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ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2014.356
<http://lawreview.law.pitt.edu>



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CHALLENGING AUTHORITY

Pat K. Chew*

INTRODUCTION

I take us back in time to 1985. Early that year Derrick Bell resigned his deanship at Oregon Law School in protest of the law school refusing to hire someone who he believed was a highly qualified Asian-American candidate.¹ As it turns out, I was that rejected Asian-American candidate.²

As I reflect on my role in that incident, I think about the back-up singers in the recent film *Twenty Feet From Stardom*.³ These back-up singers were not the star act. They did not yet have their own stage platform; they were, at least figuratively speaking, still finding their voices. Like those back-up singers, I was

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¹ DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTOR 45–46 (1994); *Derrick A. Bell, Jr.*, NATIONAL VISIONARY LEADERSHIP PROJECT, www.visionaryproject.org/bellderrick/ (last visited Aug. 1, 2014); Pat K. Chew, *Asian Americans: The Reticent Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 3–4 (1994).

Derrick and I accurately reported the facts, but ironically, some very respectable sources have reported incorrect facts. To set the record straight, the Harvard Law School website indicated that Derrick resigned in protest of an Asian American woman being denied tenure, when in fact, I was denied an initial offer of appointment. *See, e.g., Derrick Bell (1930–2011)*, HARVARD LAW TODAY (Oct. 6, 2011), www.law.harvard.edu/news/2011/10/10_derrick-bell.html. In addition, the *Washington Post* reported that Derrick resigned his deanship because the school would not hire two Asian American women, when of course, only my hiring decision was at issue. Matt Schudel, *Derrick A. Bell, Legal Scholar Who Developed Theories on Race, Dies at 80*, WASH. POST, Oct. 8, 2011.

I also note the varied perspectives on the incident itself. *See* BELL, *supra*; Chew, *supra*; *Oregon Law Mourns Derrick Bell, Former Dean and Race Scholar*, U. OR. SCH. L. (Oct. 7, 2011), <https://law.uoregon.edu/ol/winter2012/oregon-law-mourns-derrick-bell-former-dean-and-race-scholar/> (“Bell became dean of Oregon Law in 1980. He resigned five years later in relation to hiring practices at the school with which he disagreed.”).

² BELL, *supra* note 1; Chew, *supra* note 1.

³ TWENTY FEET FROM STARDOM (RADiUS-TWC 2013).

not the star act in Oregon. I had no particular platform; I was just beginning to find my professional voice. Though I never asked Derrick why he picked me to be his “back-up singer,” I just assumed I happened to be at that place at that time—a coincidental symbol of a qualified diversity candidate.⁴

In contrast, Derrick was an established star in constitutional law and critical race theory. By 1985, he had been an illustrious civil rights lawyer, the first tenured African-American faculty member of Harvard Law School, and the author of the leading textbook *Race, Racism, and American Law*.⁵

As Derrick predicted, our lives were connected after that Oregon incident. While I always viewed him as a role model and admired him, it was important to me to find my own way. While he was more outspoken, I was more reserved, more reticent.⁶ The Oregon experience and knowing Derrick for the next 25 years, however, has motivated me to think more about what might prompt each of us to confront authority and the consequences of doing so. This essay captures some of my observations.

I begin by providing background information on landmark studies exploring the human tendency to conform to authority. I then turn to the other side of the coin, which is the focus of this essay: why do we sometimes overcome this tendency to conform and instead confront authority? Throughout, I draw from interdisciplinary studies and also from Derrick’s own work.

I. RESEARCH ON CONFORMING TO AUTHORITY

Much has been written about people complying with authority—and the very disturbing, sometimes horrendous, acts that result.⁷ Herbert Kelman and Lee

⁴ See generally Derrick’s ongoing concerns about increasing the diversity of law faculty, particularly of minority women faculty in Josh Getlin, *Raising Hell for a Cause: Education: Two Years After Harvard Law’s First Tenured Black Professor Left His Job to Protest the Lack of Faculty Diversity, Little Has Changed. Derrick Bell’s Still Angry and So Are His Critics*, L.A. TIMES, Nov. 5, 1992; Montgomery Brower & S. Avery Brown, *An Angry Professor Vows Not to Teach Until Harvard Law School Give a Minority Woman Tenure*, PEOPLE MAG., May 14, 1990, at 19.

⁵ *Derrick Bell (1930–2011)*, *supra* note 1.

⁶ For example, I intentionally did not mention the Oregon incident to the other schools at which I was interviewing in 1985. I did not want to get a job offer because of it; I did not want to be denied a job offer because of it. For years my colleagues and students at my law school did not know I was *that* Asian-American woman. For further discussion, see Chew, *supra* note 1, at 3–4.

