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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."¹

Professor Bell took a "participatory approach to teaching"² his constitutional law courses, modeled after Paulo Freire's critical pedagogy.³ He took seriously the "Freire ideal . . . that students become teachers and teachers become learners."⁴ 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.⁵ 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,"⁶ which he used to explain the Supreme Court's 1954 decision in *Brown v. Board of Education*⁷—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.⁸ 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*⁹ 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?

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.¹⁰

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."¹¹ 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."¹² Such "double-consciousness"¹³ was a hallmark of Professor Bell's "critical"¹⁴ constitutional pedagogy.

Professor Bell also tried to balance another set of "warring ideals"¹⁵ 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

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.”¹⁶ 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!¹⁷

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 classroom¹⁸—using these “to break down traditional barriers between student and teacher, and even among students themselves.”¹⁹

There were many other ways in which Professor Bell aimed to resolve the “teacher-student contradiction,”²⁰ 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.²¹

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-

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).

fessor 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.²²

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.²³

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.²⁴

Many similar stories can be found on Professor Bell's official memorial website.²⁵ 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.²⁶ This

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.²⁷

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.