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DERRICK BELL'S COMMUNITY-BASED CLASSROOM

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INTRODUCTION

Derrick Bell's participatory pedagogical approach to teaching constitutional law¹ placed students at the center of the class, "mimicking the kind of process that an attorney, researching an unfamiliar area of law," might employ in practice.² Bell believed that "student interest and learning are enhanced if [students] are actively engaged in the learning and teaching process."³ He used progressive pedagogy rooted in the theories of John Dewey and Paulo Freire to shape his course syllabi,⁴ and argued that law professors can "guide students through the precedential confusion, but primarily must impart, through experience, the knowledge that each student is competent to do so."⁵ This, in and of itself, is a revolutionary legal education pedagogical approach, especially outside of clinical programs and lawyering skills courses. In this Essay, I argue that Derrick Bell enhanced this participatory, non-hierarchical pedagogy by intentionally creating *community* within the law school classroom—a community that humanized the students' educational experience.

Bell's participatory pedagogy was infused with his belief that the purpose of law school is to teach students to think and act like ethical lawyers: "learning to think like a lawyer need not and should not mean that you stop thinking, acting, and feeling like a human being."⁶ Bell's classroom community was a safe space to learn constitutional law, to discuss difficult but related issues of race, class, and gender, and to take risks when thinking about legal strategies. For Bell, this approach to teaching legal doctrine evolved over time.⁷ Bell studied what educational experts found to be the most effective teaching models, and he constantly explored ways to use those theories in developing law school curriculum. Students consistently expressed that they worked harder in his class than any other because of his student-centered pedagogy.⁸

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¹ See DERRICK A. BELL, JR., *Pedagogical Process: Active Classroom and Text as Resource*, in CONSTITUTIONAL CONFLICTS, reprinted in THE DERRICK BELL READER 284-87 (Richard Delgado & Jean Stefancic eds., 1997) [hereinafter *Pedagogical Process*] (Bell describes one approach to participatory pedagogy in a constitutional law course).

² THE DERRICK BELL READER 284 (Richard Delgado & Jean Stefancic eds., 1997).

³ *Id.*

⁴ *Id.* at 285 (explaining that "the key is to replace the basically passive procedure . . . with one requiring active engagement, similar to the multiple aspects of practice, teaching, and judicial functions. . . . [S]uch a procedure allows us to approach the Paulo Freire ideal: that students become teachers and teachers become learners.").

⁵ *Id.* at 287.

⁶ Derrick A. Bell, *One Dean's Perspective—The Law Student as Slave*, STUDENT LAWYER, Oct. 1982, at 18, 20 [hereinafter *Law Student as Slave*].

⁷ See DERRICK BELL, ETHICAL AMBITION 103 (2002) (explaining that he "could see no positive value in teaching my classes on the *Paper Chase* model, but [he] could find few people who wanted to discuss alternatives.").

⁸ *Pedagogical Process*, *supra* note 1, at 284 (explaining that "students frequently have told me—students do vastly more work, and learn more from, an engaged teaching methodology.").

Derrick Bell fostered community in every dimension of his course—in his participatory teaching method, the learning environment that he promoted between and among his students, and the collaborative assessments that he required of his students. He used this community-building model in both large lecture classes with close to one hundred students, and in smaller twenty-person seminars. Almost ten years ago, I had the opportunity to experience this approach in Bell’s classroom as his student. Since then, I have helped him teach three constitutional law courses as a Derrick Bell Teaching Fellow at the New York University (NYU) School of Law. From these distinct vantage points throughout the years, I have witnessed students—including those enrolled in the last course he would teach at NYU Law in the fall of 2011—describe his classroom as an entirely different law school experience. I call this intangible aspect of Bell’s unique participatory approach the “community-based classroom.”⁹

