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PRINCIPLES SUPPLEMENTING THE HOUSTONIAN SCHOOL
OF JURISPRUDENCE: OCCASIONAL PAPER NO. 1

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February 15, 1984

PRINCIPLES SUPPLEMENTING THE HOUSTONIAN SCHOOL
OF JURISPRUDENCE: OCCASIONAL PAPER NO. 1.

By J. Clay Smith, Jr.*

The D.C. Chapter of the National Conference of Black Lawyers honors me by this, your invitation to address the February meeting which is being held in conjunction with Black History Month. I am called upon to speak on the ideas and philosophy of Dr. Charles Hamilton Houston, who as our legal forefather, among others, pushed the clock ahead by his refusal to accept that the road to black progress in America had come to a sign that read: DEAD END. The purpose of this paper is to address a few of the basic principles that undergird Houstonian School of Jurisprudence under the title: Principles Supplementing The Houstonian School of Jurisprudence.**

The principles addressed in this paper are extracted from a single article written by Dr. Houston in 1936 in the Crisis entitled, "Don't Shout Too Soon." I have taken the liberty to revisit Houston's words and make his words meaningful to this nation today. I have selected eight principles for discussion.

*Professor of Law, Howard University School of Law. Before the D.C. Chapter of the National Conference of Black Lawyers, February 15, 1984. This speech is dedicated to Clarence Clyde Ferguson, Jr., who expired on December 21, 1983, and served as dean of the Howard Law School during my student years at the law school. Ferguson's scholarship and international advocacy for human rights align him with the Houstonian School of thought.

**See Smith, Towards A Houstonian School of Jurisprudence and the Study of Pure Legal Existence, 18 How. L.J.1 (1974).

PRINCIPLE ONE:

"The American Public Must Be Convinced"

One aspect of the Houston mission was to influence public opinion in order to expose the plight of the Afro-American to industry and commerce. Houston faced doubt from his own people, who because of ignorance, fear and plain inattention laid expose on the scaffold of historical regression. It may sound strange but some black people may need to be convinced that they are in trouble and that the years in which their children will become adults may be jeopardized by historical regression. Black America cannot stand historical regression, that is, the absorption of black progress in a political and economic time computer with an 1896 print-out date, the year that Plessy v. Ferguson was decided by the United States Supreme Court. Black people must be convinced that existing liberties are not guaranteed forever without dogged vigilance, and there should never be cause to believe otherwise.

Houston believed that the "real American public" composed of "millions of white people, North, East, West and even South [were] not vicious but just misinformed or completely lacking in information. . ." He stated, that "the competition will be stiff to see who reaches them first: Negroes and their friends bringing them light, or rank reactionaries feeding them racial intolerance and hatred." Those words were expressed by Houston in 1936, forty-eight (48) years ago, and have meaning for black Americans today.

Black leaders and advocates who favor the maintenance of the black presence in American life have never believed that all white people were vicious. To the contrary, sometimes to their detriment, black Americans have placed their destiny in the hands of white Americans. Many of those hands have protected, guided, and financed our well being. These deeds have been acknowledged by black America time and time again. But, black Americans have also faced the vicious wrath of their white brethren when they have least expected it -- when both were poor, both were disenfranchised. When white Americans are told that blacks are doing better than their white counterparts; that the courts are favoring blacks by allowing unjust quotas for jobs, and preferences for governmental contracts -- all without constitutional and historical justification -- that constitutes a vicious act, and could be interpreted as encouraging vicious acts against black America. The opinion that is being articulated in some quarters is that blacks have made it and if they haven't they are lazy and ignorant. This opinion must be rebutted when rendered and against whomever renders such statements. Black Americans and their friends are presently in an historical decathlon to maintain and influence public opinion favorable to our survival. What channels of communication are open to black America? In 1936 Houston said,

The old channels of publicity will not do.

The white newspapers, with some notable exceptions, are callously indifferent.

Negro aspirations and Negro progress are not news. The radio is practically closed to all speeches for racial equality. Any white person who is interested can inform himself about Negro life through the Negro press; but for every white person who reads a Negro paper, there are ten thousand white people who do not.

