

# IN MEMORY OF PROFESSOR DERRICK BELL

## Foreword

*Janet Dewart Bell*

First and foremost, Derrick Bell was a marvelous human being—wondrously made, intensely passionate, extraordinarily giving. While there are many who can attest to these qualities from their own personal experiences with Derrick, I would like to share some observations from having been privileged to share with him the last twenty years of his life.

The articles in this symposium are fitting tributes to his legacy and valuable contributions to Derrick’s memory. I thank each of the authors for their insights and for taking the time to share them so thoughtfully and graciously. To the authors: you do Derrick proud not only by your articles in this law review, but also by your dedication to doing the work to which he committed his life. Derrick’s life was one of service and commitment to justice—not as an abstract concept, but as a worthy goal to which he gave his all.

From humble beginnings in Pittsburgh, Pennsylvania, he attended the University of Pittsburgh School of Law, serving as an associate editor of the law review with Richard Thornburgh, the Republican former attorney general and Governor of Pennsylvania. He and Dick remained cordial over the years, even after their life and political paths diverged. Race was a defining difference in their outcomes. Their virtually equal success in law school did not prevent Derrick from being denied a position at white law firms in Pittsburgh. Derrick often said that he hoped he would have chosen to be a civil rights lawyer even if he had been offered the same associate positions as his white classmates. He did not have a choice. The hiring partner of one law firm told Derrick, somewhat sadly, that they “never had a Negro” in the firm and they were not ready to start with him. Rather than becoming bitter, Derrick set off on a different

path—a path from which those of us who believe in freedom and social justice have benefited enormously.

As a pioneering civil rights attorney working on the frontlines of the Civil Rights Movement, Derrick supervised over 300 school desegregation cases, working with the NAACP Legal Defense and Education Fund, and such stellar lawyers as Robert L. Carter and Constance Baker Motley. Both of these legal giants were his mentors and became lifelong friends. He also became the first executive director of the Western Center on Law and Poverty at the University of California Law School.

While he succeeded at these earlier endeavors, it was as a law teacher where Derrick found his calling. Derrick became the first tenured African-American professor at the Harvard Law School, a position he famously relinquished in protest of the lack of faculty diversity, specifically its failure to tenure women of color. He was also the Dean of the University of Oregon School of Law, one of the first African-Americans to hold a deanship at a predominately white law school. He resigned from that position when the school refused to hire an eminently qualified Asian-American woman.

Derrick had a fierce intellect and was a scholar of the first order; however, he did not let that get in the way of his learning or that of his students. He knew, as Paulo Freire knew, that there is, or should be, a synergy between students and teachers, each contributing to their shared learning experience. Derrick's pedagogy of "participatory learning" empowered and energized students. Derrick loved "his students," not in a possessive and restrictive way, but in a compassionate and encouraging way. Students appreciated being in Derrick's orbit. They welcomed and understood his role as mentor.

Bell's students were encouraged to think for themselves, to write prolifically, to engage in rigorous intellectual discourse, to take a stand whether it was popular or not, and to bring out the best in each other. These values form the core of Derrick's teaching and his legacy to the thousands of students he taught throughout his over forty-year teaching career.

Derrick's philosophical approach to his students also characterizes our marriage. Knowing Derrick made me a better person. But if the truth be told and it should be: all was not serious with us. Derrick loved to listen to good music of all kinds, to dance, and to tell corny quotes. In contrast to what some would like to paint as a somber and solemn existence, Derrick—and I—enjoyed a full and glorious life, even while staying committed to The Struggle. I often say that Derrick made struggle attractive. He could joke and laugh—at human foibles in general and at him-

self in particular. His sly but gentle humor was a lifeline to him and to those around him.

During his extensive academic career, Derrick wrote prodigiously, integrating legal scholarship with parables, allegories, and personal reflections that illuminated some of America's most profound inequalities, particularly around the pervasive racism permeating much of American law and society. Derrick is considered a founder of Critical Race Theory, which engages questions of race and racism in the law, investigating how even those legal institutions purporting to remedy racism can profoundly entrench it.

As a professor, Derrick challenged himself to let go of rigid teaching methods and to trust in the ability and willingness of students to try innovative techniques while accomplishing sophisticated and complex work. He did not let students flail alone in deep water; he was there for them, all hours of the day and night. He helped students find their first legal service jobs, their associate positions at law firms, their first teaching experiences. He took the time to write thousands of letters of recommendation. His personal support and encouragement are legendary.

How did he get this way? He had the examples of his working class parents who instilled in him and his three younger siblings a rigorous work ethic and a drive to confront authority. He also had grounding in the cultural traditions of African-American spirituality and its belief, vision, and hope. He loved African-American spirituals and gospel music, within which "dwells the stuff of miracles." His first wife, Jewel Hairston Bell, was a remarkable woman; her wise counsel and steadfast loyalty matched Derrick's gentleness, tenacity, and drive. She was his partner for thirty years, until her death in 1990. I met Derrick shortly thereafter. Our marriage, too, was a sacred trust and a loving partnership.

Derrick loved teaching and his students so much that he struggled to get to class, even in what we now know to have been his last days. He taught the week before his death.

Several themes emerge from the writings in this volume. Probably the biggest is Derrick's humanity and kindness, his ability to reach out and bring people into the circle of institutions—people whom the roadblocks of racism, sexism, classism, and homophobia tried to keep out. For many people of all races in the academy, particularly women and people of color in law schools, Derrick was a source of inspiration and aspiration. Because he was, they could be. Because he cared so much, there indeed was hope.

Another theme, of course, is Derrick's unwavering belief in students. His Harvard protest was to support student demands for diversity. His earlier decision to resign as Dean of the University of Oregon School

of Law was because of his deep belief that the students were entitled to have qualified, diverse faculty.

Derrick understood the parallels between his work as a civil rights attorney and his support for student demands for diversity. He did not protest for the sake of protesting. Nor did he shy away from taking principled, sometimes public and controversial, stands. He lived his life with dignity and passion. His books, particularly *Ethical Ambition: Living a Life of Meaning and Worth*, contain the moral and ethical bases for his exemplary life and his challenges to the status quo.

Derrick's scholarship contributions form another theme and include his casebook *Race, Racism, and American Law*; the development of Critical Race Theory for which he is regarded as a founding father; and his Big Bang theory of "interest convergence."

Since Derrick's death in October 2011, academia has graciously honored him with some very special and lovely awards. One of the biggest was the 2013 Association of American Law Schools Triennial Award for Lifetime Service to Legal Education and to the Law. In accepting that award on behalf of Derrick's memory, I noted that Derrick was not wrong about a lot of things, but he was wrong in thinking that perhaps the substance of his work would not survive him. In their dedication, AALS quoted a writer who noted that Derrick "sparked significant changes in the scholarly landscape of the legal field, as well as other disciplines."

Derrick Bell—law teacher, mentor, scholar, activist, author, loving husband and father—larger than the sum of his many parts. In an epigraph about the protest by black athletes at the 1968 Olympics in *Race, Racism, and American Law*, he wrote about "the dramatic finale of an extraordinary achievement." Derrick's extraordinary achievements, however, live on through his work and his beloved students. His legacy endures.

## A Tribute to Derrick Bell

*Henry McGee\**

That Derrick Bell was an iconic figure in the long march of African-Americans to actual citizenship is without doubt. The memorial service for Professor Bell at Riverside Church in New York City was an eloquent testament to the esteem in which he was held by his many friends, colleagues, and comrades in arms. Persons from every sector of the legal, political, and academic sectors of the American social order all but filled the cavernous space of the cathedral.

Derrick was among the first African-Americans to be appointed to a major university law faculty. Of the six or so professors so hired, most are now retired or near retirement. Yet the breakthrough was the outgrowth of a centuries-long struggle in which Derrick was an important leader, having served as counsel at the prestigious and path-breaking NAACP Legal Defense and Educational Fund. Among those in the struggle he was, and remains, greatly esteemed.

And though he was on a first name basis with nearly all of the Civil Rights Movement's leadership, my recollection of Derrick Bell is that he was never so busy that he could not extend a helping hand to a colleague. In my case, for example, in the gap between my graduate studies at Columbia and my appointment at UCLA, Derrick, then Director of the Western Center on Law and Poverty, arranged a research post for me at the Center. And in Cambridge, he once had the kindness to host a reception for me when I was en route to a visiting post in London.

Over the years we remained friends, taking advantage of times we found ourselves at common events, and spending time in one another's homes in Seattle and New York. Derrick was a man of uncommon humility given his accomplishments, an intellectual with heart, and it was always a great pleasure to be in the company of his gently sardonic wit and wisdom.

To the great good fortune of countless law students, Derrick chose the path of legal scholarship and teaching as a career. He was a courageous law practitioner, and he continued displaying great courage and

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integrity in his years as a professor at Harvard, where he was the first person of color to serve as a tenured professor, and as dean of the law school at the University of Oregon. Both positions were marked not only by an outpouring of legal scholarship of which his widely adopted book on civil rights was not only a signal triumph, but also a demonstration of what it means to stand on principle.

At Harvard, as is well known, Derrick put his career in jeopardy by going on strike until Harvard Law School appointed a woman of color to a professorship. His concern for gender equality in legal education was also important at the University of Oregon, where, during his tenure as dean, he fought once again for the hiring of a female professor.

No words or testament, of course, can fully capture the unique and masterful career of Derrick Bell. In closing, I am compelled to make a simple observation and declaration: The brother walked the talk!

## Tribute to Derrick Bell

*Peggy A. Nagae*

Derrick Bell is forever etched in my heart. He lived his principles doing what was right regardless of the personal cost. And his passion for justice burns on in each of us who were touched by his spirit and his heart.

Although we came from different cultures, Derrick understood the interlocking pattern of racism across the spectrum of ethnicities and because of that “saw” me, a Japanese American woman, in a way that many others had failed to. Because I am not black, many whites thought I could not be a “true minority.” Some minorities saw me as a “model minority” incapable of understanding their communities’ struggles. All in all, being an Asian Pacific American (APA) woman and a civil rights advocate from Boring, Oregon, in the late sixties and seventies was not commonplace. Raised by parents who were incarcerated during World War II, I had been trained not to stick out, to be like the other Japanese American girls, and—above all—to be nice.

