, argues that by nature, coalition work is very risky: "You don't go into coalition because you just like it. The only reason you would consider trying to team up with somebody who could possibly kill you, is because that's the only way you can figure you can stay alive." Bernice Johnson Reagon, *Coalition Politics: Turning the Century* in Margaret L. Anderson and Patricia Hill Collins, eds, *Race, Class, and Gender: An Anthology* 503, 504 (Wadsworth, 1992).
same parable, sometimes separately. Indeed, the shifts between internal and external perspective often occur without warning (pp 94-95).

The paradox produces many distortions including "racial schizophrenia," under which whites collectively embrace the Michaels (Jackson and Jordan) as cultural icons, but viciously resist the integration of an all white neighborhood by a solitary Black family, reject Black testimony on racism as unreliable, and embrace a set of neutral norms which reinforce and reproduce race and class privilege under the guise of equal opportunity (p 6). This underscores Bell's observation that prior assumptions of an oppositional relationship between the theory and practice of liberal democracy and racism are erroneous. Indeed, he argues, racism is not a temporary aberration of liberal democracy in the United States, but is its constant and comfortable companion in a society where Blacks as a subordinated group provide a societal glue, a stabilizing force, the other as object of the gaze of the skin-privileged. Thus, "civil rights gains are temporary and setbacks inevitable" (p 10).

The claim for rights under law within the existing constitutional order was at the heart of the civil rights movement, which in many ways, significantly positioned its challenge to power in the legal arena. The goal of this aspect of the struggle was that of racial equality achieved through the creation of a broad-based movement that pressured the system to secure legal commitments to anti-discrimination principles and vigilant enforcement of laws. But Bell asserts that the continued faith in this path is no more than a "comforting" illusion that overlooks the permanence of ra-

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21 Compare, for example, the usage of pronouns and shifting perspective revealed in the following statements by Bell through Jesse B. Semple: "the Man been handing us a bunch of bogus freedom checks he never intended to honor . . . [R]egardless of how great the need is, he only gives you when it will do him the most good!" (p 19, emphasis in original).

22 Compare, for example, the personal voice deployed in Chapter 1, "Racial Symbols: A United Legacy," with the omniscient point of view used in Chapters 2 and 3, "The Afro-Atlantic Awakening" and "The Racial Preference Licensing Act."

23 Although from a different analytical perspective than Bell, Chief Justice Rehnquist, as a Supreme Court clerk, seemed to sound similar insights about the contingent and provisional nature of rights won by minorities. In a memo to Justice Jackson on Brown v Board of Education, rejecting any constitutional imperative to overrule Plessy v Ferguson, Rehnquist then said: "To the argument made by Thurgood, not John, Marshall that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the rights of the minority are." William H. Rehnquist's Memorandum to Justice Robert Jackson on Brown v Board of Education, reproduced in David M. O'Brien, 2 Constitutional Law and Politics: Civil Rights and Civil Liberties 1311 (Norton, 1991).
cism, as patterns of white dominance adapt to and subvert even hard won victories in the quest for justice (pp 12-13). In the world as presently known, within the context of existing institutional structures (political, social, and economic)—if this is the America, the nation to which Bell alludes—then his observation is supported by the weight of history which counsels against any other conclusion. This America of white national identity⁴ has never allowed Blacks a sense of place. If the nation as presently constructed is the frame of reference, then the future holds small comfort. What then is to be done?

In large measure, that is the journey, the inquiry Bell undertakes. He begins with his encounter with Jesse B. Semple, a renegade character from Langston Hughes’ classic collection, The Best of Simple. Semple, a limousine driver hired to transport Bell between speaking engagements, dismisses most civil rights gains as symbolic and non-substantive.⁶ When Bell asks, “Are you suggesting that until white folks get smart, black folks will never be free?” Semple responds, “I don’t ever see white people getting smart about race” (p 28). The dialogue is highly nuanced: what is not said is as important as what is said. Semple neither affirms nor denies Bell’s vision of the necessary conditions for change—“white folks getting smart about race.” Instead, Semple insists that the struggle be grounded in reality, confronting rather than evading the fact that the law of probabilities mitigates against resting hope on the rising racial awareness and consciousness of whites.

