

IN REMEMBRANCE OF PROFESSOR DERRICK BELL

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Derrick Bell was a man of action and vision. His litigation insights, his writing, and his approach to teaching were his weapons. His music, humor, and vision of social justice gave us strength and support. At his core, Derrick embodied social change—social change not simply for the sake of change, but social change to bring about a more just world. Of all that will be written about Professor Derrick Bell the husband, father, teacher, colleague, litigator, scholar, philosopher, storyteller, fighter, and gentleman, I believe a lasting tribute to him should be that he will be remembered in a publication with the words “Social Change” in its name. Derrick not only imagined a world truly free of racism, sexism, homophobia, and classism, but he devoted his life and his life’s work to achieving that goal. He took lawyers who spend their lives studying the realm of the probable and dared us to imagine and strive for the realm of the improbable. He had the soul of a poet and the vision of a revolutionary.

Derrick made it a practice to make courageous choices. He encountered and overcame both racial and political headwinds to achieve the prestigious positions he assumed over the years. Those positions alone could have constituted an important legacy. But an even more important example of his willingness to stay true to his principles was his willingness to step away from those high-profile positions in the name of social justice. His choices were never easy for him or for his family, and his choices often brought unwanted attention, pressure, and heat to those institutions he chose to leave. Still, his unwillingness to relinquish his political affiliations or abandon his deeply-held personal commitments helped us all to understand the value and consequence of adhering to principle.

The timing of one of those principled choices—the decision to leave a tenured faculty position at Harvard Law School—is what prevented me from ever having the opportunity to be his student. I was chair of the Black Law Students Association at Harvard before he famously left the faculty to protest Harvard Law’s unwillingness to hire faculty of color. Fortunately for me, his

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twenty-year “visit” to NYU gave me the opportunity to be his colleague, to observe at his side, and learn from his example. In the years that we both taught at NYU, I had the immense pleasure of sharing some special moments with him.

NYU became a great home for Derrick. Although he had passed through, and indeed spent time at many other institutions, NYU, with its public interest spirit and talented and activist students, provided a wonderful canvas for the murals of Derrick’s life. His message to students and colleagues was not only that we should resist the subordination of people in all forms, but that relationships, community, and family are paramount. In part because of his presence, activism, and the scholarship that he produced, NYU became an incubator of new forms of struggle. Just one example: When the law students at NYU formed a new organization, the “Coalition for Legal Recruiting” (CoLR), they needed guidance. They knew exactly where to turn—to Derrick. He engaged them in wide-ranging discussions and debates about tactics and strategies that would drive home the urgency of making diversity a central goal in faculty hiring decisions. I know that Derrick reveled in counseling a new generation of young activist lawyers-to-be, but this example also demonstrates that, even in a place that he called home, Derrick was not content to sit back until he did all that he could to make it better.

Teaching was Derrick’s greatest passion and his true gift. I was aware of his great intellectual contributions prior to my arrival to the NYU faculty, but it was not until I completed teaching his Current Constitutional Issues course and prepared to teach his Critical Race Theory course after his passing last fall that I understood the power of his pedagogical insights. Derrick was a masterful teacher and a genuine explorer when it came to engaging students in their own education. He never believed that the professor at the front of the room held the monopoly on learning. He knew from experience and instinct that some of the most meaningful learning occurs in non-traditional ways and from perhaps unlikely sources. I learned from stepping into his shoes mid-semester that Derrick’s courses require careful coordination between students, teaching assistants, the clerical staff, and the professor, and that such coordination fosters an intimate learning atmosphere that is uniquely suited to grappling with the most important issues of our time. His fundamental notion is elegant in its simplicity and revolutionary in its application: Given the proper context, students are both willing and able to put the time and energy into a subject matter and to create a safe environment that allows for very intense conversations about race, gender, sexuality, and the law. What struck me stepping into his class was the diversity of thinking that the students—and the discussion—reflected. And that diversity generated competing viewpoints and forceful debates with one common theme: The law can be and should be a tool for social change.