I. A COMMUNITY-BASED APPROACH TO TEACHING

Bell’s participatory pedagogy encouraged the development of community because it immediately shifted the center of power by removing the student-teacher hierarchy.¹⁰ By replacing position and passivity with active engagement in the classroom, Bell ensured that students became more invested in learning.¹¹ That investment recalibrated the relationships among everyone in the room. Bell achieved this leveling of conventional classroom relationships not only by requiring students to lead discussions from the front of the classroom, but also by making himself vulnerable in class discussions so students would be more comfortable with being vulnerable too.¹²

Bell was not a passive participant in this pedagogy. He regularly expressed his own doubts and concerns with doctrine,¹³ while remaining open to students’ interpretations and understandings of the material.¹⁴ He told students when he learned from their ideas, but was also not hesitant to disagree with students, asking “the hard questions that have no answer.”¹⁵ He also often became “fast friends” with students who consistently supported perspectives that opposed his position.¹⁶ This open and genuine

⁹ In calling Bell’s classroom “community-based,” I draw a parallel between his approach and community-based legal services models. A community-based approach situates legal services organizations within the poor communities they serve, and the community focus generates more effective legal representation. Community-based lawyering avoids “top-down, lawyer-dominated priorities,” sees clients as collaborators in their representation, and matches community needs with services offered. Similarly, Bell’s community-based classroom avoids the teacher-dominated approach to pedagogy, sees students as collaborators, and matches students’ learning needs with course requirements and assessment. See Raymond H. Brescia, Robin Golden & Robert A. Solomon, *Who’s in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 *FORDHAM URB. L.J.* 831, 843 (2010). See also Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 *CLINICAL L. REV.* 615 (2011); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 *CLINICAL L. REV.* 195, 219 (2002).

¹⁰ See *Pedagogical Process*, *supra* note 1, at 287.

¹¹ *Id.* at 284.

¹² Charles R. Lawrence III, *Doing “The James Brown” at Harvard: Professor Derrick Bell as Liberationist Teacher*, 8 *HARV. BLACKLETTER L.J.* 263, 267 (1991).

¹³ See *id.*

¹⁴ See *Pedagogical Process*, *supra* note 1, at 285 (revealing that “I find that I learn from my students’ fresh encounters with the Constitution, as we look at new questions and question old answers.”).

¹⁵ Lawrence, *supra* note 12, at 267.

¹⁶ In the last class of constitutional law during the spring of 2008, one of Derrick’s politically conservative students brought to class a video game that allowed Bell and him to box on the screen—a metaphor for their verbal sparring in class each week.

engagement between professor and student developed a communal teaching environment where teacher and student learned from each other.

In structuring the syllabus for his constitutional law courses, Bell created hypothetical fact patterns giving rise to legal disputes. As explained in his very first memo to the class, his students sat as “the Court of Bell,” and adjudicated thorny constitutional law issues. For each “hypo,” students volunteered to take various lawyering roles, requiring “them to perform very much like the lawyers they [would] soon become.”¹⁷ Two students would act as appellate advocates, writing opposing briefs to the “Court of Bell” before their in-class oral argument, and two students would act as Chief Justices, writing a “bench memo” for the Bell Justices which explained the related background Supreme Court doctrine and any controversies inherent therein.¹⁸ Immediately after the arguments for each class, the Court of Bell would vote (by a show of hands) on the legal issues raised by the hypo.¹⁹

To begin to engage the doctrine for a class, students poured over precedent, legal scholarship, and other supporting materials in addition to the briefs and bench memo posted by the advocates and chief justices. Then in class, they asked questions during the oral argument and voted on the hypothetical case. But this was just the beginning of learning the doctrine underlying a particular hypo. Students continued conversations about complex constitutional jurisprudence and legal strategies for the hypo outside the classroom. After each class, students had about thirty-six hours to process the oral argument and write what Bell called an “opinion editorial,” or “op-ed.” Each semester, Bell required students to write at least ten op-eds, making substantive legal arguments in five, and exploring creative analytical methods in the rest.²⁰ Most students wrote more than the required ten op-eds because they enjoyed having a forum for thinking through and reflecting on the course materials and class discussions.