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⁴ In the United States, American national identity has been constructed as white. In Toni Morrison’s eloquent essay on the unacknowledged Africanist presence in the national literature she argues:

It is no accident and no mistake that immigrant populations (and much immigrant literature) understood their “Americanness” as an opposition to the resident black population. Race, in fact, now functions as a metaphor . . . necessary to the construction of Americanness . . . . Deep within the word “American” is its association with race. To identify someone as a South African is to say very little; we need to the adjective “white” or “black” or “colored” to make our meaning clear. In this country, it is quite the reverse. American means white, and Africanist people struggle to make the term applicable to themselves with ethnicity and hyphen after hyphen after hyphen.


⁵ Langston Hughes, The Best of Simple (Hill and Wang, 1961); Bell, “Racial Symbols: A Limited Legacy” (pp 15-31).

⁶ Semple is even unimpressed by the election of Black officials as a sign of real change as they are often hamstrung by pre-existing patterns of neglect and decay, able to make only limited and sometimes ineffective gestures toward alleviating the structural causes of Black disadvantage (p 23).
At the same time, however, Semple declines to embrace the conclusion that Blacks will never be free. He affirms the necessity of struggle even in the face of overwhelming odds. Yet, although it is a philosophy that keeps him going, Semple aspires to more saying, "sometimes... [I want] to keep going right on out of this racist land," evoking a deeply resonant longing for self-determined place (p 29). This provides the entree for Bell's examination of Black aspirations of emigration to a homeland—here, allegorically, Afrolantica, the Black promised land rising from the sea.

When Afrolantica emerges from the water, it becomes the occasion for Bell to review the historical debate within the Black community about emigration. He additionally exposes both white resistance to (in the campaign against Marcus Garvey) and promotion of (in the views of Abraham Lincoln) resettlement of Blacks as a solution to the country's racial problems (pp 37-41). Bell's allegory is less concerned with the destination than with the journey itself, for even as Afrolantica sinks into the sea as the first Black settlers approach, Blacks, including even those who remained behind, realize that the collective effort that enabled them to undertake the journey in the face of fierce resistance was itself the significant prize. The "Afrolantica Awakening [was] a liberation—not of place, but of mind" (p 46).

Bell's peregrination, however, does not allow him to rest on this sweet note. By the time he considers the cynical implementation of the Racial Preference Licensing Act, which substitutes for enforcement of antidiscrimination laws a license which allows employers and businesses to discriminate for a fee, the situation is much more complex, indeed, cacophonous. It is compounded at each turn: Bell encounters a representative of White Citizens for Black Survival, a group of whites in accord with the tenets of Racial Realism who are preparing themselves as sources of refuge and armed protection in the likely event of an all-out assault on

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27 Semple relies on Toni Morrison's novel, Beloved, to state his view (p 29). In the novel, the main character, Denver, who has been subjected to the utmost terror inflicted by whites, is afraid to leave her house and has the following imaginary conversation with her grandmother:

[Denver:] But you said there was no defense [against whites] . . . .

[Grandmother:] There ain't.

[Denver:] Then what do I do?

[Grandmother:] Know it and go on out the yard. Go on.

Toni Morrison, Beloved 244 (Knopf, 1987).

28 "The Afrolantic Awakening" (pp 32-46).

29 "The Racial Preference Licensing Act" (pp 47-64).
Blacks; he then confronts the iron cage created by the Rules of Racial Standing, by which Blacks as those most affected by racial subordination are disqualified from standing or credibility on race-related issues.

