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THE MINORITY SCHOLAR: TOWARD THE ULTIMATE ACT
AND ROLE -- A BLACK PERSPECTIVE

By: J. Clay Smith, Jr.*
Professor of Law
Howard University
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I

That minority legal scholars have an obligation to write about issues that affect minorities is not arguable.

From the very beginning of the legal sojourn of the Black lawyer in American history there have been too few legal scholars hired by or tenured in American law schools. Hence, to search the literature for principles, descriptions or interpretations of law in early law reviews would reveal an absence of legal principles written by the hand of the Black lawyer.

*/Before the American Association of Law Schools, Section on Minority Group, 1986 Annual AALS Convention, January 7, 1986, New Orleans, Louisiana. The Panel, chaired by John T. Baker, Dean of Howard Law School, was on the following topic: "Minority Scholarship: A Reconsideration of Principles, Priorities and Obligations." Other panelist include Professor John Dewitt Gregory of Hofstra Law School and Professor Ray Lavon Brooks of the University of San Diego Law School. The author's paper addresses issues raised by Dean Baker in his letter to the Panel dated December 2, 1985. Audio of panel on file AALS.

On the other hand, Black lawyers, though absent from teaching law in nonminority law schools until around 1940, did not neglect to write about issues affecting their race in journals, legal briefs, pamphlets, newspapers and other publications controlled by Blacks or others sympathetic to the objective of intellectual diversity.

Hence, the principle that Black lawyers are obliged to search the law and issues touching their people and those similarly situated is deeply imbedded in the legal history of the Black lawyer in America. This principle might to be considered by all minority law teachers in legal education in America. The principle is drawn from the root that holds the most learned in the race responsible for lifting the veil of ignorance from our group, for the benefit of our group and the nation at large. Further, it commands the learned to evaluate contemporary and ancient themes of scholars from their ethnic and racial ranks and to determine if the content of their legal themes, when tested against counterprevailing ideas, can render assistance in mounting debates affecting the security of minorities in the state.

Who is better suited to draw upon and nourish the principle, and water the roots of their heritage, than the minority legal scholar? The command is clear: minority legal scholars have an obligation to write about issues that affect minorities.

II

That minorities have an obligation to write about issues touching the society at large is not arguable. The history of the Black lawyer in this country demonstrates a proclivity towards diversity in areas of scholarly productivity. The notion of diversity was the choice of the Black lawyer when he declared his allegiance to the American Constitution and its aims of liberty and justice for all. It was from a subordinate class in American law that the prevision of Black lawyers assumed a duty to enlarge the opportunity of their people in America by the scholarly investigation of subjects not directly related to minorities. However, if I had drawn the question for this discussion, I would have asked: Is there any legal issue that isn't directly related to minorities that should be left untouched by minority legal scholars? To this, my answer is no. The matrix of ideas commands the investigation of all subjects that have, may have, do not now have, but may have at some future time an impact on minorities.

It has always been understood by the Black lawyer that prevision, that natural force which drives the mind to predict the future, compels the evaluation of all issues in order to secure the social and economic position of Blacks in America. Prevision by the Black scholar may be the only defense against the unknown, and the only tool to foresee future cognitive shields against discriminating concepts directed

against minorities derived from issues presently unrelated to minorities in America.

III

That minority legal scholars serving on predominantly white faculties or minority legal scholars serving on predominantly minority law faculties should feel compelled to write exclusively about minority issues may be a displacement of the historical prevision of the Black lawyer. A better question is, does a minority lawyer betray the principle of his security and that of a discreet group by abandoning themes in law or custom that affect minorities? I submit that there should be room for exclusivity on any faculty where the law teacher determines that his or her scholarship should be directed toward issues based on the moral imperative of a discrete group.

Associated with the question of whether a minority scholar should concentrate exclusively or predominantly on legal issues relating to minorities is this question: can a non-tenured, minority faculty members survive peer review on a segregated faculty? This is both a political and practical question, but unfortunately it does not have an immediate answer. Faculties that cannot tolerate exclusively by a minority scholar on minority issues is a law faculty that has forfeited it charter as a law school and has lost its vision of the

diverse imperatives of the jurisprudential matrix. Minority scholars must not be directed or compelled to abandon minority legal themes. Besides matters touching on freedom of speech, the question of immoral behavior attaches to the subordination of ideas on the basis of race, culture, politics and other legitimate related subjects. Tenure is a status; it should not be denied on the basis of one's ideas.

