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A Needed Image Makeover: Interest Convergence and the United States' War on Terror

Stephanie M. Weinstein*

I. INTRODUCTION

Recently, a diverse group of individuals decided that the time had come to form an international coalition to counter the conservative majority's domination of the world's political, social, economic, and religious climate. All were welcome to participate in the group, so that the initial international summit included people of color, women, gays and lesbians, progressives, artists, academics, workers subject to offshoring, unionists, Muslims, Buddhists, Hindus, Jews, Christians, and others from all over the world.

At the close of that first summit, Lawrence Ferlinghetti,¹ an

* B.A., University of Michigan, with distinction (2001); J.D., University of Pittsburgh (2005). For their enormous support of my work, helpful comments, and continuing inspiration, I am grateful to Professors Richard Delgado, Jean Stefancic, and Alexander Tsesis. I thank my parents, Joel and Nancy Weinstein, my sister Elizabeth Weinstein, and my grandmother, Lillian Weinstein, for their unwavering encouragement. A special thanks to Nancy Weinstein for her tremendous effort in editing this article. Finally, I am grateful to Amit Patel, Joseph DiPalo, and Megan Brown for the parts they played in this effort.

1. Lawrence Ferlinghetti is an 85-year-old writer, painter, literary maverick, and anti-establishment dissident who served as San Francisco's first poet laureate. *San Francisco Poet*, ONLINE NEWSHOUR, Dec. 27, 2002, http://www.pbs.org/newshour/bb/entertainment/july-dec02/ferlinghetti_12-27.html. He currently resides in San Francisco, CA where, in 1956, he opened City Lights Book Store and began publishing works like Allen Ginsberg's manifesto of the beat generation, "Howl," which begins with the line "I saw the best minds of my generation destroyed by madness, starving,

American beat poet, read his poem, "Speak Out," to move and inspire his fellow activists in their upcoming work.

*Speak Out*²

*And a vast paranoia sweeps across the land
And America turns the attack on its Twin Towers
Into the beginning of the Third World War
The war with the Third World*

*And the terrorists in Washington
Are drafting all the young men*

And no one speaks

*And they are rousting out
All the ones with turbans
And they are flushing out
All the strange immigrants*

*And they are shipping all the young men
To the killing fields again*

And no one speaks

*And when they come to round up
All the great writers and poets and painters*

hysterical naked," and continues to blame the materialism and spiritual emptiness of American life for the destruction. *Id.* In 1958, Ferlinghetti published "A Coney Island of the Mind," a collection of poems which sold enough copies to make him America's best-selling poet of the twentieth century. *Id.* Arguably, his best-known poem "I Am Waiting," though written forty-five years ago, remains relevant to the current world situation. *Id.* The end of the poem reads: "I am waiting to get some intimations of immortality by recollecting my early childhood, and I am waiting for the green mornings to come again, youth's dumb green fields come back again . . . and I am waiting to write the great indelible poem, and I am waiting for the last, long, careless rapture, and I am perpetually waiting for the fleeing lovers on the Grecian urn to catch each other up at last and embrace, and I am waiting, perpetually and forever, a renaissance of wonder." *Id.* "I Am Waiting" evokes a sense of longing to return to a childhood innocence, and the use of color imagery immediately calls up the color stages of the terror alerts.

2. Lawrence Ferlinghetti, *Speak Out*, POETS AGAINST WAR, <http://www.poetsagainstthewar.org/chapbook.asp> (last visited Oct. 24, 2005).

*The National Endowment of the Arts of Complacency
Will not speak*

*While all the young men
Will be killing all the young men
In the killing fields again*

*So now is the time for you to speak
All you lovers of liberty
All you lovers of the pursuit of happiness
All you lovers and sleepers
Deep in your private dreams*

*Now is the time for you to speak
O silent majority
Before they come for you*

The subsequent gatherings, whose participants communicated via satellite video over the internet, proved to be revolutionary both in their form and substance. During these early consciousness raising conferences, the activists discussed ideas for the ultimate direction the coalition would take and raised many difficult questions.

The Americans in the group were particularly vocal, as they all shared a common concern over the conservative policies and agendas of the current administration. A young American woman wondered why, although the United States is supposedly fighting to advance the rights of Islamic women abroad, it denies its own women procreative rights and uncomplicated access to abortion services.³ An African American man expressed dismay over the disproportionate number of young black and Latino men in prison.⁴ A Latino professor related a story about being the subject

3. The United States denies women late-stage abortions, information regarding sex, and access to free condoms and other types of birth control. See Editorial, *The War Against Women*, N.Y. TIMES, Jan. 12, 2003, § 4, at 14 (discussing the Bush Administration's efforts to restrict women's access to the right to have an abortion).

4. See Randall Kennedy, *McClesky v. Kemp: Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388, 1420-22 (1988) (highlighting the race disparity in capital sentences).

of racial profiling by white police officers while leaving a conference of law professors with his professor wife.⁵ A middle aged Indian American couple seethed about being held for two hours by airport security, who suspected them of being terrorists because of their race. Two gay partners explained their sorrow about not being able to legally marry in the United States. An atheist school teacher described her discomfort with the "one Nation, under God" section of the Pledge of Allegiance, which she must recite every day with her second graders, even though she does not believe that god exists.⁶

The brainchild of a young woman lawyer and activist, Sophie Meren,⁷ the coalition publicly announced its campaign as President George W. Bush was sworn into office for a second term on January 20, 2005. Meren's initial strategy revolved around a broad informational initiative to encourage minorities to push for lasting concessions from the countries of the world, particularly the United States. As Derrick Bell posited,⁸ interest convergence served as a powerful tool for understanding gains minorities achieved during the Cold War, including the famous school desegregation

5. The author learned of this true but anecdotal occurrence through a series of conversations with Richard Delgado and Jean Stefancic in the fall of 2004. See also Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writing About Race*, 82 TEX. L. REV. 121, 139 (2003) (book review) [hereinafter Delgado, *Crossroads*].

6. See Natalie Angier, *Against Toleration*, N.Y. TIMES, Sept. 5, 2004, § 7, at 19 (reviewing "The End of Faith" by Sam Harris and explaining that liberals and conservatives agree that criticism of a person's faith is currently so taboo that any rational discussion of religion is thought to be impolitic. Harris argues that religious moderates "thwart all efforts to criticize religion's literalism. By preaching tolerance, they become intolerant of any rational discussion of religion and 'betray faith and reason equally'").

7. Storytelling is an important method used in legal discourse, which was popularized by Derrick Bell. This tool, including "[s]tories, parables, chronicles, and narratives [is a] powerful means for destroying mindset - the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place." Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1989).

8. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (providing a description of Bell's radical interest-convergence theory). See also MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2001) [hereinafter DUDZIAK, *COLD WAR CIVIL RIGHTS*] (showing that Bell's interest convergence theory does in fact hold true in the case of the Cold War).

resulting from *Brown v. Board of Education*.⁹ Meren and her colleagues believe that because of the current world situation and the desperate need of the United States to gain allies in its war against terrorism and the radical wing of Islam, the United States may be willing to temporarily indulge the wishes of minorities because it would be in the majority's benefit to do so.