Through the op-ed requirement, Bell also created an online community of legal learning. The teaching team, comprised of the advocates and chief judges, responded to op-eds via an online discussion board raising questions and counterarguments that sparked mini-discussions outside the classroom. This web-based community had the added benefit of strengthening students’ written advocacy skills. Reserved students also asserted themselves more in this space, and these online conversations were often more personal. It was not uncommon for students to formulate thoughts more clearly in writing than during their in-class discussions, especially about race, gender, sexual orientation, and class. Talking about these topics is central to the law, but they are too often skirted by most law school courses. Bell’s op-eds forced students to think about their responses, which led to more productive and less confrontational discussions.

II. A COMMUNITY-BASED ENVIRONMENT FOR LEARNING

Bell’s community-based classroom transformed the traditional classroom space so that it felt more like other social settings that foster community. Food, music, and literary arts were all encouraged, and taken seriously, in his classroom. In the middle of each three-hour class block, he would take a fifteen to twenty minute “snack break,” so students could refuel for the second half of class.²¹ Unlike

¹⁷ *Pedagogical Process*, *supra* note 1, at 284.

¹⁸ *Id.* at 286.

¹⁹ During one particularly oversubscribed Constitutional Law survey course, Bell even created a new role for students—as “special justices,” a group of three to four students were responsible for issuing post-argument judicial opinions. This course development was spurred by the feedback of a former student, who expressed that the course, as originally designed, neglected the role of judicial opinion writing in developing doctrine (and garnering a majority of votes).

²⁰ The other op-eds could take on different forms, including personal reflections or the more artistic approaches described in the section *infra*, at 6.

²¹ The law school authorized about \$40–\$50 per class.

many breaks in other three-hour classes that I have experienced, students rarely stepped out to run errands or check email; instead, they stayed to talk with each other and Bell. Sometimes they continued the class discussions in order to formulate and pose more nuanced questions; other times, they asked Bell for advice or updated him on law school news.²² For nearly the entire time that he taught at NYU, Bell also extended his conception of the classroom to include a celebratory dinner after each class to honor the teaching team, and to cement his personal relationships with the students. During these dinners, which typically lasted long into the night, students found themselves debating with Bell about politics or current events, or even discussing how their life experiences colored their interpretation of the law.

In addition to food, artistic expression (of varying levels of mastery) found its way into Bell's class. He encouraged students to be "creative" and to use any tool at their disposal to present their legal arguments. Building on substantial interdisciplinary talents often acquired before law school, students wrote poetry, song lyrics, or short stories, and they knew well that Bell would ask them to perform in class. Given that these pieces were read and critiqued by the class, they were more than entertainment; they often had very thoughtful and complex relationships to the legal issue being discussed.

Bell set the stage for this less traditional environment before the students even attended the first class. About a week before the course began, students received an email with the course description and hypotheticals that immediately introduced them to his "learning by doing" pedagogy.²³ He also asked them for two things before the first class: their top three choices for the hypo they wanted to help teach and a short biography with a photo which he posted for the class to read on the course's website. Like every law professor, Bell had access to a traditional seating chart with his student's pictures, but recognition of students was not the point of the email request. The email served to alert the faint of heart that this was not a traditional doctrinal constitutional law course. It also gave students an immediate sense that he wanted to know more than each student's name—he wanted to know something about who they were as people, and he wanted them to get to know each other personally as well. Bell believed that relationship-building was essential to teaching doctrine that would touch upon difficult issues, especially issues of race.

In one of his large constitutional law courses, Bell even began each class by leading the students in the first verse of "Morning Has Broken."²⁴ And in the last class of each course taught at NYU, the tradition was to have a potluck dinner celebration, where students planned a tribute to their learning that often included skits, videos, dance, and song. Bell wove non-traditional human elements into the course structure to break down traditional barriers between student and teacher, and even among students themselves.