In addition to his legacy as a teacher, Derrick left an indelible mark as a scholar. Having entered the academy immediately following a robust practice experience in which he fought as a lawyer to bring voice to the struggles of people of color, Derrick was struck by what was missing in conventional legal

narratives. The prevailing legal scholarship lacked depth, character, and nuance about issues of race and class that both surprised and frustrated him. That frustration led to a number of important scholarly projects that critically—and famously—examined issues of race in an open, candid way, revealing conflicts in strategy and vision as the leading civil rights attorneys struggled to engage the nation in a conversation about race.

Derrick confronted hard issues head-on throughout his career as a writer and thinker. Given his background as a civil rights litigator, it surprised more than a few that Derrick would openly question in print whether racial integration was indeed the right goal to have chosen. In *Serving Two Masters: Integration Ideals and Client Interests*, Derrick wondered aloud, quite provocatively, whether the *Brown v. Board of Education* litigation goals should have been more focused on equal education than integration into white classrooms.¹ His critique was all the more powerful because it illuminated the trade-offs that occur when lawyers opt to litigate for a *cause* rather than representing the interests of their clients. Derrick observed that while the lawyers embraced racial integration as the central strategy of the cause, that strategy only had limited appeal among their clients, who were members of the Black community. In a later piece, further reflecting on the civil rights movement and litigation, Derrick continued to ask difficult questions about strategy and reform. He raised important issues about class when he suggested that fighting to end legal segregation instead of fighting to promote the education of Black children had taken the civil rights movement down the wrong path. He argued passionately and persuasively that integration had done very little to improve conditions for poor Black children.²

But perhaps Derrick's most significant scholarly contribution remains his theory of "interest convergence." That theory posits that the overwhelming consensus against school segregation in the 1950s emerged largely as a result of a convergence of interests between minority and white-majority interests. The international post-World War II context saw the United States attempting to hold out its political and economic structure as the model for developed countries. While claiming to embrace freedom, the United States was simultaneously encountering international criticism for oppressing people of color. Derrick incisively argued that the fight for racial justice was enabled because the country's interests converged in a way that made ending legal segregation a political imperative given the international interests at stake.³ Interest convergence theory has become one of the most useful and oft-cited analyses of legal strategy and lawyering.

1. Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests*, 85 YALE L.J. 470 (1976).

2. DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (2004).

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

One of the most revealing marks of Derrick's genius was his tremendous understanding of and belief in the power of narrative. As one of the intellectual founders of Critical Race Theory, Derrick used rich and textured storytelling to insert issues of race, gender, and class into the landscape of legal analysis. Beginning with his masterful *Supreme Court Forward* in the 1985 issue of the *Harvard Law Review*⁴ and continuing with his compelling fictional alter ego, Geneva Crenshaw, Derrick elucidated through stories and taught through analogies. Derrick's scholarly exploration and innovation was timely. Law students, professors, and lawyers were beginning to openly question the absence of context in law school classrooms and in legal analysis more generally. Derrick drew on a storytelling tradition and combined that tradition with his keen intellect, activism, and provocative observations to raise questions about how we thought about, wrote about, and taught the law.

Derrick ultimately became resigned to the "permanence of racism." At first blush, this might seem a pessimistic forecast for our nation's future. But not to Derrick. He was a deeply committed optimist. In his important book *Confronting Authority*, Derrick described his profound belief in the permanence of racism as a motivation for many of his protests. It was, in the end, what spurred him to be an activist and to fight even in the face of overwhelming odds. It was precisely these lessons—fighting the good fight, being reflective, and finding ways to commit to justice as an act of courage—that Derrick taught us through his writing and his life.

All of us who were his students—in the classroom and in life—know that he challenged us to be his legacy. When I think of Derrick and his life's work, I am reminded of one of my favorite quotes:

Go to the people. Live with them. Learn from them. Love them. Start with what they know. Build with what they have. But with the best leaders, when the work is done, the task accomplished, the people will say "We have done this ourselves."⁵

This was Derrick's gift. Derrick Bell embodied this model of a patient, selfless, wise man of action and vision, and the world is a much better place because of his lifelong dedication to creating a just future for us all.

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

5. Source unknown. Often apocryphally attributed to Lau Tzu.