BLACK LAW PROFESSORS AND THE INTEGRITY OF AMERICAN LEGAL EDUCATION

Henry J. Richardson, III*

INTRODUCTION

These reflections grow from a comment made by Professor James Jones** during a meeting of the AALS Section on Minority Groups, San Francisco, 1974, where he perceptively observed the need for Black law professors as a group to understand their relation to and role in American legal education, *even* where there are *no* minority law students in particular law schools.

I know of no writing on this particular issue, perhaps because of a tacit assumption among Black law professors and others that such issues are too crass to raise, and that the inquiries involved in thinking them through were somehow unneeded in the 'civilized' reaches of legal education. Such tacit assumptions are shortsighted, and to the extent that they forestall inquiry, over-optimistic in light of the history of Black people in the United States. In every field of endeavor, especially the more prestigious, Black people have arrived late over great opposition, and departed early during times of economic stress to cries of 'necessity.' Those who have remained have borne the twin burdens of being Black and being required to do a competitively superlative job, often against expectations to the contrary. Such situations have led Black people to ask, 'Why am I here?' or, more seriously, others to ask, 'Why is he/she here?' The imperative of inquiring into such questions in the context of legal education is already upon us, as was obvious in San Francisco.

The need to develop a principled vantage point relative to Black law professors may not yet be as dire as that implied by Samuel Yette in *The Choice is Survival*,[1] but events and problems have shown the desirability of doing so beyond any tacit or express assumption to the contrary. Further, since the profound impact of Black people on American history is now common wisdom, we may suspect that attempts to understand the role of Black law professors in American legal education cannot be confined to procedural arrangements and affirmative action statistics. Rather, such attempts must press on to examine the constitutive features of American legal process, as

* Associate Professor of Law, Indiana University (Bloomington): Visiting Associate Professor of Law, Northwestern U. Law School 1975-1976. My colleagues, Professors Julius Getman and Alan Schwartz, and Professor Derrick Bell, contributed useful comments on an earlier draft. With them is shared any credit for this essay, while whatever errors occurred despite their efforts.

** Professor Jones' remarks are reprinted in full at 488, *supra*.

1. New York, Putnam Press (1971).

well as those of the relationship of Black people to America. Hence, the reflections that follow.

The path of inquiry begins with identifying and clarifying three major premises that seem to undergird American Black/white relations:

(1) that one purported 'mission' of Black people is to be a redemptive force for the collective soul of white people;
(2) that Black-white social interaction is a dominant reality; and
(3) that (1) and (2) above convey a notion of a process of reciprocal enrichment between Blacks and whites, from which stems the core of the inquiry: the relationship of Black law professors to enrichment of legal process and legal education.

Enrichment must be considered relative to new obligations introduced into the law that are consonant with major goals of legal process and the wider community. A significant source of such obligations has been the confrontation between American legal process and the Black Experience; they extend across the entire scope of legal process, and enrich both sides of that clash. Evaluating these obligations from this source, for their meaning relative to enrichment, leads to their evaluation in light of four illustrative jurisprudential questions arising in this century. Discussing those questions in connection with enrichment highlights the dichotomy between the abolition of racism on the one hand, and causes of action at law on the other. It further illuminates contributions of the Black Experience directly to legal process by both introducing new obligations, and by stimulating new thinking on jurisprudential questions.

Black law professors are inevitably of the Black Experience as they are also legal scholars, and are therefore in the best position to systematically understand and communicate the conjunctions and disjunctions between Law and the Black Experience as they impact on legal process. This impact is of present and increasing significance: because of the intersection of social perspectives in the Black Community with selected issues in the majority white community; because obligations introduced into legal process by Black litigation are now being mobilized by other deprived American groups; because the jurisprudential questions raised by this introduction of new obligations go to the heart of American thinking about law and promise to recur in other contexts; and because the impact of the Black Experience on American law is now irrevocable. Thus the sum total of the foregoing must be incorporated within the training of all who would be lawyers because this is what the Law has become and is becoming. Not to do so would undermine the integrity of American legal education. Black law professors are essential as both scholars and conveyers of the Black Experience, to meet this need.

