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# THE MEANING OF BLACKS' FIDELITY TO THE CONSTITUTION

*Dorothy E. Roberts**

## INTRODUCTION

WHAT fidelity to the Constitution does to us depends on our experience of constitutional evil. In *Agreements with Hell and Other Objects of Our Faith*,[1] Professor Balkin observes that "[w]ithin our legal culture the idea of fidelity to the Constitution is seen as pretty much an unquestioned good."[2] For many Americans, however, constitutional fidelity is not at all an indisputable precondition. In the case of black Americans, it is much more appropriate to begin with the question, why *should* they be faithful to the Constitution? How could black people possibly pledge allegiance to a Constitution that defined them as less than human, was structured to enslave them, and has been interpreted time and time again to keep them subjugated to whites? In light of all the indignities showered upon blacks under color of the Constitution, I would think the presumption would be that blacks should repudiate the document and all the injustice for which it has stood.

Where Balkin ends up—unsettling the notion of constitutional faith as an unquestioned virtue—is precisely where black Americans begin. Having been treated as outsiders all along, blacks confront the Constitution with an unavoidable option of accepting or rejecting it. Surprisingly, many prominent black thinkers—even the most radical ones—not only have failed to reject the Constitution but have made it a highlight of their advocacy. Black activists from Martin Luther King, Jr. to the Black Panthers have framed their demands in terms of constitutional rights. While King peacefully insisted that segregation violated the Constitution, Huey Newton claimed his constitutional right to bear arms. This Response explores the meaning of blacks' astonishing fidelity to the Constitution.

## I. THE PURPOSE OF CONSTITUTIONAL FIDELITY

In each historical period, black Americans have been faithful to a Constitution that looked very different from the version espoused by contemporary courts. It is a Constitution that abolished slavery prior to the Civil War, that provided freed slaves with forty acres and a mule during Reconstruction, that invalidated separate-but-equal facil-

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1. J.M. Balkin, *Agreements with Hell and Other Objects of Our Faith*, 65 Fordham L. Rev. 1703 (1997).

2. *Id.* at 1704.

ities prior to *Brown v. Board of Education*,[3] and that continues to mandate a radical dismantling of discriminatory structures despite the Supreme Court's adherence to the doctrine of color blindness. Surely black people are the main practitioners of what Balkin calls "Ideal constitutionalism," which "solves the problem of fidelity to an unjust Constitution by conforming the object of interpretation to our sense of what is just."[4] No self-respecting person could commit to a covenant that denies her humanity. But why have most blacks not rejected the Constitution altogether? I think the answer is that fidelity to the Constitution offers practical advantages to black people's struggle for full citizenship.

The goal of equal citizenship is the heart of black Americans' fidelity to the Constitution. Black people's first commitment is to establishing their inclusion in the American polity, and fidelity to the Constitution is a way of achieving that objective. Under this instrumental approach, equal citizenship does not arise from the Constitution; it precedes it. The Constitution is not the standard of justice we should faithfully uphold; equal citizenship is. We know how to be just not by immersing ourselves in the Constitution's language but by imagining what it would mean for black people to be treated like human beings. The purpose of constitutional fidelity is to insist that constitutional interpretations abide by this higher standard of justice. In short, fidelity is a means, not an end, and it is a means to an end that is more fundamental than the Constitution.[5]

Blacks, then, are not faithful to the Constitution because the Constitution deserves their allegiance, for it deserves their cynicism, if not their contempt. They are faithful to the Constitution because black people deserve to be included in the Constitution's protections and promises. Blacks' fidelity to the Constitution is not a duty, it is a demand—a demand to be counted as full members of the political community. The black nationalist Malcolm X refused to petition whites for the recognition of blacks' civil rights, relying instead on the more fundamental notion of human rights. As Malcolm X explained it: "Human rights are something you were born with. Human rights are your God-given rights. Human rights are the rights that are recognized by all nations of this earth."[6] At the same time, Malcolm X was the consummate pragmatist, advocating that blacks attempt to win their freedom by any means necessary. When asked about his attitude

3. 347 U.S. 483 (1954).