The United States' urgent need to gain allegiance of foreign countries to help fight its war on terror is indeed forcing it to grant concessions to domestic minorities and religions to present a positive image of itself to the rest of the world, just as Bell's interest convergence theory would predict. Minorities may wish to seize this rare opportunity to press for even greater and more permanent advances at this opportune time. Part II explains Derrick Bell's interest convergence theory and its relevance to *Brown v. Board of Education*. Part III explores the meaning of interest convergence in today's world, with the United States currently in need of allies in its war against terrorism and the radical wing of Islam. Part IV makes the case that the United States' cause is not progressing particularly well, so that it has thus been granting token concessions to various minority groups and religions to help buttress its image internationally. Part V concludes by addressing the means by which minorities might take advantage of this fortuitous and fleeting alignment of interests by pressing for larger, enduring concessions that might otherwise be unattainable from an increasingly conservative society.

II. DERRICK BELL'S INTEREST CONVERGENCE THEORY

"The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just." – E.P. Thompson¹⁰

In 1954, the United States Supreme Court handed down the revolutionary school desegregation decision *Brown v. Board of*

9. 347 U.S. 483 (1954) (striking down school segregation under the "separate but equal" doctrine).

10. E.P. THOMPSON, WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT 262 (1975).

Education (“*Brown I*”). In *Brown I*, the Court held that the segregation of white and black children in the public schools denied black children equal protection of the laws as guaranteed by the Fourteenth Amendment, even though physical facilities and other “tangible” factors of the segregated schools may have been equal.¹¹ The Court therefore ruled that separate schools were inherently unequal and reversed the decision of the lower court for legal and social scientific reasons.¹² In the Court’s mandate to actually make desegregation take place (“*Brown II*”) it ordered the transition to desegregation to occur “with all deliberate speed.”¹³

A. *Brown and Bell’s Interest Convergence*

While many celebrated *Brown* as a great breakthrough for racial justice, Derrick Bell notes in his groundbreaking article, *Brown v. Board of Education and The Interest-Convergence Dilemma*, that school segregation was still pervasive even in 1980.¹⁴ In fact, black children mostly attended inferior and isolated public schools at that time.¹⁵ Bell hypothesizes that *Brown* exemplified an “interest convergence” case, in that the white majority only advanced black students’ interest in equality because it converged, momentarily, with the interests of whites.¹⁶ Further, Bell posits that the Fourteenth Amendment, on its own, will not grant a judicial remedy to provide actual racial equality for blacks where the remedy “threatens the superior societal status of middle and upper class whites.”¹⁷ As a result, “[r]acial remedies may instead be the outward manifestations of unspoken

11. *Brown*, 347 U.S. at 493, 495.

12. *Id.*

13. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955). See generally CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* (2004) (arguing that *Brown* was a failure and that in order to improve educational opportunities for poor blacks, society must put its resources into charter schools and after school programs and highlighting the nation’s limited commitment to racial justice); MICHAEL KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004) (presenting a similar point of view in his 2003 book).

14. Bell, *supra* note 8, at 518.

15. *Id.*

16. *Id.* at 523.

17. *Id.*

and perhaps subconscious judicial conclusions that the remedies, if granted, will secure, advance or at least not harm societal interests deemed important by middle and upper class whites.”¹⁸ Courts and policy makers may therefore advance racial justice, or its appearance, because they determine it to be important to their interests.¹⁹

Bell then proceeds to describe in pragmatic terms the reasons for the Court’s abrupt break from the separate but equal doctrine of *Plessy v. Ferguson*.²⁰ In doing so, he postulates that the Court’s retreat from its position in *Plessy* cannot be comprehended without consideration of *Brown*’s value to the white majority.²¹ The white majority Bell refers to includes not only those concerned with the “immorality of racial inequality, but also those whites in policy-making positions able to see the economic and political advances at home and abroad that would follow” from *Brown*’s mandate of desegregation.²²

Bell highlights how *Brown* helped to win the support of the Third World in America’s struggle with Communist countries during the Cold War.²³ Both government and NAACP lawyers who argued the case employed this line of reasoning.²⁴ News media conjectured that *Brown*’s impact internationally would be extremely important, “scarcely less important than its effect on the education of black children.”²⁵ A piece in *Time* magazine stated that, “[i]n many countries, where U.S. prestige and leadership have been damaged by the fact of U.S. segregation, it [*Brown*] will come as a timely reassertion of the basic American principle that ‘all men are created equal.’”²⁶

Bell continues by describing how *Brown* reassured American

18. *Id.*

19. *Id.*

20. *Id.* at 524. See also *Plessy v. Ferguson*, 163 U.S. 537 (1896) (establishing the “separate but equal” doctrine).

21. Bell, *supra* note 8, at 524.

22. *Id.*

23. *Id.* The term “Third World” refers to countries that are not as industrialized or technologically advanced as OECD countries such as the United States. *Third World*, WIKIPEDIA, http://en.wikipedia.org/wiki/Third_World (last visited Jan. 18, 2006).

24. *Id.*

25. *Id.*

26. *Id.*

black veterans that the "precepts of equality and freedom so heralded during World War II might yet be given meaning at home."²⁷ At the time, black veterans were the subjects of constant discrimination and were violently attacked in the South in a manner similar to that which they suffered at the end of World War I.²⁸ It is altogether possible that the Court responded with *Brown* to its fear of the rising sentiment among blacks, as movingly described by Paul Robeson: "[i]t is unthinkable . . . that American Negroes would go to war on behalf of those who have oppressed us for generations . . . against a country [the Soviet Union] which in one generation has raised our people to the full dignity of mankind."²⁹

Bell surmises that some whites wanted to increase their profits by industrializing the South.³⁰ It was therefore in their economic benefit to end the struggle to preserve state-sponsored segregation and thus capitalize on the potential of the Sunbelt.³¹

Thus, *Brown* was a welcome development for whites who desired an end to segregation for moral and pragmatic reasons.³² At the time of Bell's article, unstable Supreme Court majorities upheld sweeping desegregation plans ordered by the authors of

27. *Id.*

28. *Id.*

29. *Id.* at 525. Paul Robeson was a slave's son. He was the third black student to enroll at Rutgers University. *Paul Robeson: A Brief Biography*, ELECTRONIC NEW JERSEY: A DIGITAL ARCHIVE OF NEW JERSEY HISTORY, <http://www.scc.rutgers.edu/njh/PaulRobeson/PRBio.htm> (last visited Oct. 25, 2005). He went on to obtain a law degree at Columbia University. *Id.* After facing discrimination in his practice of law, Robeson returned to his childhood love of drama and singing. *Id.* In his performances, he acted on his belief that music is universal and that by performing spirituals and other cultures' folk songs, he could promote intercultural understanding. *Id.* During the 1940s, while traveling around the world to perform, Robeson found the Soviet Union to be a tolerant and friendly nation. *Id.* He protested the mounting Cold War hostilities, and questioned why African Americans should support a government that did not treat them as equals. *Id.* Through his stance against inequality and oppression, Robeson helped to inspire the civil rights movement of the 1960s. *Id.*

30. Bell, *supra* note 8, at 525.

31. *Id.*

32. *Id.* As a result of the desegregation mandate, poor whites experienced a sense of betrayal and became afraid of losing power over their schools and facilities. They had assumed that wealthy whites would continue to perpetuate the lower class of whites in a superior societal status than blacks. *Id.* at 526-27.