As noted above, some clarification of basic social premises in Black-white relationships in America as they affect Black law professors must precede any such inquiry.

CLARIFICATION OF PREMISES

The first premise concerns the purported "mission" of Black people to "save" - be a redemptive force for - the collective soul of white people. This premise has at least two facets: 1) Black people 'forgive' white people for

past racist sins, and then join with them to sail off together into the sunset to build a new society. 2) Black people bring the Black Experience into the collective experience of white people, thus enriching it because (a) white people's lives are collectively sterile (technologically oriented to the suppression of the passions) while the Black Experience restores the passions through the African connection and its American derivations; and (b) change is the law of life and Black people are sources of new perspectives for change, and new demands the accommodation to which produces change. Inquiring into this premise is significant in that it underpins the notion of enrichment of American legal process, to which we return in a moment.

A second premise is that the moral arguments above, and indeed this entire essay, presuppose some ongoing social interaction of Black and white people, as contrasted with Black nationalist aspirations for the separation of Black and white societies. On the basis of past, present and projected realities such separation within the United States is impossible, and has been for quite some time, at least in important areas of power and wealth interactions. Thus proximity and intermingling are inevitable, and put in issue the factors involved in *regulating* this interaction. To state the obvious here intends to emphasize the interdependencies of American society among Blacks and whites, and to recall that these were intense even during slavery—the period of the most sustained and oppressive attempt at segregation—because of the common humanity of both groups locked into the same system on the same territory.[2] This is no less true now, in different forms, for legal education,[3] and the legal process as discussed hereafter.[4]

Redemptive forgiveness rationales do not seem key to inquiring into the role that Black law professors should play, for at least two reasons. First, they are not in a position to forgive white people for anything as representatives of Black people, because they are too elite as a group to be *that* representative. Secondly, redemptive forgiveness is a question *consciously* to be decided by

2. See generally Genovese's excellent ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE (Pantheon, 1974), for example at 30-31, 47-49, 88-89.

3. The interdependency between a quality legal education and equal access under the law for all who would potentially walk into those classrooms was recognized by the Supreme Court as long ago as *Sweatt v. Painter*, 339 U.S. 629, 633-35 (1949). Recognition of this interdependency was implicitly continued in *DeFunis v. Odegaard* (Douglas, dissenting) 416 U.S. 312, 333, 336 (1974) in that the context was constantly recalled of there being only a limited number of places in *that* institution of legal education, and that equal protection issues must be resolved among interacting groups and individuals in *that particular* framework. In this connection, see also Redish, *Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Argument*, 22 U.C.L.A. L. REV. 343, 361 et seq. (1974).

4. The first premise is not exclusive of "progressive" Marxist-oriented cutting-edge political thought in the Black community, which theoretically aims for unification of working class transracial groups for construction of a new political force to, *inter alia*, abolish racism. That is, socialism as an antidote to racism. This kind of thinking is encompassed by the forgiveness and enrichment issues in the first premise, *unless* racism can be eliminated by removing certain economic structural factors in the society. However, the alternative view is taken here: removal of those factors would not *guarantee* the abolition of racism. The argument here in part is that socialism-as-abrogating-racism still implies the validity of both enrichment and forgiveness issues, at least until the arrival of American socialism proves us wrong, *or* until the obligation on white America for past racism is discharged under some condition of forgiveness or recompense, for example, through effective payment of just reparations.

Black people, e.g. relative to reparations.[5] Black law professors, however, may well comprise an important group of brokers to help *ensure* that white people are not redeemed (vis-a-vis major attitudes among Black people) until Black people can know, understand and validly consent to terms and conditions of such forgiveness. This comprises, among other things, a question of law in its most profound sense,[6] and Black law professors should be in the forefront of formulating it.