4. Balkin, *supra* note 1, at 1709.

5. *Cf.* Richard Delgado, *Rodrigo's Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. Pa. L. Rev. 379, 388 (1994) (advocating "legal instrumentalism" that treats law as "a tool that is useful for certain purposes and at certain times").

6. Malcolm X, *The Ballot or the Bullet*, Speech at Cory Methodist Church (Apr. 3, 1964), *in* Malcolm X Speaks 23, 35 (George Breitman ed., 1965).

toward civil rights organizations, he responded: "I'm for whatever gets results."[7]

The source of blacks' fidelity to the Constitution is not to be found in the Constitution itself. It comes from the faith that the Constitution will one day be interpreted to include blacks as full citizens. This faith derives from the belief in oppressed people's determination to be free. It is the faith embodied in the civil rights movement's conviction that "we shall overcome." Slave songs vowed that victory unrealized on earth would surely be achieved in heaven.

This instrumental fidelity to the Constitution is the reason for black critical race scholars' disagreement with white critical legal studies scholars over the significance of rights. Scholars such as Kimberlé Crenshaw, Anthony Cook, and Patricia Williams have argued that the critics' rejection of rights discounts the importance of rights to blacks' struggle for equal citizenship.[8] Critical legal studies theorists rejected rights discourse in part because of its stereotyping of human experience. But Patricia Williams argued that this is a lesser historical evil than having been ignored altogether: "The black experience of anonymity, the estrangement of being without a name, has been one of living in the oblivion of society's inverse, beyond the dimension of any consideration at all."[9] By asserting rights, dispossessed people rebel against this social degradation and demand recognition as full members of society. Williams explains: "For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being."[10] It is not blacks' assertion of their constitutional rights but America's lack of commitment to these rights that has preserved the oppressive social order.

This instrumental fidelity to the Constitution is also subject to criticism from the opposite direction. Scholars dedicated to constitutional interpretation might contend that an instrumental fidelity is not really fidelity at all; it merely exploits constitutional rhetoric for an ulterior

7. Interview with Malcolm X (Jan. 28, 1965), *in* Malcolm X Speaks, *supra* note 6, at 222, 222.

8. *See* Patricia J. Williams, The Alchemy of Race and Rights 148-61 (1991); Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 Harv. L. Rev. 985, 992 (1990); Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331, 1356-66 (1988).

9. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 Harv. C.R.-C.L. L. Rev. 401, 414 (1987).

10. Williams, *supra* note 8, at 153. Kimberlé Crenshaw similarly contends that rights critics "disregard the transformative potential that liberalism offers. Although liberal legal ideology may indeed function to mystify, it remains receptive to some aspirations that are central to Black demands, and may also perform an important function in combating the experience of being excluded and oppressed." Crenshaw, *supra* note 8, at 1357.

purpose like a suitor's false profession of love. A second criticism is that equal citizenship is too limited a focus for an approach to the entire Constitution. Although it may help us interpret the Equal Protection Clause, for example, it is useless in figuring the meaning of, say, the Second Amendment. Finally, blacks taking an instrumental approach might be accused of an irrational obsession with race. Race is important, but American politics turns on other important issues as well. All of these objections crumble in light of the centrality of black citizenship to the Constitution's meaning.

Whites' persistent mission of denying blacks the rights of citizenship has stunted official interpretations of the Constitution's provisions, even those not directly related to racial equality. Numerous constitutional provisions have been interpreted or deployed to deny black citizenship. Of course, the Constitution's original accommodation of slavery most blatantly accomplished this end. The Constitution's guarantees of liberty existed alongside its protection of slavery for nearly a century. But the addition of the Reconstruction Amendments that formally acknowledged black citizenship did not stop an official regime of segregation, disenfranchisement, and terror that practically reduced blacks to their former status as slaves.[11] The Supreme Court interpreted the Commerce Clause, as well as the Equal Protection Clause, to allow states to segregate public accommodations. More recently, the Court adopted a discriminatory intent rule because of its fear of the remedies a discriminatory impact rule would entail, or, as Justice Brennan put it, the Court's "fear of too much justice."[12] Justice Harlan had such confidence in the Constitution's power to preserve white supremacy that he predicted in his dissent in *Plessy v. Ferguson*[13] that the white race would remain dominant for all time if it "holds fast to the principles of constitutional liberty."[14]

