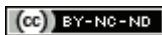


## INTRODUCTION

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# INTRODUCTION

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Jasmine B. Gonzales Rose\*

“Critical Race Theory is dead.” This was the message the Editor-in-Chief of the *University of Pittsburgh Law Review* received when he approached an advisor about the prospect of commemorating the 75th volume of the *Law Review* by dedicating a symposium and printed issue in honor of esteemed alumnus, the-late Derrick A. Bell, Jr. (L.L.B. 1957). Moved by Bell’s scholarship, this undaunted second-year law student sought a second opinion.<sup>1</sup> On March 27–28, 2014, at the University of Pittsburgh’s *Challenging Authority: A Symposium Honoring Derrick Bell*, and within the pages of this issue of the *University of Pittsburgh Law Review*, there is a resounding and undeniable message: Not only is Critical Race Theory alive and more relevant than ever, Derrick Bell’s scholarship, teaching, and example continue to be a driving force in the field.

There have been many events celebrating Derrick Bell’s life and work since his passing in 2011. However, a celebration at the University of Pittsburgh School of Law and by the *University of Pittsburgh Law Review* was particularly fitting and significant. Long before Derrick Bell became the first tenured black professor at Harvard Law School, dean of the University of Oregon School of Law, and a father of Critical Race Theory, he was a native son of Pittsburgh. Bell was born and

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<sup>1</sup> I was truly privileged that the Volume 75’s Editor-in-Chief, Caleb Pittman, approached me to serve as the faculty advisor to the *Law Review*’s symposium. Mr. Pittman and Volume 75’s Lead Executive Editor, Megan Block, did a phenomenal job organizing the conference. I am particularly grateful to Dean William M. Carter, Jr. for living up to Derrick Bell’s creed that “students come first” and enthusiastically supporting this student-initiated event.

raised in the Hill District, a historically black neighborhood bordering the University of Pittsburgh.<sup>2</sup> After attending Pittsburgh's Duquesne University and serving in the Air Force in Korea, he enrolled in the University of Pittsburgh School of Law.<sup>3</sup> In a class of 120, he was the only black student and only one of three African Americans in the entire law school.<sup>4</sup> He was an outstanding student and served as Associate Editor-in-Chief on the *University of Pittsburgh Law Review*.<sup>5</sup> Decades later, he frequently returned home to teach as a visiting professor at the University of Pittsburgh School of Law, where he left a lasting influence on the students and faculty, and instilled an institutional commitment to social justice.

*Challenging Authority: A Symposium Honoring Derrick Bell* and this special symposium issue of the 75th volume of the *University of Pittsburgh Law Review* celebrate and seek to continue Bell's critical inquiry into and fight against racial injustice. The symposium featured prominent voices in the field of Critical Race Theory, such as Devon Carbado, Kimberlé Crenshaw, Richard Delgado, Cheryl Harris, Ian Haney López, Juan Perea, and Jean Stefancic, as well as many other leading and emerging voices.<sup>6</sup> The articles and essays in this issue represent one piece of the symposium dialogue and highlight both Derrick Bell's legacy and the further critical race work that needs to be done. These works examine and build upon some of Bell's most eminent concepts, such as the permanence of racism and Interest Convergence Theory; explore Bell's impact as a professor and activist; and look forward to the next wave of critical race study.

A central theme of Derrick Bell's scholarship is that racism is permanent in our society and thus, the fight against racism needs to be equally enduring. As he contended, "Black people will never gain full equality in this country. Even those herculean efforts we hail as successful will produce no more than temporary 'peaks of progress,' short-lived victories that slide into irrelevance as racial patterns adapt

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<sup>2</sup> *Introduction*, THE DERRICK BELL READER 3 (Richard Delgado & Jean Stefancic eds., 2005).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Additional speakers, in alphabetical order, included: Jessie Allen, Janet Dewart Bell, Alfred Brophy, Kristina Campbell, Monré Carodine, William M. Carter, Pat Chew, Tanya Asim Cooper, Patience Crowder, Paul Finkleman, David Garrow, Timothy Golden, Justin Hansford, Marissa Jackson, Melinda Molina, William Rhee, Rakhi Ruparelia, Stacey Gahagan, Jasmine Gonzales Rose, Josephine Ross, Thomas Ross, Spearlt, Andre Smith, George Taylor, and Sheila Vélez Martínez.

