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Symbol and Substance in the Minority Professoriat's Future

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As enrollment levels of black college students have diminished in the 1980s,¹ a corresponding decline in the number of blacks going on to law school is an increasing possibility. A recent *New York Times* article stated, "Since reaching a peak in the mid-1970's, the number of black students and faculty at American colleges and universities has once again declined, and any hint of a revival of exclusionism is no joking matter."² Although for the present there has been contained growth in the number of minority law professors,³ it is likely that the number of black law professors will level off, or even decline, as a result of the shrinking minority presence on the nation's campuses⁴. Not only may the pool from which minority professors are drawn evaporate, but the felt-need for minority instructors may lessen in intensity as well.

With some exceptions, most law faculties have one or no minority instructors at all. Few in number, minority faculty function today in a climate in which a large number of their colleagues, and their white students regard racial conflict as the problem of a by-gone era.⁵ In effect, suggestions or allusions about racial oppres-

1. "In the late 1960s, blacks, Chicanos, and American Indians made relatively impressive gains on college campuses in the United States, but from the mid-1970s to the end of the decade, the growth in the proportion of these minority students on campus came to a virtual standstill, according to the American Council on Education in Washington. Beginning in 1980, ACE said, the number of minorities on campus compared with their representation in the general population actually began to shrink. And the reduction occurred just as the proportion of minority students graduating from high schools began to rise significantly. . . . According to the U.S. Census Bureau, between 1975 and 1980, the number of blacks enrolled in college as a proportion of high school graduates declined 4.2%, from 32% of the total to 27.8%. During the same period the proportion of Latinos fell 5.5%, from 35.4% to 29.9%." Roark, *Minorities on Campus Increasingly Isolated*, Los Angeles Times, Dec. 11, 1983, at 28, col. 1.
2. Staples, *The Dwindling Black Presence on Campus*, N.Y. Times, Apr. 27, 1986, 6 (Magazine), at 46.
3. In 1984-85, there were 381 minority professors known to the Association of American Law Schools out of 5,728 full-time law teachers. The 1983-84 figure was 364 out of 6,773, and the 1982-83 proportion was 337 out of 5,728. Minority professor as a category includes Asians, American Indians, Blacks, and Hispanics/Latinos. Interview with Noel J. Austin, Associate Director of the Association of American Law Schools (Feb. 28, 1986).
4. "Despite active recruiting by white colleges, the situation is getting worse because the potential pool of black professors is getting smaller. For the past five years, the number of blacks applying to arts and science graduate schools has steadily declined." Smith, *Large Shortage of Black Professors in Higher Education Grows Worse*, Wall St. J., Jun. 12 1984,
5. Public opinion polls in the late 1970s often revealed that significant numbers of white Americans no

sion are regarded as either irrelevant, distracting, or an excuse to avoid a search for more subtle, less obvious explanations for the growing disparity in the allocation of national opportunities and resources. In this growing cult of "color blindness,"⁶ not only are his concerns viewed as less important, but, the minority professor is himself becoming less and less visible. As his visibility fades, his ability to impact the desperate plight of the minority community decreases. Indeed, his very absorption into the system is construed as proof that no racial problem exists.

While the minority professor is confronted with a number of problems with regard to his presence, or lack thereof, on the campus, he also faces significant dilemmas with respect to his own community. This stems from the situational gulf that exists between minority faculty members and the minority community at large. As increasing numbers of minorities fall farther below the national socio-economic and social indicators,⁷ and racial isolation deepens and becomes more pervasive, the minority law professor's efficacy also tapers as he becomes physically removed

longer viewed racial discrimination as a recurrent problem, but one of the past. L. HARRIS & ASSOCIATES, A STUDY OF ATTITUDES TOWARDS RACIAL AND RELIGIOUS MINORITIES AND TOWARD WOMEN, (1978). *E.g.*, In 1978, a *New York Times* article quoted John F. Deardoff, a white insurance representative for the integrated Local 1010 of the United Steel Workers Union in Gary, Indiana, who stated, "I'll admit at first I resented all of the push for black rights, but then I came around to understand it. But now we have run that gauntlet and we are all the way over on the other side to reverse discrimination. We have civil-righted so hard that now you are discriminating against me." Nordheimer, *Two Societies: America Since the Kerner Report*, N.Y. Times, Feb. 27, 1986, at 14, col.1.