⁷ See generally HERBERT C. KELMAN & V. LEE HAMILTON, CRIMES OF OBEDIENCE: TOWARD A SOCIAL PSYCHOLOGY OF AUTHORITY AND RESPONSIBILITY (1989); Stanley Milgram, *Behavioral Study of*

Hamilton describe these as “crimes of obedience”—“consequences that often ensue when authority gives orders exceeding the bounds of morality or law.”⁸ Kelman and Hamilton’s work on the social pressures to conform;⁹ Stanley Milgram’s study on the human propensity to follow authority even when it appears harmful to others;¹⁰ and Phillip Zimbardo’s experiment on how individuals put in certain situations and roles will act in surprisingly brutal ways if they are authorized to do so,¹¹ in particular, shaped the research on conformity and authority.

Psychologists Herbert Kelman and Lee Hamilton offer a conceptual model for the human tendency to conform to societal norms and influence.¹² They describe a three-stage process, which culminates in individuals being totally integrated into their social environment. The initial stage is one of “compliance.”¹³ This occurs when individuals accept the influence of others, particularly those in authority, in order to receive a reward or positive gain or to avoid punishment or other negative consequence.¹⁴ The second stage, “identification,” is when individuals accept influence of others so they can maintain a “satisfying self-defining relationship” to the other.¹⁵ The roles may be reciprocal or the individuals may want to model themselves on the other person.¹⁶ Finally, “internalization” is when individuals accept influence from others in order to maintain congruence with their own beliefs.¹⁷ Conforming to the norms has become consistent with their own self-concept and personal values.¹⁸

Obedience, 67 J. ABNORMAL & SOCIAL PSYCHOL. 371 (1963); C. Haney, C. Banks & Philip Zimbardo, *Interpersonal Dynamics in a Simulated Prison*, 1 INT’L J. CRIMINOLOGY & PENOLOGY 69 (1973).

⁸ KELMAN & HAMILTON, *supra* note 7, at xi.

⁹ KELMAN & HAMILTON, *supra* note 7; Herbert C. Kelman, *Interests, Relationships, and Identities: Three Central Issues for Individuals and Groups in Negotiating Their Social Environment*, 57 ANN. REV. PSYCHOL. 1 (2006).

¹⁰ Milgram, *supra* note 7.

¹¹ Haney et al., *supra* note 7.

¹² Kelman, *supra* note 9, at 3–17.

¹³ *Id.* at 3–6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Kelman, *supra* note 9, at 11.

Thus, individuals are fully integrated into the social system, organization, or group by complying with its rules, identifying with its roles and relationships, and finally internalizing its values.¹⁹ When individuals deviate from these processes and the implied standards for behavior, Kelman and Hamilton predict that individuals will react in certain ways. For instance, those who do not comply with the rules or norms experience social fear and embarrassment; those who do not identify with specified roles and relationships experience guilt and shame; and those who do not internalize the social values feel regret and self-disappointment.²⁰

These social pressures to conform appear heightened in certain situations, for instance, when a strong authority figure orders certain behavior. In a famous study in 1963,²¹ psychologist Stanley Milgram set up a laboratory experiment where study participants sat in one room and played the role of “teachers.” They were instructed by an authority figure in a white coat and tie to administer what they believed were increasingly painful electric shocks to “learners” who they could not see but who they believed were experiencing increasing pain because of fabricated audio cues. Many of the teachers continued to shock the learners, even though some of the teachers voiced their personal and moral concerns about what was occurring.²² They apparently found it too difficult to disobey the authority figure’s adamant instructions.

Milgram theorized that individuals have a general inhibition to inflicting pain and committing other harmful acts, particularly when they act “autonomously” based on their own conscience and principles.²³ Over time, however, hierarchical structures became useful as a way to regulate human behavior and to assure stable societies. These institutional systems of authority legitimized certain roles and rules, which served as cues to individuals to act as agents of the system and to carry out these rules. For those in authority, ideally this disposition to act “agentially” is

¹⁹ *Id.*

²⁰ Kelman, *supra* note 9, at 12–13.

²¹ Milgram, *supra* note 7. See also STANLEY MILGRAM, OBEDIENCE TO AUTHORITY; AN EXPERIMENTAL VIEW (1974); Thomas Blass, *The Milgram Paradigm After 35 Years: Some Things We Know About Obedience to Authority*, 29 J. APPLIED SOC. PSYCHOL. 955 (1999).

²² MILGRAM, *supra* note 21, at 33.