That was me—a bundle of paradoxes—when I met Derrick in the early ‘80s. I was practicing law in Portland, and he was the Dean at the University of Oregon Law School. We met at a Minority Law Day Seminar; he gave the keynote address and I participated on a panel. My mentor, Herb Cawthorne, had just given me some advice: “If you stop being a ‘nice Japanese girl’ and say what you want to say, people will remember your message.” I decided to put that advice into practice, so when an APA lawyer and fellow panelist remarked that as the hiring partner, he did not look at race or gender, but only qualifications, I said that was BS and that the first aspects people see about me *are* my race and gender, *not* my abilities as an attorney. This was certainly true in Portland where I had been the only criminal defense attorney who was a woman of color and where my legal abilities were underestimated on a daily basis. I was routinely mistaken for a legal secretary, paralegal, or defendant, but never the attorney.

Derrick approached me at the seminar, commenting that he thought I would like teaching law and asked that I send him my resume. I knew he had heard and “seen” me as an APA woman aware of the impact of

race and gender, and his recognition validated my experiences. But even so, I had disliked law school so intensely that I responded bluntly, saying that law schools were the last bastion of white male privilege and that I was not interested. He just smiled and said, “Send me that resume.”

I did not send Derrick my resume, but I did write and thank him for his keynote address and told him that I would very much like to get together whenever he visited Portland.

Much to my surprise, I received a letter from Derrick several months later, inviting me to apply for an assistant dean position open at the law school. I was stunned; not every day did I receive an invitation like that. In fact, I never had. I thought back on my experiences as a law student and attorney. When I got accepted to the University of Oregon Law School, I visited and asked the Director of Admissions about programs for minority students. Her response: “Prove that you’re a minority.” My response: “Look at the last census data.” I declined my admission there and accepted admission at Lewis and Clark, where I was part of the law school class with the largest number of minority students in the school’s history.

My first year of law school was a year of great promise; we founded the Minority Law Students Association and bonded with students of color from the two other classes. Yet, 54% of the first-year students of color flunked out that year compared to four percent of the white students. Fighting to get students reinstated, a group of us battled the administration. In one meeting, the then dean asked me, “What’s behind those dark, inscrutable eyes?” I was boiling but did not respond. Without the understanding I would receive later from Cawthorne or Bell, I knew that any explanation about the racist nature of his comment would be futile and the expletives I wanted to say would not be helpful.

So Derrick’s invitation was a *huge* validation. I resisted as I thought about leaving my law practice and the move to Eugene but then I quickly realized the enormity of the opportunity. I thought about the many times in law school that I had said, “If I were a law school administrator, I would do things differently.” Working for a dean of color with Derrick’s civil rights background, commitment to justice, and legal stature—in Oregon—was nothing short of a miracle.

At the same time in 1982, a group comprised of mainly APA attorneys reopened the World War II Japanese American internment cases: *Korematsu*, *Hirabayashi* and *Yasui*. I represented Minoru Yasui in Oregon. Min, as he was called, was the *first* Japanese American to graduate from the University of Oregon Law School, the *first* Japanese American attorney in Oregon, and the *first* Japanese American to test the constitutionality of the military curfew imposed upon U.S. citizens of Japanese descent. Like Derrick, Min offered a legacy of speaking out and taking

steps forward for justice. His case was important not only in addressing tragic wrongs that needed to be righted, but also to give voice to my community's history of discrimination and to honor my family's experiences in the internment camps.

When Derrick offered me the University of Oregon position, I said I would have to decline unless I could continue on as Min Yasui's lead attorney. Derrick's response was instantaneous: "If my community asked me to be involved in such an important issue, I would do so without hesitation, so come to Eugene and bring your case." And so with Derrick's support I was able to take the position and represent Min.

In 1985, we invited Min to speak at the law school and Derrick introduced him. Life does not get much better than that, when your boss is Derrick Bell and your client is Minoru Yasui and they are in the same room with you. Like Min, Derrick was a warrior who had fought against racial discrimination and understood that while the particular types of oppression were different, racial discrimination was a common enemy that intersected both of our communities.

In that same year, Derrick again demonstrated his commitment to APAs when the faculty refused to hire an Asian-American woman, saying that she lacked the necessary "qualifications." At the end of their discussion, Derrick said, "I will abide by your decision but I cannot represent a law school that would do this. I resign." And just like that, he stepped forward for justice rather than stepping away or backing down.

Later we heard that that candidate had received job offers from nine different law schools, notwithstanding her "qualifications." But that was little solace for those of us devastated by Derrick's resignation. After the third day of seeing me cry, he wrote me a note: "I am sorry you are so sad, but I want you to know that I did this, in large part, because of you."

I visited with Derrick the Tuesday before he slipped into a coma. He asked me about how religion played a part in my consulting practice. Since the time we had worked together, I completed two masters degrees, one in Spiritual Psychology and another in Illumination Sciences. So while not necessarily religious, I said that spirituality was embedded in all my work.

And the same is true for Derrick. Embedded in his work and his life were principles of Christian spirituality and the courage of his heart. Although Derrick is no longer with us, his message of courage remains:

Courage is a decision you make to act in a way that works through your own fear for the greater good as opposed to pure self-interest. Courage means putting at risk your immediate self-interest for what you believe is right.

— Derrick A. Bell, Jr.

## On Derrick Bell as Pioneer and Teacher: Teaching Us How to Have the Nerve

*Angela Onwuachi-Willig\**

In a March 5, 1943, letter, Zora Neale Hurston, author of the critically acclaimed *Their Eyes Were Watching God*,<sup>1</sup> wrote a letter that discussed racism, segregation, the hypocrisy of white liberals, and what she viewed as the flawed strategies of black civil rights leaders to her friend, Countee Cullen, a prominent black poet during the Harlem Renaissance era.<sup>2</sup> Near the end of her letter to Cullen, Hurston penned these powerful words: “You are right in assuming that I am indifferent to the pattern of things. I am. I have never liked stale phrases and bodiless courage. I have the nerve to walk my own way, however hard, in my search for reality, rather than climb upon the rattling wagon of wishful illusions.”<sup>3</sup>

It is difficult to read these words by Hurston without also thinking of the late Professor Derrick Bell. After all, these short few lines by Hurston seem to describe the essence of Professor Bell. He was indifferent to following patterns—that is, unless one wants to call his repeated challenges to racism and intersectional racism and sexism a pattern. Yet, even then, he was not following a pattern, but rather blazing and creating a pattern of resistance in academia for professors of the next generations

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1. See ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* (1937) (presenting the story of a young black woman from the rural South named Janie Crawford and the road that she takes to understanding and expressing her identity).

2. See Zora Neale Hurston, *Jump at the Sun*, AMERICAN MASTERS, PBS (Aug. 26, 2008), <http://www.pbs.org/wnet/americanmasters/episodes/zora-neale-hurston/jump-at-the-sun/93/> (reprinting Hurston’s March 5, 1943, Letter to Cullen from the Amistad Research Center at Tulane University).

3. *Id.*

to follow.<sup>4</sup> Always the pioneer, Professor Bell broke with conventional patterns that white male lawyers and law professors had long established for reading and interpreting cases and statutes. Instead, he posed and considered previously excluded and important questions concerning race and social justice. In fact, Professor Bell was the first academic in law to develop a casebook that explored and examined law's influence on shaping race and racism, and race and racism's impact on the development of the law—a casebook called *Race, Racism, and American Law*.<sup>5</sup> This casebook helped to provide legitimacy to a field that, at the time, was not considered to be pertinent to legal studies, but has since then become a central part of the study of law at law schools across the nation.<sup>6</sup>

Keeping in line with his “pattern” of challenging authorities that explicitly and implicitly excluded voices of color, Professor Bell also resisted group impulses that revered, perhaps without enough critical examination, proud moments in legal history<sup>7</sup> like *Brown v. Board of*

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4. See generally DERRICK A. BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994) (narrating the story of his action in taking a leave of absence from his position as a tenured professor at Harvard Law School because the school failed to hire black female tenure-track professors); see also Meera E. Deo, *Separate, Unequal, and Seeking Support*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 9, 45–48 (2012) (drawing from Derrick Bell's lessons in *CONFRONTING AUTHORITY* to speak “directly to law school administrators and others who have the power to make change on their campuses, such that we can attempt to meet the goals of both masters: integration and equality”); Mario L. Barnes, *Reflection on a Dream World: Race, Post-Race and the Question of Making It Over*, 11 BERKELEY J. AFR.-AM. L. & POL'Y 6, 7 (2009) (asserting that *CONFRONTING AUTHORITY* was “about how to respond in a principled and ‘soul-saving’ manner when majority-white institutions practice racial tokenism and otherwise only lightly value minority faculty members . . . [and] about taking a principled stand against the subtle but deeply entrenched forms of racist exceptionalism practiced within elite, majority-white institutions and American society”).

5. See DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (6th ed. 2008); see also Richard Delgado, *Centennial Reflections on the California Law Review's Scholarship on Race: The Structure of Civil Rights Thought*, 100 CAL. L. REV. 431, 448 (2012) (acknowledging the importance of the casebook and Derrick Bell's work, but critiquing the casebook because it was “unabashedly Afrocentric (although less so in the later editions, which devote brief treatment to the problems of Chinese, Japanese, Mexicans, and Muslims after September 11)” and critiquing two particular articles by Professor Bell because they “describe America's racial troubles in explicitly black-white terms, as though ‘race’ were equivalent to ‘black’”).

6. Ralph Richard Banks, *Beyond Colorblindness: Neo-Racialism and the Future of Race and Law Scholarship*, 25 HARV. BLACKLETTER L.J. 41, 42–43 (2009) (referring to the casebook as “groundbreaking,” and stating that Professor “Bell has influenced the field of race and law scholarship to an extent that is difficult to overstate”).

7. See, e.g., Angela Onwuachi-Willig, *For Whom Does the Bell Toll The Bell Tolls for Brown?*, 103 MICH. L. REV. 1507, 1510, 1520, 1523–32, 1535 (2005) (disagreeing with Professor Bell's conclusion that court enforcement of the ‘separate but equal’ doctrine would have proved more effective than the strategy that civil rights lawyers employed in arriving at *Brown* and, in fact, offering a “far more pessimistic [view] about whether [such racial equality in education] even would have been possible,” but at the same time, contending that “*Brown* gave society a goal to strive for and set the stage for a movement that created racial change[, that] *Brown* was more than a legal decision[, and that] it was ‘a statement about the fundamental moral basis of democracy’”).