Therefore, enrichment rationales emerge as most pertinent to the rest of our inquiry.

In this connection a third premise emerges. Enrichment is a two-way street. Black people have also arguably been "enriched" by white people, especially regarding modernization, industrialization, technology, all as part of a process again beginning with the slavery experience. One immediate question is whether the latter really constitutes enrichment, in terms of values most cherished in the Black community.[7] But no matter whether this gets an affirmative, negative or indecisive answer, the process certainly constitutes interchange incorporated into the Black Experience. Accordingly, our vantage point is not that of a separate group deciding upon assimilation, but of a partially assimilated group who are presumptively in the midst of a process of reciprocal though unequal and unfair interchange with white society.[8]

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5. See Richardson, *Between Law and Justice: Professor Bittker's Case for Black Reparations*, INDIANA L.J. (forthcoming, Spring 1975).

6. It is such a question not only in the Hohfeldian sense that it deals with reciprocal rights and obligations on a broad scale, but equally because, with respect to two groups of participants in national social processes, the question of payment of Black reparations immeditely focuses on community expectations about the authority of decision-makers within the general community to make decisions allocating resources among and within the two groups. *See* BITTKER, THE CASE FOR BLACK REPARATIONS (1973), at 71-86.

7. It is a commonplace that industrial social values, previously thought to convey only benefits, have not been called into question across the board not only from the suspicion that they may be too expensive in terms of other resources, but also that they may be fundamentally destructive to the human spirit. This suspicion is no less present on certain levels in the Black Community for various reasons. For example, the statistical indicators that tend to implement such industrial values have been inadequate at the least and oppressive at the most in their being used to regulate, among other things, the relationship between Black people and the majority American society. Cf. ROZAK, WHERE THE WASTELAND ENDS: POLITICS AND TRANSCENDANCE IN POSTINDUSTRIAL SOCIETY (Doubleday, 1972) at 33-40, 50-53, 58-59, 64-67.

8. It is clear to most if not all Black people that this life inter-change has been unequal and unfair on many levels. This clarity however has not been reflected in legal outcomes under the Equal Protection Clause, e.g. in the area of legal education. American legal process has had considerable difficulty responding to the ripple effects of white discrimination against Black people, and especially in finding rationales to justify educational policies that respond to those ripples for what they are, e.g. attacking such ripples in legal education as in *DeFunis*. The presumption *still* persists of the fairness of the interchange unless otherwise proved, and opportunities are taken on short notice to strengthen the presumption by pointing to superficial economic criteria to indicate a lack of unfairness and thus less need for corrective policies. E.g. in raising the issue of whether the offspring of Black upper middle class income parents should be eligible for minority admissions evaluation at a given law school. *See* REDISH, *supra*, at 395-96. Such economic criteria are almost totally beside the point because of the racism in the surrounding society pressing on both students and parents, including on the former in the supposedly advantageous educational institutions they attended. Such economic advantage as they enjoyed may well have gone mostly into ensuring psychic survival; this is vastly different from the Black student emerging from that institution on an equal footing with students who have never encountered such racism and who have even reaped its majority advantages. Yet, reference to these realities produces distinct scholarly, not to mention judicial, unease. *Id.* at 399.

The working assumption here is that this interchange has conveyed a mixture of enrichment and detriment both from white to Black, and from Black to white. For present purposes, the task is to identify Black to white enrichment factors in a defined area of interchange: the legal process, and particularly the scholarship, education, and appraisal mechanisms within legal process.

Stating the problem in this manner requires some definition of "enrichment," and then an exploration of the relationship of Black law professors to enrichment of legal process and legal education.

ENRICHMENT OF LAW AND THE BLACK EXPERIENCE

If we start from the proposition that the legal process must grow to remain consonant enough with social processes to be viable, that such growth necessitates change, and that such change has much to do with the aspirations, hopes and fears of the human participants in the processes of the law, then we might be at least halfway towards saying that all growth in the law constitutes enrichment of the law. But only halfway, because enrichment must refer also to the objectives of the major participants in the legal process relative to the values and goals they are seeking to enhance.