III. A COMMUNITY-BASED METHOD OF ASSESSMENT

²² Bell enjoyed talking to students about their "nonacademic" lives, and for some time enjoyed being a law school matchmaker. He jokingly recounted instances where he read students' compatibility totally wrong. He also presided over the weddings of several of his students, and became the godfather to some of their children.

²³ *Pedagogical Process*, *supra* note 1, at 284.

²⁴ Bell used the Cat Stevens version of Morning Has Broken to begin class. The first verse is:

Morning has broken, like the first morning
 Blackbird has spoken, like the first bird
 Praise for the singing, praise for the morning
 Praise for them springing fresh from the Word.

For the lyrics of the entire song, see *Cat Stevens—Morning Has Broken Lyrics*, METROLYRICS, <http://www.metrolyrics.com/morning-has-broken-lyrics-cat-stevens.html> (last visited May 10, 2012).

Bell's experiential pedagogy required extensive class participation, online discussion, teaching responsibilities, and op-ed writing which were all integral components of a student's grade. At both the midterm and again at the end of the semester, Bell asked students to compose a self-evaluation. The midterm self-evaluation was prospective, requiring students to describe their current work product, compare it to the course requirements, and reflect on areas for growth in the second half of the course. This growth assessment model allowed Bell, the Bell Fellow, and his teaching assistants (who were his former students) to engage with the students early on, evaluating their performance and collaboratively pinpointing necessary improvements. The final written assessment was a four to six-page retrospective self-evaluation of the student's op-eds, in-class participation, online discussion, and teaching plan. In response, Bell, with the help of the Bell Fellow and teaching assistants, would prepare a two or three-page final evaluation memo that began where the student left off. This approach made each student accountable for their own learning, emphasized a growth mindset to learning, and engaged multiple levels of evaluation into each student's final grade. Self-reflection was a critical lawyering skill for Bell: "It's both necessary and reassuring to question what we do as we continue to do something."²⁵

CONCLUSION

Over the past year, the media has placed a spotlight on the failures of legal education, criticizing law schools for not training students in the skills of their trade and not instilling a professional responsibility to serve the public interest. One *New York Times* editorial declared that "American legal education is in crisis," and argued that "the choice is not between teaching legal theory or practice; the task is to teach useful legal ideas and skills in more effective ways."²⁶ Derrick Bell agreed. In his community-based classroom, he sought to teach both substance and skills through a more effective pedagogy. He wanted to counter his indictment of law school education: "Law school curricula are woefully inadequate in preparing students to live as competent, caring professionals. . . . Somehow in the process of teaching, we in the law schools manage to dehumanize those involved in the law."²⁷ In breaking down boundaries to humanize the classroom, Bell aimed to mimic what students needed to do outside the classroom as lawyers. His community-based classroom trained law students to become professionals—requiring them to improve their oral and written advocacy skills, encouraging them to take risks (and sometimes, to get it wrong), and teaching them how to be self-reflective lawyers.

In *Humanity in Legal Education*, Bell reminds us that "not all experiments succeed, but the risk of failure is the prerequisite to any success."²⁸ Lawyers need courage in their practice of the law, and "this courage must be taught, nurtured and practiced on a daily basis."²⁹ Derrick Bell's community-based classroom did just that. It enhanced the participatory education model, inspired students who never thought about law teaching to become professors, and resulted in scores of former students heralding his course as their best class in law school.

²⁵ Derrick A. Bell, Jr., *Humanity in Legal Education*, 59 OR. L. REV. 243 (1980) [hereinafter *Humanity in Legal Education*].

²⁶ Editorial, *Legal Education Reform*, N.Y. TIMES, Nov. 26, 2011, at A18.

²⁷ *Law Student as Slave*, *supra* note 6, at 21.

²⁸ *Humanity in Legal Education*, *supra* note 25, at 254 (quoting the former dean of the University of Oregon School of Law).

²⁹ *Id.* at 245.