

## Book Review

### **Unfinished Business: A Civil Rights Strategy for America's Third Century**

by Clint Bolick

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Reviewed by William B. Allen

Winston Churchill and George Washington expressed themselves similarly after their initial encounters with dangers in battle. A curious detachment from danger to their own lives and a sense of excited pleasure marked their reactions. Washington expressed it most succinctly: "I heard the bullets whistle [by me], and, believe me, there is something charming in the sound." These great statesmen reveal with clarity how important it is, in preparing for great moral crises, that the soldiers in such encounters embrace the sights and sounds of battle as the handmaidens of victory and liberty.

When Americans undertook a decade ago to challenge the growing regime of racial preferences, they enlisted in a great moral crusade for which they were ill-prepared. Setting off after Ronald Reagan on behalf of "white firefighters," they had not sufficiently contemplated the reality that they would be fired upon by enemies whose bullets consisted of charges of "racism" and "self-interest." Stung by the weight of the fusillade and seized with a mortal fear not only for themselves but for their cause, the anti-quota warriors fell back, determined to drop the cause of "white firefighters," and set forth anew under the disguise of bringing "empowerment" to the disadvantaged.

The *Unfinished Business* of civil rights is, in reality, Clint Bolick's response to the suspicion that his prior book, *Changing Course*, had veered off course with a view of civil rights as reserved for minorities or the disadvantaged. Bolick admits as much in *Unfinished Business*: "Some commentators have criticized *Changing Course* for what they perceive is a suggestion that laws that arbitrarily restrict entrepreneurial opportunities are violations of civil rights because they have an adverse impact on blacks and other minorities." Bolick finishes the business of *Changing Course* with the flat declaration that these are rather "violations of civil rights because the people affected are Americans."

So much done, Bolick may next raise the question, What is the next step for civil rights? His response: emulate the early 20<sup>th</sup> century legal strategy of the NAACP, and use the courts to re-establish civil rights protections that safeguard individuals instead of just groups. A sensible litigation strategy, highlighted by such notable cases as the Ego Brown case (the right to operate shoeshine stands in Washington, D.C. just like other open-air vendors), the Amaya-Crawford case (challenging the legally enforced exception of black children from IQ testing in California schools), and the Alfredo Santos case (the right to operate a jitney service in San Antonio against unduly restrictive and antiquarian regulations), will chip away both at the barriers to economic liberty that undermine all other civil rights guarantees and also at the threats to equal protection of the laws con-

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tained in all race-based legislation and regulation.

Bolick is persuasive: A strategy of cultivating the “right” cases in order to challenge bad laws—even such long-standing bad law as the *Slaughterhouse* decision (1873)—promises to increase the leverage of new civil rights advocates working against the inertia of the old civil rights lobby. Some critics will imagine that Bolick’s prescription (revitalizing the 14<sup>th</sup> Amendment) threatens to augment the authority of the Federal Government in our lives by making courts perpetual censors of every act of legislation. I, on the other hand, cannot imagine how federal power might ever increase beyond the present level! Besides, it is precisely because this strategy opens all legislation and regulation more generally to judicial second-guessing that the spiraling costs of litigation—and especially of losing—will become an ally of fundamental rights by fostering avoidance behavior in legislatures and bureaucracies.

Nevertheless, *Unfinished Business* still must confront the dilemma that this crusade cannot be so well developed as the country requires, so long as “sympathetic plaintiffs” *must* be disadvantaged. If it were not so unpardonably lighthearted in the face of the tragedy of black-Jewish relations, one could well dub Bolick the new Jew of civil rights—that is, advancing the interest of his own people by means of a sincere attachment to the civil rights of a minority. What is rather required, however, is frank espousal of the rights of the strong, if I may put it so. The common sense inherent in the Reconstruction Congress’ defining equality as guaranteeing the “same rights to blacks as white men enjoy” lay in the entirely reasonable assumption that white men would never neglect to assert and defend their own rights—their self-interest ought naturally to incline them to it. In this respect, however, the drafters of the Reconstruction era statutes and amendments were unfortunately in error. This embarrassing imponderable is surely the greatest mystery of our contemporary dilemma.

I am persuaded that the unfinished agenda in civil rights does not end with persuading conservatives sincerely to espouse the claims of minority victims of discrimination. Still more importantly, the grounds of common interest between minorities and others must be established, and that means that “white firefighters” must be no less readily defended than the disadvantaged. It is even reasonable to suppose, in the circumstance, that any civil rights advocate who is bashful in the assertion of his own claims thereby renders his solicitousness for other folk suspect.

It must be said in all candor that “white men posing as the saviors of po’ black folk just ain’t gonna cut it anymore.” Our new statesmen can earn respect for their efforts only when they can stand up and shout, like the American Revolution heroes, “I got my rights.” Those are the kinds of souls other folk, all kinds of folk, are willing to go into battle with, for such men fight with a fearless awareness that their own fates are at stake. At the U.S. Commission on Civil Rights I have often reflected that the too rare presence of such allies makes that work nearly impossible, meaning that I might more wisely look elsewhere to carry on the unfinished business of civil rights.

W. B. Allen