By way of fixing the outer limits, two crude examples illustrate legal change without enrichment. Refinements of legal procedures in Nazi Germany ultimately designed to move Jews more efficiently to concentration camps and gas chambers, or equally, refinements in Soviet law under Stalin in the late 1920's and early 1930's designed to easily obtain the process "confessions" of those victimized during the Communist Party purges, are not here considered to be either growth or enrichment because they grossly affront, in both their substance and procedures, values that mankind universally aspires to preserve and that are also inherently brutal. Even if the above may be argued as 'growth' in the law in terms of changes over time via an accumulation of new subject-matter and procedures, it still does not constitute 'enrichment.' It likely constitutes neither, but the distinction need not further disturb us here. Similarly, it need not do so relative to those principles and procedures facilitating American slavery.

Since enrichment is not a value-neutral concept but refers to the value-content of that which is introduced, we are on safer ground if we look for enrichment in the direction of new obligations incorporated within the law that are consonant with major goals of legal process of the facilitation of social change, the preservation of human dignity, and the maintenance of minimum public order. This direction points us towards the source of such new obligations. The late British international legal scholar, J. N. Brierly, has perceptively noted that the source of legal obligations lies outside of the legal process, deriving from the values, aspirations and plans in the wider community of human society.[9] This would seem not only the case for international law, but for law in national communities as well. In the United States, one source of legal obligations is the confrontation between the American (white-controlled) legal process and the Black Experience. This is even more apparent, and indeed self-evident, because the values, goals and objectives

9. BRIERLY, THE LAW OF NATIONS, 54-56 (6th ed. H. Waldock 1963).

that Black people have generally sought when utilizing the legal process are nowhere near the abyss of the above Soviet and Nazi examples, but are well within the goals, values and ideals of the Founding Fathers of the country and within the expressed goals of the international community.

The confrontation between the Black Experience and American Law is best conceived as an ongoing process. With significant exception, the strategy from the side of the former has generally been one of litigation.[10] Litigation is one of the primary pipelines by which outside influences are channeled into legal process in ways significant enough to alter it; indeed, we know this as the essence of the Common Law which incorporates the doctrine of *stare decisis*, on the one hand, a doctrine challenged in empirical form by the legal history of its frequent circumvention by the courts, on the other. Thus many litigants sue the court to impose a new obligation from their own perspectives on the respondent, or at least one not previously defined in the precise demanded form. And so it has been for the collective litigation of the Black Experience.

What new obligations has the Black Experience sought and to what extent has that litigation been successful? A complete answer to that question would come close to providing the jurisprudential meaning of civil rights litigation for American law: how has this widespread sustained attempt in the context of a social movement by ex-slaves, with the resulting judicial outcomes now being employed by other American groups' objects of deprivation to introduce *their* new obligations into the American legal process, changed the way of thinking about law in the United States, and arguably in the larger international community?

A full answer is impossible in the context of this essay, for it would literally require a history of Black people and the Law.[11] For present purposes, we may note that new obligations sought to be imposed by the Black Experience extend across a wide scope of legal process,[12] though certain general areas (e.g. school desegregation) have obviously attracted more attention than others. Black people further have framed, invoked and sought to have prescribed new legal obligations in doctrinal areas of the law not commonly associated with the Struggle, e.g. antitrust law as the basis of a claim to prevent real estate developers from conspiring to prohibit sales of property to Black people.[13] This wide scope only reflects the truism that the Black Experience has in some way reached into every corner of American life.