Houston was right in 1936 and he is right today. The old channels of publicity, must be supplemented. Our educated population must churn out opinions in published journals, newspaper articles, and increase use of the airwaves. We must fight to maintain the Fairness Doctrine, and agitate to have our views expressed on the editorial pages of every newspaper in this nation. We must remind the networks whose influence is so great that black America will take its advocacy for coverage and fair coverage to the manufacturers of beer, wine, bread, butter and video game companies -- who fund the networks with advertising -- that black Americans demand to be hired in policy roles in newsrooms and policy positions that often paint the existence of blacks in America and black presidential candidates in America in negative images. No, the old channels of publicity simply will not do to convince the American public of the value of our presence and the necessity of our upward mobility in America.

PRINCIPLE TWO:

"We Must Persistently Agitate For Truth"

If there was a bottom line principle for Houston it was one calling on blacks and those who believed in their cause to "agitate for more truth about the Negro in the history, economic and sociology courses in the schools, colleges and universities." The agitation that Houston spoke of calls for more than oral projections and physical confrontation, but an intellectual occupation to unearth hidden sources of words and phrases to explain and to justify the continued need to maintain the black colleges of this nation; and the intellectual occupation to rebut negative I.Q. presumption and Shockly and Jensen-type theories of genetic inferiority; an intellectual preoccupation with economic theories which protect black Americans from mathematic hieroglyphics on blown up charts prepared by the Office of Management and Budget.

The agitation for truth is a special ingredient of Houstonian jurisprudence because it calls upon the law to adjust to the sociological needs of legal outcasts. It requires the law to recognize the need to change and to adjust to historical advancement of discrete groups in America. It seeks to push thought beyond the norm of common acceptability to a level of possibilities without significantly displacing the establishment. The establishment is forced to recognize that it cannot stand still; it too must move to a higher level of

intellectual recognition and refinement of its principles and its notions of a free, open and robust society which is committed to non-violent attainment by the accomodation of a citizenry whose confident in corporate America forms the bases for its continued success and survival. This transition and perfection of the American establishment will not occur if there is a timidity to agitate for truth. As Houston said, "we must persistently agitate for truth."

PRINCIPLE THREE:

"We Must Participate"

The Houston tradition requires black Americans to "participate in and share all the conflicts in the main stream of economic and political life of the country." This Houstonian principle is a challenge that is as strong today as when stated. Every American conflict whether domestic or international is a conflict that affects black America. Every deficit, every tax increase, all waste, every drop of acid rain, every threat of nuclear war, every polluted stream; every deal cut by the Federal Government reducing the property of the United States, every procurement contract that allows costly overruns, every broadcast license that is granted to a licensee who uses the airwaves to call blacks "niggers," is a conflict for black America. Black America is today sending a message to the world that it will participate in the political life of this nation; blacks will supplement the meaning of liberty and justice for all; and blacks by their collective vote this year will substantially influence the election of a president of the United States of

America, and perhaps will be instrumental this year or in the near future in electing the first president of the United States of Afro-American descent.

The Houstonian concept of participation is not to be defined narrowly. It encompasses the widest range of participation limited solely by the forces of energy, time, geography and financial resources. However, intellectually there is no limit to participation in any aspect of the society; the intellectual energy that is massed within our physiology is the ultimate blueprint to lift the barriers of time, geography and finances.

The Houstonian principle of participation is not color-blind; it requires black Americans to support and to build their communities at every level. It requires the men and women in the community to aid the young, who are desperately in need of positive role models. No man or woman can complain about the loss of freedom who fail to participate in groups whose goals, objectives or mission is to enhance the elements of human survival in America. To guarantee liberty, we must participate.

PRINCIPLE FOUR:

"We Must Not Forget"

Another Houston principle is that ". . . we must not forget . . . to educate many of our own race brethren to proper American practices and ideals." One of those practices is to exercise the right to vote. Another is to recognize that ignorance is a state of slavery and that the practice and the

process of learning -- yes, the quest for excellence a sine qua non of freedom. We must not forget to police our ranks and to preach American practices and ideals -- for this is our native land.

The Houstonian concept that "we must not forget" directs our immediate attention to our foreparents. Houston's father was a lawyer, and, according to McNeill,* his mother exposed Houston to his heritage as a black American. There is no evidence that Houston ever forgot that his destiny was tied to the black nobility of the past.