in ways that maintain white dominance.”<sup>7</sup> This concept remains as provocative and pertinent today as when Bell first introduced it decades ago. The traditional narrative states that we live in a post-racial era where racial equality has been achieved and thus race no longer matters.<sup>8</sup> However, despite being in the second term of an African American presidency, most measures of equality, such as poverty, incarceration rates, and health outcomes reveal stark racial disparities.<sup>9</sup> We also live in a time of increased awareness of racialized violence and how non-black perpetrators often kill black people with legal impunity.<sup>10</sup> When Americans must hang signs and take to the streets proclaiming what should be a self-evident fact that “black lives matter,”<sup>11</sup> it is undeniable that race still matters in the United States. Racial subordination has not only proved itself to be a permanent condition, it permeates all aspects of our civilization including legal institutions. This phenomenon is explored in Montré Carodine’s essay, *Contemporary Issues in Critical Race Theory: The Implications of Race as Character Evidence in Recent High Profile Cases*.<sup>12</sup> Carodine uses contemporary incidents of violence against blacks as a starting point to explore the manner in which race operates as outcome-determinative character evidence in the courts, resulting in unjust verdicts for black victims and defendants.

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<sup>7</sup> Derrick A. Bell, Jr., *Racism Is Here to Stay: Now What?*, 35 HOW. L.J. 79, 79 (1991).

<sup>8</sup> ROY L. BROOKS, RACIAL JUSTICE IN THE AGE OF OBAMA xvii, 37, 111 (2009).

<sup>9</sup> For poverty statistics, see Suzanne Macartney, Alemayehu Bishaw & Kayla Fontenot, *Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007–2011*, U.S. Census Bureau ACSBR/11-17 (2013), available at <http://www.census.gov/prod/2013pubs/acsbr11-17.pdf>. For incarceration, see *Criminal Justice Fact Sheet*, NAACP (last visited Mar. 2015), <http://www.naacp.org/pages/criminal-justice-fact-sheet>; *Racial Disparity*, SENTENCING PROJECT (Mar. 2015), <http://www.sentencingproject.org/template/page.cfm?id=122>. For health outcomes, see V.M. Mays, S.D. Cochran & N.W. Barnes, *Race, Race-based Discrimination, and Health Outcomes Among African Americans*, 58 ANN. REV. PSYCHOL. 201 (2007).

<sup>10</sup> Here I refer to the public outcry after the killings of Trayvon Martin, Michael Brown, Eric Garner, and others. See, e.g., Ben Kamisar, *House Dem Urges Grand Jury Reform After Brown, Garner Decisions*, THE HILL (Dec. 12, 2014), 2014 WL 6994734.

<sup>11</sup> See, e.g., Associated Press, *Chanting “Black Lives Matter,” Protesters Shut Down Part of Mall of America*, N.Y. TIMES (Dec. 20, 2014), available at <http://www.nytimes.com/2014/12/21/us/chanting-black-lives-matter-protesters-shut-down-part-of-mall-of-america.html>; Jennifer Steinhauer & Elena Schneider, *Thousands March in Washington to Protest Police Violence*, N.Y. TIMES (Dec. 13, 2014) available at: <http://www.nytimes.com/2014/12/14/us/thousands-march-in-washington-to-protest-deaths-by-police.html>.

<sup>12</sup> 75 U. PITT. L. REV. 679 (2014).

Derrick Bell has provided scholars with numerous theoretical tools for understanding racism. One of his most well-known is Interest Convergence Theory, which provides a counter narrative to the nation's civil rights progress. For instance, rather than viewing the much celebrated school desegregation case of *Brown v. Board of Education* as a progressive step towards racial equality, he explains how advancement for blacks occurs only when it benefits the interests of whites.<sup>13</sup> Bell posits that racial subordination is the norm, rather than an anomaly, because it serves majoritarian interests.<sup>14</sup> Not only is Interest Convergence useful as a deconstructive theory, it also holds practical utility in helping shape policies that both attempt to remediate racial minority inequality and appeal to the empowered (or perhaps more accurately termed the "in-powered") majority. In the essay, *Economic Interest Convergence in Downsizing Imprisonment*, SpearIt employs a variation of Bell's theory to examine converging economic and liberty interests in reducing imprisonment in the United States.<sup>15</sup> Similarly inspired by Bell's work, Patience Crowder re-conceptualizes Interest Convergence Theory to propose regional interest convergence as a framework for addressing poverty in her article *Interest Convergence as Transaction?*<sup>16</sup> These scholarly endeavors demonstrate how Derrick Bell's scholarship is inspiring a new generation of critical race theorists.