When a Black claim is successfully made out in an area of the law previously so "untouched," legal expectations are enhanced by the extension

10. The exceptions must include the 13th, 14th and 15th Amendments, and perhaps the following Congressionally enacted civil rights legislation: Voting Rights Act - 42 U.S.C. §§ 1971, 1973-1973p (1970); Civil Rights Act of 1964 - 42 U.S.C. §§ 1971, 1975a-1975d, 2000a-2000h-6; Public Accommodations Provisions - 42 U.S.C. § 2000a.

11. Derrick Bell, however, in RACE, RACISM AND AMERICAN LAW, (Little, Brown & Co., 1973) has come close enough to provide us with much valuable source material and food for thought along these lines.

12. *See e.g.* Bell, *supra* n.11, Table of Contents, pp. ix-xviii, and also L. MILLER, THE PETITIONERS: THE STORY OF THE SUPREME COURT OF THE UNITED STATES AND THE NEGRO (1966).

13. Bratcher v. Akron Area Board of Realtors, 381 F.2d 723 (6th Cir. 1967).

into that area of the principle of non-discrimination against Blacks, as subsequently applied to similar future problems. Such extension also enhances the Black Experience by providing, through a court order, leverage to enable Black people to more fully participate in or enjoy activities formerly encumbered by restrictions. It is a two-way street therefore, with enrichment arguably traveling in both directions. But this reciprocity also calls into question somewhat Brierly's original perception that the source of legal obligation necessarily lies *outside* of the legal process. Because where there are a few basic principles in a body of law of signal social impact, their subsequent *application* to future legal problems may be of significance in formulating new obligations equal to that from Brierly's crystallization of *social* expectations into a *new principle* and applied to the same problem. However, to understand whether a particular obligation introduced by a specific case derives from one source or the other requires an intimate and fundamental understanding of the social and economic process and progress of the Black Experience in this country. On this basis Brierly's conclusion retains some vigor, but there is still a question to be resolved.

This jurisprudential question as to the source of legal obligations that is raised by the Black Experience confronting American Law is the first of four such questions that will be noted here. That they are raised by this confrontation, and that a journey into the Black Experience is required for their resolution is indicative of the enrichment brought to American Law by Black-introduced obligations. We begin to see that enrichment is itself a process and, at least in part, conveys a notion of releasing potentially new answers from certain basic questions by reapproaching them from a fresh value direction. This seems a more accurate conception than a straight two-or-three-line-inclusive-definition, because the interaction between American Law and the Black Experience is itself a dynamic process. Accordingly, we move on to consider a second such question.

Part of the meaning of civil rights court decisions is that Black people using the federal courts have sometimes been able to gain at least temporary enforcement of their rights in communities where the majority of people were opposed. This has often involved flirtations with a breakdown of public order, as in Little Rock, Selma and Boston, and has required outside coercive force to prevent a complete breakdown. It further brings into view another jurisprudential dictum, Justice Holmes' observation that "A right is what a given crowd will fight for successfully."[14] But the confrontation between law and the Black Experience suggests that a right just might be something more, and thus raises our second jurisprudential question.

Holmes' dictum did point in the direction of the rise of the legal realism school of American jurisprudence. Part of the meaning of that advent was the shift of the basis of law as commands from some institutional or theologically-derived lawgiver, on the one hand, to the events, hopes, fears, and expectations of the people who are to be regulated by it. The substance of a right then, no longer depends upon the historical or theological validity of its formulations, but rather on procedures in the courts and in other arenas by

14. This general question has been well raised by Francis Biddle in JUSTICE HOLMES, NATURAL LAW AND THE SUPREME COURT (Macmillan, 1961).

which the right is invoked, prescribed and applied.[15] This philosophy can be said to be predominant today, especially in legal education.[16] For our purposes here it has produced several outcomes, among them vastly increased attention to the concept, details, enforceability, and integrity of procedural due process of law.