Brown.³³ Bell reinforces his racial realist argument by suggesting that the reservations of the *Brown* concurrences and the vigorous dissents warn against optimism in controversial areas of civil rights law.³⁴

Bell's interest convergence theory, therefore, explains the monumental *Brown* decision as an illustration of the rule that progress toward racial equality occurs only when it is in the interest of whites to prevent upheaval.³⁵ In other words, sadly, often only when minority and majority interests converge do minorities become chance beneficiaries of legal and policy decisions.³⁶ The *Brown I* court was aware that its move away from separate but equal doctrine and toward desegregation mandates would help the country in its competition with Communist nations abroad during the Cold War and mollify dissident factions at home.³⁷

B. Dudziak's Reinforcement of Interest Convergence

"It is in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination should be viewed." – Brief for the United States as Amicus Curiae, *Brown v. Board of Education*³⁸

33. *Id.* at 527.

34. *Id.* See also Cass R. Sunstein, *Did Brown Matter?*, THE NEW YORKER, May 3, 2004, at 102 (discussing Michael J. Klarman's reconstruction, through Justice Department conference notes and draft opinions, of the *Brown I* court's internal deliberations). See also KLARMAN, *supra* note 13 (highlighting that the *Brown* court brought about little desegregation because it did not have the power to overcome local resistance).

35. Bell, *supra* note 8, at 523; David L. Chappell, *If Affirmative Action Fails . . . What Then?*, N.Y. TIMES, May 8, 2004, at B7, 9. See also DERRICK BELL, SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM (2004) (advancing the proposition that the major impetus for the Emancipation Proclamation at the time of the Civil War was to gain Union advantage). Cf. SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM (2004).

36. Christopher Benson, *Strange Justice: Two Books Wrestle With a Historic Supreme Court Decision's Incomplete Legacy*, WASH. POST, May 16, 2004, Book World at 5 (comparing Derrick Bell's *Silent Covenants* and Charles Ogletree's *All Deliberate Speed*).

37. Sunstein, *supra* note 34, at 104.

38. Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61, 61 (1988) [hereinafter Dudziak, *Desegregation*].

Mary Dudziak explores Bell's interest convergence theory in her 2000 book *Cold War Civil Rights*.³⁹ Dudziak also argues that interest convergence prompted the elimination of *de jure* segregation and that the United States did not have more extensive hopes for racial justice.⁴⁰ She investigates Bell's contentions that interest convergence explains the *Brown I* decision through her analysis of many archival documents.⁴¹ As a result of her thorough investigation, Dudziak confirms Bell's hypothesis that civil rights gains for minorities during the Cold War period were the result of foreign policy objectives that did not specifically encompass civil rights.⁴²

For example, in its brief before the *Brown I* court, the Department of Justice quoted then Secretary of State Dean Acheson, writing that racial segregation and discrimination gave other unfriendly governments "the most effective kind of ammunition for their propaganda warfare," and persisted as "a source of constant embarrassment to [the United States] government in the day-to-day conduct of its foreign relations."⁴³ The Department of Justice also argued in its brief that desegregation was in the nation's interest regarding its foreign policy affairs.⁴⁴ *Brown I*, the Department of Justice contended, was important because "[t]he United States [wa]s trying to prove to the people of the world, of every nationality, race and color, that a free democracy is the most civilized and most secure form of government yet devised by man."⁴⁵ Following the *Brown* decision, press around the world celebrated the case as a "blow to communism" and a vindication of American democratic principles.⁴⁶ Further, the Truman Administration structured

39. See DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 8.

40. Dudziak, *Desegregation*, *supra* note 38, at 64.

41. Alexander Tsesis, *Justice at War and Brown v. Board of Education*, 47 HOW. L.J. 361, 367 (2004) (book review). See also RICHARD DELGADO, *JUSTICE AT WAR: CIVIL LIBERTIES AND CIVIL RIGHTS DURING TIMES OF CRISIS* (2003) (extending Bell's interest convergence theory to the split between the moderate and radical factions of the civil rights movement in the 1960s and 70s).

42. DUDZIAK, *COLD WAR CIVIL RIGHTS*, *supra* note 8, at 252-53.

43. Sunstein, *supra* note 34, at 104.

44. Dudziak, *Desegregation*, *supra* note 38, at 65.

45. *Id.* (quoting Brief for the United States as Amicus Curiae at 6, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (Nos. 1, 2, 4, 10)).

46. *Id.* (quoting N.Y. TIMES, May 18, 1954, at A19).

United States government policy regarding civil rights issues in accordance with the international implications of America's racial problems.⁴⁷ Particularly of interest regarding today's world climate, the Truman Administration "impressed upon the Supreme Court the necessity for world peace and national security of upholding black civil rights at home."⁴⁸

Dudziak also considers other countries' attention to discrimination based on race in the United States.⁴⁹ She demonstrates that race discrimination was an international issue, on which the Soviet Union capitalized, framing it as an American weakness.⁵⁰ The United States Department of State deemed the issue a serious foreign policy concern.⁵¹ Dudziak thus proves with concrete evidence what Bell posited about interest convergence years earlier.

C. *Other Scholars of Interest Convergence*

Many other critical theory scholars deploy Bell's interest convergence to powerful effect. For example, Richard Delgado writes about Bell's racial realism. Delgado shows how interest convergence explains civil rights progress more than moral concerns do.⁵² He breaks down white materialistic interest and its relation to minority fortunes in a variety of categories.⁵³ Delgado writes that "throughout history, whites have subordinated blacks and other people of color in order to advance their own economic self interest Slavery . . . conferred a great economic benefit on the South . . . [as did] Chinese coolie labor, the Bracero Program and Alien Land Laws that cut down on the competition from expert Japanese Farmers."⁵⁴

Delgado also extends Bell's interest convergence to the split between the moderate and radical factions of the civil rights

47. *Id.*

48. *Id.*

49. *Id.* at 66.

50. *Id.*

51. *Id.*

52. Delgado, *Crossroads*, *supra* note 5, at 128-29.

53. Richard Delgado, *White Interests and Civil Rights Realism: Rodrigo's Bittersweet Epiphany*, 101 MICH. L. REV. 1201, 1210 (2003) [hereinafter Delgado, *White Interests*].

54. *Id.* See also JUAN PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 91-428 (2000).

movement in the 1960s and 70s.⁵⁵ Delgado and Jean Stefancic consider a variety of “homeo-mechanisms” having to do with interest convergence that continue to help explain “racial replication” in the United States.⁵⁶

Delgado suggests in a recent article that no critical race theorist had analyzed whether and how interest convergence theory describes the current world situation, with the United States at war against terrorism and the radical wing of Islam.⁵⁷ In 1954, the country’s civil rights problem was concrete - *de jure* segregation. The civil rights concerns of our time strike many as remote and abstract, lacking in the concrete urgency of former times. As a result, many race scholars today forego real-world analysis of concrete problems for examination of text, mindset, and discourse.⁵⁸ Still, as the next sections show, the pragmatism of interest convergence theory *does* apply to the current world situation. The United States’ attempt to change its image internationally because it needs to secure the allegiance of other countries in fighting its war on terror is the latest example of the majority’s interest benefiting minorities’ social status.