²³ See Robert Cover, *Violence and the Word*, in NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER 203, 219–21 (Martha Minow, Michael Ryan & Austin Sarat eds., 1992).

stronger than an individual's instinct to act autonomously—so much so that individuals would be blindly obedient to authority.²⁴

While one might think that the Milgram study was exceptional, variations of the study have further indicated that individuals may act brutally and inhumanely in certain situations when authorized to do so. In Phillip Zimbardo's classic Stanford Prison Experiment, for instance, college students were recruited and randomly assigned to be either "guards" or "prisoners" in a pretend prison.²⁵ While the guards were not given specific instructions, Zimbardo and his colleagues encouraged them to act like actual guards in a real prison and to make the prisoners feel powerless.²⁶ Within a day or so, the guards identified with their roles and acted the way they thought actual prison guards would act. They began treating the prisoners brutally, with the prisoners at various times taunted, stripped naked, deprived of sleep and forced to use plastic buckets as toilets. Even Zimbardo started acting like a prison superintendent.²⁷

While the guards' surprisingly brutal treatment of their peers in the Stanford Prison Experiment is famous, another lesser-known aspect of the study is of particular interest to our discussion. Five days into the planned two-week study, Christina Maslach, who had just finished her Ph.D. at Stanford, was visiting the prison experiment and observed the guards lining up the prisoners for the night's toilet run. The prisoners came out, and the guards put bags over their heads, chained their feet together and made them put their hands on each other's shoulders, like a chain gang. They yelled and cursed at them.²⁸ Maslach was aghast at the cruel behavior, emotionally protesting to Zimbardo that the prisoners' brutal treatment and suffering was wrong. Maslach's confronting of Zimbardo's authority prompted Zimbardo to pause, gain some perspective, and subsequently stop the experiment early.²⁹

²⁴ *Id.*

²⁵ Haney et al., *supra* note 7.

²⁶ Romesh Ratnesar, *The Menace Within*, STANFORD MAG. (July/Aug. 2011), http://alumni.stanford.edu/get/page/magazine/article/?article_id=40741 (interviews with participants in the study).

²⁷ *Id.*

²⁸ Kathleen O'Toole, *The Stanford Prison Experiment: Still Powerful After All These Years*, STANFORD NEWS SERVICE (Jan. 8, 1997), <http://news.stanford.edu/pr/97/970108prisonexp.html>.

²⁹ *Id.*; see also Phillip Zimbardo, *On the Ethics of Intervention in Human Psychological Research: With Special Reference to the Stanford Prison Experiment*, 2 COGNITION 243 (1973).

II. EXPLORING WHY WE CHALLENGE AUTHORITY

What prompted Maslach to confront Zimbardo? What prompts us to similarly confront authority? While there is much written about individuals complying with authority, there is surprisingly little research on why individuals instead challenge authority. This essay offers my observations on this fledgling conversation.

I posit that certain conditions create opportunities for us to confront authority: namely, when we observe that things are being done in a way that jeopardizes important principles in which we strongly believe *and* jeopardizes the welfare of organizations, institutions, or individuals about which we deeply care. For most of us, these opportunities are filled with angst—as we experience the tension between wanting to conform and wanting to confront, of weighing what we have to lose and what we have to gain by taking one course of action versus another. While there are many ways to challenge authority,³⁰ I limit my comments to those ways that are constructive, legal, and to the extent possible, respectful of diverse worldviews.

Christina Maslach, for instance, saw that the Stanford Prison Experiment was jeopardizing a principle in which she strongly believed—that is, that experimentation with students should be conducted within certain ethical and professional standards, including not harming them psychologically and physically.³¹ As a recent doctoral graduate, she also likely cared about the university and the psychology department. As it happens, she also cared about Phillip Zimbardo. They were dating and she admired him.³² She saw the study as jeopardizing the welfare of the university, the psychology department, and Dr. Zimbardo.

A. *Challenging Authority in the Workplace*

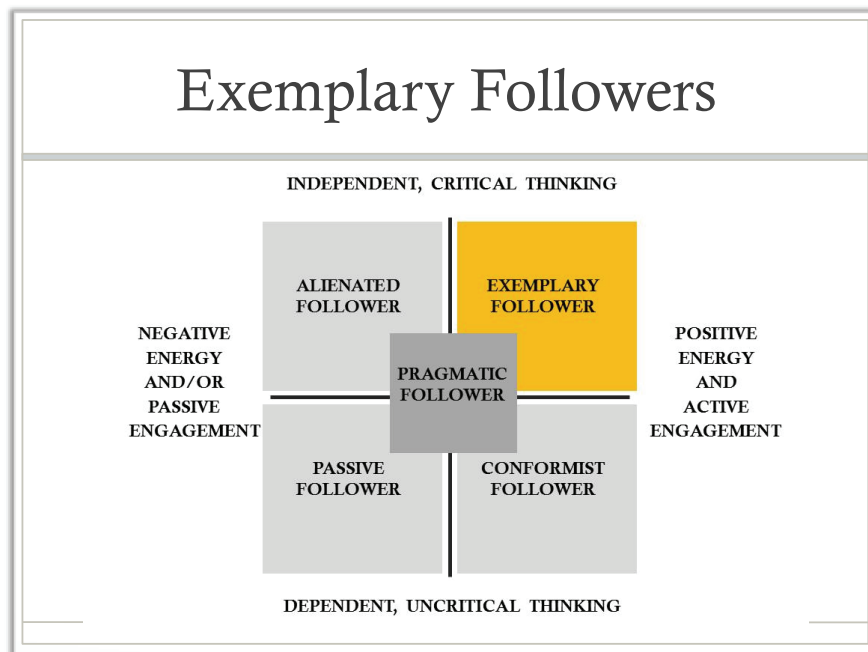
These opportunities to challenge authority can occur in any aspect in our lives, although I will discuss in particular these opportunities in the workplace and as citizens. Robert Kelley, for instance, has studied in detail employees who are