Houstonian jurisprudence involves the fierce recognition that the law was used as a tool for social engineering to reduce human beings to the status of a legal nonbeing; Houstonian jurisprudence uses law as a tool for social engineering to restore and to reclassify the metaphysical being of black America, and others similarly situated. We must not forget the jurisprudence of the past that locked black America out of every definition of their personhood.

PRINCIPLE FIVE:

Selling Out The Black Race For Profit

Houston was constantly aware that his astute advocacy and that of the people who supported him might lead to political ambush or sabotage. But Houston's strength was his vision to see not only the future, but to see around corners. Houston was a strong and confident person who never stooped to backbiting

*McNeill, Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights 27 (Univ. of Pa. Press, 1983).

and midnight raids. He had power and influence but to our knowledge he was above acrimony, and was never sold out by a member of his race. Hence, he was able to assist his race and to enhance the position of those within his race with whom he disagreed.

Something is to be learned about this. Today there is an increasing tendency for some black people and organizations to sell out their heritage on the theory that they will be put in a position one day to buy it back. This is a new and ominous phenomenon and requires careful, open and critical monitoring. There are grave risks attendant to this type of economic order, and fortunately black organizations, the press and white America are beginning to see the dangers associated with blacks who would mortgage away their heritage and that of others for profit.

This is a delicate subject and further explanation is required to assure that there is no misunderstanding by what is being stated. No black person sells out his race if what they support is reasonably calculated to benefit the larger black community where there is an exchange of cash for such support. The goals supported for such consideration may be as noble as the sacrifice of one's life for another. On the other hand, we must be careful not to allow ourselves to be used as a broker for hire at any price, that is, the price of betrayal to the historical goals of our group.

PRINCIPLE SIX:

"It Takes Money To Fight For The Survival Of The Negro"

The Houston principle that it takes money to fight for survival encompasses several factors: (1) give what you can afford to the cause of black people in America -- but give some money; (2) give to black causes as a habit and not for show; (3) make the giving of what you can afford based on a joy of life and not from a mood of compulsion; (4) encourage others to give what they can afford by educating people on the issues and the principles of self survival. In addition, every black American adults should abstain from a pack of cigarettes, a fifth of whiskey or a pleasure for ten (\$10.00) dollars or less per month on an annual basis; and every youth should contribute one (\$1.00) dollar per month and target those dollars with regularity to institutions of the Afro-American heritage outside the family and home.

If Houston faced any limitations in his career as a Vice-Dean of Howard Law School or as a civil rights litigator, it was that black people did not pool their money to invest in their future. Black Americans are an institution in America, and institutions must finance their survival or lose their respectability. This does not mean that black Americans are barred or disqualified from or should not seek to participate or to benefit from government assistance, whatever the form. White institutions have benefitted so much from government subsidies throughout the history of this nation that they are considered

a part of the corporate ethic. Today black Americans are being told by some that we must make it on our own and that it is unethical and contrary to the creed of the free enterprise system to request or depend on any assistance from our government for the unlifting of a discrete group. Black people will not be whitewashed with such misleading doctrines. Those are not the rules that people of wealth play by and those are not the rules people who seek greater participation in the wealth of this nation are going to play by.

PRINCIPLE SEVEN:

"There is No Easy Road Ahead"

For black Americans, Houston believed that there was "no easy road." He stated that the best efforts and the money of every Negro, and all the Negro's friends was necessary to fight for equal rights. Houston warned that "if we do not remain on the alert and push the struggle farther with all our might, even this little hole will close upon us."

Houston stated, but could hardly believe that "Maybe the next generation will be able to take time out to rest. . . ." We are that "next generation." Do we have time to rest?

Our children have become deaf mutes to the hymns of James Weldon Johnson. Do we have time to rest? Our people no longer recognize the poetry of Paul Laurence Dunbar. Do we have time to rest? Our eyes no longer recognize the paint brush strokes of Hale A. Woodruff, or the print blocks of James L. Wells,

or the marble sculpture of Richmond Barthe'. Do we have time to rest? Our libraries are filled with books by black authors touched only by the fingers of dust containing the philosophy of Franz Fanon, the history of our people by Rayford W. Logan, the explanation of the rebirth of black America by Alain Locke and elegance of speech by Mary Church Terrell, the scientific journals of Ernest Just and the religious experiences of Howard Thurman. Do we have time to rest?

