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Derrick A. Bell, Jr.: Serving Two Masters Elegantly

*Margaret Chon**

No one can serve two masters. Either he will hate the one and love the other, or he will be devoted to the one and despise the other.¹

Dear Derrick,

I write this from a somber place. It might be that I'm fighting a cold. It might also be because we are in the raw, gray middle of Seattle winter, where the sun breaks through for a few minutes before retreating again in the battle to emerge from its winter nadir. Or it might be too that in the last two years, I have suddenly lost three people whom I loved: first, my friend Keith Aoki,² then you, and then my dad. These losses are a lot to absorb all at once. In order to write this, I have to let some more seep in.

I miss all three of you. All of you were far from ordinary. You were great men who supported and shaped many others in your role as teachers who advocated for a better world and men who actually did measurably change the world for the better. But I especially miss you three because, among the formative people in my life, each of you saw me as the person I am, and (yet) you egged me on. I “blame” all of you (and include in the blame my judge, *the Judge*, the late A. Leon Higginbotham, Jr.³) for the fact that apparently I still don't know my place after all these years.

This Martin Luther King Day weekend, I had set myself to write a tribute fitting for a graceful individual who exemplified Dr. King's principles—you. I meant to trace your impact on the legal academics on the west coast of the U.S.—your various former students who are now teaching at schools up and down the coast, the many professors who cite to

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1. *Matthew* 6:24.

2. Margaret Chon, *Law Professor as Artist*, 90 OREGON L. REV. 1251 (2012); Margaret Chon, *Supercolleague*, 45 U.C. DAVIS L. REV. 101 (2012).

3. Margaret Chon, *A Symposium Tribute to Judge A. Leon Higginbotham, Jr.: The Mentor and His Message*, 33 LOY. L.A. L. REV. 973 (2000).

your scholarship and teach from your textbooks, your generous visit to Seattle University in 2007 to speak to faculty of color across the university who eagerly sought your advice, your continuing connection to us through the National Advisory Board of the Korematsu Center for Law and Equality at our law school, your earlier stance as Dean of the University of Oregon Law School who resigned when the faculty would not hire a highly qualified Asian American woman and your courage in the face of angrily confused students in your constitutional law class at Stanford University. But I think I will be a bit more personal today and let others canvas these impressive achievements.

One thing I absolutely loved about you, Derrick, is that you refused to be optimistic. No soothsaying platitudes were ever to be expected from you. But at the same time, you were not a depressed, negative person. You just called it as you saw it. In important ways, you were idealistic, but simultaneously very realistic about people and institutions. And you were able to continue on in an enlightened, non-violent way to educate others, knowing that it was going to take a very long time, if ever, for your lessons to sink in. You would understand the reasons for my current gloom, and you would give me good counsel. I need it now, badly.

Your early piece on serving two masters is a starting point for this tribute.⁴ From your work as a civil rights lawyer before you went on to teach as the first African American law professor at Harvard, you knew that the interests of your clients in receiving the best possible education for their children were at odds with the civil rights cause of advancing school desegregation. It is still a powerful article and one of the first I read after becoming a professor (even though I was trying to write my first article on intellectual property rather than civil rights, back then!).

I wish you were here still so we could discuss what I see as a parallel conflict of interest, which haunts all legal academics who care about their students—whatever their gender, color, or creed. I feel strongly that the law professor has a duty to teach critical core lawyering skills so that the students can succeed in the legal profession. However, this duty conflicts with the professor's other so-called "master"—that is, the duty to change a flawed legal educational process, to reform the legal system, and even to take on aspects of the overarching social system itself in which law is so complicit.

I plead guilty of trying hard last semester to serve only one master, not both: of wanting to expose my students to as many core concepts as possible that would enable them to understand the bar-tested material

4. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976).

more easily and eventually out-maneuver other lawyers, if necessary. In doing so, I did not pay enough attention to the other master. I did not impart to my students an urgent sense of their role as actors in the process of positive social change. This semester, I want to try to change that again—and I am worried that I’ll fall flat on my face in trying.