Privileged racial status gives whites a powerful incentive to construe other constitutional provisions in a way that leaves the existing social order intact. Many white Americans view a broad range of reforms as contrary to their self-interest because they perceive black people's social position to be in opposition to their own. Under American racist ideology, constitutional interpretations that would benefit blacks are antithetical to whites' interests because blacks' social advancement diminishes white superiority. Derrick Bell has argued that whites in America—even those who lack wealth and power—believe that they

11. Eric Foner, Nothing but Freedom: Emancipation and Its Legacy 48-59 (1983); C. Vann Woodward, The Strange Career of Jim Crow 23-25 (3d ed. 1974).

12. McCleskey v. Kemp, 481 U.S. 279, 339 (1987) (Brennan, J., dissenting); *see* Randall L. Kennedy, McCleskey v. Kemp: *Race, Capital Punishment, and the Supreme Court*, 101 Harv. L. Rev. 1388, 1413-14 (1988).

13. 163 U.S. 537 (1896).

14. *Id.* at 559 (Harlan, J., dissenting).

gain from continued economic disparities that leave blacks at the bottom.[15] Thus, racism helps to explain the prevailing understanding of the Constitution that disregards poverty.

Black activists have claimed that their instrumental approach is more, not less, faithful to the Constitution. As he sat in a Birmingham jail, Martin Luther King, Jr. predicted:

> One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo-Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.[16]

We cannot know what the Constitution means until the precondition of black citizenship is attained. Without this reason for constitutional fidelity, every attempt at constitutional interpretation makes a mockery of the ideals of equality, liberty, and democracy.

## II. Racial Disparities in Cognitive Dissonance

This instrumental approach does not shelter blacks from all ill effects of fidelity to an evil Constitution. Balkin is right that "[t]o pledge fidelity to something and simultaneously believe it to be riddled with evil produces serious cognitive dissonance."[17] As in so many aspects of American life, however, there are racial differences in our psychoses. For whites, cognitive dissonance may be a fancy term for guilt. For blacks, it may be a fancy term for despair.

### A. *Marginalizing Injustice*

The chief psychosis that Balkin attributes to constitutional fidelity afflicts white people far more than blacks. Balkin worries that "[o]ur fidelity to the Constitution requires us to believe that it is a basically good and just document, and that it frames the legal system of a basically good and just polity."[18] The worst symptom of this constitutional "idolatry" is the tendency "to see injustices as marginal or exceptional to the political scheme."[19] I think that black folks' experience of oppression makes them pretty much immune to this particular ailment. Being the brunt of the bulk of constitutional evil at least affords what

15. Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism 7-9 (1992) [hereinafter Bell, Faces at the Bottom of the Well]; Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 St. Louis U. L.J. 393, 402 (1990).

16. Letter from Martin Luther King, Jr. to several clergymen (Apr. 16, 1963), *in* Martin Luther King, Jr., Why We Can't Wait 77, 99 (1964).

17. Balkin, *supra* note 1, at 1731.

18. *Id.* at 1729.

19. *Id.* at 1730.

James Baldwin called the American Negro's "great advantage of having never believed in that collection of myths to which white Americans cling."[20] Blacks do not write off injustices as less monumental than slavery; rather they tend to view contemporary racist practices as a perpetuation of slavery's evils—a practice many white people find as annoying as blacks find whites' belief in American virtue.

The psychosis Balkin describes rests in the mind of someone who feels bad about injustice but has no real stake in eradicating it. Her primary interest is in whitewashing the political scheme, perhaps because she has an unconscious wish that some things would remain the way they are. Pretending that injustices are aberrational is one of the techniques white people use to distance themselves from their own involvement, either direct or indirect, in oppression so they can sleep well at night.

The peculiar way of thinking that says "injustices that the ideal Constitution does not and cannot reach cannot be deep and profound ones" also stems from too much devotion to the Constitution itself.[21] Black people cannot afford to think that way. Relinquishing the belief that the ideal Constitution requires equal citizenship is inconceivable. The ideal Constitution *must* reach the deep and profound injustice of denying blacks' equality or it is useless. There would be no point in even embarking on the enterprise of constitutional interpretation. If the Constitution cannot incorporate blacks as full citizens then the game is over. We might as well collect our chips and go home.