³⁰ Depending on the issue, those involved, the time in your life, and your personal style—you may choose different ways to protest. (Or you may decide to do nothing for the time being but anticipate a longer-term strategy.) Viewed as a continuum of possibilities: a person can go along but not be personally supportive of the established norms, or question the norms discretely, or more visibly confront and protest authority. In addition, a person can choose to work within the system or work outside the system.

³¹ Ratnesar, *supra* note 26.

³² O'Toole, *supra* note 28 (Maslach reflecting on the experience).

willing to challenge authority in order to protect principles in which they believe and to improve the organizations and institutions about which they care.³³ He calls these employees “exemplary followers” with a “courageous conscience.”³⁴ As depicted in the matrix below, he identified two key dimensions that distinguish between major types of followers: the first is the degree to which a person is an “independent and critical” thinker versus being a dependent and uncritical thinker (as shown in the top and bottom of the matrix); the second is the degree to which a person is “actively engaged” in their work versus being passive and detached (as shown in the right and left of the matrix).



Using these two core dimensions, Kelley describes five different types of followers.³⁵ For instance, “conformist” followers see themselves as team players who are committed to doing what the organization needs; but others often see them

³³ See ROBERT KELLEY, *THE POWER OF FOLLOWERSHIP* (1991) [hereinafter KELLEY, *FOLLOWERSHIP*]; Robert E. Kelley, *In Praise of Followers*, HARV. BUS. REV., Nov.–Dec. 1988, at 142.

³⁴ KELLEY, *FOLLOWERSHIP*, *supra* note 33, at 87–148.

³⁵ *Id.* at 107–14.

as lacking their own ideas and avoiding conflict. These followers gravitate toward an established order where uniformity in behavior and attitudes is encouraged.³⁶

“Exemplary” followers are distinct from all other types of followers.³⁷ They successfully balance the two core dimensions—namely, they are independent and critical thinkers, while being actively and constructively engaged in their work and organization.³⁸ Kelley emphasizes that these core characteristics can be learnable; one is not inherently an exemplary follower or not.³⁹ This is good news for everyone, but especially young professionals who are formatively developing their skill set. Exemplary followers are characterized by certain attractive job skills, such as taking initiative, assuming ownership, going above and beyond their jobs, and being more productive and effective in their jobs.⁴⁰

Specifically relevant to our topic, exemplary followers often also have a “courageous conscience,” which Kelley defines as “the ability to judge right from wrong and the fortitude to take affirmative steps toward what one believes is right.”⁴¹ These affirmative steps may include confronting authority, including their coworkers, immediate supervisors, leaders in their organizations or industry, or perhaps those outside the organization. When deciding whether or how to exercise their courageous conscience, they are systematic and reflective in their decision-making: assessing whether they have a duty to confront authority, they consider what they personally have at stake, what the organization has at stake, the leader’s expertise and legitimacy, and the broader community consequences if they do not act.⁴² If they decide they do have a duty to confront, they carefully lay the

³⁶ Other follower types include the following. “Pragmatist” followers believe they are attuned to the winds of organizational politics; although others may see them as overly game-playing and self-interested. “Passive” followers tend to rely on the leader’s judgment and orders; with others thinking they are just putting in their time. These followers assume the organization does not want or value their ideas. “Alienated” followers see themselves as mavericks and are skeptical of the way things really are. Others may see them as troublesome, cynical, negative, and with a chip on their shoulders. These followers are often disgruntled with their situation because they feel they have not been properly recognized or utilized. KELLEY, FOLLOWERSHIP, *supra* note 33, at 87–124.

³⁷ *Id.* at 125–47.

³⁸ *Id.* at 125–26.

³⁹ See ROBERT KELLEY, HOW TO BE A STAR AT WORK: 9 BREAKTHROUGH STRATEGIES YOU NEED TO SUCCEED 11–24 (1998).

⁴⁰ KELLEY, FOLLOWERSHIP, *supra* note 33, at 125–47.

⁴¹ *Id.* at 168, 167–98.

⁴² *Id.* at 175–83.

groundwork for being effective in achieving what they believe is the right course of action. For instance, they gather the necessary facts, seek wise counsel, frame their position so they will be heard, and educate others on how their best interests are served.⁴³

Organizations benefit greatly from exemplary followers who exercise their courageous conscience. In an ethical company involved unintentionally in questionable practices, an exemplary follower can head off embarrassment, expense, and litigation.⁴⁴ Consider, for instance, the following example of an exemplary follower who plays a constructive role in preventing racial discrimination in her organization.