*Education*.<sup>8</sup> For example, in the seminal and groundbreaking article *Brown v. Board of Education and the Interest-Convergence Dilemma*, Professor Bell argued that the Supreme Court's 1954 decision did not come to be simply because of a moral or cultural shift in United States citizens' attitudes, views, and ethical understandings about race and integration. Instead, Professor Bell argued, *Brown* occurred because of the convergence of interests between Blacks<sup>9</sup> who wanted to break down Jim Crow laws and racial segregation in all aspects of life, particularly education, and the white elite, who were worried that the United States might lose its fight against emerging Communist superpowers and might receive more condemnation from other countries if it did not alter its treatment of black citizens.<sup>10</sup>

Similarly, never one for stale phrases, Professor Bell exhibited courage that extended and continues to extend far beyond his body. Writ-

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8. 347 U.S. 483 (1954); see Leland Ware, *Brown at 50: School Desegregation from Reconstruction to Resegregation*, 16 U. FLA. J.L. & PUB. POL'Y 267, 294 (2005) (citing DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (2004)) (pointing out that Bell argued that civil rights lawyers in *Brown* pursued the wrong strategy, racial integration in public schools and that black "students would have fared better had the U.S. Supreme Court reaffirmed *Plessy* in *Brown* and ordered the states to equalize the black and white schools").

9. Throughout this Essay, I capitalize the words "Black" and "White" when I use them as nouns to describe a racialized group; however, I do not capitalize these terms when I use them as adjectives. Additionally, I find that "[i]t is more convenient to invoke the terminological differentiation between black and white than say, between *African-American* and *Northern European-American*, which would be necessary to maintain semantic symmetry between the two typologies." Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 U. ILL. L. REV. 1043, 1044 n.4. Professor Kimberlé Crenshaw, one of the founders of Critical Race Theory, has explained that "Black" deserves capitalization because "Blacks, like Asians [and] Latinos, . . . constitute a specific cultural group and, as such, require denotation as a proper noun." Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). Also, I generally prefer to use the term "Blacks" to the term "African Americans" because "Blacks" is more inclusive. For example, while the term "Blacks" encompasses black permanent residents or other black noncitizens in the United States, the term "African Americans" includes only those who are formally Americans, whether by birth or naturalization.

10. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524–28 (1980). In fact, Zora Neale Hurston may have agreed with Professor Bell's arguments, as she "was highly critical of *Brown*." Michael deHaven Newsom, *Clarence Thomas, Victim? Perhaps, and Victorizer? Yes—A Study in Social and Racial Alienation from African-Americans*, 48 ST. LOUIS. U. L.J. 327, 372 n.285 (2004); see also Neil G. Williams, *Brown v. Board of Education Fifty Years Later: What Makes for Greatness in a Legal Opinion?*, 36 LOY. U. CHI. L.J. 177, 183 (2004) (noting that Hurston "took offense at what she perceived to be *Brown*'s assumption that black institutions are inherently inferior" and that "[s]he viewed the *Brown* decision itself as stigmatizing and insulting to those who taught at and ran black schools"); Carmen M. Butler, *Victimhood to Agency: A Constructionist Comparison of Sexual Orientation to Religious Orientation*, 4 SEATTLE J. FOR SOC. JUST. 147, 153 n.38 (2005) (quoting Hurston as indicating that "freedom was 'something internal. . . . The man himself must make his own emancipation'" (quoting Henry Louise Gates, Jr., *Epilogue to ZORA NEALE HURSTON, SERAPH ON THE SUWANEE* 357 (Henry Louis Gates, Jr. ed., Harper Perennial 1991) (1948)).

ing with Hurston's same zeal in crafting stories such as the famous "Space Traders"<sup>11</sup> and "The Electric Slide Protest,"<sup>12</sup> Professor Bell moved beyond the traditional formulas for composing legal scholarship to employ more creative and accessible forms of writing, such as personal narratives and storytelling. Communicating in such forms took more than a body full of courage to do, as Hurston's words to Cullen suggest. Indeed, at the beginning of her letter to Cullen, Hurston confessed to the great poet, "[Y]ou are my favorite poet now as always since you began to write. I have always shared your approach to art. *That is, you have written from within rather than to catch the eye of those who were making the loudest noise for the moment.*"<sup>13</sup> For many of us in academia, Professor Bell was our favorite scholar precisely because of the styles in which he wrote, as well as the way in which he wrote from within to inspire and create change, rather than to earn the eyes and praise of those deemed to be the most prestigious voices in the academy.

Finally, Professor Bell had the nerve to walk his own way. During a treasured conversation with Professor Bell's widow, Janet Dewart Bell, I learned from her that the late professor once stated that he "had a lot of nerve to think that he could be the first tenured black professor at Harvard—that it took a lot of nerve for him to think that."<sup>14</sup> I immediately smiled and chuckled upon hearing this story. It sounded odd to think of Professor Bell as having to "have the nerve" in any context. After all, "to have the nerve" suggests that he did not "belong" at Harvard in the first place, and Professor Bell certainly belonged there. Indeed, to those of us on the outside, he seemed to make himself "belong" in the most difficult of circumstances, entering on his own terms and also leaving on his own terms. Yet, as I thought more deeply about this phrase, "having the nerve," and its meaning, I began to see how the phrase contained just the right words to describe how Professor Bell moved within the world of legal academia. After all, Professor Bell taught us, the many professors of color who followed him, how to have the nerve to think that we, too, could become tenure-track law professors, then tenured professors, then Chairs, and even Deans at our own institutions. In fact, I have highlighted elsewhere the role that Professor Bell's scholarship, particularly his story "Space Traders," had on convincing me of my own place in the legal field during law school. I explained:

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11. Derrick Bell, *Space Traders*, in *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

12. Derrick Bell, *The Electric Slide Protest*, in *GOSPEL CHOIRS: PSALMS OF SURVIVAL FOR AN ALIEN LAND CALLED HOME* (1996).

13. *See supra* note 2 (emphasis added).

14. Conversation with Janet Dewart Bell, Association of American Law Schools Annual Conference, New Orleans, Louisiana (Jan. 7, 2013).

For me, CRT [Critical Race Theory] was a lifeline in law school. In fact, but for CRT, I may have never become a lawyer. . . . During my first few days of law school, I felt so alienated, alone, and, according to some, too preoccupied with justice and change that I began to wonder if there was a place for me in the law. It was not until I met a group of 2Ls who were part of a CRT Reading Group that I truly began to see law as a potential professional home for me. It was these 2Ls who introduced me to Professor Derrick Bell's *The Space Traders*, a fictional tale about the government's decision to accept an offer from aliens to trade all Blacks in return for . . . "gold, to bail out the almost bankrupt federal, state, and local governments; special chemicals capable of unpolluting the environment . . . and a totally safe nuclear engine and fuel, to relieve the nation's all-but-depleted supply of fossil fuel." *The Space Traders* spoke to my experience as a black woman in the United States, and it helped fill a void of silence about race that seemed to be never-ending during my time in law school. The reading group's discussion of *The Space Traders* nourished my soul, and I began to think, "There just may be a place for me in the law yet."<sup>15</sup>

In the end, Professor Bell taught us—meaning the many professors of color who followed him into the academy—how “to have the nerve” to both survive and thrive in our institutions as teachers, scholars, and citizens, and he did so with just his deep belief in our true belonging in academia. Over and over in his career, he displayed that belief by walking away from privilege, power, and prestige in academia when other law professors failed to hold his same strong belief in our belonging on law school faculties and instead refused to extend to candidates of color any offers for tenure-track or tenured employment. For instance, in 1986, Professor Bell resigned in protest from his powerful and prestigious leadership position as the Dean of the University of Oregon School of Law when its faculty failed to extend an offer of employment to a qualified Asian American female law faculty candidate. Similarly, in 1990, after returning from Oregon to Harvard and after years of pushing for the hiring and promotion of qualified women of color on the Harvard Law School faculty, Professor Bell gave up his coveted, high-status position as a tenured law professor at Harvard Law School in protest of the law school's failure to hire one of several black female law faculty candidates. He made these and other sacrifices in putting his theory into practice despite the personal costs to himself. By so doing, Professor Bell, the

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15. Angela Onwuachi-Willig, *Critical Race Theory Speaker Series CRT 20: Honoring Our Past, Charting Our Future: Introduction—Celebrating Critical Race Theory at 20*, 94 IOWA L. REV. 1497, 1499–1500 (2009).

“intellectual father figure” of Critical Race Theory,<sup>16</sup> and a man of great principle, helped to usher in and mentor two generations of students, scholars, and civil rights lawyers and activists, all of whom have continued to ask the types of questions about race and the law that Professor Bell routinely posed throughout his career, and many of whom have brought new perspectives and understandings to both practical and theoretical analyses of race, law, and social justice.

Among many other comments, Zora Neale Hurston is quoted as once saying, “It’s a funny thing, the less people have to live for, the less nerve they have to risk losing nothing.”<sup>17</sup> Unlike the quote that I began this law review tribute with, this statement by Hurston does not describe the late Professor Derrick Bell in the least. Professor Bell had much to live for. In fact, as his rich life suggests, he had so much to live for that he possessed enough nerve to risk losing anything and everything throughout his career, and even to share that nerve with the generations of professors, of all races, sexes, socioeconomic backgrounds, sexual orientations, ages, and abilities, who have worked so hard and continue to work very hard to emulate his model of brilliance, spirit, action, and just plain goodness in their own professional homes.

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16. RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 5 (2d ed. 2012).

17. *Zora Neale Hurston Quotes*, BRAINY QUOTE, [http://www.brainyquote.com/quotes/authors/z/zora\\_neale\\_hurston.html](http://www.brainyquote.com/quotes/authors/z/zora_neale_hurston.html) (last visited Mar. 22, 2013).

## An Homage to Derrick Bell

*Margalynne J. Armstrong\** & *Stephanie M. Wildman\*\**

Derrick Bell's work has inspired generations of legal scholars and activists. His visionary scholarship contributed to our own in three significant ways. First, he introduced the character Geneva Crenshaw and used narrative to address racial justice, changing the landscape of legal scholarship. Second, his concept of interest-convergence provides both an understanding of the historical limitations of the quest for racial justice and a pathway for racial progress. Finally, his aspiration for ethical ambition teaches new generations of students to become ethical practitioners seeking social justice.