Again, this is no place to write a history of Black people and the Fourteenth Amendment, but the secularization of thinking about the law has put a premium on the dividing line between deprivations to people that the law will recognize - especially in subtle, relatively intimate contexts - and those deprivations that although very real to the people involved, will not be recognized and therefore not remedied. The subtleties and intimacies of illegitimate coercion by a state representative (for the purposes of 'state action') are ultimately defined by reference to principles still retaining much theological (natural law) content: 'fundamental fairness, due process, equal protection,' but are evaluated in a social context where legal process is increasingly thought of in terms of the expectations of the community. Where state officials are mostly white and defendants Black, 'fundamental fairness' relates directly to the detailed history of the interrelationship between the two groups, and therefore to the nature of racism.

As much of racism is subtle as crude: Black people and the Black Experience alone are experts on both. The overall legal question posed is not as Black people would generally want the law to define it: What is racism and once identified, how may legal process best eliminate it? Rather it is posed, "Is *this* manifestation of racism a violation of a legal principle (equal protection, due process, etc.) and accordingly what *partial* (*re* the abolition of racism) remedy is available? The result here is that even if a successful claim in litigation is made out and a new obligation created, procedural completeness will often be negatively compared with substantive completeness; this produces a further conclusion of substantive incompleteness in American law by some 23 million Black people in a nation of 202 million. This substantive incompleteness produces our third jurisprudential question, namely, the managing of the dichotomies in law between the realities of racism, on the one hand, and the generally more limited 'established' causes of action in legal process, on the other.

On its face, anyway, this Black Experience conclusion is consonant with both natural law and legal realism conceptions of legal process. The conflict between procedure and substance in this context bears much more reflection if the law is to be understood (and taught) as more than a system of naked control. Further, the ambiguity here produces our fourth jurisprudential question, namely, the meaning of legal realism for Black people and others who rely so heavily on certain constitutional rights of natural law origin.[17]

15. *See generally* H. Kantorowicz, *Some Rationalism About Realism*, 43 YALE L.J. 1240 (1934); M. Radin, *Legal Realism*, 31 COLUMBIA L.R. 824 (1931); Biddle, *supra*, 16-17.

16. *See* Lasswell and McDougal, "Legal Education and Public Policy: Professional Training in the Public Interest", (1943) reprinted in McDougal & Associates, *infra*; Brown, *Recent Trends in United States Legal Education*, 26 J. LEGAL ED. 283 (1974); cf. Richardson, *Reflections on Education in International Law in Africa*, 4 DENVER J. OF INT'L LAW AND POLICY 199, at 199-201 (1974).

17. *See* Biddle, *supra*, at 32. This issue as it directly relates to Black people was only raised by Biddle in a tangential reference to Little Rock (at 36) by way of differentiating Holmes'

Accordingly, while an all-inclusive definition of enrichment is not possible, these brief reflections do indicate that since the goals and objectives of Black people seeking legal redress are consonant with wider community goals, their introduction of certain new obligations into American law seems to constitute enrichment of that law because of the values underpinning those obligations, and because implementing such obligations has raised the distinct possibility of getting new answers from the above jurisprudential questions that could make American law more responsive to present and projected community-wide problems.

ENRICHMENT AND BLACK LAW PROFESSORS

Black law professors are irrevocably of the Black Experience, and relative to questions of jurisprudence and legal process such as the foregoing, bring a unique collection of both structured and inchoate insights. These insights collectively comprise a wellspring for the process of jurisprudential enrichment which must be understood by any lawyer purporting to comprehend and utilize American law. This is true for reasons that relate to *stare decisis*, but even more so to understanding law as a process of authoritative decision[18] in the immediate future of grinding decisions which must be made about social, political, economic and human priorities in the United States and throughout the world.