There is no easy road ahead. However, we cannot travel the road ahead without the maps of the past. At what fork in the road will we turn? Over what river do we build our bridges? Around what mountains do we go? What language in the casebooks shall we move to alter? What box of the jurisprudential matrix shall we open or attempt to influence or close? Who shall we support for public office? Who shall be ban together to defeat? Perhaps the answer to written in the lines of a poem or is hidden within the canvas of a painting or in a footnote to a book. Do we have time to rest? We are the generation who can answer these questions. We are the generation who are compelled to answer.

PRINCIPLE EIGHT:

"We Have Got To Look In The Face [Of Facts] And Realize What We Are Up Against"

Houstonian approaches to problem solving require the Afro-American to look in the face of facts at every economic level and in every walk of life that limit the upward

mobility of twelve (12% percent) of the American population. The recognition that many black people are poor because they cannot find employment is to look in the face of fact. The recognition that black people are dying from hunger and starvation as they are simultaneously being told that the economy is on an upswing is to look in the face of fact. The recognition that black children in many parts of America use outdated and secondhand books from which to learn is to look in the face of fact. The recognition that black institutions are being substantially undercut by federal budget decisions is to look in the face of fact. To witness the closing and the financial difficulties of more and more historic black colleges is to look in the face of fact. The recognition that some political historians are attempting to make white America believe that history has been unkind to America because the facts tell the truth about the effect of racism on the metaphysical experience of blacks in America is to look in the face of facts. The recognition that today some black people whisper that they believe in affirmative action because they fear retaliation or somebody calling them crazy is to look in the face of fact. The recognition that the failure to enforce civil rights statutes is a part of a mandate for the election of federal and state political candidates is to look in the face of fact. And regretfully, the recognition that a few blacks have bought into the colorblind bank in return for a quick claim deed as consideration for their survival is to look in the face of fact.

As black Americans, we believe in the ideals and creeds of our nation. We know no other. We seek no other. Hence, it is difficult, perhaps too painful to realize that there are person within the government and outside the government who would push black America to the brink of ruin and cause others to believe that they deserve it. But, we've got to look in the face of fact and realize what we are up against.

One of the elements of the Houstonian School of Jurisprudence is the teaching that groups faced with a condition which stabilizes their growth and development in the body politic must look in the face of fact. Where the conditon sucks away the strength of or demoralizes the people, or involuntarily redirects their goals, or confuses their mission or confounds their presence in America, the Houstonian tradition compels us to look in the face of fact.

Black America and those sympathetic to its plight are called upon to ascertain the condition(s) which causes black America to confine its interests; which causes it to lose its strength and to believe that it is futile to hope for a better day; which causes it to divide it ranks when to do so results in defeat and renders its missions vague; and further, which causes it to doubt its legitimacy on claims of citizenship.

It is time for black America to declare for all to hear that it is immunized against instruments that suck its strength. It is time for black America to declare for all to hear that its collective moral armor is too thick to pierce; that its goals can be programmed only on its own computer with data

unearthed from its heritage and verified by the blood of generations of the neglected. And further, it is time for black America to declare that hope for a better day is a word that will never be dashed on the concrete jungles of human despair because our hope is not built upon materialism but rather on the ideas associated with freedom and justice for all. Let it be known that black America can, are and will continue to close ranks around a host of common denominators such as jobs and civil rights and will cancel out at the ballot box any politician, black, brown, white, or woman whose political platforms drop the plank that excludes black people from the bottom line.

CONCLUSION

In conclusion, only eight principles of Houstonian thoughts have been identified. Much work, more discussion and more groundwork must be done to assure the preservation of the Houston legacy in American legal thought. I thank you for giving me the opportunity once again to expand on this theme and I hope that these words will inspire you to hold on to your principles, and to investigate Houston's principles -- for if we lose his principles, we must be prepared to offer those which are at least as profound and provocative. Do we have time to rest?