### B. *Frederick Douglass's Idealism*

One malady Balkin diagnoses in a black man is delusion—the misguided faith in an ideal Constitution that does not really exist. Balkin criticizes Frederick Douglass for being "off the wall" because Douglass claimed that the Constitution prohibited slavery at a time when no judge even questioned slavery's constitutional status.[22] Douglass is the type of idealist who "offer[s] theories of interpretation that produce a 'Shadow Constitution' that remedies the positive law of the Constitution of its existing defects."[23] Certainly Douglass was well aware of the effects of the positive law of slavery—he himself grew up in chains. He was no starry-eyed romantic. He came to his position on the Constitution after years of careful consideration and political advocacy. Douglass initially adhered to the Garrisonian rejection of the Constitution as a slaveholding document. In 1849, he wrote:

20. James Baldwin, The Fire Next Time 115 (1963).
21. Balkin, *supra* note 1, at 1732.
22. *Id.* at 1709-10.
23. *Id.* at 1710.

> [T]he original intent and meaning of the Constitution (the one given to it by the men who framed it, those who adopted it, and the one given to it by the Supreme Court of the United States) makes it a pro-slavery instrument [which] I cannot bring myself to vote under, or swear to support.[24]

Douglass argued the Garrisonian position in a debate in Syracuse, New York, in 1850, proclaiming that the Framers "attempted to unite Liberty in holy wedlock with the dead body of Slavery, and the whole was tainted. Let this unholy, unrighteous union be dissolved."[25]

What led Douglass to reverse his stance on the Constitution? In his autobiography, Douglass describes the change in his views after he left New England for Rochester, New York, to publish his paper, The North Star; lecture against slavery; and conceal fugitive slaves in the underground railroad:

> By such a course of thought and reading I was conducted to the conclusion that the Constitution of the United States—inaugurated to "form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty"—could not well have been designed at the same time to maintain and perpetuate a system of rapine and murder like slavery, especially as not one word can be found in the Constitution to authorize such a belief.[26]

Douglass stuck to his position that America had only two options: either it could abide by a Constitution that recognized blacks' equal citizenship, and therefore prohibited slavery, or the Union would have to be dissolved. It seems Douglass decided it made far more sense to interpret the Constitution to incorporate blacks than to tear the country asunder. His conversion was not a conservative concession to slaveholders but a radical reinterpretation of the text that recognized black humanity. He did not select out the portions of the Constitution he admired and ignore its less palatable parts. Rather, he applied the well-accepted method of interpreting a document's parts in light of the whole: "[I]f the declared purposes of an instrument are to govern the meaning of all of its parts and details, as they clearly should," he argued, "the Constitution of our country is our warrant for the abolition of slavery in every State of the Union."[27]

Compare Douglass's constitutional faith to Justice Story's. According to Balkin, Story followed a strategy of preserving the Union by

24. Letter from Frederick Douglass to C.H. Chase, *in* The North Star, Feb. 9, 1849, *reprinted in* 1 The Life and Writings of Frederick Douglass: Early Years, 1817-1849, at 352, 353 (Philip S. Foner ed., 1950).

25. 2 The Frederick Douglass Papers, 1847-54, at 223 (John W. Blassingame ed., 1982).

26. Frederick Douglass, The Life and Times of Frederick Douglass 261-62 (MacMillan Co. 1962) (1892).

27. *Id.* at 262.

upholding the right of slave owners to regain their slaves.[28] Because of his faith in the Constitution itself, Story believed that the conflict between the Constitution and social justice would be resolved eventually. Douglass, on the other hand, had faith in blacks' ultimate liberation and followed a strategy of fidelity to constitutional ideals to achieve this end. Douglass's fidelity required denying whites the right to hold slaves altogether under the Constitution.