B. Racism, Authority, and the Courageous Conscience

Racism is not as overt today as it once was. But subtle and implicit racism, what some psychologists call “modern racism,” continues to exist.⁴⁵ For instance, instead of the blatant racist slur, we may rely, perhaps unconsciously, on racial stereotypes that shape our thinking and our conclusions. Social scientists are using innovative new research methodologies to detect and measure this type of racism.⁴⁶

Moreover, studies indicate implicit racism is more likely to occur when authority provides a justification for it.⁴⁷ Johnathon Ziegart and Paul Hanges’ study, for instance, suggests that individuals appear more likely to act on their implicit biases when an authority figure or role model, such as one’s supervisor or organizational leader, condones discrimination.⁴⁸ Participants in their study were administered a battery of instruments, including one that assessed their implicit (rather than express) racist attitudes.⁴⁹ Participants were then asked to play the role of a manager and to evaluate job applicants for a vice president position on the basis of a packet of information about each candidate. Some participants had an

⁴³ *Id.* at 184–98.

⁴⁴ KELLEY, FOLLOWERSHIP, *supra* note 33.

⁴⁵ Pat K. Chew, *Seeing Subtle Racism*, 6 STAN. J. C.R. & C.L. 199–204 (2010).

⁴⁶ *Id.*

⁴⁷ *Id.* at 199. See also Arthur Brief et al., *Just Doing Business: Modern Racism and Obedience to Authority as Explanations for Employment Discrimination*, 81 ORG. BEHAV. & HUM. DECISION PROCESSES 72–97 (2000).

⁴⁸ Johnathon Ziegart & Paul Hanges, *Employment Discrimination: The Role of Implicit Attitudes, Motivation, and a Climate for Racial Bias*, 90 J. APPLIED PSYCHOL. 550, 560–61 (2005).

⁴⁹ *Id.* at 556–57.

additional memo from the company president providing a business justification for preferring a white vice president. The researchers found that participants who were provided the business justification for discrimination and had implicit racist attitudes were more likely than others to discriminate and select the white candidate.

How might this research on implicit racism and Kelley's exemplary follower be applied? Imagine that a lawyer for an organization is working with the marketing division in their search process for a new member of the marketing team (which happens to be all white). As part of their hiring process, a supervising manager from the marketing division unit meets with the hiring committee, indicating things to look for in the candidates. The candidate pool currently includes individuals of diverse genders, races, and religions. Among these "qualifications," the manager mentions how the current team works well together because they share common values and interests, and furthermore that these values and interests are the same ones as their customers. Hence, the manager strongly recommends finding someone who would not disrupt this sense of camaraderie and positive client rapport.⁵⁰

The research described above indicates that what may appear to be reasonable business logic (that is, continuity and homogeneity in work teams and client relationships) may also be implicit albeit unconscious racial bias (that is, excluding minority candidates on the assumption they will not be good team members or develop positive client relationships just because they are a departure from the current all-white marketing team). Furthermore, the business justification offered by a manager (namely, a person in authority) would increase the probability of an interviewer's implicit bias occurring in the hiring process.

As an exemplary follower, the lawyer could intervene by diplomatically offering an alternative perspective that would help the organization decrease the risk of legal liability, while gaining insights on hiring talented individuals. For instance, she could point out the benefits of a more diverse team, such as increased creativity and improved problem-solving, and emphasize that customers' primary concerns are about service and product quality. Furthermore, as a lawyer, she could note the possible legal risks of the hiring process appearing discriminatory (for instance, if the process consistently yielded disproportionately fewer minority hires). This lawyer's tactful "confronting of authority" would eliminate, or at least diminish, the business justification offered by authority, thus decreasing the

⁵⁰ This hypothetical is modified from one described in Brief et al., *supra* note 47, at 80.

chances of implicit racism occurring. At the same time, her courageous conscience has helped her organization.

C. *Whistle-Blowers*

Unlike our discrete and diplomatic lawyer above, other employees may conclude they need to be more confrontational and public. As Kelley counsels, working within the system is preferred, but if the principles and potential harm are significant enough and you meet insurmountable resistance within the organization, then you may have to go outside the organization to disclose and protest misconduct.⁵¹

Whistle-blowing employees are clear counter-examples to those individuals who are blindly obedient. Whistle-blowers who disclose some wrongdoing or corruption do “good,” namely by preventing anticipated harms. Consider, for example, two well known cases subsequently depicted in popular films.⁵² Jeffrey Wigand was a former chief scientist at a major tobacco company.⁵³ Through his disclosures, he forced tobacco companies to admit their intentional manipulation of nicotine levels in cigarette smoke with the purpose of causing smokers to become addicted.⁵⁴ A second whistle-blower example is Karen Silkwood, who was a technician and labor activist at a nuclear power plant.⁵⁵ She testified to the Atomic Energy Commission about safety and health risks at nuclear power plants.