6. President Reagan, perhaps the political guru of the cult, has said, "We want a colorblind society. A society that, in the words of Dr. King, judges people not by the color of their skin, but by the content of their character." Wash. Post, Jan. 16, 1986, at 11. "A recurrent finding in several public opinion polls conducted during the years 1977 through 1979 is that white Americans believe that black Americans have made great progress toward achieving equality and that blacks are no longer the victims of discrimination." G. GILL, MEANNESS MANIA: THE CHANGED MOOD 25 (1980). Author Tom Sowell has made three general claims in support of the view that governments should pursue "color blind" policies and let different ethnic groups protect their own interests, i.e., 1. Victims of racial and ethnic discrimination are sometimes more affluent than their former oppressors, 2. Discrimination tends to disappear once governments stop enforcing it since discrimination is more expensive than it is worth in a competitive environment, and 3. Interests of the poor are not served by government efforts to eliminate private discrimination. Jencks, *Discrimination and Thomas Sowell*, N.Y. Review of Books, Mar. 3, 1983, at 33.
7. Since 1968, the year King died, the number of blacks holding public office at all levels has risen from fewer than 1,500 to more than 6,000. In the same period, black voter registration has remained at 66 percent of those eligible while white registration has declined from 69 to 61 percent meaning that blacks now have more relative clout in the electorate than they did then.

"But the unemployment rate among blacks today is 15 percent, more than 2 and a half times the 5.9 percent rate among whites. In 1968 the black rate was 7 percent, less than double the 4.1 percent rate for white workers at that time.

"Similarly, in 1984, the last year for which complete figures have been computed, the median family income for blacks was \$15,432, compared to \$27,686 for white families. That gap is greater than it was in the year of Martin Luther King's death—in constant dollars, the figures then were \$16,003 for black families to \$26,882 for white families.

"The obvious lesson in all this is that the rise in black political power over the last generation has not paid dividends in an equivalent improvement in blacks' economic position. And that, in turn, suggests that those black political leaders most aggressive in demanding economic equity—Jesse Jackson is the leading example—are clearly on the right track." Germond and Witcover, *King Holiday, a Hollow One for Many Blacks*, Los Angeles Herald Examiner, Jan. 22, 1986, at 19, col. 1.

John E. Jacob, President of the National Urban League, has put the situation succinctly: "In the best of worlds we would be reporting that the black condition has shown marked improvement over the past decade. But the facts argue otherwise. In virtually every area of life that counts, black people made strong progress in the 1960s, peaked in the 70s, and have been sliding back ever since. . . . The economy is not the only force that continues to operate against blacks. The national will to take positive steps to help set the scales of justice into balance has diminished tremendously over the past ten years, and has been replaced, in large measure, by a feeling that nothing more needs to be done and if blacks are still on the outside looking in, it's probably their own fault." Jacob, *An Overview of Black America in 1984*, in NATIONAL URBAN LEAGUE, THE STATE OF BLACK AMERICA 1985, at i, ii.

from his community. This paradox is exemplified by Derrick Bell's deanship of a law school with an all-white faculty in a state in which minority numbers and influence might fairly be described as insignificant. With some exceptions, most minority law faculty, like the race problem itself, remain at the margin of the consciousness of their faculties and their students. Much like the protagonist in Ralph Ellison's *Invisible Man*,⁸ the Black professor is a phantasm, whose very race is suppressed in the consciousness of students nurtured by a prevailing ideology which suggests that race has a declining significance.⁹

The minority law professor today is therefore faced with a significant challenge. He must strive to preserve his self-identity while maximizing his effectiveness to impact the national domestic agenda, in light of conditions imposed by his predominantly white surroundings. While minority professors, because of their achievements, have a valuable opportunity and, indeed, an obligation to jar the consciousness of a nation which tends to have both a short attention span and a convenient memory; they must confront the reality that an attempt on their part to emphasize the problems of race is likely to be viewed as an irrelevance at best, or at worst, an attempt to conceal some deeper failing.

A transcendent reality minorities must confront is that few whites are comfortable with race and racial conflict.¹⁰ The circular chains of racial subjugation cannot be squared with the myth of a democratic and egalitarian order.¹¹ And the situation has worsened. In the sixties and early seventies, those Blacks permitted to teach law functioned in an environment in which the assumption was all but universal that

8. R. ELLISON, *INVISIBLE MAN* (1952).

9. W. J. WILSON, *THE DECLINING SIGNIFICANCE OF RACE* (1978). Professor Wilson writes that, "the recent mobility patterns of blacks lend strong support to the view that economic class is clearly more important than race in predetermining job placement and occupational mobility." *Id.* at 152.