IV

That minority scholars have an obligation to work and share their knowledge with other scholars on any issue is the essence of our calling to the academic community. Drawing again on the history of the Black lawyer in America, if it had not been for the act of sharing information on nonminority issues, minority lawyers would have succumbed as a legal force long ago. The fact is that there is room within the principle of diversity that allows the support for and even the forgiveness of a minority scholar who abandons scholarly research touching directly or indirectly on minority issues. To them our aim must be to observe, and to share ideas to allow them to develop to their maximum capacity. The role of a scholar is to respect the pursuits of his or her peers whether we agree or disagree with the direction of such pursuits. Minority scholars will not diversify the matrix if we fall victim to the same acts of limitations imposed upon us by nonminority scholars. We must share our knowledge and support minority initiated scholarship as a matter of the highest priority.

The last question posed for discussion is by far the most important; namely, "ultimately, what role is the minority scholar to play in legal scholarship?" Here again, the question that I would have posed, given the history of minority lawyers in the legal profession is: what role has the minority played in the legal profession? Until this question receives more attention, some may doubt the ultimate role the minority scholar is playing and will play in the legal profession. Minority lawyers are charged with the responsibility of preserving, and carrying the footnote of minority legal scholarship forward. However, this obligation is one that must be shared by all legal scholars in pursuit of truth, not just minority scholars. This may not or cannot be done until white scholars are caused to recognize the existence of and the available legal research, opinions and arguments by minority lawyers. The scholarship of contemporary minority scholars ought to be linked with the minority legal scholars of yesteryear. The survival of the ideas and principles of yesteryear will depend on whether you write enough to allow future generations to be linked with those ideas, and your own.

The ultimate act of the minority scholar is the extent to which he/she utilizes the pen toward the publication of an idea. The ultimate role of the minority scholar is to be one.



OFFICE OF THE DEAN
SCHOOL OF LAW

HOWARD UNIVERSITY

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FOUNDED BY GENERAL O. O. HOWARD

December 2, 1985

Professor J. Clay Smith, Jr.
Howard University School of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008

Dear Professor Smith:

Thank you very much for agreeing to participate in the AALS Section on Minority Groups' Panel Discussion which will be held on Tuesday, January 7th, at the AALS Convention in New Orleans. The topic is: Minority Scholarship: A Reconsideration of Principles, Priorities and Obligations.

I chose this topic because I thought that it might be productive to begin some dialogue among minority law professors on the issue of scholarship. My thinking was stimulated by an article written by Richard Delgado in the University of Pennsylvania Law Review. (The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Penn. L. Rev. 561 (1984)). Delgado's central thesis appears to be twofold: first, that most civil rights articles that get widely cited are written by white scholars and secondly that minorities are more sensitive to many aspects of civil rights than their white counterparts and can therefore make a more persuasive case, consequently, whites should stop writing about civil rights and let minorities do it. While the conclusion seems overly simplistic to me, some of the observations in the article about the monopoly that white scholars have in the civil rights area is deserving of thought and perhaps even discussion.

In any event, I think that there are some important issues to explore in the course of our discussion in New Orleans. We have two hours. There are three panelists: J. Clay Smith, Howard; John Gregory, Hofstra; Roy Brooks, San Diego. I will serve as moderator. I will make a brief introduction (5 to 8 minutes). Each panelist should spend from 15 to 20 minutes discussing the issues from his vantage point. We will then open the discussion to the audience.

Some of the issues that you should think about are: (1) Do minority scholars have an obligation to write about issues that affect minorities? (2) Even if the issue isn't directly related to minorities should minority scholars address the impact that the issue or subject matter does have on minorities, e.g., corporate relocation decisions as they affect minority employment, divorce laws as they affect minority economic status, the Code of Professional Responsibility as it affects disbarment of minority lawyers, etc. (3) Should minority scholars write about minority issues exclusively? Predominantly? Seldom? Never? Why? (4) When discussing this issue does it make a difference whether the minority scholar is tenured? If so, why?

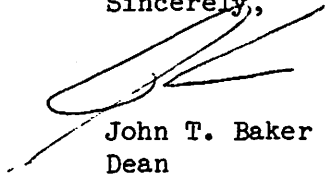
- (5) Do minority scholars have an obligation to work with other minority scholars even if the scholarship does not involve minority issues?
(6) Ultimately, what role is the minority scholar supposed to play in legal scholarship?

As you can readily see, I have framed these issues as broadly as possible. Obviously, you will find some to be too broad, some irrelevant, and some too narrow. Hopefully, you will add to the list.

Perhaps we can get together sometime before 2:00 p.m. on Tuesday to discuss the format and substance more. Howard Law School will have a suite in one of the two convention hotels and we can meet there at any time. I will be happy to host a breakfast on Tuesday morning in the Howard suite for the panelists. If you have further questions or comments about the panel, please feel free to contact me.

Thanks again.

Sincerely,



John T. Baker
Dean

JTB:mt