Although most recognized as an expert on race, Derrick Bell was a ground breaking scholar and professor of constitutional law, employing critical methods in his research and pedagogy. A predominate theme of this work explored a concept he termed "constitutional contradiction" whereby he argued that the framers drafted the Constitution to protect property rights of the white forefathers, rather than to advance the rights of the people of the United States.<sup>17</sup> Continuing in this tradition, in his article, *Doctrines of Delusion: How the History of the G.I. Bill and Other Inconvenient Truths Undermine the Supreme Court's Affirmative Action Jurisprudence*, Juan Perea, employs a rigorous historical analysis and critiques the

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<sup>13</sup> Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

<sup>14</sup> *See id.*

<sup>15</sup> 75 U. PITT. L. REV. 475 (2014).

<sup>16</sup> 75 U. PITT. L. REV. 693 (2014).

<sup>17</sup> Derrick Bell, *The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1984).

intellectual foundations of the United States Supreme Court's affirmative action jurisprudence finding that the unifying theme is the protection of white interests.<sup>18</sup>

Derrick Bell inspired his students and peers not only through his scholarship but through his commitment to critical pedagogy and the courageous way he lived a life of ethical engagement. As a professor, Derrick Bell impacted many, including Barack Obama, who was a student at Harvard Law School when Bell announced that he was taking unpaid leave until Harvard Law hired a black woman on the faculty.<sup>19</sup> Alfred Brophy and Stacey Gahagan's article, *Reading Professor Obama: Race and the American Constitutional Tradition*, mines President Obama's race and the law seminar syllabus from the University of Chicago Law School, exploring his intellectual relationship with Derrick Bell, to reveal insights into Obama's beliefs about race and jurisprudence.<sup>20</sup> As a professor, Derrick Bell influenced his faculty colleagues as well. At the University of Pittsburgh School of Law, George Taylor and Derrick Bell co-taught a course in Race, Religion, and Law. In his essay, *The Object of Diversity*, George Taylor reflects on this co-teaching with Bell, using this experience as a vehicle to explore a new generation of race scholarship.<sup>21</sup>

While many teachers and scholars might tout values of diversity and racial justice, Derrick Bell put his ideals into principled action. Jean Stefancic was a colleague of Derrick Bell during his visitorships at the University of Pittsburgh School of Law and a co-editor (with Richard Delgado) of *The Derrick Bell Reader*. Her essay, *Discerning Critical Moments: Lessons from the Life of Derrick Bell*,<sup>22</sup> explores how radical social analysis can enhance one's ability to take action when faced with "critical moments" or opportunities for activism. She draws on the life of Derrick Bell, focusing on his leave and ultimate resignation from Harvard Law School over its failure to hire a female professor of color, stepping down as dean of the University of Oregon Law School when its faculty refused to hire an exceptionally qualified Asian American, Pat Chew (who was later hired at Pitt Law), and other acts of selfless courage, as examples of facing critical moments and turning them into effective action. In a similar vein, in the essay *Challenging*

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<sup>18</sup> 75 U. PITT. L. REV. 583 (2014).

<sup>19</sup> See Stacey Marlise Gahagan & Alfred L. Brophy, *Reading Professor Obama: Race and the American Constitutional Tradition*, 75 U. PITT. L. REV. 495 (2014).

<sup>20</sup> *Id.*

<sup>21</sup> 75 U. PITT. L. REV. 653 (2014).

<sup>22</sup> 75 U. PITT. L. REV. 457 (2014).

*Authority*, Pat Chew discusses her experience with the University of Oregon appointments process and her relationship with Derrick Bell, as well as interdisciplinary studies and Bell's scholarship, as a springboard to explore what inspires people to confront rather than conform to authority.<sup>23</sup>

Although the convocation of the symposium and this issue of the *Law Review* are a celebration of Derrick Bell's life and work, they are not merely retrospective; they are also prospective. This is exemplified by Richard Delgado's essay and the symposium's keynote lecture, *Law's Violence: Derrick Bell's Next Article*.<sup>24</sup> In this essay Delgado insightfully speculates about what Derrick Bell may have written were he alive today. While the world has been deprived of the physical embodiment of the great Derrick Bell, through the legacy of his scholarship, teaching, mentorship, and courageous example, his spirit lives on in the halls of Pitt Law, the pages of this issue, and the hearts and minds of millions, prompting us to critically examine on-going racial subordination and our professional and personal responsibilities to fight such oppression.

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<sup>23</sup> 75 U. PITT. L. REV. 711 (2014).

<sup>24</sup> 75 U. PITT. L. REV. 435 (2014).