10. See generally R. APOSTLE, C. G. LOCK, T. PIAZZA, M. SUELZLE, *THE ANATOMY OF RACIAL ATTITUDES* (1983). In 1978, the *New York Times* described the agony of the liberal wife of a liberal Kansas City advertising man in a story which might represent a paradigm of white discomfort with race. In deciding what food to serve at a dinner party for her husband's staff, which included a black secretary, the wife lamented, "It was a warm day and if the group had been all white I could have served fried chicken and watermelon and no one would have given it a second thought. But that obviously was out. On the other hand, I felt I couldn't serve boeuf bourguignon and chocolate mousse because someone might think that was a putdown "[I] settled on neutral pot roast and apple pie because [p]eople might think I'm a lousy cook, but they won't think I'm a racist." Nordheimer, *Two Societies: America Since the Kerner Report*, N.Y. Times, Feb. 27, 1986, at 14, col. 3. Nordheimer also reported that, "Similarly, professional and educated blacks are often offended, and sometimes amused by the whites who grope for appropriate 'black' conversation gambits at cocktail parties or dinners. 'During the recent Muhammad Ali fight, you'd be surprised how many whites assumed I had an inordinate interest in boxing,' smiled M. Carl Holman, director of the National Urban Coalition, who is also an accomplished poet." *Id.*

11. "The United States has always had its values tested by the phenomenon of race. Slavery made this inevitable. A society that could proclaim all men to be created equal and still sanction slavery was bound to be faced with moral dilemmas. The framers of the Constitution dealt with the issue in two ways: by prohibiting the further importation of slaves after 1807, and by devising a 3/5 calculation as a basis for counting slaves and as a basis for determining the population size of each state for purposes of representation in the House of Representatives and the number of electoral votes in presidential elections. Hardly decisions that would adequately meet the moral issue of human bondage." Hamilton, *Race, Social Policy, and the Evolving Struggle: From Rights to Resources*, POL. SCI. QUARTERLY (1986).

Derrick Bell sums up the situation as follows: "The Constitution has survived for two centuries and, despite earnest efforts by committed people, the contradiction remains, shielded and nurtured through the years by myth. This contradiction is the root reason for the inability of black people to gain legitimacy—that is, why they are unable to be taken seriously when they are serious and why they retain a subordinate status as a group that even impressive proofs of individual competence cannot overcome. Contradiction, shrouded by myth, remains a significant factor in blacks' failure to obtain meaningful relief against historic racial injustice." Bell, *The Supreme Court 1984 Term, Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4, 7 (1985).

race was a high priority social issue. Controversy flared, not over the question of whether a racial problem in fact existed, but over the source of the problem and the costs of its solution.

Today, however, students are likely to find allusions to the race problem unsettling. Indeed, indifference and ignorance characterize current law student attitudes about racial conflict. The very presence of a minority in a professorial position, in the majority view, would seem to refute the notion that race is an issue which still merits resolution. This year's beginning law students, for the most part, are too young to remember such occurrences as the assassinations of Martin Luther King and John F. Kennedy. This is exacerbated by the fact that what today's students have not personally witnessed, contemporary rhetoric attempts to obscure from their consciousness.

While there may be a "new candor on race," recent discussion about the question is likely to shift away from the stultifying effects of racism toward a focus on what minorities should be doing to alleviate their situation. For example, it is not uncommon to read suggestions such as the following: "Whatever white racism remains, blacks are now harming themselves more than whites are; blaming the broader white society for black problems promotes a victim mentality and excuses personal irresponsibility."¹² Even in more sympathetic sectors of the American intellectual establishment, victim-blaming rhetoric is much more pronounced than one might expect. Indeed, a black scholar has written:

"...[W]e must try to move beyond the exchange of epithets and accusations. This problem [of proliferating black families headed by females] is in no direct way the result of 'white racism': neither does it reflect genetic inferiority of blacks. It arises from a past in which racism has played a role, but in which there has been sufficient failure among blacks for us to shoulder a sizeable share of responsibility as well. This crisis of inner-city America, though rooted in our history of race relations and continuing to cast a clouds over the dream that we may one day become a colorblind society, reflects a human tragedy that transcends racial boundaries."¹³