III. AMERICA’S REPUTATION – IN NEED OF A MAKEOVER?

*“Criticism, as we in the movement for minority rights have every reason to learn, is a synonym for neither cowardice nor capitulation. It may instead bring awareness, always the first step toward overcoming still another barrier in the struggle for racial equality.” – Derrick A. Bell, Jr.*⁵⁹

Many of America’s former allies view the United States as a religion-obsessed world imperialist power, acting under the thrall of large corporations to advance a global corporate agenda. The

55. Delgado, *Crossroads*, *supra* note 5, at 129. See also Delgado, *White Interests*, *supra* note 53.

56. Richard Delgado & Jean Stefancic, *The Racial Double Helix: Watson, Crick, and Brown v. Board of Education (Our No-Bell Prize Award Speech)*, 47 HOW. L.J. 473, 479-88 (2004). Homeo-mechanism in this context refers to the way culture replicates itself. *Id.* at 479.

57. Delgado, *Crossroads*, *supra* note 5, at 138. Delgado also suggested this application of Bell’s interest convergence theory in his classroom teaching and public speaking, thus challenging the author to address this gap in Critical Race Theory scholarship herself.

58. See Delgado, *Crossroads*, *supra* note 5, at 131-32.

59. Bell, *supra* note 8, at 533.

United States has an extremely poor record with respect to health care and health insurance disparities, funding of public education, harassment of Muslims and others of Middle Eastern descent, and suppression of women's rights. As a result of this record, the United States is presently experiencing a chilling of relations with its European and other allies. America is undergoing an image crisis both at home and abroad.

The United States is suffering from a loss of credibility in the Muslim world and in Europe. Al Jazeera, the Arab world's major news source, exemplifies that community's exceptionally negative view of America and Americans. European writers such as Arundhati Roy and the late Edward W. Said express their disdain for United States policies.⁶⁰ In fact, even the United States government openly recognizes and is trying to address its image problem.

A. *America's Reputation in the Muslim World*

"Friends . . . We're in trouble in Iraq. We have to immediately get the Democratic and Republican politics out of this policy If we do not, we'll end up not only with a fractured Iraq, but with a fractured America, at war with itself and isolated from the world." – Thomas L. Friedman⁶¹

Al Jazeera consistently portrays the United States in a negative light. In the first sentence on its "Iraq Under Occupation Page," the news source reports that "[the] occupation of Iraq is regarded as the reemergence of the old colonialist practices of the western empires in some quarters."⁶² At the conclusion of its profile of Vice President Dick Cheney, Al Jazeera criticizes Cheney's overstatement of "the threats America faces and its need for military rather than political means" to deal with these threats.⁶³ The article also depicts an attitude in Washington that

60. See *infra* notes 83-86 and accompanying text.

61. Thomas L. Friedman, *Iraq: Politics or Policy*, N.Y. TIMES, Oct. 3, 2004, § 4, at 11.

62. *Iraq Under Occupation*, AL JAZEERA.NET, <http://english.aljazeera.net/NR/exeres/8245212D-39CC-4E6E-80FF-2E1F29F72BC5.htm> (last visited Oct. 25, 2005).

63. *Dick Cheney*, AL JAZEERA.NET, <http://english.aljazeera.net/special/>

is generally disdainful of international law.⁶⁴

Al Jazeera writers further point out the disconnect between the United States' rhetoric and its international actions. The news source attacks the United States for "[f]ailing to ratify the majority of international agreements," leading to a loss of credibility "at offering any kind of global leadership."⁶⁵ Examples of non-ratification include President George W. Bush's decision to desert the Anti-Ballistic Missile Treaty and eschew the International Criminal Court.⁶⁶ In its article "US Scorn for International Law Blasted," Al Jazeera cites a study by the Institute for Agriculture and Trade Policy (hereinafter "IATP"), an American organization in Washington, D.C., which found that the United States has only ratified fourteen out of 162 "active treaties" of the International Labor Organization and only two of eight "core" United Nations conventions that safeguard the rights of workers.⁶⁷ The IATP also found that the United States approved only three of eleven major environmental treaties, five out of the twelve human rights treaties endorsed by the United Nations High Commissioner for Human Rights, and about half of the twenty-three treaties regulating intellectual property and technological rights.⁶⁸

Al Jazeera reports that United Nations Secretary General Kofi Annan described the American-led Iraqi invasion as illegal and a violation of the United Nations Charter.⁶⁹ Najib Ghadban writes that the Bush Administration's justifications for the war on Iraq - Saddam Hussein's alleged possession of weapons of mass

profiles/cheney_txt.htm (last visited Oct. 21, 2005).

64. *Id.*

65. *US Scorn for International Law Blasted*, AL JAZEERA.NET, Sept. 30, 2004, <http://english.aljazeera.net/NR/exeres/1EA2F3BB-7933-40E2-95ED-FE49777EC616.htm>. See also SEYMOUR M. HERSH, CHAIN OF COMMAND: THE ROAD FROM 9/11 TO ABU GHRAIB (2004); Michael Ignatieff, *What Geneva Conventions? Seymour Hersh Explains How the United States Came to Violate the Very Rights It Promised to Restore in Iraq*, N.Y. TIMES, Oct. 17, 2004, § 7, at 13.

66. *US Scorn for International Law Blasted*, *supra* note 65.

67. *Id.*

68. *Id.*

69. *Annan: U.S. Invasion of Iraq Was Illegal*, AL JAZEERA.NET, Sept. 16, 2004, <http://english.aljazeera.net/NR/exeres/2AA1310F-798C-4666-AE76-DCB6370C75CC.htm>. See also Editorial, *The Rule of Law at Gitmo*, N.Y. TIMES, Nov. 10, 2004, at A24 (discussing the Bush Administration's non-compliance with international law).

destruction, his links to terrorists, and the liberation of Iraqis from tyranny and oppression - were convenient excuses for mustering the support of the American public.⁷⁰

Al Jazeera reported that the Bush Administration is promoting a false image of a civil war in Iraq as an alleged reason to continue its occupation.⁷¹ In fact, according to staff writer Mustafa al-Bazergan, the reality is that a popular uprising is taking place against United States forces.⁷² In another article, columnist Ahmad al-Quni reports that United States policy toward Iraq has always been focused on Iraq's rich oil resources, its strategic geographic location on the Persian Gulf, and its regional weight.⁷³ An analysis by Shaheen Chughtai accuses Bush and British Prime Minister Tony Blair of being war criminals because of their use of illegal weapons of mass destruction against Iraqis.⁷⁴

Further, Al Jazeera criticizes the United States' treatment of racial minorities, quoting former President Jimmy Carter who said that a "fumbling attempt has been made recently to disqualify 22,000 African Americans [likely Democrats], but only

70. Najib Ghadban, *The War on Iraq: Justifications and Motives*, AL JAZEERA.NET, Aug. 10, 2003, <http://english.aljazeera.net/NR/exeres/FC73D48E-EE6F-4C4E-BD67-C8C1179E97CC.htm>. See also Imad Khadouri, *Circle of Lies Coming to a Close*, AL JAZEERA.NET, Aug. 10, 2003, <http://english.aljazeera.net/NR/exeres/D9D2791A-EA23-4C23-AB8A-D7EB77AA8A1D.htm> (discussing the United States' false justifications for invading Iraq).

71. Mustafa al-Bazergan, *Bush's High-Risk Civil War Scam*, AL JAZEERA.NET, Sept. 27, 2004, <http://english.aljazeera.net/NR/exeres/68184A67-1FFD-43D8-93C8-751BE89BACDC.htm>.