Geneva Crenshaw, the heroine of his Harvard introduction<sup>1</sup> and "And We Are Not Saved,"<sup>2</sup> broke a barrier in legal scholarship. Geneva, like so many African American women, faced ostracism for being who she was—an allegorical character who enlivened the dry pages of legal scholarship. She enabled the birth of Rodrigo,<sup>3</sup> Teresa Vallero,<sup>4</sup> and other voices that brought new relevancy and diversity to academic debates about legal issues. Her voice and the others that she liberated enabled legal scholarship to reach new depths of awareness and understanding of the role of race in law and lawmaking.<sup>5</sup>

Second, Derrick's work served as a generative force in critical race theory's project of exposing the fallacy of legal neutrality and analyzing

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1. Derrick Bell, *The Supreme Court, 1984 Term—Forward: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985).

2. DERRICK A. BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1989).

3. RICHARD DELGADO, *THE RODRIGO CHRONICLES* (1996); RICHARD DELGADO, *WHEN EQUALITY ENDS: STORIES ABOUT RACE AND RESISTANCE* (1999); *THE LAW UNBOUND!: A RICHARD DELGADO READER* (Adrien Katherine Wing & Jean Stefancic eds., 2007).

4. STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* (1996).

5. See, e.g., Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

the role of self-interest in the United States' tentative progress toward racial equality. His interest-convergence theory about the history of racial progress through the law provides:

The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites. However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites.<sup>6</sup>

Professor Bell's recognition that the mechanisms of legal change are intricately connected to the flow of evolving social concerns illuminates mechanisms that can promote the growth of equality in the United States. Interest-convergence explained how the nation's need to win alliances in a decolonized world, where non-whites were choosing their partnerships, displaced the forces that had long maneuvered their interest in benefiting from segregation to undermine the interests of the country as a whole. Today, the continually shifting racial landscape of the United States, in conjunction with the globalized nature of commerce, no longer allows any single racial interest to subvert interests of the rest of the nation. The potential for all racial group interests to converge can generate radical racial change.

Bell's articulation of the permanency of racism led us to consider whether racism can ever be eradicated and what individuals can do to address ongoing racism, whether or not Professor Bell was correct about its permanence. Derrick wrote:

The racial philosophy that we must seek is a hard-eyed view of racism as it is and our subordinate role in it. We must realize with our slave forbearers that the struggle for freedom is, at bottom, a manifestation of our humanity that survives and grows stronger through resistance to oppression even if that oppression is never overcome.<sup>7</sup>

Color insight—the antidote to color blindness—provides one avenue to combat racism's permanence. The process of developing color insight requires four steps: (1) considering the context for any discussion about race or other identity categories; (2) examining systems of privilege; (3) unmasking perspectivelessness and white normative-ness; and

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6. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

7. Derrick Bell, *Racism Is Here To Stay: Now What?*, 35 HOW. L.J. 79, 88 (1991); see also DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

(4) combating stereotyping and looking for the “me” in each individual.<sup>8</sup> The process of applying color insight pushes interest convergence one step further. By understanding that everyone in U.S. society is subject to racial identification and stereotype and by discarding color blindness because it serves as a barrier to eliminating racial inequality, society can move toward recognizing our national interest in achieving racial justice. Each one of us has a race, and white supremacy can no longer function as a societal norm. Most of the world is not white; by 2043 the majority of the U.S. population will not be white either.<sup>9</sup> The nation cannot isolate itself or hide from scrutiny of its social justice practices as it has done in the past. Color insight also serves as a model for developing insight based on other culturally significant identity categories, and echoes social justice feminism and its precept of inclusion. Color insight recognizes the importance of racial justice within social justice feminism.<sup>10</sup> Conversation about race recedes from feminist conversation unless speakers make a concern for racial justice explicit.

Finally, Derrick Bell’s book, *Ethical Ambition*<sup>11</sup> inspires our work every day in the Center for Social Justice and Public Service at Santa Clara University Law School.<sup>12</sup> The Center provides social justice curriculum and enrichment opportunities, including a certificate program. The Center also works to fill the service gap in the legal profession for marginalized, subordinated, or underrepresented clients and causes through programming that enables law students to serve the community’s

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8. For several articles developing the concept of color insight, see Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635 (2008); Margalynne J. Armstrong & Stephanie M. Wildman, *Working Across Racial Lines in a Not-So-Post-Racial World*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 224 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012); Margalynne J. Armstrong & Stephanie M. Wildman, *Colorblindness is the New Racism*, in DECONSTRUCTING PRIVILEGE: TEACHING AND LEARNING AS ALLIES IN THE CLASSROOM (Kim Case ed., forthcoming 2013).

9. William H. Frey, *Census Projects New “Majority Minority” Tipping Points*, BROOKINGS (Dec. 13, 2013), <http://www.brookings.edu/research/opinions/2012/12/13-census-race-projections-frey>.

10. Kristin Kalsem & Verna L. Williams, *Social Justice Feminism*, 18 UCLA WOMEN’S L.J. 131 (2010).

11. DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2003).

12. See <http://law.scu.edu/socialjustice/index.cfm> for more information on the Center; See also Stephanie M. Wildman, *Instilling Purpose: Courses in Justice Need to be a Part of Every Law Student’s Legal Education*, L.A. DAILY J., Feb. 5, 2001, at 18, available at [http://law.scu.edu/socialjustice/File/instilling\\_purpose\\_070110.pdf](http://law.scu.edu/socialjustice/File/instilling_purpose_070110.pdf); see also Stephanie M. Wildman, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, 55 J. LEGAL EDUC. 252, 255 (2005).

legal needs while they study law.<sup>13</sup> The best tribute to Derrick Bell's genius is to teach students his legacy as they become lawyers who can follow in his footsteps as ethical practitioners seeking to address the social justice issues to which he dedicated his life.

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13. Deborah Moss-West & Stephanie M. Wildman, *A Social Justice Lens Turned on Legal Education: Next Steps*, 37 J. LEGAL PROF. (forthcoming 2013).

## Derrick Bell: Oregon Trailblazer

*Steven W. Bender\**

Derrick Bell arrived at the University of Oregon School of Law as the new dean in 1980 to much fanfare. Few, if any, black professors made their home in Eugene at that time and, apart from student athletes, almost no black college students or ordinary residents did either. The town greeted Dean Bell as the celebrity he was—the first black law professor to achieve tenure at Harvard.

As an Oregon undergraduate drawn by the pull of Dean Bell's star, I decided to apply to Oregon law school. Although I was born and raised in the East Los Angeles barrio and am the grandson of two Mexican immigrants, at the time I was more intrigued by black culture than Latino/a culture. I listened mostly to soul and funk music, emulated black dance moves, and befriended the few black youth I encountered in Oregon when my family moved there from Los Angeles. Perhaps I thought Dean Bell too was down with the Isley Brothers, Chaka Kahn, and Parliament-Funkadelic.

When I applied to Oregon law school I had no academic mentor to speak of and no sense of the U.S. law school hierarchies that prevailed then and now. In my senior year, I remember being ecstatic when I received my admission letter from Oregon law. Later, a friend who learned my LSAT score and knew my GPA told me I was crazy to enroll at Oregon; rather, I could attend any law school in the country. He urged me to at least apply to University of California, Hastings. I did and was accepted there, but I chose to stay at Oregon after talking with my mother, who encouraged me to remain in state.

Despite my naïve expectations as a first-year law student that I would regularly “hang” with Dean Bell, it was not until fall semester of my second year when Dean Bell was teaching constitutional law that I talked with him. Our class was filled with students excited to learn from someone who had taught Harvard students a few years earlier and whose reputation as a civil rights attorney was a novelty for us in a state where

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Robert Kennedy, campaigning for the presidency in 1968 before all-white audiences, had lamented “[t]his ain’t my group.”<sup>1</sup> I remember my panic at the content and style of his class. I had excelled in all my first-year classes and was encouraged to pursue teaching law by an Oregon professor who became my mentor. But he also warned me that, coming from a nontraditional feeder school such as Oregon, I had better earn straight A’s (when C’s were the majority grade for competent exams) and then hope for some magic to enter academia. Regurgitating black letter law proved easy for me, and most classes conveniently fit that mold.

But Dean Bell’s class was different. Policy mattered, and doctrine was steeped in the early threads of critical race theory and rich historical perspectives that worried me as to how I might be called upon in our exam to situate the black letter law within these important policies and histories. I knew the holdings of the *Dred Scott* and *Lochner*<sup>2</sup> cases, for example, but how might I relate on an exam that Dean Bell taught how both relied on structural rather than historical readings of the Constitution, and how the bakers in *Lochner* were just as powerless economically and otherwise as the black slave in *Dred Scott*? My worry, happily, was short-lived.

During my third year, however, Dean Bell resigned abruptly to protest the Oregon faculty’s refusal to extend a tenure-track offer to a female Asian-American candidate who had graduated from University of Texas<sup>3</sup> rather than from one of the elite law schools. Dean Bell, having attended Pittsburgh law school, believed more in the quality of a candidate’s experience than the pedigree of her law school.<sup>4</sup>

Visiting the next year at Stanford Law School, Bell taught the same constitutional law course he offered at Oregon, but controversy arose as some students complained that Bell placed slavery and race in the foreground.<sup>5</sup> What was intriguing in then lily-white Oregon played differently in the terrain of California where, at the time, demographic changes

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1. STEVEN W. BENDER, ONE NIGHT IN AMERICA: ROBERT KENNEDY, CÉSAR CHÁVEZ, AND THE DREAM OF DIGNITY 93 (2008).

2. *Dred Scott v. Sandford*, 60 U.S. 393 (1856) (striking down the Missouri Compromise and ruling that African Americans, even if free, were not citizens of the United States), *superseded by constitutional amendment*, U.S. CONST. amend. XIV; *Lochner v. New York*, 198 U.S. 45 (1905) (striking down state statute setting maximum hours for bakers).

3. She ultimately enjoyed a stellar academic career elsewhere.

4. See DERRICK BELL, CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER 45 (1994).

5. Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REF. 51, 75–76 (1994); see also Derrick Bell, *The Price and Pain of Racial Perspective*, STAN. L. SCH. J., May 9, 1986, reprinted in MICHAEL A. OLIVAS, THE LAW AND HIGHER EDUCATION: CASES AND MATERIALS ON COLLEGES IN COURT 1122 (2d ed. 1997).

made race more apparent and contentious both outside and inside the classroom.