But there are dozens of lesser-known whistle-blower cases, such as Marsha Coleman-Adebayo and Nancy Olivieri. Coleman-Adebayo was a Senior Policy Analyst in the Office of the Administrator at the U.S. Environmental Protection Agency (EPA).⁵⁶ While assigned in South Africa to assist the government on public health issues, she disclosed to the EPA that an American company was

⁵¹ KELLEY, FOLLOWERSHIP, *supra* note 33, at 195–96.

⁵² THE INSIDER (Touchstone Pictures 1999) (film on Jeffrey Wigand); SILKWOOD (ABC Motion Pictures 1983) (film on Karen Silkwood).

⁵³ Rick Lyman, *A Tobacco Whistle-Blower's Life Is Transformed*, N.Y. TIMES (Oct. 15, 1999), <http://www.nytimes.com/1999/10/15/us/a-tobacco-whistle-blower-s-life-is-transformed.html>.

⁵⁴ *Id.*

⁵⁵ *The Karen Silkwood Story: What We Know at Los Alamos*, LOS ALAMOS SCIENCE No. 23, at 252 (1995), available at <http://fas.org/sgp/othergov/doe/lanl/00326645.pdf>.

⁵⁶ *Dr. Marsha Coleman-Adebayo Biography*, NO FEAR INSTITUTE, <https://thenofearinstitute.wordpress.com/about/dr-marsha-coleman-adebayo-biography/> (last visited Aug. 15, 2014).

exposing African miners to mining vanadium, a dangerous substance.⁵⁷ She then blew the whistle on the EPA for illegal racial and gender discrimination. Her case eventually led to the passing of the No-FEAR Act, which makes federal agencies more accountable for employee complaints.⁵⁸

Nancy Olivieri was part of a research group evaluating the use of the drug deferiprone to treat persons with a blood disorder.⁵⁹ Olivieri became concerned about the drug's inefficacy and toxicity. She informed Apotex, the drug maker, and the research ethics board that was monitoring the research. The ethics board instructed Olivieri to inform study participants about her concerns. Apotex responded by noting that Olivieri had signed a confidentiality agreement as part of the drug trial and that informing participants about her concerns would violate that confidentiality agreement. Apotex disputed Olivieri's findings and threatened to vigorously pursue all legal remedies against her if she disclosed her conclusions to patients. Olivieri nonetheless disclosed her concerns to her patients and published her findings in a medical journal, suggesting that deferiprone led to progressive hepatic fibrosis.⁶⁰

By whistle blowing, these individuals intervened in a stream of events that would have otherwise lead to negative consequences. By confronting authority rather than being blindly obedient, they prevented harm to others and society. At the same time, they acted on their own principles of right and wrong while trying to improve their organizations and industries. Whistle blowers, however, may pay a high social and personal cost for confronting authority. They may become ostracized by their industries and find it difficult to get new jobs. Ironically, some few also are heralded as heroes.

D. Challenging Authority as Citizens

We also may encounter these opportunities to challenge authority as ordinary citizens going about our every-day lives. Political scientists Stefano Passini and Davide Morselli point out that society tends to think of disobedience as the

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Gary Schwitzer, *Medical Research Ethics Whistle Blower Nancy Olivieri Honored Again*, HEALTH NEWS REVIEW.ORG. (May 31, 2012), <http://www.healthnewsreview.org/2012/05/medical-research-ethics-whistleblower-nancy-olivieri-honored-again/>.

⁶⁰ *Id.*

opposite of obedience.⁶¹ Yet if obedience to authority is important in ensuring the stability of social and group life, they posit, then perhaps disobedience is crucial in some circumstances—namely in stopping the authority relationship from degenerating into an authoritarian relationship. In this sense, disobedience and obedience are more on a continuum than an antithesis of each other. Both can exist and even complement the other.

They explored their theory further in a study of students, whose attitudes toward obedience, disobedience, authoritarianism, responsibility for human rights, and their values were measured.⁶² They found that people who consider both obedience and disobedience between the individual and society as important are more likely to value democratic principles and consider themselves responsible for defending human rights. In contrast, people who value obedience but consider disobedience as a threat to the status quo are more likely to be authoritarian.

In discussing these results, Passini and Morselli suggest that obedience and disobedience should coexist, and that risks otherwise arise.⁶³

Authoritarian attitudes, in terms of the uncritical submission to authority, emerge when there is no room for constructive disobedience . . . this implies that the meanings attributed to disobedience may have a protective function against the degeneration of the authority relationship into an authoritarian relationship. That is, [it is important that] disobedience is not considered only as a transgression of the rules or as the right to express one's own opinion, but is conceived of as a duty and as a self-account of responsibility towards others.