72. *Id.*

73. Ahmad al-Quni, *Iraq Oil - The Target For Years*, AL JAZEERA.NET, Aug. 10, 2003, <http://english.aljazeera.net/NR/exeres/E07D937C-456F-48C9-90FF-A2C87F2DB724.htm>. See Ahmad al-Quni, *Increasing Dependence On Oil Imports*, AL JAZEERA.NET, Aug. 10, 2003, <http://english.aljazeera.net/NR/exeres/2CDA8F31-A5D7-4071-B12D-1B804E1C15EE.htm>. See also Thomas L. Friedman, *The Battle of the Pump*, N.Y. TIMES, Oct. 7, 2004, at A35 (discussing how "[t]he Arab-Muslim world is in a must-change human development crisis, but oil is like a narcotic that kills a lot of the pain for them and prevents real change," says David Rothkopf, a visiting scholar at the Carnegie Endowment for International Peace).

74. Shaheen Chughtai, *Washington's Secret Nuclear War*, AL JAZEERA.NET, Sept. 7, 2004, <http://english.aljazeera.net/NR/exeres/B2E2DF9B-1E0C-43F4-BBF6-074C1367E27C.htm>.

61 Hispanics [likely Republicans], as alleged felons.”⁷⁵ Contributor Imad Khadduri criticizes America’s democracy by claiming that it is “misguided” because of such small numbers of United States citizens voting in the 2000 presidential election.⁷⁶ Khadduri quotes Senator Robert Byrd from his new book, *Losing America: Confronting a Reckless and Arrogant Presidency*, in which Byrd perceives a grave threat to America’s democracy and Constitution because “[n]ever . . . ha[s] America been led by such a dangerous head of state.”⁷⁷

Senator Joe Biden, Al Jazeera reports, called for an expansion in American radio and television broadcasts to the Muslim world to repair America’s image problem.⁷⁸ Thomas L. Friedman writes in his *New York Times* Op-Ed column *Jews, Israel and America* that Iraqis distrust American forces and have come up with a nickname for United States troops.⁷⁹ The Iraqis “call American soldiers ‘The Jews,’ as in ‘Don’t go down that street, the Jews set up a roadblock.’”⁸⁰ A widespread perception holds that in the “Arab-Muslim world . . . the great enemy of Islam is JIA - Jews, Israel and America” and therefore that Jews are the universal, ubiquitous menace.⁸¹

Even the relatively moderate Senator Herb Kohl warned that “winning the hearts and minds of the Arab world is vital to our success in the war on terror” and that “[p]hotographs that have come out of Abu Ghraib have undoubtedly hurt those efforts.”⁸²

75. *Carter Predicts Unfair Vote in Florida*, AL JAZEERA.NET, Sept. 27, 2004, <http://english.aljazeera.net/NR/exeres/B419BBEA-B3BB-4055-A3E1-2E920033CBB2.htm>.

76. Imad Khadduri, *Bush’s America Asks: Why Us?*, AL JAZEERA.NET, Sept. 23, 2004, <http://english.aljazeera.net/NR/exeres/BD2F209D-4C66-4824-96A6-184F23AC8ABC.htm>.

77. *Id.*

78. *Senator Proposes Muslim Media Blitz*, AL JAZEERA.NET, Sept. 30, 2004, <http://english.aljazeera.net/NR/exeres/E3C60CE0-C16F-47BB-AB0B-41FF5AAC63B6.htm>.

79. Thomas L. Friedman, *Jews, Israel and America*, N.Y. TIMES, Oct. 24, 2004, § 4, at 11. See Thomas L. Friedman, *The Other Intelligence Failure*, N.Y. TIMES, Oct. 10, 2004, § 4, at 11 (explaining the surge of an Islamic identity over the past few decades).

80. Friedman, *Jews, Israel and America* at 11.

81. *Id.*

82. Jonathan Schell, *Letter from Ground Zero: What is Wrong with Torture*, NATION, Feb. 7, 2005, at 8.

B. *America's Reputation in Europe and Elsewhere*

"The conquest of the earth, which mostly means the taking it away from those who have a different complexion or slightly flatter noses than ourselves, it is not a pretty thing when you look into it too much. What redeems it is the idea only. An idea at the back of it; not a sentimental pretence but an idea; and an unselfish belief in the idea – something you can set up, and bow down before, and offer a sacrifice to" – Joseph Conrad, *Heart of Darkness*⁸³

The United States has also lost a great deal of its credibility in Europe, as it is viewed as a nation attempting to conquer vulnerable nations. The late Edward W. Said, in his book *Culture and Imperialism*, argues that the United States is an imperialist power and engages in the economic and cultural rape of weaker countries.⁸⁴ Arundhati Roy posits that the demands of global capitalism drove the United States to war in Iraq.⁸⁵ In her latest book, *The Ordinary Person's Guide To Empire*, she links the pursuit of empire through many spheres.⁸⁶ She finds parallels between Iraqi construction contracts, international mass media propaganda, South African AIDS, American poverty, and Indian caste politics.⁸⁷

83. JOSEPH CONRAD, *HEART OF DARKNESS* 7 (Enriched Classics ed., Pocket Books 1972) (1902).

84. EDWARD W. SAID, *CULTURE AND IMPERIALISM* 281-303 (1993). American cultural imperialism is rampant in the Arab world. The Arab world has become extremely commercialized, with American brands gaining increasing popularity. *Id.*

85. Arundhati Roy, *Not Again: Tomorrow thousands of people will take to the streets of London to protest against an attack on Iraq*, *THE GUARDIAN* (LONDON), Sept. 27, 2002, at Features 2-3. See Arundhati Roy, *The Algebra of Infinite Justice*, *THE GUARDIAN* (LONDON), Sept. 29, 2003, at Saturday Review (challenging the United States' instinct for vengeance); Arundhati Roy, *Mesopotamia, Babylon, The Tigris and Euphrates*, *THE GUARDIAN* (LONDON), Apr. 2, 2003, at Features, available at <http://www.guardian.co.uk/g2/story/0,3604,927712,00.html> (expressing disapproval of American policy and action toward Iraq). A classically trained architect, Arundhati Roy is a widely published essayist who won the Booker Prize for her novel, *THE GOD OF SMALL THINGS*. She currently lives in New Delhi, where she pursues her social activism. See also Jonathan Tepperman, *The Anti-Anti-Americans*, *N.Y. TIMES*, Dec. 12, 2004, § 7, at 24-25.

86. ARUNDHATI ROY, *AN ORDINARY PERSON'S GUIDE TO EMPIRE* (2004).

87. *Id.*

European intelligence officials are afraid that because of the United States' war in Iraq, a new generation of disaffected European Muslims could use this as a "galvanizing cause that sends idealistic young men abroad, trains them and puts them in touch with a more radical global network of terrorists."⁸⁸ Officials fear that these young Europeans, like those who fought in wars in Afghanistan, Bosnia, and Chechnya, may return to Europe to plot terrorist attacks there.⁸⁹

Thomas L. Friedman, in his essay *Addicted to 9/11*, highlights how the United States has lost its balance and is being transformed by its war on terror.⁹⁰ The Bush Administration's exploitation of 9/11 "created a wedge between . . . America and the rest of the world, between America and its own historical identity, and between the president and common sense."⁹¹ For instance, tension grew between the United States and Spain after Spain's newly elected Prime Minister José Luis Rodríguez Zapatero withdrew his forces from Iraq in April.⁹² Spanish Defense Minister José Bono made a variety of anti-American comments while anti-American sentiments are becoming more common among the Spanish public.⁹³

Others criticize President George W. Bush's supposed "Mandate of Heaven," which is meant to elicit images of the influential neo-Confucianism of the Chinese Empire.⁹⁴ Some argue that the United States is seeking not simply imperial centralization but hegemony over the existing "Core and Periphery," or the entire world.⁹⁵ Additionally, progressives such as James H. Mittleman assert that the United States, in its invasion of Iraq and other countries, is attempting to "secure

88. Craig S. Smith & Don Van Natta, Jr., *Officials Fear Iraq's Lure for Muslims in Europe*, N.Y. TIMES, Oct. 23, 2004, at A1.