Well, Derrick, I have told myself repeatedly that I could and should try to be a good teacher and role model to and for my students. But lo and behold, I find myself disappointed yet again for our collective failure in legal education to know that we serve both masters at once. The prevailing norms of legal education still focus on one master—the technical requirements of being a good lawyer. Many in the legal academy have tried to change this dynamic, to shift it toward the “justice” aspects of lawyering, but we are still far from real reform.

Somehow, toward the end of your career as a legal educator, it seems *you* were able to find a way to serve two masters, perhaps uneasily. Nonetheless, your constitutional law classes at NYU were legendary. How did you find the energy to do it? You influenced so many students with your creative pedagogy, your insistence on their ownership of their learning process and the focus on social justice as the real purpose of legal education. And you worked like a fiend until the very last few days of your life in order to take care of your students’ intellectual growth. Your passing was so sudden that many, including myself, did not have an opportunity to say good-bye. But after you passed, we witnessed the power of your legacy among your NYU students as a kind but fearless educator about justice in law.⁵ It was such a privilege to be present when Mrs. Janet Dewart Bell graciously accepted a posthumous teaching award on your behalf from the faculty at the end-of-year dinner last May.

Derrick, as you no doubt noticed before you passed from us, we are in the midst of another gilded age. This time around, though, growing global inequality seems dangerously coupled with ubiquitous and constant access to media and to potential technologies of destruction. And the resulting tension is pulling at the fragile threads of civility, making it harder to discuss dignity, equality, fairness, and justice, even in a relatively stable place with currently stable legal institutions such as law schools in North America. As you knew so well, resentment flares up against politically powerless minorities in times of overall economic stress.

Lawyers across the ages—from St. Thomas More⁶ to you—have felt a special duty to adhere to principles of justice and ethics, even in

5. *Videos*, DERRICK BELL OFFICIAL SITE, <http://professorderrickbell.com/videos/> (last visited Apr. 21, 2013).

6. *A MAN FOR ALL SEASONS* (Highland Films 1966).

times of crisis and disruption. One of the things I recently learned after my dad passed away is that his father—my grandfather, who had been trained as a lawyer in Japan—led a public demonstration in March 1919 as part of an organized protest against Japanese annexation of Korea. According to archives in South Korea,⁷ copies of the Korean Declaration of Independence were distributed in a public square of HwangHae province, now part of North Korea. And yet, even though it is an important part of my personal sense of the special role that lawyers can play, I'm not sure exactly how to include this family legacy into my teaching—even though I am a lawyer and educator, just as my grandfather had been. When I learned about this episode in my own family history, I was strongly reminded that so many people—including many lawyers—have participated in the creation over vast spans of space and time of an ongoing, over-arching legacy: the legacy of taking a stand for what is right rather than what is popular or politically expedient. Why is this lesson so hard to fit into the law school curriculum?

Like my grandfather, whom I never met, you believed that ours ought to aspire to be an ethical profession—one that rises above temporary expedience—even at the cost of one's health and life. Like my late mentor Judge Higginbotham, you taught me that it was imperative to link law to justice, and reason to passion. Like my dear friend Keith, who published legal articles in the form of graphic art, you believed that being a lawyer did not mean having to abandon creative personal expression, in the form of characters you invented such as Geneva Crenshaw. Like my beloved dad, you believed that women and men should be equally heard, according to their abilities, despite being raised with patriarchal values that dictated otherwise.

And like so many others who knew you and loved you, Derrick, I hope to continue to follow the example you set of trying one's best to serve the two masters of legal education and still being true to oneself. I know you continually reflected upon the ethical impact of your actions until the end, and so I too will continue to wrestle with mine.

Derrick, I picture you watching all of us and our temporary tribulations with your bemused smile and gentle eyes. Writing to you has helped me out of this temporary funk, as I knew it would. Thank you, as always, for guiding us with your wisdom.

Love,
Maggie

7. *Patriots Who Actively Took Part in Korea's Independence Movements at Home and Abroad Against the Japanese Occupation*, DOKRIP YOONGONGJA (GONG HOON ROK) (독립운동자(공훈록)), http://www.mpva.go.kr/narasarang/gonghun_view.asp?id=7007&ipp=10 (last visited Apr. 24, 2013).