Furthermore, Passini and Morselli distinguish between types of disobedience.⁶⁴ The first type is “anti-social” disobedience. It is destructive in the sense that it is not directed at improving society at large or improving egalitarian principles; rather it is enacted as a way to favor one's own group “achieving rights” and policies that do not erase inequality but only change the distribution of inequality.⁶⁵ The second type of disobedience is “pro-social.” It is constructive in

⁶¹ Stefano Passini & Davide Morselli, *The Obedience-Disobedience Dynamic and the Role of Responsibility*, 10 J. COMMUNITY & APPL. SOC. PSYCHOL. 1–14 (2010).

⁶² *Id.* at 3–11.

⁶³ *Id.* at 10–11.

⁶⁴ *Id.*

⁶⁵ *Id.*

the sense that it advocates change for the benefit of everyone.⁶⁶ It recognizes the importance of obeying for the functioning of society, while at the same time, acknowledges the limits of authority. These individuals selectively disobey and only within particular contexts, for instance, when authority's demands are immoral and intolerably harmful.⁶⁷

There are many constructive ways that citizens can challenge those in power. The most direct is to exercise our right to vote, to work for those candidates who we believe best represent democratic values, and to run for office ourselves.

While tailored for his particular political environment, the former President of the Czech Republic Vaclav Havel's parable of the greengrocer⁶⁸ illustrates that citizens can effectively confront authority even with purposeful inaction. This inaction can be especially meaningful if done collectively. Havel describes greengrocers in the totalitarian communist regime in Czechoslovakia, who follow the ritual of hanging a small poster with a communist slogan on the store window next to their bins of tomatoes and green peppers. The grocers do not identify with the message or its ideology, rather they hang the government-endorsed poster as a form of obedience and compliance, "by accepting appearances as reality, by accepting the given rules of the game, thus making it possible for the game to go on."⁶⁹

In contrast, if the green grocers decided to take purposeful inaction by not hanging the poster, this would constitute a meaningful questioning of authority. As one commentator explains:

Our greengrocer, seemingly unimportant and powerless, nevertheless has the potential to threaten the regime with an action as small as neglecting to hang a certain sign in his window. In fact, if all the greengrocers one day took down their signs, precisely this act would be the beginning of a revolution.⁷⁰

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Vaclav Havel, *The Power of the Powerless*, in VACLAV HAVEL, THE POWER OF THE POWERLESS: CITIZENS AGAINST THE STATE IN CENTRAL EASTERN EUROPE 13 (1985).

⁶⁹ *Id.* at 15.

⁷⁰ Marci Shore, *The Sacred and the Myth: Havel's Greengrocer*, 3 CONTAGION: J. VIOLENCE, MIMESIS, AND CULTURE 163, 173 (1996).

E. Affirming Self-Worth and Derrick Bell

When Derrick Bell explained why he challenged authority, he added a reason different than those above. He described his reason as the “fragility of our self-worth.”

[T]hose of us who speak out are moved by a deep sense of the fragility of our self-worth. It is the determination to protect our sense of who we are that leads us to risk criticism, alienation, and serious loss while most others, similarly harmed, remain silent.⁷¹

What Derrick labeled as the “fragility of our self-worth” is as aptly called the “the affirmation of our self-worth.” To further explain, consider Kelman and Hamilton’s third stage of being socially assimilated. This stage of “internalization” requires that an individual’s values and principles are totally congruent with society’s established norms.⁷² But what happens if instead an individual chooses not to internalize all of society norms? Thus, for instance, to the extent that society discriminates, discredits, discounts one’s worth because of gender or race—individuals challenging that discrimination affirms their personal principles of anti-discrimination and asserts that their worth is greater than society has assessed.

Consider, for instance, a young minority lawyer who readily engages in the rules, norms, roles, and relationships in his law firm. Consistent with Kelman and Hamilton’s model,⁷³ he is complying with the rules as a way to receive the rewards that comes with being a first-year associate and is involved in the firm’s professional relationships because those relationships are self-serving. What if the young lawyer, however, begins to observe what appear to be unfair and discriminatory work-related decisions (for instance in how assignments or hiring and promotion decisions are made). It could be then that the young lawyer cannot internalize the values of the law firm because it compromises his own personal values and self-identity. Therefore, he may choose instead to not conform and instead confront the law firm, thus taking action consistent with his sense of self even if that action would risk his job security and not necessarily stop the law firm’s improprieties.

⁷¹ BELL, *supra* note 1, at ix–x.

⁷² Kelman, *supra* note 9, at 10–11.

⁷³ *Id.*

If his challenge is carefully planned and strategically implemented, as Kelley advises,⁷⁴ it may in fact result in successfully and positively influencing the firm's management policies. In either case, he has exercised control over his own decision-making and acted in accordance with his principles. Furthermore, as Havel would describe it, he is clearly rejecting the "rituals" of every-day racial discrimination by refusing to play the "given rules of the game."⁷⁵

Indeed, Derrick described his struggles for racial justice as a source of personal satisfaction.⁷⁶ There was a kind of self-affirming and transformative power of self-examination and choice, a way of gaining control of one's life in a racist society.

