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*Where Knowledge and Values Meet*

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# TOURO LAW REVIEW

TOURO COLLEGE

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## A COLONY AT RISK

*Derrick Bell\**

During the Spring 1998 luncheon at the 3rd Annual Northeastern People of Color Conference at Touro Law School, my mind wandered. The eight of us seated at an honorees' table were commended for our 25 years and more in law school teaching.<sup>1</sup> We were extolled by speakers as among the academy's of color.<sup>2</sup> Most of us were the first of our race at our schools. It was our intention to perform at a level that would help establish a pattern of hiring and promoting persons of color that would

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<sup>1</sup> The following individuals were identified by the Conference as the "firsts" to teach at white institutions in this region: John Baker (Albany Law School), Frank Bae (New England School of Law), Frederick Tse-Shyang Chen (Quinnipiac Law School), John Gregory (Hofstra University), Kellis Parker (Columbia Law School), Larry Palmer (Cornell Law School), Surya Prakash Sinha (Pace Law School), and the author.

<sup>2</sup> The idea of "firstness" is complicated by the movement back and forth between white institutions and historically black law schools like Howard University Law School, Washington, D.C.; North Carolina Central University, Durham, N.C.; Thurgood Marshall School of Law at Texas Southern University in Houston, TX and Southern University in Baton Rouge whose graduates became the "first" faculty of color at white institutions. For instance Charles Hamilton Houston and Clyde Ferguson were both educated at Harvard and both were Deans at Howard.

For histories of the work of black lawyers and scholars at Howard and other historically black law schools, see Jay Clay Smith, *EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944* (1993).

enable legal education, or at least the law schools where we labored, to serve as models of diversity.

Musing on our high hopes and the many difficulties, disappointments, and even defeats we had suffered over the years, I thought of an earlier group of equally committed pioneers who disappeared from the first colony in America. You remember the early British settlement of 100 people on Roanoke Island, N.C. that mysteriously disappeared between the time of its founding in 1587, and the return in 1590 of the expedition's leader, John White, who had returned to England for supplies and for additional colonists to replace those who had perished. The only trace of the "lost colony" was the word "Croatoan" carved on one tree and the word "Cro" on another. Had the survivors been wiped out by hostile Indians? Or, given the chance, had they simply integrated themselves into a friendly tribe? Speculation abounds, but the mystery of the "lost colony" has never been solved.

The black, Hispanic, and Asian lawyers who accepted teaching positions in the decade from 1969, as well as those few, brave souls, like Charles Quick, John Morris, Clyde Ferguson, and Robert Ming who taught earlier, were likely as courageous in the face of the challenges before us as were those early Virginia colonists. The dangers and hardships those first colonists endured were surely greater than ours, but at least during that Touro Law School luncheon, I saw the connection. It was one of continuity. Both groups were committed to starting something new. We might not survive this early stage, but we hoped that what we were beginning would make it possible for others to continue.

We lawyers recruited from practice and from administrative posts saw ourselves as trailblazers willing to brave and overcome the antipathy of those in the academy convinced that we did not belong. The hurdles of gaining acceptance in our classrooms, of negotiating the tenuous path toward tenure, all these lay ahead. Any of these barriers might halt any one of us, but we felt that we were part of something bigger than ourselves. That because of our efforts, law schools would no longer wish to return to their all-white, mostly male status.

Certainly, none of us felt that 25 years after our pioneering, there would be the doubt that today exists about the future of minority teachers in legal education. For we pioneers, our careers are secure enough. God willing, we will make it to retirement, but the numbers of those who are to replace us are much smaller than we had hoped. In many instances, when we leave, there is little interest in replacing us. The impetus for recruiting those who should be our colleagues, our successors, has been smothered under the general opposition to affirmative action and the renewed commitment to hiring "only the best." One can only marvel that many of those voicing this commitment can do so with straight faces, without any seeming understanding of just how unimpressive they are.

Here, though, has always been an essential of the challenge we teachers of color faced: To nurture and develop our skills in teaching and scholarship in an atmosphere where, so often, our achievements were deemed an undeserved fortuity. At the same time, discretion dictated we maintain a discreet silence at the all too ample evidence of the white, tenured mediocrity all around us. Candor seemed the necessary sacrifice in our struggle to survive and gain the status that would, we felt, free us to teach and write forthrightly about the role of race, class, and sex in the law and in our lives. This many of us have done with the predictable rejection by many and the welcome commendations of a few.

There is no need here to speak of victory or defeat. Because of the courage of many and the tenor of the times, opportunities opened for us that had never before been available. We were selected as the pioneers. We accepted the challenges. And, to our credit, we have striven to provide our students and our communities the different perspective that was needed rather than the plain vanilla conformity that so many really wanted. Only time will tell whether in the years to come, there will be reminders of our endeavors beyond the academic equivalent of the "Croatoan" carved on one tree.