With the tutelage and support of a former Yale law professor at my Arizona law firm, Oregon hired me in the early 1990s. It was only after several schools pursued me that Oregon became interested, but I look back with some satisfaction that by elevating principle above all, Derrick Bell made it possible for me, an unpedigreed Mexican-American lawyer, to receive and accept a tenure-track offer from essentially the same faculty Bell had left five years prior. I taught my first law class in the same classroom as our constitutional law course, and it felt as if I was walking in some large footprints teaching there.

Over the years, I continued in Derrick Bell's path and orbit, writing books on Latino/a workers and immigrants—the civil rights issue of our time—that employed Bell's use of narrative and his interest-convergence theory,<sup>6</sup> and serving as co-president of the progressive organization Bell had helped establish years before, the Society of American Law Teachers. I oversaw and spoke often about demographic changes and struggles in the Northwest that Bell had prepared me to both anticipate and analyze through historical and critical perspectives. I was always pleased to see him at academic conferences and gatherings, knowing that although I took his course at Oregon and not Harvard, Stanford, or NYU, I too belonged in the room.

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6. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980). For a comprehensive collection of excerpts of Bell's influential theories and writings, see *THE DERRICK BELL READER* (Richard Delgado & Jean Stefancic eds., 2005).

## 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.<sup>1</sup>

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,<sup>2</sup> 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.<sup>3</sup>) 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.<sup>4</sup> 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

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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.<sup>5</sup> 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 More<sup>6</sup> to you—have felt a special duty to adhere to principles of justice and ethics, even in

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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,<sup>7</sup> 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

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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](http://www.mpva.go.kr/narasarang/gonghun_view.asp?id=7007&ipp=10) (last visited Apr. 24, 2013).

## Educating for ‘Ethical Ambition’: Bell’s Impact in the Undergraduate Classroom

*Angelique M. Davis\**

Although Bell’s *Race, Racism, and American Law*<sup>1</sup> textbook is designed for use in the legal academy, I find his work particularly relevant to teaching my undergraduate political science *Race and the Law* course. I first encountered Bell’s textbook as a law student at Howard University and have used it in my classroom for the last ten years at Seattle University. His textbook lends itself well to Seattle University’s Jesuit Catholic mission, which emphasizes social justice and education of the whole person. It also lends itself well to my pedagogical goals as a professor of political science.

My primary pedagogical goal is to produce students who, due to their experience in my classroom, question the prevailing conceptions of law and examine whether or not it functions to silence and oppress those who are marginalized. My hope is that no matter their chosen profession my students will examine how their actions affect all members of society and question the formulaic application of law. Moreover, many of my students are grappling with how they can professionally succeed while still maintaining their integrity—what Bell coined as “ethical ambition”<sup>2</sup>—and his work provides the perfect template.

Bell’s work, with its emphasis on how power is deployed through the law, is a superb text for use in the undergraduate political science classroom. In the discipline of political science, the public law subfield analyzes the behavior of legal decision-makers and the law-related behavior of citizens, and includes the study of legal and constitutional doctrine. Its goal is to develop an understanding of the role of law, legal practice, and legal theory in the governmental process. Thus, to understand the structure and function of government, students must understand how the law undergirds the regulation of social life. Moreover, with a

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1. DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (6th ed. 2008). The first edition of this textbook was published in 1973 by Little, Brown.

2. DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2002).

student demographic that is predominately white and affluent I find Bell's work particularly useful in helping to expand students' understanding of their world. This includes helping students understand the sociopolitical nature of our legal system, the U.S. racial hierarchy, and their location within in it.

As part of the course, students are assigned a moot court and reflection assignment. These assignments are outlined in both the textbook and teaching manual,<sup>3</sup> although I have taken the liberty of adapting them to my pedagogical goals. The moot court assignment is based upon the racism hypotheticals contained in the textbook and address subjects such as colorblind adoption, racial segregation in prison, school integration, and college admissions. Each student is assigned a role as a judge or advocate for one of the parties. The advocates have to research and write briefs for their assigned position and deliver an oral argument in front of the classroom. Those who are judges in the judicial panel must research and prepare questions for the oral argument, run the moot court exercise and classroom vote on the topic, and also write a legal opinion that they deliver in front of the class. While students submit their preferences for these hypotheticals, I make it a practice to assign students to roles that I know will challenge their analytical abilities. For example, if I know a student tends to be very liberal in their political views, I assign them to a conservative position. Students consistently share how challenging yet rewarding this assignment is and their work product demonstrates they take it seriously.

Students also do a reflective op-ed assignment that they post on the course website. This gives them a forum to reflect upon what they are learning about in the course and the opportunity to respond to the posts of their classmates. Most of these students are struggling develop their own views on issues—particularly racism—and this allows them an opportunity to integrate the assignments into their lived experience. It also saves us from using too much class time to process their feelings on the topic. Many of their writings demonstrated a deep, and often profound, integration of the readings into their lived experience and showed how much impact Bell's work and critical race theory have had on their lives. For example, one student wrote:

*In Korematsu v. United States* the Supreme Court ruled that the internment of Japanese Americans was indeed constitutional during wartime. How the court could uphold such a thing I do not know, and it surely shows that our judicial system is not a perfect system.

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3. DERRICK BELL, RACE, RACISM, AND AMERICAN LAW: TEACHER'S MANUAL 2-4 (5th ed. 2004).

. . . Something that really resonated with me was Fred Korematsu's family sitting around the radio in fear after the bombing of Pearl Harbor. That struck a chord because being from a Muslim and Immigrant background, I remember my own parents looking at the television in fear as the twin towers were hit. I recall my mother crying several days later when it was revealed that the terrorists were Muslim. In fact, many similarities arise when the treatment of Japanese Americans during World War II and the treatment of Muslim and Arab Americans after September 11<sup>th</sup> are compared. . . .

Over the years, many students have taken this course and indicated, both through class reviews and anecdotal feedback, that exposure to critical race theory transformed their view of the world. At the end of the quarter, I show the video reenactment of "Space Traders."<sup>4</sup> One student wrote in their reflective op-ed:

After reading the Space Trader's article and watching the movie in class it is easy to think of the story as a joke, that's funny and would never take place in this country. In class we were all laughing at the ridiculous remarks that were being made and the funny eighties acting that was presented before us. It is easy to observe the movie and simply discard what is taking place, laugh, and think something like this is beyond our reality. The reality in fact is that this actually has taken place before in history and there is no reason that something like this couldn't take place again.

Another student wrote about how their world-view had changed over the quarter:

It would be lovely to think that we as humans all care about one another and would not dare do something like trade other humans, but we already do that. May I remind you of a couple of things called colonialism and slavery? . . . Right now there is much hatred brewing in America. With the power of the tea party, the attitude towards Muslims, and the negative laws against immigrants, it would seem to me that we are repeating history but only with new victims. . . . Everything presented in this class really had me thinking in a new way about race relations and the law and American society. This is all an intricately woven blanket, and one thread leads to another. I think it will be interesting to see what happens in this nation in the future. We are headed in a place that I cannot predict. President Obama, our first black president will leave office soon. The Tea Party is more powerful than the republicans and the democrats. In-

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4. *Cosmic Slop* (HBO television broadcast Nov. 8, 1994).

tolerance and Islamophobia is at an all time high. Illegal immigrants have to constantly deal with racist laws attempting to exclude and punish them merely for their situation. I now feel like I at least somewhat have the tools to look at all that happens around me with a reflective lens.

While I wonder how long these students remain as reflective and passionate to effectuate societal change as they often are immediately after reading Bell's work, I do believe that exposure to his scholarship in the undergraduate classroom alters the way they perceive the world—that when they return to their everyday lives this critical perspective informs their ambition. In this way I believe Bell fulfilled his own definition of success through inspiring my undergraduate students to maintain ethical ambitions:

we can be ambitious, strive for success, if our ambition is powered by a passion for the good and the just that may include your personal comfort but goes far beyond it. Let our sense of success be far broader and deeper than us and our kin. Let it inform the choices we make, big and small, public and unseen. We need not aim for sainthood, but by striving to choose ethically—no matter the “success rate”—we will have a cumulative wealth of knowledge and experience to draw on and pass on that will pay dividends throughout our lives and beyond. Through our choices, day by day, we will be the success we aim for.<sup>5</sup>

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5. BELL, ETHICAL AMBITION, *supra* note 2, at 177–78.

# Bell Labs: Derrick Bell's Inspirational Pedagogy

*Charlotte Garden\**

I signed up for Professor Bell's Current Constitutional Issues class for three reasons: I had enjoyed my introductory Constitutional Law course; I (like many other law students) hoped to litigate constitutional issues one day; and I had heard a bit about Professor Bell's background—that he was a former NAACP lawyer, and that he had left Harvard Law School in protest. In other words, Professor Bell's experimental, participatory teaching/learning method—in which students convene and present argument to the “Court of Bell” each class<sup>1</sup>—was a surprise. Yet, it was that pedagogy, comprised of equal parts intellectual rigor and humanity, that made the course memorable, and that later inspired me to attempt to import elements of Professor Bell's approach into my own classroom. In this Essay, I first briefly describe Professor Bell's transformative approach to teaching, and then discuss my adventures in adapting elements of his approach for use in a small labor and employment course.

## I. THE COURT OF BELL

Current Constitutional Issues focused on cases that were either currently pending before the Court, or else likely to come before it in the near future. A few students briefed and argued the day's assigned case, with the rest of the class acting as justices on the Court of Bell. Then, students drafted op-ed style reactions to the case, which we posted on the course website so that we could continue our dialogue by responding to each other.

To simply describe the mechanics of the class, however, obscures the work that Professor Bell did to create what Joy Radice identified as “a community that humanized the students' educational experience.”<sup>2</sup>

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1. Derrick Bell, *Constitutional Conflicts: The Perils and Rewards of Pioneering in the Law School Classroom*, 21 SEATTLE U. L. REV. 1039 (1998) [hereinafter *Constitutional Conflicts*]; Joy Radice, *Derrick Bell's Community-Based Classroom*, 2 COLUM. J. RACE & L. 44 (2012).