89. *Id.*

90. Thomas L. Friedman, *Addicted to 9/11*, N.Y. TIMES, Oct. 14, 2004, § 1, at 29.

91. *Id.*

92. Renwick McLean, *Old Friends U.S. and Spain Weather a Time of Tension*, N.Y. TIMES, Oct. 17, 2004, § 1, at 11.

93. *Id.*

94. William Marina, *George W. Bush & the "Mandate of Heaven,"* COMMON DREAMS NEWS CENTER, Oct. 5, 2004, <http://www.commondreams.org/views04/1005-27.htm>.

95. *Id.*

economic globalization by military means.”⁹⁶ Condemnation of the Bush Administration centers around the president’s placing more value on waging seemingly endless wars than making America more secure, while he tries to hide under his “vast cloud of patriotism.”⁹⁷ Further, the United States comes under criticism because George W. Bush, who obtained his first term of presidency through illegitimate means, is leading the world through force rather than consensus, and values supremacy more than the respect of the rest of the world.⁹⁸

C. America’s Attempts at Rehabilitating Its Image Abroad

“It’s simply astounding that in the United States, the home of the greatest and most effective democratic revolution, so many people have come to regard democracy as a luxury-brand vehicle, suited only for the culturally upscale, when it’s really a sturdy truck, effective in conditions both rough and smooth.” – David Brooks⁹⁹

The United States is in the process of revitalizing its international image. Of particular note is the State Department’s October 2001 hiring of Charlotte Beers as the Under Secretary for Public Diplomacy and Public Affairs, a position established to promote American values and culture to the Muslim world.¹⁰⁰ As a private sector advertising executive, Beers built her reputation on her marketing for Uncle Ben’s rice and American Express.¹⁰¹ Secretary of State Colin Powell, who recruited Beers, became

96. James H. Mittleman, *Where Have All The Protestors Gone? Critics of Globalization May Be Less Visible But the Opposition Is, In Fact, Deeper and More Widespread*, COMMON DREAMS NEWS CENTER, Oct. 5, 2004, <http://www.commondreams.org/views04/1005-33.htm>.

97. Larry Beinhart, *The War on Terror Badly Needs a Total Rewrite*, COMMON DREAMS NEWS CENTER, Oct. 1, 2004, <http://www.commondreams.org/views04/1001-01.htm>.

98. Gary Younge, *Divided Against Itself: If Americans Choose Bush Over Kerry, It Will Be from Fear, a Lack of Choice – and a Preference for Power Over Safety*, COMMON DREAMS NEWS CENTER, Oct. 4, 2004, <http://www.commondreams.org/views04/1004-24.htm>.

99. David Books, *The Insurgency Buster*, N.Y. TIMES, Sept. 28, 2004, at A25.

100. Roger Cohen, *Democracy as a Brand: Wooing Hearts, European or Muslim*, N.Y. TIMES, Oct. 16, 2004, at B7, B12.

101. Charlotte Beers, SOURCE WATCH, Apr. 1, 2004, http://www.disinfopedia.org/wiki.phtml?title=Charlotte_Beers.

acquainted with her on various corporate boards.¹⁰² Before accepting her appointment, Beers acted as the head of both Ogilvy & Mather and J. Walter Thompson, large American advertising agencies.¹⁰³

With Beers at its helm, the State Department has been targeting its vast propaganda campaign, entitled "Shared Values," at the Islamic world.¹⁰⁴ Roger Cohen writes, in his article *Democracy as a Brand*, that "[p]ropaganda is central, victory begins in the mind and the heart is ever vulnerable to seduction."¹⁰⁵ Under Beers' supervision, the State Department indeed attempted to seduce the hearts and minds of Muslims around the world.

The State Department produced pamphlets, videos, booklets, and other propaganda.¹⁰⁶ This material included an advertising campaign depicting religious tolerance and Muslims thriving in the United States, which the State Department intended to air in Muslim countries.¹⁰⁷ One such video was to be played on Muslim television during Ramadan.¹⁰⁸ The video portrayed American Muslims commending American tolerance and way of life.¹⁰⁹

Beers also attempted to "re-brand" the United States as "elegant" and President Bush and Secretary of State Colin Powell as "symbols of the brand."¹¹⁰ To counteract Osama bin Laden's videos, Beers recruited Powell, Condoleeza Rice, and former Syrian Ambassador Chris Ross to Washington's Al Jazeera studios

102. See Margaret Carlson, *Can Charlotte Beers Sell Uncle Sam?*, TIME, Nov. 14, 2001, <http://www.time.com/time/columnist/klein/article/0,9565,184536,00.html>. See also Alexandra Starr, *Charlotte Beers' Toughest Sell: Can She Market America to Hostile Muslims Abroad?*, BUS. WK., Dec. 17, 2001, at 56.

103. *Charlotte Beers*, *supra* note 101.

104. Cohen, *supra* note 100; *Shared Values*, SOURCE WATCH, Aug. 2, 2003, http://www.disinfopedia.org/wiki.phtml?title=Shared_Values.

105. Cohen, *supra* note 100.

106. *Id.*; *President Bush Signs an Executive Order Creating a White House Office to Improve American's Image Abroad*, ONLINE NEWSHOUR, Jan. 21, 2003, http://www.pbs.org/newshour/bb/media/jan-june03/diplomacy_1-21.html.

107. *Id.*

108. Embassy of the United States of America, *Documentaries on American Muslims Designed to Provoke Dialogue*, Jan. 17, 2003, http://www.usembassyjakarta.org/press_rel/US_Muslims2.html.

109. Cohen, *supra* note 100; ONLINE NEWSHOUR, *supra* note 106.

110. Carlson, *supra* note 102.

to appear on the television station.¹¹¹ Beers also coordinated with the Ad Council to produce a poster to plaster all over Arab countries about the reward for information leading to the capture of the Most Wanted terrorists.¹¹²

In her job with the State Department, Beers served as mistress of propaganda and attempted to employ "psychological warfare" on Muslims, rather than deploying a traditional advertising soft-sell.¹¹³ Beers' job was thus to attempt to correct the world view that America is the Great Satan of the Muslim world.¹¹⁴ However, "[o]n March 3, 2003 Beers unexpectedly announced her resignation from [her under secretary position for undisclosed] health reasons."¹¹⁵

The C.I.A. also engaged in a propaganda campaign of its own to improve the United States' image in Iraq.¹¹⁶ The agency wanted to bring hundreds of small American flags to pre-war Iraq so that "grateful Iraqis" could wave the flags at "their liberators."¹¹⁷ The C.I.A. intended to film the contrived scene and jubilantly broadcast it to the Arab world.¹¹⁸

In June 2003, after the Pew Research Center for the People and Press reported that the Middle East still held negative views of the United States, "the . . . State Department launched an inquiry into the failure of [the] Shared Values program to polish America's image in Muslim countries."¹¹⁹ The Pew Research Center's "Views of a Changing World" report highlights how, in most countries, opinions of the United States are strikingly lower than they were previously.¹²⁰ The war in Iraq widened the rift between Americans and Western Europeans, further angered the

111. *Id.*

112. *Id.*

113. *Id.* Though Beers' salary is \$133,700, she enjoys an extravagant lifestyle and associates with Washington elites such as Madeleine Albright and Jeanne Kirkpatrick. Beers is also close friends with Martha Stewart. *Id.*

114. *Id.*

115. *Charlotte Beers, supra* note 101.