Thus, the prevailing ideological orientation, even when it is undeniably informed and compassionate, is likely to reflect the view that not much else remains for the larger social order to do about what is perceived as an idiosyncratic problem.¹⁴

Besides, "after the political turmoil of the sixties, Americans have retreated to

12. Samuelson, *The New Candor on Race*, Newsweek, Feb. 10, 1986 at 64.

13. Loury, *Black Family Crisis Is America's Crisis*, Los Angeles Times, Feb. 7, 1986, at 5, col. 3.

Loury has argued that "while the civil-rights strategy was in the 1960s and '70s an effective weapon against explicit segregation and made possible the heartening growth rate of the black middle class, it has exhausted itself on the subtler and more intractable realities of ghetto life. Even worse, Loury says, it encourages its advocates—the bulk of the civil-rights leadership today—to maintain the fiction that discrimination is to blame for the plight of the one-third of American blacks who belong to the underclass. 'The lagging economic condition of blacks,' he wrote in the *New Republic* two weeks ago, "is due in significant part to the nature of social life within poor black communities." *Breaking the Code*, Newsweek, Oct. 21, 1985 at 84.

Assailing the Great Society approach to problems of the underclass, Loury charged in a recent speech in Washington: 'We have created a dependent class of citizens who have little incentive to avoid trouble with the law, to remain employed, to keep their families together, to ensure that their daughters do not become pregnant.'

Like other black conservatives, he harshly criticized traditional civil rights leaders for 'undermining the dignity of our people' by advocating government-financed social programs and affirmative action in hiring and promotions. May, *New Black Theme: Save Yourselves*, Los Angeles Times, Mar. 8, 1986, at 1, col. 1.

14. Given both the mistaken public perception of the degree of black progress and the emerging intellectual/political callousness towards the poor, it is little wonder that the problems of black Americans ranked last out of thirty-one possible choices in a recently published survey of national issues by

purely personal preoccupations. Having no hope of improving their lives in any of the ways that matter, people have convinced themselves that what matters is psychic self-improvement; getting in touch with their feelings, eating health food, taking lessons in ballet or belly-dancing, immersing themselves in the wisdom of the East, jogging, learning how to 'relate,' and overcoming the 'fear of pleasure.' Harmless in themselves, these pursuits, elevated to a program and wrapped in the rhetoric of authenticity and awareness, signify a retreat from and a repudiation of the recent past."¹⁵In this light, many efforts to ameliorate minority problems have been characterized as exacerbating them.¹⁶

Moreover, many minority professors will concentrate in areas of the law which seem racially neutral. Therefore, their ability to point out the operation of social conflict is essentially peripheral. The Uniform Commercial Code affects transactions regardless of the race of the parties involved. Contracts executed in barrios and ghettos as well as those between corporations must ordinarily be supported by consideration. And the law of intestate succession operates, even if less lucratively, for minorities as well as for those of European ancestry.

Therefore, despite such factors which seemingly minimize the importance of race as a social issue, the minority professor must realize that, notwithstanding his own position, America's race problem abides. This is exhibited in current instances of racially-motivated violence and opposition, as well as in the presence of overwhelming poverty in the black community. Such recent episodes as whites rioting in objection to housing integration in Philadelphia,¹⁷ and suspected lynchings in northern California¹⁸ suggest the intransigence of white America and the intractability of the race question. Additionally, as one researcher has suggested:

William Watts and Lloyd H. Free, entitled, *The State of the Union III*, G. GILL, MEANNESS MANIA: THE CHANGED MOOD 6 (1980).

15. C. LASCH, *THE CULTURE OF NARCISSISM; AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS* 4-5 (1978).

16. See generally, C. MURRAY, *LOSING GROUND* (1984). Murray suggests the following premises: "Premise # 1. People respond to incentives and disincentives. Sticks and carrots work. Premise #2. People are not inherently hard-working or moral. In the absence of countervailing influences, people will avoid work and be amoral. Premise #3. People must be held responsible for their actions. Whether they are responsible in some ultimate philosophical or biochemical sense cannot be the issue if society is to function. . . . Social policy since 1964 has ignored these premises and has created much of the mess we are in." *Id.* at 146.

Conservative columnist James J. Kilpatrick summed up the emerging view that to assist blacks is to hinder them: "We seem to have tumbled into a senseless situation in which the more benefits we provide, the worse the picture gets." Kilpatrick, *Does Welfare System Create Poverty*, Los Angeles Times, Mar. 10, 1986, at 5, col. 1.