2. Radice, *supra* note 1, at 44.

This sense of class community made the performative aspect of class—arguing with our peers over some of the most divisive issues of the day—merely challenging, rather than anxiety-provoking or even silencing.<sup>3</sup> Professor Bell accomplished this feat through the way he thoughtfully engaged us through his reactions to our work, by his obvious interest in our professional and personal success, and by his commitment to using class time to talk about professional ethics, writ-large. As an illustration of the meaning that the course held for me, I can point to the fact that, ten years and one cross-country move later, I am still in possession of the four-page final grade memo that Professor Bell wrote at the conclusion of the course. There was simply no other non-clinical professor who provided such detailed feedback, and it seemed to be a tangible representation of his investment in each of his students—something too precious for the recycling bin.

## II. ADAPTING THE COURT OF BELL

Professor Bell wrote that his teaching method could be “altered to fit class size and student and teacher inclination,” with the key being the “replace[ment of] a basically passive procedure, consisting of assigned reading and lecture listening, with one requiring active involvement, similar to the multiple aspects of practice, teaching, and judicial functions.”<sup>4</sup> In my first year on the faculty at Seattle University School of Law, I put that statement to the test. During a conversation with SU’s academic Dean that took place before I had even moved to Seattle, I found myself proposing that I would teach a new course, closely modeled on Professor Bell’s pedagogy, but focused on labor and employment issues. At the time, it seemed like a natural proposition, given both my own memories of Current Constitutional Issues, and the fact that I was coming from a clinical teaching fellowship where I had taught students to write briefs and orally argue cases. But, as the first day of my new course approached, I became increasingly nervous. In particular, I began to fear

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3. Research suggests that female law students are, in general, more alienated by law school and less likely to participate in class than their male peers. See, e.g., Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School* 13 AM. U. J. GENDER SOC. POL’Y & L. 511, 514, 516 nn.25–26 (2005) (describing finding that female students are less likely to participate in class than their male counterparts, and reviewing additional studies with similar findings). Additional research suggests that law school alienation is amplified for female students of color. Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL ED. 311, 314, 327 (1994). Importantly, though, Neufeld’s study also found that that difference in participation between men and women disappeared in particular classes. Neufeld, *supra*, at 514. Neufeld did not suggest an explanation for this phenomenon. However, Professor Bell’s class provides an important case-study illustrating the proposition that inclusive community is not incompatible with intellectual rigor.

4. *Constitutional Conflicts*, *supra* note 1, at 1049.

that my students, knowing that I was a new professor, would regard the adoption of a teaching method that involves “surrender[ing] some control over student discourse”<sup>5</sup> as an attempt to cover for lack of knowledge or classroom authority. Additionally, I had to think through how to structure the course so that it would work with a smaller number of students who would receive only two credits without either sacrificing Professor Bell’s “active learning” style or overburdening the students.<sup>6</sup> It turns out, though, that I needn’t have worried. Just as Professor Bell described, the “[l]aw students gracefully [rose] to the challenge,”<sup>7</sup> arguing or presenting on 11 labor and employment cases that were either pending before the Supreme Court or had recently been heard in a court of appeals. They assumed the attorney role, researching a relatively unknown area of law, and then working to persuade each other or to understand why the (real) courts had come out as they had. Of course, the class was not perfect, but here, too, Professor Bell is inspirational—he was open about the fact that his course was constantly evolving and therefore at least in part an experiment each year.

Over the course of his four decades in the Academy, Derrick Bell influenced an entire generation of advocates, starting a revolution in the way law is taught in America. Those of us who have been fortunate enough to follow him into teaching owe him an enormous debt of gratitude for showing us all a model that reflects his passion for justice and dedication to effective and humane teaching.

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5. Andrea McArdle, “*A Living, Working Faith*”: Remembering Our Colleague Derrick A. Bell, Jr. as Teacher, 2 COLUM. J. RACE & L. 30, 33 (2012).

6. I am grateful to Vinay Harpalani, a former Derrick Bell Fellow who assisted Professor Bell in teaching his Constitutional Law course, for sharing some of Professor Bell’s classroom materials with me, and helping me think through various issues related to adapting Professor Bell’s methods to a smaller class.

7. *Constitutional Conflicts*, supra note 1, at 1044.

## From Roach Powder to Radical Humanism: Professor Derrick Bell’s “Critical” Constitutional Pedagogy

*Vinay Harpalani\**

In my very first job out of law school, I had the privilege of sharing an office with the late Professor Derrick Bell. As the final Derrick Bell Fellow at New York University School (NYU) School of Law in 2009-10, I helped Professor Bell organize and teach his last constitutional law courses. I read his work many years before, learned about his principled protests, and was a student and teaching assistant in his classes. But it was through closely working with Professor Bell that I learned the most from him, and saw how he combined critical thought and simple kindness to “humanize the law school experience.”<sup>1</sup>

Professor Bell took a “participatory approach to teaching”<sup>2</sup> his constitutional law courses, modeled after Paulo Freire’s critical pedagogy.<sup>3</sup> He took seriously the “Freire ideal . . . that students become teachers and teachers become learners.”<sup>4</sup> In his classes, students argued real and hypo-

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1. See Vinay Harpalani, *Tributes in Memory of Professor Derrick Bell*, DERRICK BELL OFFICIAL SITE (Oct. 16, 2011), <http://professorderrickbell.com/tributes/vinay-harpalani/> (noting how Professor Derrick Bell “wanted to ‘humanize the law school experience’ – and . . . brought food, song, and entertainment into the classroom along with vigorous intellectual debate and life lessons.”).

2. Derrick Bell, *Constitutional Conflicts: The Perils and Rewards of Pioneering in the Law School Classroom*, 21 SEATTLE U. L. REV. 1039, 1045 (1998).

3. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (1989).

4. Bell, *supra* note 2, at 1050.

thetical cases and questioned each other in appellate argument format. They also wrote and discussed short op-eds in response to the cases.<sup>5</sup> Professor Bell sometimes shared his personal views in these discussions, but he limited himself to one lecture per semester. And even this lecture, which occurred early in the semester, was designed to elicit student participation.

During the lecture, Professor Bell would argue essentially that the U.S. Constitution is a useless document. He would invite students and teaching assistants to challenge him and engage in dialogue. When I was a teaching assistant, Professor Bell invited me to the front of the class to challenge him as he gave this lecture. He talked for fifteen minutes about how the Constitution is unnecessary because the Justices vote their personal preferences in most important cases. He delved into his theory of “interest-convergence,”<sup>6</sup> which he used to explain the Supreme Court’s 1954 decision in *Brown v. Board of Education*<sup>7</sup>—arguing that the ruling reflected the parallel political interests of White and Black Americans in eliminating de jure segregation, to promote U.S. foreign policy.<sup>8</sup> I then interrupted him and asked:

Professor, I can see what you are saying about interest convergence—it is like political process, and that is what Footnote 4 of *Carolene Products*<sup>9</sup> recognized. But doesn’t the Constitution provide a nice structure for interest convergence? Doesn’t federalism, separation of powers, etc. allow different political interests to become aligned, such that minority group interests can be served? And in that sense, isn’t the Constitution a useful document?

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5. *Id.* at 1047. Professor Bell’s classes were constantly evolving. For a newer and more detailed and updated description of his constitutional law course, see Joy Radice, *Derrick Bell’s Community-Based Classroom*, 2 COLUM. J. RACE & L. 44 (2012).

6. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

7. 347 U.S. 483 (1954) (holding that racially segregated public schools are unconstitutional).

8. Bell, *supra* note 6 (arguing that the Supreme Court’s ruling in *Brown* reflected America’s need to improve its image around the world, in order to increase its global influence). Professor Mary Dudziak later supported and expanded upon Professor Bell’s thesis. See Mary Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61 (1988); see also COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY (2000).

9. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938) (“[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.”). One interpretation of footnote 4 is that strict scrutiny is necessary to protect minority interests when interest convergence via political process fails to do so.

Professor Bell responded:

When I was a kid, we had cockroaches in the house, but we didn't have roach powder. So we killed the roaches by stomping on them. What the Justices do is stomp on the roaches, and then spray them with roach powder. The Constitution is like the roach powder.

Students had several interesting reactions to the “roach powder” analogy. Monique Robinson, NYU Law '10, wrote:

Justices, as humans . . . use their feet to step on the roaches . . . [and] . . . it seems that feet make more of impact than roach powder when it comes to killing a roach. So, why not just use feet? Well, because we do have a constitution and a constitution represents democracy. There can only be legitimacy in our process of judicial review and in our democracy if we use the roach powder.<sup>10</sup>

Monique's op-ed reflects precisely the lesson that Professor Bell wanted to teach with his provocative lecture. Professor Bell believed that “[t]he challenge in teaching Constitutional Law is to teach the doctrine while puncturing the myths . . . [which] is not an easy task.”<sup>11</sup> In spite of his “roach powder” analogy and other critiques of the Constitution, Professor Bell's constitutional law syllabus stated that “many if not most op-ed postings [which were the primary basis for students' grades] should reflect . . . awareness and understanding of applicable legal precedent.”<sup>12</sup> Such “double-consciousness”<sup>13</sup> was a hallmark of Professor Bell's “critical”<sup>14</sup> constitutional pedagogy.

Professor Bell also tried to balance another set of “warring ideals”<sup>15</sup> in his critical pedagogy: the rigorous and competitive nature of law school and the desire to maintain a sense of humanity in his classroom. He believed that “students do vastly more work, and learn more from, an

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10. Monique Robinson, Roach Powder Op-ed for Professor Derrick Bell's Constitutional Law, (Spring 2009) (unpublished op-ed) (on file with author).

11. Bell, *supra* note 2, at 1040.

12. Derrick Bell, Unpublished Course Syllabus, Constitutional Law (Spring 2010).

13. See William Edward Burghardt Du Bois, *THE SOULS OF BLACK FOLK* p. xxxi (1903) (“It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.”). I suggest here that Du Bois's notion of “double-consciousness” also describes Professor Derrick Bell's approach to teaching constitutional law.

14. Professor Bell used to say about Critical Race Theory (of which he was a founding figure): “I don't know what that is. To me, it just means telling the truth, even in the face of criticism.” He was, of course, quite aware of the relativity of “truth”—and he strove to tell his own version. But he also recognized that being “critical” meant analyzing all perspectives—particularly those that were marginalized in the mainstream discourse.