116. Maureen Dowd, Op-Ed., *Casualties of Faith*, N.Y. TIMES, Oct. 21, 2004, at A29.

117. *Id.*

118. *Id.*

119. *Shared Values, supra* note 104.

120. Pew Research Center for the People and the Press, *Views of a Changing World 2003: War With Iraq Further Divides Global Publics*, June 3, 2003, <http://www.people-press.org/reports/print.php3?PageID=712>.

Muslim world, drastically reduced international support for the war on terror, and significantly weakened global public support for the United Nations and the North Atlantic alliance.¹²¹ Many believe the war in Iraq shows that the United Nations is no longer as important as it once was.¹²² Further, majorities in five of seven surveyed NATO countries support less dependence on the United States regarding diplomatic and security matters.¹²³ The report therefore conveys a primarily negative picture of the United States, its people, and its policies in the view of the rest of the world.¹²⁴

IV. MINORITY GAINS – FOLLOWING FROM A CONVERGENCE OF INTERESTS YET AGAIN

*"[The University of] Michigan decisions should provide me with some measure of prophet's pride. For more than two decades, I have been writing and teaching that no matter how much harm blacks were suffering because of racial hostility and discrimination, we could not obtain meaningful relief until policymakers perceived that the relief blacks sought furthered interests or resolved issues of more primary concern." – Derrick A. Bell, Jr.*¹²⁵

In order to gain allies and power in its global war against terror, one method the United States has employed to improve its destroyed image is making small concessions to various minority groups. For example, minorities are experiencing small gains in the areas of civil liberties, affirmative action, economic opportunities, political appointments, and voting rights.¹²⁶

During its debate about intelligence reform, the 9/11 commission noted that the United States government lacks a

121. *Id.* The United Nations and the North Atlantic alliance are commonly known as the "pillars of the post-World War II era." *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. Derrick Bell, *Diversity's Distractions*, 103 COLUM. L. REV. 1622, 1624 (2003).

126. The areas discussed in which minorities are benefiting as a result of interest convergence are not exhaustive, but provide a sample of incremental gains. Other examples include the recruiting practices of the CIA, FBI, and Armed Forces. The gains minorities are experiencing should also be contrasted with losses such as the Patriot Act and racial profiling.

department whose responsibility it is to safeguard the civil liberties of Americans.¹²⁷ The commission recommended, and the Bush Administration created by executive decree, the President's Board on Safeguarding Americans' Civil Liberties ("the Board" or "the Bush Board"), a special board to protect civil liberties.¹²⁸ However, this Board cannot initiate investigations.¹²⁹ Instead, it must await requests from Bush Administration cabinet members for a review of the Board's actions.¹³⁰ The Board's makeup consists of current administration appointees who frequently control the operations, such as the C.I.A., which the Board seeks to review.¹³¹ The Board held its first meeting in private and lacks a mandate to conduct public hearings, subpoena power, a charge to regularly review laws, or an ability to issue reports to the public.¹³² Though the Bush Board is effectively powerless and extremely partisan, it is a step in the right direction towards recognizing the necessity of protection for civil liberties. The Board's development further demonstrates that interest convergence theory plays a significant role in today's political decisions. It is clear that the civil liberties Board was formed to benefit minorities and provide a necessary image improvement for the country as a whole.

In response to the substantial shortcomings of the Bush Administration's civil liberties Board, Senators Joseph Lieberman

127. Editorial, *In Defense of Civil Liberties*, N.Y. TIMES, Sept. 20, 2004, at A24. The 9/11 Commission suggested that a new agency is necessary to accomplish what the courts, Congress, and the attorney general are undertaking. *Id.* In reality, civil liberties are not high on John Ashcroft's list of priorities. *Id.* Similarly, Congress does not want to appear soft on terrorism and thus cannot effectively defend civil liberties. *Id.* The Bush Administration "has tried to sweep aside the Constitution by declaring selected American citizens to be unlawful combatants and jailing them indefinitely; Mr. Ashcroft's Justice Department produced the appalling memo justifying the torture of prisoners. It was also responsible for, among other things, jailing a lawyer from Portland, [Oregon], on charges of international terrorism based on a misreading of his fingerprints and, apparently, on his religious beliefs. The administration set up a detention camp in Guantanamo Bay where minimal standards of justice have been suspended or eliminated altogether." *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

and John McCain, in a bipartisan effort, submitted a bill that would form a civil liberties panel of five presidentially appointed independent non-governmental individuals who would be subject to Senate approval.¹³³ Optimistically, this proposed panel will display a bipartisan balance.¹³⁴ In contrast to the Bush Board, the McCain-Lieberman panel would be authorized to initiate investigations, compel federal officials to supply documents and testify, and deliver subpoenas.¹³⁵ The panel would hold public hearings, issue reports to the public, examine proposed legislation, regulations and policies, and their implementation, hear reports from government agencies, and report to Congress and the president twice a year.¹³⁶ The panel would recommend that Congress change some of its powers, such as those found in sections of the Patriot Act, based on whether those powers really do enhance national security.¹³⁷ The McCain-Lieberman panel would also review the extent to which the government is violating civil liberties and whether these breaches are essential to America's security.¹³⁸ The creation of this alternative panel indicates that Congress is finding a convergence of interests in the midst of the war on terror.

Minorities are also experiencing gains in affirmative action. The 2003 University of Michigan affirmative action cases, *Grutter v. Bollinger* and *Gratz v. Bollinger*, provided gains to minority students applying to undergraduate institutions and law schools by justifying affirmative action based on a diversity rationale.¹³⁹ In a recent article, Bell once again employs his interest

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. See *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003). The Court recently granted a few other token concessions to minorities. See also *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that a Texas statute criminalizing same sex intimate sexual conduct violates the Due Process Clause); *Virginia v. Black*, 538 U.S. 343 (2003) (deciding the Virginia cross-burning statute unconstitutional on its face because it discriminates on the basis of content and viewpoint); *Smith v. Texas*, 543 U.S. 37 (2004) (limiting capital punishment for the mentally handicapped); *United States v. Moussaoui*, 382 F.3d 453 (4th Cir. 2004) (upholding the rights of Middle Eastern people or those accused of being enemy combatants).

convergence theory and argues that *Grutter* and *Gratz* are classic examples of interest convergence.¹⁴⁰ In their arguments supporting affirmative action, Michigan lawyers, civil rights groups, “academics, labor unions, scores of Fortune 500 companies, and nearly 30 retired military and civilian defense officials” focused on the value of diversity to educational institutions and society generally.¹⁴¹ The Michigan lawyers and *amici curae* shifted their arguments in support of affirmative action away from remedies for past and continuing discrimination and toward diversity justifications, which are in line with the majority’s interest.¹⁴² The majority is presently encouraging diversity as a means to achieve greater cultural understanding in the workplace and armed services. Therefore, diversity justifications, which provide the rationale behind the Court’s continued approval of affirmative action programs, converge with the majority’s interest.