I do not see Douglass's constitutional idealism as skirting the problem of constitutional evil or "assuaging the cognitive dissonance produced by fidelity to the Constitution in a world of injustice."[29] It was a way of exposing the nation's sins and demanding the nation's repentance. Black activists simultaneously have denounced constitutional evil while relying on constitutional ideals. Indeed, the very point of insisting on the Constitution's ideals is to shine light on the evil practices inflicted in the name of the Constitution. Blacks have criticized racial injustice not by hiding their eyes to constitutional evil, but by showing how that evil diverges from the just results of a properly interpreted Constitution. Douglass taunted the Framers when he said "they wrote of Liberty in the Declaration of Independence with one hand, and with the other clutched their brother by the throat!"[30] W.E.B. Du Bois mocked Americans' false patriotism when he described white spectators' delight over the burning body of a black prisoner lynched in Coatesville, Pennsylvania, in 1911: "'Oh, say, can you see by the dawn's early light' that soap box of blackened bones and dust."[31]

The height of blacks' cynical legalism was the Black Panthers' practice of surrounding police while they arrested a black man, demanding, law books in hand, that the "pigs" abide by the letter of the law.[32] The Black Panthers, as well as Malcolm X, relied on the Second Amendment to support black people's right to arm themselves against racist violence.[33] This is the paradox of blacks' fidelity to the Constitution: Blacks have no reason to have faith in the Constitution that was designed to exclude them; yet they have remained faithful to the Constitution in the struggle for citizenship by relentlessly demanding that its interpretation live up to its highest principles and follow its strictest requirements.

It is not black people's faith in the ideal of equality that causes cognitive dissonance. Indeed, black people's pathologies have been caused by the lack of idealism, by trying to be an American within the

28. Balkin, *supra* note 1, at 1708.
29. *Id.* at 1731.
30. 2 The Frederick Douglass Papers, *supra* note 25, at 223.
31. W.E.B. Du Bois, Triumph, *in* The Oxford W.E.B. Du Bois Reader 376, 377 (1996).
32. David R. Papke, *The Black Panther Party's Narratives of Resistance*, 18 Vt. L. Rev. 645, 675 (1994).
33. *Id.*; Malcolm X Speaks, *supra* note 6, at 43.

current order. Many blacks suffered the humiliation of passing as white in order to receive the benefits of citizenship. Cheryl Harris explains that her Negro grandmother presented herself as a white woman when she sought employment at a major retail store in Chicago in the 1930s because "[b]ecoming white increased the possibility of controlling critical aspects of one's life rather than being the object of others' domination."[34] It is hard to imagine the psychological trauma of not only taking on the identity of someone else, but of someone who holds you in contempt.

Of course, black people must conceal their true selves daily in less conspicuous ways to be eligible for even second-rate citizenship. Du Bois described the schizophrenia that results when a black person tries to fit into the current racist culture: "One ever feels his twoness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder."[35] Du Bois concluded that blacks' wholeness depended on striving to "make it possible for a man to be both a Negro and an American, without being cursed and spit upon by his fellows, without having the doors of Opportunity closed roughly in his face."[36] It is only faith in the eventual victory of their constitutional vision of equal citizenship that allows blacks to maintain any semblance of sanity.

### C. *Derrick Bell's Antidote for Despair*

The fact that blacks typically are not plagued by the type of cognitive dissonance Balkin describes does not mean their fidelity is without psychological cost. A contemporary example of a black person grappling with the trauma of constitutional fidelity is Professor Derrick Bell. Professor Bell's writings, some of the most piercing critiques of constitutional evil of our time, have become increasingly pessimistic about the chances for racial justice in America.[37] Bell points to whites' persistent refusal to abdicate their racial domination while repeatedly sacrificing black people's rights. Despite decades devoted to civil rights protest and litigation based on constitutional fidelity, the economic and political condition of the majority of blacks has worsened. Bell's observations echo Malcolm X's warning thirty years ago that blacks were "wasting [their] time appealing to the moral conscience of a bankrupt man like Uncle Sam."[38] Like Bell, Malcolm X

34. Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707, 1713 (1993).
35. W.E.B. Du Bois, The Souls of Black Folk 3 (Kraus-Thomson Org. Ltd. 1973).
36. *Id.* at 4.
37. For an example of this development, see Derrick Bell, And We Are Not Saved: The Elusive Quest for Racial Justice (1987); Bell, Faces at the Bottom of the Well, *supra* note 15; and Derrick Bell, *Racial Realism*, 24 Conn. L. Rev. 363 (1992) [hereinafter Bell, *Racial Realism*].
38. Malcolm X Speaks, *supra* note 6, at 40.