15. Du Bois, *supra* note 13, p. xxxi.

engaged teaching methodology, one which requires that they perform very much like the lawyers they will soon become.”<sup>16</sup> Students worked very hard in his classes; for example, Brittany Jones, NYU Law ‘11, who had been a student in Professor Bell’s final constitutional law course (co-taught with me) in Spring 2010, sent an e-mail to me after the course:

Law school has been somewhat of a roller coaster for me, but classes like Con Law . . . have made the entire experience worthwhile. . . I don’t think I have ever tried so hard in a class AND had so much fun doing it!<sup>17</sup>

Brittany’s comment is particularly germane, because Professor Bell strived to make his courses not only challenging, but also fun. He provided snacks to students during the class break and invited students to bring music, art, poetry, and other forms of creative expression into the classroom<sup>18</sup>—using these “to break down traditional barriers between student and teacher, and even among students themselves.”<sup>19</sup>

There were many other ways in which Professor Bell aimed to resolve the “teacher-student contradiction,”<sup>20</sup> often simply through his every day interactions with students. At the 2009 Faculty of Color Appreciation Dinner, Maneka Sinha, NYU Law ‘09 noted, in her speech honoring Professor Bell:

[A]ll semester in class and even when he ran into me outside of the classroom – Professor Bell desperately . . . [tried] . . . to pronounce my name and despite his best attempts . . . [got] it more amusingly wrong each time . . . [u]ntil we got to the very end of the semester when . . . I see Professor Bell with this giant grin on his face— he got it right . . . [a]nd since that day, Professor Bell has never once forgotten it again.<sup>21</sup>

Professor Bell’s humanism extended to those students whom he disagreed with. Tommy Haskins, NYU Law ‘09, a self-professed conservative who frequently challenged Professor Bell in class, says of his experience:

I don’t think that the America Professor Bell saw was an accurate portrayal of where the country is. The prescriptions he offered for what he saw as ailing the country are not, and would not, in my opinion, be effective in the ways he believed. . . . But, I think Pro-

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16. Bell, *supra* note 2, at 1044.

17. E-mail from Brittany D. Jones to author (June 19, 2010, 09:48 EST) (on file with author).

18. *See* Radice, *supra* note 5, at 47.

19. *Id.*

20. *See* Bell, *supra* note 2, at 1039.

21. Maneka Sinha, Speech Given in Honor of Professor Derrick Bell at the Faculty of Color Appreciation Dinner, March 25, 2009 (on file with author).

Professor Bell's approach to discourse is one that is both radical and transformative. Professor Bell engaged, he challenged, and he encouraged. He was genuinely interested in knowing where it was I believed his positions to be off-base; he wanted to be convinced by a different perspective. . . .

Professor Bell's legacy is that of a man who desired intellectual and emotional honesty and openness, and of a man who was willing to be the first to offer it, even if it resulted in great backlash.<sup>22</sup>

Indeed, when his more liberal classmates criticized Tommy for expressing his conservative views, Professor Bell often came to Tommy's defense, noting his own deep admiration for students who have the courage to challenge him or any other authority figure.<sup>23</sup>

A few weeks after Professor Bell passed away in October 2011, I received an e-mail from Mark Goldfeder, NYU Law '11, who had been in Professor Bell's final constitutional law course in spring 2010. Mark went through a difficult family crisis during that semester and missed several classes, but nevertheless worked hard to make up his assignments and did very well. His e-mail to me stated:

After that class I stayed in touch with Professor Bell, who not only wrote me a recommendation, but always, whenever I would see him, would take the time to stop and chat and ask me how I was and how things were going. His small acts of kindness were actually quite profound and meant a lot to me, and I wanted to write his wife a note just expressing that, and my condolences on her loss and what an incredible person he was.<sup>24</sup>

Many similar stories can be found on Professor Bell's official memorial website.<sup>25</sup> His "critical" constitutional pedagogy was about much more than learning the law or even the real world pressures that influence constitutional decisions. At its core, Professor Bell's teaching philosophy was humanist—it was a reflection of how he lived his own life.<sup>26</sup> This

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22. E-mail from Thomas G. Haskins to author (Jan. 12, 2013, 22:27 CST) (on file with author).

23. *Cf. supra* note 14 (Professor Bell stating that Critical Race Theory "just means telling the truth, even in the face of criticism.").

24. E-mail from Mark Goldfeder to author (Oct. 26, 2011, 00:52 EST) (on file with author). Mark recently began his academic teaching career and told me that his Law and Religion course is modeled on his "most memorable law school class; Con Law, with Professor Bell and you." E-mail of Mark Goldfeder to author (Jan. 17, 2013, 22:51 EST) (on file with author).

25. DERRICK BELL OFFICIAL SITE, <http://professorderrickbell.com/> (last visited Feb. 11, 2013). Many others have also paid tribute to Professor Bell. *See, e.g.*, I. Bennett Capers, *Derrick Bell's Children*, 2 COLUM. J. RACE & L. 6 (2012); R.A. Lenhardt, *A Legacy of Teaching*, 2 COLUM. J. RACE & L. 24 (2012).

26. *See, e.g.*, DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994); DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2002).

included his principled protests, but it also meant that he treated everyone with kindness and respect on a daily basis. Professor Bell is best known as a “radical,” and he would proudly embrace the term. But more than legal theories or political views, it was Professor Derrick Bell’s “radical humanism” which defined his pedagogy, and which has had a lasting impact on all whom he touched.<sup>27</sup>

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27. Vinay Harpalani, *Professor Derrick Bell: “Radical Humanist”*, THE BLACK COMMENTATOR (May 22, 2012), [http://www.blackcommentator.com/464/464\\_bell\\_harpalani\\_guest\\_printer\\_friendly.html](http://www.blackcommentator.com/464/464_bell_harpalani_guest_printer_friendly.html).

## Derrick Bell and the Emergence of LatCrit Theory

*Kevin R. Johnson*<sup>\*</sup>

As no doubt many of the contributions to this memorial issue attest, Professor Derrick Bell no less than blazed the trail for generations of minority scholars to write about race and civil rights in original, dynamic, and nothing less than cutting edge ways. As we all know, he was a founder of Critical Race Theory, and authored path-breaking race and civil rights scholarship.

As is also well known, Professor Bell's casebook, *Race, Racism, and American Law*, published by Little Brown & Company in 1973, is the gold standard in civil rights scholarship. When a Harvard Law School professor publishes a casebook with a major legal publisher, it lends legitimacy to a field—in this case, one that ultimately evolved into Critical Race Theory. By lending important intellectual credibility to critical race scholarship, *Race, Racism, and American Law* made it possible for future scholars writing civil rights scholarship to be accepted as legitimate, and, among other things, be hired and tenured at law schools across the United States.

These are monumental achievements that deserve acclaim and recognition. In the limited space that I have, my hope is to outline how Professor Bell helped spur an intellectual movement with which he has not generally been associated; namely, he helped create the intellectual space for critical Latina/o (LatCrit) theory. Professor Bell also became a role model for intellectual activism in that political movement.

My linking of Derrick Bell with the emergence of LatCrit theory at first glance may seem anomalous. He generally is not identified with LatCrit scholarship. Indeed, some LatCrit scholarship directly responded to what the writers viewed as limits to Professor Bell's scholarly analysis.

Nonetheless, Professor Bell's scholarship helped fuel the creation of LatCrit theory's exploration into peculiarly Latina/o civil rights concerns in a variety of ways. Moreover, his actions, in important respects, legitimized in legal academia the LatCrit commitment to activism. In-

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deed, it is difficult to imagine the emergence of LatCrit theory—and its commitment to activism—without the lifetime of work by Derrick Bell.

Following Professor Bell's example,<sup>1</sup> leading LatCrit scholars employed narrative forms and analyzed issues of race and civil rights frankly, critically, and insightfully. Professor Margaret Montoya's classic article "Mascaras, Trenzas, y Greñas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse"<sup>2</sup> follows in the path of Bell's narrative and offers critical (and powerful) insights about Latinas in the American imagination.

Professor Bell's scholarship placed race at the center of the analysis of American law. Similarly, LatCrit theory centers Latina/os in critically analyzing the law. By so doing, for example, LatCrit theorists have helped us better understand the racial underpinnings and impacts of U.S. immigration law and its enforcement.<sup>3</sup>

Importantly, Professor Bell's activism, from his departure from the Justice Department for refusing to resign from the NAACP, to his leaving Oregon and Harvard law schools in protest of the lack of commitment to faculty diversity, made activism by law professors a legitimate endeavor.<sup>4</sup> With Professor Bell as a leading role model, scholarly activism has been a cornerstone of LatCrit theory from the movement's inception.<sup>5</sup>

At the same time, LatCrit theory represented a response to the scholarship of Derrick Bell and other critical scholars. Critical Race

1. See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1993) (employing narrative as well as historical analysis to illustrate the permanence of racism in American society); Derrick Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382 (1989) (describing in narrative form the danger of being a "token" minority on an otherwise all-white faculty).

2. Margaret E. Montoya, *Mascaras, Trenzas y Greñas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1 (1994); see, e.g., Berta Esperanza Hernandez-Truyol, *LatIndia II - Latinas/os, Natives, and Mestizajes - A LatCrit Navigation of Nuevos Mundos, Nuevas Fronteras, and Nuevas Teorias*, 33 U.C. DAVIS L. REV. 851 (2000) (employing personal narrative to explore the indigenous threads of Caribbean Latina/o identity).

3. See Jennifer Gordon & R.A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 FORDHAM L. REV. 2493, 2506–07 (2007).

4. See DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2002); DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994).

5. See Kevin R. Johnson & George A. Martínez, *Crossover Dreams: The Roots of LatCrit Theory in Chicana/o Studies, Activism and Scholarship*, 53 U. MIAMI L. REV. 1143 (1999); see also Steven W. Bender & Francisco Valdes, *LatCrit XV Symposium Afterword—At and Beyond Fifteen: Mapping LatCrit Theory, Community, and Praxis*, 14 HARV. LATINO L. REV. 397, 411 (2011) ("LatCrit theorists from inception have paid close attention both to knowledge production and to its principled performance, both internally and externally. We have seen the fusion of theory and action as central to anti-subordination academic activism and essential to the social relevance of our work. From a LatCrit perspective, critical and self-critical praxis always has been, and remains, imperative.") (footnote omitted).