The final discordant, bleak chord is sounded in the tale of "The Space Traders." Here, Blacks are faced not with the choice of emigrating, but are "emigrated" against their will. In fact, they are sold to space beings who come to the country bearing treasures: "gold, to bail out the almost bankrupt federal, state, and local governments; special chemicals capable of unpolluting the environment . . . and a totally safe nuclear engine and fuel to relieve the nation's all-but-depleted supply of fossil fuel" (pp 159-60). Despite well-organized opposition that includes even a prominent Black neo-conservative ally of the President, the white majority approves the trade through a constitutional amendment. The exchange is ultimately implemented on the holiday commemorating Martin Luther King's birthday when Blacks are taken in chains onto the waiting alien ships (p 194).

And so, again, what is to be done? What is Bell saying? If this is the place in which we find ourselves, is there any way forward?

Bell renews his search where our story in this country begins—with slavery—a central, defining experience in the formation of a people, and asks how did the slaves resist even in the face of the most brutal subjugation and overwhelming odds? (p 195). He remembers: "Knowing that there was no escape, no way out, the slaves, nonetheless continued to engage themselves. To carve out a humanity. To defy the murder of selfhood. Their lives were brutally shackled, certainly, but not without meaning despite being imprisoned" (p 197, emphasis in original). This is the origin of the tradition of making a way out of no way, a tradition we are called upon to pick up and carry forward in the present. The full implications of what is required if reform is doomed to fail remain unstated in Bell's work. He advances an argument of struggle for its own sake that lacks the power of his earlier analysis. Yet, curiously, he sets forward a historical example that belies any exhortation to simply struggle with the knowledge that failure is certain.

For while the slaves faced overbearing odds and dehumanization, they did not struggle to reform slavery, but to abolish it, to over-

30 "Divining a Theory of Racial Realism" (pp 89-108).
32 Although "[m]any whites had, to their credit, been working day and night to defeat the amendment . . . the outcome was never really in doubt" (p 192).
turn it. Their success was measured not by their individual fate, but by the hunger for liberation left in their children. Perhaps these are questions which can only be answered through organized struggle and as such orient us as active agents in the task of fundamental social transformation. Bell’s journey suggests that it will require going outside the existing parameters of this constitutional frame within which only transitory gains are possible. In order to locate the word “Afrolantica” within the word “America,” we will have to challenge the current concept of America, forge a new meaning of nation, and construct a new, multi-voiced national identity. We will have to embrace the fact that, as Lerone Bennett has stated:

A nation is a choice: it chooses itself at fateful forks in the road by turning left or right, by giving up something or taking something—and in the giving up and the taking, in the deciding and not deciding, the nation becomes. . . . America, or to be more precise, the men who spoke in the name of America, decided that it was going to be a white place defined negatively by the blood and the bodies of the reds and the blacks . . . . [I]t didn’t have to happen that way. There was another road— but that road wasn’t taken.”

This is where we find Bell, looking back and forward to the roads laid down and the paths not taken. We recognize this journey as our own, with all of its pains, joys, disappointments, achievements, narratives, visions, betrayals, and overcomings. Here, between rocks and hard places, are blues songs, blues people. Here are Bell’s Blues.

22 One of the major figures of the South African anti-apartheid movement, O.R. Tambo, articulated this point clearly in describing the nature of the South African struggle:

The South African Constitution excludes the blacks. They are outside the constitution. There is nothing they can do about the decisions, the policies of the South African regime. They don’t belong. They are fighting from outside this white state. This is not a civil rights struggle at all. If we were part of the constitution, if we were citizens like any other, then of course there would be rights to fight for, as there are rights to fight for in the United States. But in South Africa the position is different. Our struggle is basically, essentially, fundamentally, a national liberation struggle.


24 “[S]omewhere in the word America . . . there is as well the word Afrolantica” (p 46).

25 Lerone Bennett, Jr., The Road Not Taken, Ebony Magazine 70 (Aug 1970).