In the context of such decisions, the response of law schools and the legal profession— and ultimately the entire American and world community-to the above four jurisprudential questions illustrative of those born of the confrontation between the Black Experience and American Law, will loom large in the courts and other legal arenas.[19] Such questions are significant because the impact of the Black Experience on American Law is now historically irrevocable. Those early great Black litigators, especially Charles Houston and Thurgood Marshall,[20] have more than amply ensured this, as confirmed by the precedents now being cited in cases seeking to establish obligations of civil rights to Indians, women, and Chicanos. Those cases reveal the recitation of the early and recent cases confirming (or

"Right in the narrow legal sense" from "an activity to which men may believe they are entitled but which cannot be achieved through a court of law". The issue of course for us, Biddle, and Holmes is whether such a narrow conception of 'legal' right remains adequate and accurate in a society where (1) the legal process is much more than what courts do (as recognized by Biddle-Holmes, *id.*); (2) legal process is being called on to regulate an increasing number of social activities; (3) the idea of the *entire* executive apparatus of a society being wrong both morally and legally about virtually a universe of policies is now a familiar one; (4) the framers of the Constitution arguably anticipated (3) above in the notion of checks and balances; and (5) the concept of causes of action "in law" has now transcended national boundaries and arguably will increasingly do so, e.g. as an outcome of the incremental yet real growth of the international law of human rights. Arguably, one net effect of all of the above is to buttress our skepticism about a one-to-one identity between the existence of a legal right and its instant enforceability.

18. This concept of law (and this inquiry) has been substantially influenced by the work of Professors Myres McDougal and Harold Lasswell. *See generally* MCDOUGAL AND ASSOCIATES, STUDIES IN WORLD PUBLIC ORDER (1960).

19. Some indication of this is gleaned by substituting "sexism" for racism, *mutatis mutandis*, in the discussion to this point.

20. *See* Burch, *The Brown Strategists*, 3 BLACK L.J. 115 (1974); McNeil, "Charles Hamilton Houston", *id.* at 123. An article useful for placing these and other Black lawyers in the concept of the Black Community is Tollett, *Black Lawyers, Their Education, and the Black Community*, 17 How. L.J. 326 (1972).

attempting to) the same or similar rights to Black people.[21] The choice is no longer open to judges, lawyers, scholars and others to reject the outcome of the Black Experience-cum-legal-expectations. Though such cases may be mis-cited, distinguished and limited, they must henceforth be dealt with via some variant of the same judicial and litigational principles and strategies which have built the common law. Further, this outcome has already begun to be felt, albeit incompletely, in concepts of legal education. There is some indication that *Brown v. Board* is emerging as a primary teaching tool in the constitutional law classroom, supplanting in this role such ancient stalwarts as *Marbury v. Madison.*[22]

Not only has the Black Experience had this major impact, but the future seems to promise more of the same, if only because issues raised by, and the perspectives of, various factions of the Black community intersect with similar though differently-motivated issues brought to the fore by white groups. For example, Black nationalistic desires for control over schools in Black ghettos intersect with white neighborhood school plans; Black desires for control over local police intersect with the wider question of urban decentralization; Black proposals for land-use cooperatives and land banks intersect with wider issues of regional planning, de-urbanization, and ecological conservation of land; Black distrust of white policemen intersects with the issue of the use of state coercion to suppress political dissidence. The list could be continued.[23]

In future decades the impact of the Black Experience - *in se* and as a legal stalking horse for other deprived American groups - is not likely to diminish. The perspectives introduced by Black-oriented litigation seem to have a continuing chance to be confirmed by the courts in some measure as new legal obligations, for two general reasons: (1) Because of probable alliances with selected sentiments and trends primarily white-inspired; and (2) the designation of legal issues, and therefore of significant court cases, as critical or survival issues vis-a-vis the Black community, is likely to continue to move upwards on the scale of subtlety following that of racist opposition—e.g., from the crude issues of having to desegregate drinking fountains and washrooms, to buses, to schools, to bussing, to employment in the context of layoffs in an economic depression, to compensation plans and affirmative

21. *See e.g., Reed v. Reed,* 404 U.S. 71 (1971); *Frontiero v. Richardson,* 411 U.S. 677 (1973); *In re Griffiths,* 413 U.S. 717 (1973).