17. On November 22, 1985, Philadelphia, Pa., Mayor Wilson Goode declared a state of emergency banning outdoor gatherings of more than four people in a 30-block area around the home of black Charles Williams, who, along with his wife and seven-year-old daughter, moved into a hitherto all-white working-class neighborhood of the city's southwest section. The emergency was triggered by white mobs who nightly demonstrated outside the Williams' home protesting their presence in the neighborhood. A month later, the Williams moved out. An interracial couple who moved into the same district and suffered intense harassment decided to stay, after their home was placed under police guard. *Brotherly Fear*, Time, Dec. 9, 1985 at 34.

18. San Francisco, California suburb Concord's reputation has lately been tarnished by allegations of racial disharmony, knifings and murder—a brutal if familiar by-product, some people here say, of the very urbanization that is putting Concord back on its feet.

The most grisly event occurred on Nov. 2, in a vacant lot near one of the new office towers adjoining the (train station of the metro line known as BART). On that mud-caked piece of land, an off-duty security guard found the body of a young black man hanging from the branch of an old fig tree.

Police ruled the man's death a suicide. But local black leaders and some white residents are convinced that 23-year-old Timothy Charles Lee was lynched—perhaps by a splinter of the Ku Klux Klan. Stein, *Lynching or Suicide? A City is Gripped by Tension*, Los Angeles Times, Feb. 11, 1986, at 1, col. 1.

“ . . . Today, black poverty is once again being blamed primarily, if not exclusively, on the structure and culture of black families. But evidence from an ongoing long-term study of American families shows that even when black children live in two-parent families, they are likely to spend four times as much of their childhood in poverty as the average white child will spend. The solution to black poverty lies less in the family than in the labor market.

. . . The survey evidence reveals that most black poverty does not fit the underclass stereotype, and that the welfare system rarely produces long-term dependency either in its present recipients or in their children's generation. . . .

. . . Data from annual government surveys paint a bleak picture of the economic plight of black children, but the results from (an 18-year Panel Study of Income Dynamics conducted at the University of Michigan) are even bleaker. Among black children, fewer than one in seven lives above the poverty line during every year of childhood. In contrast, a clear majority of white children enjoy economic security throughout their entire childhood. Despite the safety net of cash welfare programs instituted in the last 20 years, the average black child can expect to spend more than five of his or her first 15 years in poverty. For white children the time spent in poverty averages five months.”¹⁹

Race is thus a powerful determinant of personal fate in the United States; a brutal and ineluctable aspect of the social order which cannot be refuted, regardless of the number of minority faculty appointments that are made. Minority law professors, in turn, must come to grips with this reality, as well as recognize that they themselves, through their positions, may be playing a role in legitimizing a legal system whose hegemonic function vindicates and supports a social and political order in which non-whites are subjugated.²⁰ On the occasion of the first national observance of Martin Luther King's birthday, *Nation* magazine saw the event as:

“ . . . the end of one short phase of the epic struggle of black people for equality in America. The white power structure which King used to speak of in the 1960s is still impervious to the aspirations of most black people, and the larger social system remains dedicated to the preservation of privilege for those at the top. In the course of the long drive, no single success is unalloyed. The addition of a “black holiday” to the national calendar was a concession to an underprivileged community, but it was also an attempt at co-optation, another quaint locution from an earlier political generation. Just as the various pieces of civil rights legislation in the 1960s were designed to avert social conflict as well as to harmonize political interests, this latest civil rights token is clearly seen by many as the specie of social appeasement.”²¹

In light of this dilemma, what might minority professors do to avoid cooptation within such a system? How might they make their careers relevant to the struggle for racial justice? Though individual self-attainment and achievement is an important part of one's career, minority professors cannot permit the symbolic image of their personal success serve to perpetuate the myth that race is a variable of neu-

19. Duncan, *Blame Joblessness, Not the Families, for Black Poverty*, Los Angeles Times, Feb. 10, 1986, at 5, col. 1.

20. “In modern societies, at least, the theoretical and moral foundations of the legal order and the actual, specific history of its ideas and institutions influence, step by step, the wider social order and system of class rule, for no class in the modern Western world could rule for long without some ability to present itself as the guardian of the interests and sentiments of those being ruled.

The idea of ‘hegemony,’ which since Gramsci has become central to Western Marxism, implies class antagonisms on a terrain in which its legitimacy is not dangerously questioned.” E. GENOVESE, *ROLL JORDAN ROLL*, 25-26 (1972).