There is a difference, however, between protestors' being effective in achieving their stated goals versus achieving some "good" viewed more broadly. This was a difference that Derrick understood well. His protests over the lack of diversity hiring did not always achieve his stated goals: Oregon did not change their mind and make me an offer;⁷⁷ Harvard did not respond at that time to his protest by hiring women of color for their faculty.⁷⁸ It is likely that his "bosses" at Harvard would not have called him an "exemplary" follower who helped the law school be more productive.

On the other hand, Derrick's protests showed that he was willing to take action, even at a considerable social and personal cost, to bring attention to his causes—to live critical race theory and not just to write about it. By doing so, he surely put the issues on the table and over time prompted many others to reflect more earnestly about the decisions they made and their commitment to principles they espoused. He also inspired many "students," both in and out of the classroom, both at this law school and in other institutions. Many of these students are now in positions where they can influence change and shape government and institutional policies. In these ways, his protests had very positive and on-going "trickle-up" effects.

⁷⁴ KELLEY, FOLLOWERSHIP, *supra* note 33, at 184–98.

⁷⁵ Havel, *supra* note 68.

⁷⁶ BELL, *supra* note 1, at xi.

⁷⁷ *Id.* at 45.

⁷⁸ *Id.* at 4.

IN CLOSING

Derrick Bell was right when he predicted in 1985 that his life and my life would be interconnected. How ironic it is, for instance, that I ended up teaching at the very law school that Derrick attended—that this law school faculty had the same vote of confidence in my abilities that Derrick had. As I prepared this essay, I was reminded how much others and I learned from him.

One of his lessons was that, as lawyers and legal scholars, we are uniquely skilled and positioned to confront authority. From our first day of law school, we are trained to “think like a lawyer,” including the basic skills of spotting legal issues, identifying the legal principles, determining the facts, applying the principles to the facts to reach a legal conclusion. In a nutshell, we have learned the analytical skills necessary to scrutinize whether a principle or order or norm makes sense. We also learned to use judicial opinions and statutes to advocate for a particular position, and we are skilled at using the justice system to achieve certain outcomes. In other words, we are trained both to understand and to question authority, and if appropriate, to challenge authority and its mandate.

It is no wonder then that legal scholars and lawyers have so often confronted authority. Faculty do it in their scholarship and professional activities. Consider, for instance, Professor Michael Olivas, who has for years agitated for fairer immigration laws and increased Latino/a representation on law school faculties.⁷⁹ It was his idea years ago to publicize the “dirty dozen” law schools, those schools with the worst Latino/a faculty representation.⁸⁰ Professor Frank Wu regularly criticizes in his writings and in the media the treatment of Asian Americans in American society.⁸¹ In his upcoming book, he reminds us of the lessons of the tragic Vincent Chin case.⁸²

⁷⁹ *Michael Olivas*, U. HOUSTON L. CENTER, <https://www.law.uh.edu/faculty/main.asp?PID=31> (last visited Aug. 15, 2014). Despite or perhaps because of all those years of agitation, Professor Olivas is now a leader among his peers. He is a recent President of the Association of American Schools and Director of the Institute for Higher Education. *Id.*

⁸⁰ Marie McCullough, *A Hispanic Plea for Law Teachers*, THE INQUIRER (Mar. 7, 1993), http://articles.philly.com/1993-05-07/business/25963705_1_hispanic-students-law-schools-olivas.

⁸¹ See, e.g., FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* (2003). Wu is now the Chancellor at the University of California Hastings College of Law and a regular blogger for the *Huffington Post*. Frank H. Wu, HUFFINGTON POST (Mar. 24, 2015), <http://www.huffingtonpost.com/frank-h-wu/> (index of commentary written by Wu).

⁸² See *Frank Wu Interview: The Historical Context Behind Vincent Chin's Murder*, VINCENT WHO?, http://www.vincentwhofilm.com/interviews/frank_wu/ (last visited Aug. 30, 2014).

With the help of their attorneys, there are also many examples of clients who have confronted authority and prompted important positive changes. For example, Mildred and Richard Loving in *Loving v. Virginia* simply wanted to marry and live together.⁸³ In order to do that, they had to contest Virginia's laws prohibiting interracial marriages—ultimately dismantling anti-miscegenation statutes. And Ann Hopkins in *Price-Waterhouse v. Hopkins* sued her employer, a major accounting firm, for sex discrimination.⁸⁴ With the help of her lawyers and psychologist Susan Fisk, she helped redefine gender discrimination to include sex-based stereotyping.⁸⁵

In closing, I'm pleased to have been Derrick Bell's back-up singer, coincidence or not. I also believe Derrick, as a pioneering and prolific critical race legal scholar, was pleased to be the back-up-singer for the many individuals who have accepted those opportunities to challenge authority—to protect their principles and those organizations, institutions, and people about whom they most care—to bravely work for the greater good.

⁸³ *Loving v. Virginia*, 388 U.S. 1 (1967).

⁸⁴ *Price-Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

⁸⁵ *Id.*