noted that white Americans would not eliminate the evil of racism because it is evil; rather, "they eliminate it only when it threatens their existence."[39]

Bell draws the conclusion that our commitment to racial equality can only lead to despair. Bell therefore urges the following bleak manifesto:

> Black people will never gain full equality in this country. Even those herculean efforts we hail as successful will produce no more than temporary "peaks of progress," short-lived victories that slide into irrelevance as racial patterns adapt in ways that maintain white dominance. This is a hard-to-accept fact that all history verifies. We must acknowledge it and move on to adopt policies based on what I call: "Racial Realism." This mind-set or philosophy requires us to acknowledge the permanence of our subordinate status.[40]

Bell argues that this realistic stance is the antidote to the psychological weight of despair, freeing blacks to try new racial strategies that are more feasible than fidelity to the Constitution.[41]

How does black people's despair differ from the cognitive dissonance that afflicts white people? As Balkin recognizes, fidelity is a mutual experience; "[t]here is an important connection between fidelity and the existential commitment of trust."[42] Bell's message is that, despite black people's patient faithfulness, America has not reciprocated and never will. Racism makes America fundamentally untrustworthy. There are particularly good reasons for blacks not to have faith in the victory of their ideal Constitution.

If blacks despair, it is not because they were deluded into thinking that white people meant for the Constitution to include them, or that the injustices they experienced were aberrational, or that interpretations of the Constitution alone could overcome racism. Rather, it stems from the realization that the strategy of constitutional fidelity will fail to make blacks full citizens because white supremacy is too powerful a force to vanquish. This despair is not the same thing as finding out that the God we worshipped is actually a demon,[43] for blacks are well aware that American justice has been more wicked than divine. It is more like a prisoner discovering that the route he had painstakingly shoveled out to escape his unjust confinement leads back to the wretched cell he fled. The strategy he had pinned his hopes on is hopelessly futile. It is the tension between blacks' righteous desire to be citizens and the recognition that this may be unattainable in white America.

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39. *Id.*
40. Bell, *Racial Realism*, *supra* note 37, at 373-74 (emphasis omitted).
41. *Id.* at 374.
42. Balkin, *supra* note 1, at 1721.
43. *See id.* at 1725.

Other black scholars have rejected Bell's prescription of racial realism on the ground that it misdiagnosed black people's problem.[44] john powell, for example, argues that Bell erroneously attributes the injury suffered by the black community to its false consciousness about rights rather than the Supreme Court's perpetuation of racial dominance.[45] In powell's view, Bell therefore incorrectly concludes that "it is the false hope for equality, and not racism, that must be vanquished."[46] Black people may suffer from despair, says powell, but it is "a material problem rooted in the structure of racism," rather than "a psychological problem in the minds of black people."[47]

Professor Bell's sober assessment of racism's intransigence counsels against a naive faith in the moral power of the Constitution alone to bring about racial equality. Yet it need not defeat blacks' instrumental fidelity to the Constitution as part of a social movement for equal citizenship. Blacks' constitutional fidelity is not the faith that the Constitution will end racism. The constitutional allegiance of black leaders such as Douglass, Du Bois, and King was grounded in their participation in social struggle for citizenship rights. They could hold fast to a vision of an ideal Constitution despite their awareness of constitutional evil because of their commitment to a liberation movement. As I stated elsewhere, "Blacks must continue to struggle for citizenship—not in America as we know it, but in a nation radically transformed by Blacks' very efforts to achieve social justice."[48] It is that struggle that deserves our utmost fidelity.

44. *See generally Commentary on Racial Realism*, 24 Conn. L. Rev. 497, 497-565 (1992) (compiling the works of various commentators who advocate approaches other than Bell's).

45. john a. powell, *Racial Realism or Racial Despair?*, 24 Conn. L. Rev. 533, 540 (1992).

46. *Id.* at 534.

47. *Id.* at 543.

48. Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 Yale L.J. 1563, 1602 (1996) (book review).