21. *The March Goes On*, *The Nation*, Feb. 1, 1986 at 99-100.

tral significance in the American social order. In other words, the minority profesoriat must not provide additional leverage for further suppression of an essentially non-white underclass, without resources and largely without any future.²² As race disappears from the national agenda of problems to be solved, minority professors can play a valuable role in signaling to the dominant elites the ultimate consequences of racial bifurcation.

In an effort to respond to his environment and his responsibilities, the minority faculty member is thrust into a situation in which there lies the great ambiguity which inheres in all human encounters. Such an ambiguity is implicit in situations both with and without political implications. There exists a structural imbalance between the minority and white communities. Yet, at any given moment and in any given relationship, momentary equilibrium is a possibility. Such an equilibrium is attainable if one recognizes that to be white is not necessarily to be wrong or to be implicated. Whites may benefit from oppression without conspiring in its perpetration. However, one must recognize that the history of the struggle against racism, like that of the agitation and bloodshed necessary to purge the nation of the stain of slavery, is marked by heroism and self-sacrifice on both sides of the color line. Minorities must disentangle individuals from the institutionalized web of racism in which all Americans, no matter their color, are ensnared.

Once the minority faculty members bridges the abyss that separates all beings one from another,²³ he must also keep in mind the responsibility he assumes as a result of his presence on the faculty; a responsibility which personal relationships cannot obscure. Sartre has said, "In war there are no innocent victims."²⁴ . No minority faculty member can escape his politically important symbolic role. He must recognize the fact that, to many, his presence confirms what is believed to be the essential justness and fairness of the American social order. His success telegraphs the message that hardworking and capable minorities can also rise. In light of what his personal success may symbolize to many, the minority professor, therefore, has the responsibility to expose the flaws in the assumptions that are drawn from his accomplishments, by pointing out the obstacles that still exist.

Next, personal authenticity is of salient importance. This will require fidelity to his origins, not suppression of his roots. It should be borne in mind that minorities bring something to university life that was sorely missing before they arrived in the sixties. The academic community should not be deprived, in the case of blacks, of generous servings of soul. Du Bois has written:

"We the darker ones come even now not altogether empty-handed: there are today no truer exponents of the pure human spirit of the Declaration than

22. See K. AULETTA, *THE UNDERCLASS* (1982).

Before Auletta, another author had used the word "underclass" to describe "a group whose emergence as a permanent fixture of our nation's social structure represents one of the most significant class developments in the past two decades. The term underclass has slowly, almost imperceptibly eased its way into the nation's vocabulary, subtly conveying the message that another problematic group is emerging that needs society's help." D. GLASGOW, *THE BLACK UNDERCLASS: POVERTY, UNEMPLOYMENT, AND ENTRAPMENT OF GHETTO YOUTH*, 3 (1981).

23. "Man can will nothing unless he has first understood that he must count on no one but himself; that he is alone, abandoned on earth in the midst of his infinite responsibilities, without help, with no other aim than the one he sets himself, with no other destiny than the one he forges for himself on this earth" J.P. Sartre, *L'etre Et Le Neant* (1943), quoted in BARTLETT'S FAMILIAR QUOTATIONS, 865 (15th Ed., 1980).

24. Jean-Paul Sartre used this phrase of Jules Romains' in *L'ETRE ET LE NEANT* (1943). See *THE PHILOSOPHY OF JEAN-PAUL SARTRE*, 279 (R. Cumming ed. 1965). Sartre has written, "there are no accidents in life; a community event which suddenly bursts forth and involves me in it does not come from the outside. If I am mobilized in a war, this war is my war; it is my image and I deserve it. I deserve it first because I could always get out of it by suicide or by desertion; these ultimate possibles are those which must always be present for us when there is a question of envisaging a situation. For lack of getting out of it, I have *chosen* it." *Id.* at 278.

the American Negroes; there is no true American music but the wild sweet melodies of the Negro slave; the American fairy tales and folk-lore are Indian and African; and, all in all, we black men seem the sole oasis of simple faith and reverence in a dusty desert of dollars and smartness. Will America be poorer if she replaces her brutal dyspeptic blundering with light-hearted but determined Negro humility? or her coarse and cruel wit with loving jovial good-humor? or her vulgar music with the soul of the Sorrow Songs?"²⁵