Theory, as well as civil rights scholars generally, had focused largely on what has been characterized as the Black/white paradigm of civil rights, with race relations being viewed primarily as concerning African Americans and whites.<sup>6</sup> Professor Bell and his seminal casebook, for example, did not delve deeply into issues of immigration, bilingual education, and other issues of special concern to the Latina/o community. LatCrit theory moved to fill that scholarly void.<sup>7</sup>

In conclusion, the ripple effects of Derrick Bell's scholarship and activism created the intellectual space, academic legitimacy, and activist legal scholar role model necessary for the emergence and flourishing of LatCrit theory. Like Martin Luther King's "arc of justice,"<sup>8</sup> his insights and actions helped move us in large and small ways toward a better understanding of the causes and remedies of racial injustice.

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6. See Richard Delgado, *Derrick Bell's Toolkit—Fit to Dismantle That Famous House?*, 75 N.Y.U. L. REV. 283 (2000); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997).

7. See Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 106–17 (1997).

8. "[T]he arc of the moral universe is long, but it bends toward justice." Dr. Martin Luther King, Jr., *Remaining Awake through a Great Revolution*, Address Before the National Cathedral, Washington, D.C. (Mar. 31, 1968), available at [http://mlk-kpp01.stanford.edu/index.php/kingpapers/article/remaining\\_away\\_through\\_a\\_great\\_revolution](http://mlk-kpp01.stanford.edu/index.php/kingpapers/article/remaining_away_through_a_great_revolution).

## Derrick Bell: Ethical Ambition and Law Teaching

*Natasha Martin*<sup>\*</sup>

Part of our job is teaching them about who they are.

Classrooms are vehicles to communicate not just the subject, but self.

– Derrick Bell<sup>1</sup>

It was June 2006. I boarded a train from Seattle to Vancouver, British Columbia, to attend the midyear AALS Conference, “New Ideas for Law School Teachers: Teaching Intentionally,” feeling exhausted after the ending of another year of law teaching, and not to mention, dealing with pre-tenure anxiety. I had recently completed teaching Professional Responsibility, a course that I loved to teach, yet, I felt somewhat battered and bruised after a semester of trying to bridge the gap between practice and theory, and to do what every legal ethics professor strives for, veterans and novices alike: to make ethics real for an audience that cannot fully appreciate the trappings of law practice beyond the four walls of a classroom and from a bird’s eye view of the life of a lawyer. I had struggled to impress upon my students the need for serious reflection on their future roles as lawyers in society and an understanding that the capacity and stamina to be a professionally responsible lawyer in contemporary law practice required active self-awareness. I was energized, however, anticipating the opportunity to see and to hear Professor Bell engage about teaching at a moment when my confidence in my own efforts and effectiveness had waned. I needed renewal, to be honest, and I needed hope. Thus, the opportunity to hear from an iconic figure who I greatly admired about the challenges and rewards of law teaching seemed just the salve my spirit needed at the time.

Nearly seven years later, I find myself at the juncture of a new year and a new semester of teaching the course in professional responsibility, and again contemplating, with cautious optimism, the pedagogical

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<sup>1</sup> These quotes are from my notes of his lecture, “Creating a Classroom Where Deep Learning Occurs,” on June 12, 2006 at the AALS MidYear Meeting in Vancouver, British Columbia.

framework toward professional formation that I to use to engage my students. Confident now in my quest to facilitate what I call a self-integrative approach to professional responsibility, I begin each semester of teaching this course with excitement accompanied by a mild angst.<sup>2</sup> Thus, I am grateful for this opportunity to reflect upon one of the most courageous scholar-educators I have ever known and the wisdom he bestowed that still fortifies me.

Why is this relevant to Professor Bell's work and to this symposium? The answer is simple. My approach to law teaching, generally, and the professional responsibility course in particular, is deeply influenced by Professor Bell's *Ethical Ambition*.<sup>3</sup> After nearly eight years of law practice, I entered law teaching impassioned to bring a new perspective to the subject of legal ethics. I theorized that the antidote to the well-documented ills of the profession lay at the intersection of role and identity. To forge a paradigm shift in ethics discourse and law practice required empowering students to develop strong professional identities. Building the capacity for reflective judgment entails that students go beyond the Rules of Professional Conduct and center themselves at the heart of an ethical quandary. This critical reflection, in my view, allows students "to understand how the role of lawyer is cloaked with power and discretion; how who we are drives what we do" when faced with ethical and professional dilemmas.<sup>4</sup> Through my review of and engagement with Professor Bell's *Ethical Ambition*, I designed an ethics course, with more intention, one that challenges students to engage not only with the law governing lawyers, but also with themselves as individuals with personal identities and professional interests.

*Ethical Ambition* remains one of my favorite of Professor Bell's many contributions. It comprises a powerful reflection on achieving success while maintaining fidelity to one's core values. Professor Bell devotes a chapter to six principles that he credits to living a life of worth and that significantly contributed to his own life's journey: passion, courage and risk taking, faith, relationships, inspiration, and humility. He is candid and transparent about his strengths and his weaknesses, struggles, and even the isolation of honoring his values and attempting to do good work. For sure, his groundbreaking use of narrative methodology created refuge for me during law school where so often the legal rules and text, as well as the classroom discussion, seemed devoid of context.

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2. To read more about my theory and approach to legal ethics, see Natasha Martin, *Role, Identity, and Lawyering: Empowering Professional Responsibility*, 3 CAL. L. REV. CIRCUIT 44 (2012), [http://www.californialawreview.org/assets/circuit/Martin\\_3-44.pdf](http://www.californialawreview.org/assets/circuit/Martin_3-44.pdf).

3. DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* (2002).

4. See Martin, *supra* note 2, at 5.

The celebrated *Faces at the Bottom of the Well*, for example, brought the cold recitation of the facts in legal opinions to life by adding a layer of realism, along with cultural and social meaning that resonated with me.<sup>5</sup> The significance of those contributions and the foundations of critical race theory are undeniable; they serve as a lens through which I can see myself and include my voice in the conversation about law and its limitations. Notwithstanding, *Ethical Ambition* anchors me as a scholar-educator, serves as a template for my approach to teaching ethics and professionalism, and remains a guidepost when I lose my way. This work is a prescription for integrating professional success and personal values and integrity. The first article I wrote as a legal academic engaged with this important work.<sup>6</sup> The timing of the publication of *Ethical Ambition* and my entry into law teaching may be coincidence, but it is a fate for which I am forever grateful. It remains the most underexamined and undervalued of his writings, but one of the most revealing and instructive.

Reflecting on my experience in 2006, I remember how I hung onto every word of Professor Bell's during his presentation. Poignantly, he stated that as law professors, we are instructors of living an ethical life, personally and professionally. He was always a man ahead of his time. Even the title, *Ethical Ambition*, holds a prophetic quality in Professor Bell's absence. He knew that as lawyers in society and as law professors we are always "in process," constantly engaging with our students, as well as with ourselves.<sup>7</sup> He knew that professional responsibility or legal ethics did not constitute a hopeless oxymoron. His life and numerous acts of courage demonstrated his belief in the power of conviction and faith.

I understand now that the recurring angst that I feel as I begin another semester of teaching professional responsibility is just as it should be because, as Bell's words show—*Classrooms are vehicles to communicate not just the subject, but self*. To create a classroom where deep learning occurs, I must give of myself as honestly and authentically as I can. As I invite my students to turn inward, I am revealing much about myself, as well as what it means to be a professional. There exists an assuredness in this seeming vulnerability, a quiet confidence that I am meeting my fiduciary duty to my students and to their future clients as they learn the skill of critical reflection; for self-examination is central to

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5. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992). For a compilation of Professor's Bell's groundbreaking work, see *THE DERRICK BELL READER* (Richard Delgado & Jean Stefancic eds., 2005).

6. Natasha Martin, *Allegory from the Cave: A Story About a Mis-Educated Profession and the Paradoxical Prescription*, 9 *LEWIS & CLARK L. REV.* 381, 385–86, 399 (2005). I also corresponded with Professor Bell when he thanked me for the gift of my article centered on *Ethical Ambition*.

7. BELL, *supra* note 3, at 36.

becoming a professionally responsible lawyer with integrated values.<sup>8</sup> Effective law teaching is not about connecting with students in an artificial manner on the surface, but about providing the space and opportunities for them to connect with themselves and to each other. The classroom is a laboratory, for students *and* professors, allies in the quest for knowledge about the subject and the self. I remember Professor Bell proclaiming at this meeting, “*Part of our job is teaching them about who they are.*”<sup>9</sup> Thus, fostering a learning process wherein students get to know themselves on the deepest level strengthens their capacity and courage to occupy the discretionary space that ethics and advocacy demand. This is what empowering change is about.

I had a few encounters with Professor Bell but none more significant for me as that fateful summer of 2006. I wrote to him in advance of the Vancouver conference, sent him my article that engaged with *Ethical Ambition*, and shared that I would love an opportunity to connect with him at the conference. Although we never made plans in advance to gather, I will never forget sitting in the conference luncheon, the only person of color at my table, and by far the youngest, when Professor Bell entered the room, made his way to my table and sat next to me. This academic luminary, who certainly could have chosen to congregate with familiar colleagues or others of his reputation and stature, instead, offered himself in that moment to me, the young professor. Professor Bell shared his advice and encouragement and the exaltation to always be myself, for it is the only way to be alive, to stay sane, and to succeed in this enterprise over the long haul. He seemed to know exactly what I needed to hear; his words and presence renewed my spirit. I do not know why he sat next to me on that day; perhaps he sensed that I needed to hear what he shared, or maybe it was pure serendipity. I was strengthened by his grace and generosity. He gave me hope, validation, and confidence.

Having recently stood on the spot at the Lincoln Memorial where Dr. Martin Luther King, Jr. gave his rousing speech almost fifty years ago at the March on Washington for Jobs and Freedom, I am filled with so many emotions as I conclude this tribute. I can say without hesitation

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8. Bell exhorts the value of subjecting oneself to examination as part of the prescription for engaging with integrity, avoiding the “white knight” phenomenon, and putting the good of the client first. *Id.* at 155–59. His transparency reveals how his own pursuit left him pondering past actions he had taken, particularly with regard to his involvement in the school desegregation cases in the ’50s and ’60s. *Id.* Additionally, recent empirical evidence demonstrates the correlation between professionalism and effectiveness in law practice. See, e.g., Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137 (2011).

9. See *supra* note 1.

that I believe Professor Bell, like Dr. King and so many others, was truly a drum major for truth and justice. I hope that I can maintain fidelity to my values, identity, and history in a manner that honors Professor Bell's legacy. I find solace and resolve in his photograph, which remains in my office—his knowing, gentle eyes continuing to beckon me onward and upward.