Religious minorities, such as Sikhs, are also experiencing economic gains. Akal Security, owned by the Sikh Dharma community, is one of America’s fastest growing security companies.¹⁴³ Sikh Dharma was founded in the early 1970s as a religious and spiritual retreat where members follow their beliefs in meditation and community service.¹⁴⁴ Akal benefits from \$1 billion in government contracts, as a result of the post-9/11 security demands, and is the largest provider of security officers for federal courthouses in the United States.¹⁴⁵ Some criticize the government’s awarding of such large contract amounts for security projects such as protecting White Sands Missile Range in New Mexico to foreigners who would be taking over a “critical weapons testing site.”¹⁴⁶ Senator Jeff Bingaman defended the

140. Bell, *supra* note 125, at 1624.

141. *Id.* at 1625.

142. *Id.* at 1624-25.

143. Leslie Wayne, *Sikh Group Finds Calling in Homeland Security*, N.Y. TIMES, Sept. 28, 2004, at A1, C4. The Sikh Dharma community is monotheistic and combines New Age principles and orthodox Sikhism, which originated in the Punjab region of India. *Id.*

144. *Id.* at A1. The members say “they are following an ancient Sikh tradition of the warrior-saint – as well as showing deftness at the more modern skill of landing federal contracts.” *Id.*

145. *Id.*

146. *Id.* at C4.

company by stating that Akal is composed of friends to America who do a good job.¹⁴⁷ Because the United States must bolster its image in the Arab-Muslim world, it is in the majority's interest to afford certain economic gains to minority groups in specific cases.

The Bush Administration has been appealing to various minority groups through its cabinet appointments. In President Bush's first administration, the President nominated Condoleezza Rice and Colin Powell to his cabinet, thus appealing to blacks. In preparing for his second administration, the president is charming Latinos by appointing Alberto Gonzalez to the post of attorney general as successor to hardliner Attorney General John Ashcroft who resigned.

Both political parties worked hard to attract African American voters during the 2004 presidential campaign. President George W. Bush campaigned in black churches and received support because he backed both a constitutional amendment banning same-sex marriage and faith-based initiatives to deliver funding to encourage more religious organizations to provide social services.¹⁴⁸ Senator John Kerry sought campaign help from former President Bill Clinton, who is extremely popular in black America, and touted his campaign as the "continuation of the civil rights movement."¹⁴⁹

Therefore, because America's image-buttressing strategy is not progressing particularly well internationally, the United States grants token concessions to various minority groups and religions to help strengthen its image elsewhere.¹⁵⁰ Countless examples demonstrate how the United States is finding a convergence of majority and minority interests and is thus

147. *Id.*

148. Jim Dwyer & Jodi Wilgoren, *Gore and Kerry Unite in Search for Black Votes*, N.Y. TIMES, Oct. 25, 2004, at A1, A17. See generally Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413 (1991) (describing the interest-convergence dilemma's relationship to minority political empowerment). President Bush, however, did not speak to the NAACP.

149. Dwyer & Wilgoren, *supra* note 148, at A1.

150. Gains come, as they did in the 1960s, with a kicker. Minorities are expected to understand that their advances come only if they toe the party line. For instance, black churches only receive federal funds for "faith based initiatives" if they agree to accept the Bush Administration's pro-life, pro-war stance. Latinos will receive a few token appointments, such as Alberto Gonzalez, as long as they do not push too hard on immigration issues.

allowing minority groups to experience small gains.¹⁵¹

V. CONCLUSION – PRESENT-DAY PROSPECT FOR CHANGE

“The battle to reclaim democracy is going to be a difficult one. It is a battle that must range across continents and countries. It must not acknowledge national boundaries, but if it is to succeed, it has to begin [in America]. The only institution more powerful than the U.S. government is American civil society. Hundreds of thousands of you have survived the relentless propaganda you have been subjected to, and are actively fighting your own government. In the ultra-patriotic climate that prevails in the United States, that’s as brave as any Iraqi or Afghan or Palestinian fighting for his or her homeland. I hate to disagree with your president: yours is by no means a great nation. But you could be a great people.” – Arundhati Roy¹⁵²

In order to look better in the eyes of the world, the United States must work to improve its image by granting concessions to minority groups. Currently, the volatile world situation presents clear cut opportunities for the dispossessed in the United States to press for social reform in an effort to bolster its image at home and abroad. Groups should form coalitions, such as Meren’s,¹⁵³ to engage in activism against the majority’s “new colonialism.”¹⁵⁴ Perhaps the United States will attempt to buy off Meren’s coalition and others with token reforms.

151. See Linda Greenhouse, *Justices Give Second Hearing in a Texas Death Row Case*, N.Y. TIMES, Dec. 7, 2004, at A20 (discussing the Supreme Court’s “strong suspicion of racial discrimination” which perhaps violated Mr. Miller-El’s constitutional rights by excluding black jurors from his murder trial on the basis of their race); Michael Cooper, *New York State Votes to Reduce Drug Sentences*, N.Y. TIMES, Dec. 8, 2004, at A1 (discussing how state law makers voted to reduce the extreme mandatory prison sentences given to people convicted of drug crimes in New York state. The mandatory sentences, or Rockefeller drug laws, disproportionately burden minorities).

152. ROY, *supra* note 86, at 66-68.

153. See *supra* text accompanying note 7.

154. Mittleman, *supra* note 96 (regarding coalitions). See also KRIST NOVOSELIC, OF GRUNGE AND GOVERNMENT 99 (2004) (discussing an incorporation of the positive energy and creativity of the World Trade Organization anti-globalization protests into conventional politics).

Meren's coalition and others are left to their own devices to unite themselves. Coalitions should forge a broad community of action out of their disappointment, compassion, and wisdom. The place of progressives is to speak, though often on the margins of society, about the changes that are necessary to bring about social justice for the dispossessed.¹⁵⁵ The majority will most likely listen only when it is in their interest to do so.

Hopefully, the time has come for the majority to grant concessions to domestic minority groups. In a better world, the government would permit women to have control over their bodies, by providing unrestricted access to abortion services, birth control, and sex education. Blacks, Latinos, Native Americans, people of Middle Eastern descent, Indian Americans, and others would not have to worry about being the subjects of unjustified airport searches or racial profiling. The state would not intrude into people's sexual preferences and right to marry. The separation of church and state and freedom to practice, or to refrain from practicing, religion would strengthen. In a more progressive world, moral values, such as poverty, hunger, health care, and education would serve to unite rather than to divide.

The United States is apt to grant concessions to domestic minority groups only when it is in the majority's interest to do so. In today's climate, that means that minority groups must actively take strides to press for changes. If such groups and broader coalitions challenge the majority's policies, great gains might be possible.

155. Members of the legal community should also engage in rebellious lawyering. See, e.g., Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, in CRITICAL RACE THEORY: THE CUTTING EDGE 607, 612 (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); GERALD LOPEZ, REBELLIOUS LAWYERING (1992).