Minorities should not feel constrained to replicate the mannerisms of whites, but must somehow make a personal and personality difference when they step in the classroom, and when they write. The blandness that characterizes the dominant culture is ill-served by a slavish imitation of American academics. Both in perspective and style, racial minorities are the last best hope of America, which sorely needs their contributions and abilities, which have been forged in one way or another in the cauldron of racism.²⁶ Minority faculty must equal white faculty in competence. However, they must be themselves, not darker replicas of their colleagues. If it is acceptable to look black—or brown—then it is acceptable to speak accented English. Indeed, it may well be preferable to speak in our own accents and from the deep reservoir of our personal origins.²⁷ As Kenneth Karst has written:

“. . . A great many Americans will continue to identify themselves in significant ways as members of cultural groups and, indeed, to reject parts of the majority culture, such as family patterns that seem isolating and uncaring. The survival of these cultural groups in some form is entirely consistent with the process of assimilation, and it is unlikely that any ethnic group now visible in America soon will disappear. What seems more likely is that the process of assimilation will go on as it has proceeded in the past, with each newly assimilated cultural group not only maintaining a measure of internal cohesion but also contributing to the enrichment of the cultural mainstream.

If many largely assimilated Americans cling to some aspects of their 'primordial affinities,' perhaps they understand that genuine individuality is not to be found by participating in a vast social or political market. Rather, both individuality and community are attainable only within a particular group of people who share cultural traditions. 'Most often, when individual men and women insist on 'being themselves,' they are in fact defending a self they share with others.' "²⁸

Bringing a humanitarian approach, as well as the beauty and power of their own cultures, minority academics come to teaching and scholarship freighted with a historic mission. In the classroom, minorities must eschew the neutrality and the colorless, unemotional content of traditional teaching styles. Although white academics have mastered the art of concealing emotion and suppressing their feel-

25. W.E.B. DuBois, *Souls of Black Folk*, 22 (1953).

26. "What it comes to is that if we, who can scarcely be considered a white nation, persist in thinking of ourselves as one, we condemn ourselves, with the truly white nations, to sterility and decay, whereas if we could accept ourselves as we are, we might bring new life to the Western achievements, and transform them. The price of this transformation is the unconditional freedom of the Negro; it is not too much to say that he, who has been so long rejected, must now be embraced, and at no matter what psychic or social risk. He is the key figure in his country, and the American future is precisely as bright or as dark as his." J. Baldwin, *The Fire Next Time*, 107-08 (1963).

27. "In our view, speech patterns, or accents, announce to the world an essential quality of the speaker's identity. He is telling all who will listen who he is, and stating that this aspect of his identity forms an essential element of his character structure." Cf. W. Grier & A. Castaneda, *Cultural Democracy, Biocognitive Development, and Education* (1974).

28. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. Law Rev. 304, 336 (1986).

ings, and even their beliefs, minorities must not shrink away from the opportunity to expose future white opinion makers to points of view they would otherwise never hear first hand. Many white students, perhaps most, come to law school having lived a life in which they have never encountered a minority figure in a position to impact their lives, or even a non-white acquaintance. It is critical that such students, after having the opportunity to encounter a minority professor, should not be able to leave law school keeping intact any prior illusions they may have had about the absence of race and class conflict in the United States. Indeed, though minority faculty members are generally considered to serve as role models for aspiring minority students, it may well be that their impact on white power brokers—present colleagues and future lawyers—may well be their most important contribution.

In the future, given the structure of the American social order, it is white students who, for the most part, will be the decision-makers that will essentially determine the fate of minorities at the century's end. Educating them is critical. Even one slumbering white mind is worth awakening from the smug unconsciousness and insensitivity which so frequently characterizes it. And if opportunities do not always arise in the classroom to teach what really needs to be taught, then surely in collegial exchanges with other faculty; minority faculty do not justify their presences by lulling their colleagues to even a deeper sleep by reassuring them that minority faculty bring with their appointments the millenium of racial harmony.

In terms of scholarship, no matter the subject, minority law professors must explore the outer limits of their fields. They must conduct the kind of path-breaking scholarship which can command attention on a disciplinary-wide basis. This will come easier in areas which concern social problems, or race itself. Here the superior vantage point of the victim-class will give the minority scholar an edge—one not conceded by whites who usually regard minorities as biased—and insights which privilege will deny to the beneficiaries of America's racial caste system. But since law is the system's lubricant, much research and teaching will be consumed by areas of study which are ostensibly race-neutral, even though integral to the apparatus of white domination.