22. I am grateful for Derrick Bell's confirmation of my intuition on this point, gleaned from general discussions with others in legal education.

23. The wide range of such issues generated by the Black Experience leads us to examine the converse proposition: that the relationship between Black law professors and the enrichment of legal process as discussed here, might well find close analogies in the relationship of Black academics to other disciplines, e.g., political science, sociology, philosophy, as has been suggested by Professor Jones. To anticipate the implications of this essay as completed, it would seem, *prima facie,* that similar truths could indeed be identified relative to enrichment in most if not all other disciplines. However, we focus here on law and legal education for two reasons, the first of which, briefly, is the personal preference and vantage point of the author. But secondly, law is unique as an intellectual discipline in that its inquiries, decisions, and students graduated from its schools tend, on a continuing basis, to have early consequences for the maintenace and quality of public order in the community. Further, there are substantial expectations throughout the society for these kinds of wide ordering and value-allocating decisions (in terms of e.g. power, wealth, and respect) to be made as a matter of legal process. In a context so significant, clarification of the legitimacy of Black participation in legal education might well influence the outcome of analogous issues in other disciplines, though this bears further investigation beyond the scope of this essay.

action, to the present need now to rid affirmative action programs of *their* discrimination against Black people. These are among the most passionate issues of American society because, among other reasons, Black people faced with racism of the most interlacing and subtle nature in "gatekeeper"[24] institutions, (e.g. Bar Examinations) are frequently forced into the strategy of advocating and working for the total abolition of such institutions (it being impossible to enforce their equitability), notwithstanding meritorious functions otherwise performed by them for both Blacks and whites (i.e. the enforcing of standards of professional competence in representing the interests of others).

Litigation against racism in all areas of the law, the new obligations it imports into legal process, and consequent modification and evolution of American law are now permanent features of the legal landscape and seem destined to remain so. This evolution therefore must be understood and taught in American law schools into the future, not to preserve a kind of intellectual Maginot line for the survival of Black people, but because this is what American Law has irrefutably become and continues in the process of becoming. Such a realization does not amount to charity to Black scholars, but rather an essential attempt to prevent a distortion of the education of all lawyers and to preserve the integrity of American legal education.

As the previous discussion has indicated, the confrontation between the Black Experience and American Law has not been one of two solid objects colliding on their outside surfaces, but rather that of the infusion of a dye throughout a cell. The jurisprudential questions already noted are only illustrative of a larger number that now doubtless arise and will arise throughout legal process.[25] The particular contributions which Black law professors can make relative to resolving these questions stem from their dual role as 1) carriers of the Black Experience, itself a sourcebook of non-legal influences incorporated into law; 2) legal scholars who understand both the Law and the Black Experience and can, in the most scholarly meaning of the term, 'make sense of' both the conjunctions and disjunctions between these two historical forces as they impact on legal process.

It is left for future inquiry, with regard to the unique contributions Black law professors have to make relative to *each* of these four questions, to spell out the substantial actual or theoretical impact of the Black Experience on understanding the particular issues involved. Such answers need not be awaited, however, to conclude that Black law professors approaching and contributing to legal scholarship, and teaching out of the Black Experience, clearly enrich American law and are essential, in vastly greater numbers than at present, to the minimum education of all lawyers in whatever law school.

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24. This perceptive expression is that of Walter Leonard, Special Assistant to the President, Harvard University.

25. A fifth such question that could easily be added is that of the tort construct of the "reasonable man", when used as a supposedly neutral concept in a non-homogeneous society, emerging not as a touchstone of 'reasonableness' but as a technique of cultural and social majoritarian control. See in this connection Richardson, "Black People, Technocracy and Legal Process: Thoughts, Fears and Goals" in BARNETT AND STRICKLAND (eds.), POLITICAL AND ECONOMIC STRATEGIES FOR BLACK PEOPLE IN THE COMING DECADES, (forthcoming, 1975). coming, 1975).