The minority scholar should of course heighten his own personal powers of observation and illumine his own field of study, as well as bring to bear his personal insights on the situation in which minorities are thrust. He is not captive of any particular style. He can sing our song in prose and in fiction as well as he can in a pedantic manner. Indeed, as Dean Bell's masterpiece suggests, his power may be maximized by communing with the voices in our past. Who knows? Geneva Crenshaw may have a more authentic democratic vision than any to be discovered in the footnotes of a too long and too boring piece of legal scholarship.²⁹

Realities of promotion and retention aside, minority scholars must not slavishly imitate dominant models of research and writing. Though no scholar writes in a vacuum, and minorities have had a history of exclusion from the national debates, it is still possible to both establish high standards and write with originality. And, no matter his area of research, minority scholars have an obligation to speak and write on critical matters of public policy. The wills and trust professor should speak out on such issues as the deprivation of malnourished minority children. The property professor must speak out on the obscene disparities in wealth generated by the dominant economic order. The torts professor should point out workers' exploita-

29. Ms. Crenshaw is the heroine of Professor Bell's *Civil Rights Chronicles*. He says of her, "I can appreciate Geneva's legal prescience now, but I was more impressed in those days with her willingness to stand up to the major figures in civil rights law. As she articulated her views at staff meetings, and later in southern courtrooms, she seemed to embody the strengths of the nineteenth-century black abolitionists Harriet Tubman and Sojourner Truth" Bell, *The Supreme Court, 1984 Term — Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4, 14 (1985).

tion as well as their injuries. Finally, minority professors should be the first to look carefully at cost benefit analysis, which often tend to cost minorities dearly, while leaving scant benefit to them. Minority professors must be wary of constitutional balance striking. Not infrequently the balance is struck against the non-white and the powerless.³⁰ Such has been the historical experience of the nation.

There remain the students—minority as well as white. Here lies the capital advantage of the minority professor. Outside of the classroom, as Dean Bell's experience attests, he is likely to be more accesible and more sought out than his colleagues.³¹ With some exceptions, the minority professor will bring to his position a compassion for the powerless that does not normally go with the territory. Sensitive and perceptive white students—and there are many—know this, and will rely on minority professors, more often than not. And as role model to minority students, the minority academic in countless ways can serve as a mentor to those who follow in his footsteps. Often just listening will be a significant contribution. But not infrequently, minority students will have to be convinced that the minority professor—by definition a superman—has not lost the common touch. Finally, minority professors understand the relationship of the students to the community and often serve as important counselors on research activity and community work.

With characteristic precision, Dean Strickland has spoken of the high wire act minority professors perform.³² The high wire has its danger, but also unparalleled excitement. Sharing invisibility with other minorities, the minority academic must make his presence felt. From the margin to which the minority *professoriat* is consigned, he or she must use the leverage and vantage point of the outsider to impact mainstream priorities. In Fanon's phrase, "the new day, which is already at hand must find us firm, prudent and resolute."³³

30. *Washington v. Davis*, 96 S.Ct. 2040 (1976). See *Clark v. Community for Creative Non-Violence*, 104 S.Ct. 3065 (1984) where the Court upheld a ban on sleeping in a Washington, D.C. park. Though the Court conceded that the ban reduced the effectiveness of demonstrations protesting the plight of the homeless, the Court upheld the ban because it was a so-called content-neutral means of deterring demonstrations. Thus, the park was preserved for non-expressive use. In *Members of City Council v. Taxpayers for Vicente*, 104 S.Ct. 2118 (1984), the Supreme Court upheld a ban on posting signs on public property, including campaign posters on telephone poles. The Court suggested that the ban's purpose was to reduce "visual clutter," but failed to acknowledge that the ban silenced the poor and middle class more than the more affluent who have ready access to other means of communication. A fresh example of the Courts' penchant for balancing is illustrated by *New York v. Class*, 54 U.S.L.W. 4178, 4180-81 (1986). See generally Tribe, *Constitutional Calculus: Equal Justice or Economic Efficiency*, 98 HARV. L. REV. 592-621 (1985).

31. Bell, *supra* note 29, at 75.

32. Strickland, *Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*, 20 U.S.F. LAW REV. —, (1986), an address at the Minority Law Faculty Conference, University of San Francisco, Oct. 26, 1985.

33. Frantz Fanon, quoted by V. HARDING, *THE OTHER AMERICAN REVOLUTION* at 232 (1980).