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Kenneth Lasson

*University of Baltimore School of Law*, [klasson@ubalt.edu](mailto:klasson@ubalt.edu)

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# The Tintinnabulation of Bell's Letters

Kenneth Lasson<sup>†</sup>

Hear the tolling of the bells—  
Iron bells!  
*What* a world of solemn thought their monody compels!  
In the silence of the night  
How we shiver with affright  
At the melancholy meaning of the tone!  
—Edgar Allan Poe, *The Bells*<sup>1</sup>

It is easy to admire Derrick Bell for the passion of his principles, and to empathize with the pain he feels for his people. Those same emotions, however, are so often conveyed with such rhetorical acrimony that his considerable merits as a role model—as well as his standing as an impartial scholar engaged in objective and well-reasoned analysis—have come to be substantially diminished.<sup>2</sup> Nevertheless Bell's letters<sup>3</sup> have a disturbing resonance, a tintinnabulation that gives many people of good will second thoughts about the quest for equality in America.

The foregoing essay is consistent with his oft-stated conviction that the path toward racial justice in the national experience has been marked not by real progress, but by short-lived judicial or legislative victories that serve to obscure the country's hopelessly ingrained racism. Bell's message is short and bitter: Whites conspire to oppress blacks; racism in America is "integral, permanent, and indestructible."<sup>4</sup>

Even assuming the accuracy of such rhetoric, what purpose is served when it is unaccompanied by either hope or pragmatism? Surely Bell's motives are nobler than to foment discord or sell books. What wisdom does he offer young blacks struggling to escape the ghetto, or to their older brothers and sisters who have already succeeded in an alien world, or for

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<sup>†</sup> Professor of Law, University of Baltimore. This essay, in response to Derrick Bell's foregoing piece, *Racial Libel as American Ritual*, was solicited by the editors.

1. EDGAR ALLAN POE, *The Bells*, reprinted in *POETRY AND TALES* 94 (Patrick F. Quinn ed., 1984).

2. Bell was the first tenured black professor at Harvard Law School. He resigned in protest over that institution's failure to tenure more minority women. A leading proponent of "Critical Race Theory," he has written numerous articles and widely-reviewed books on racism.

3. Cf. Webster's defines *Belles lettres* as "literature that is an end in itself and not practical or purely informative." WEBSTER'S NEW COLLEGIATE DICTIONARY 142 (9th ed. 1983).

4. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* ix (1992).

that matter to all those of any color who have spent their lives fighting through the quagmires of endemic prejudice?

Not much. For Bell, black victories are little more than temporary achievements that "slide into irrelevance as racial patterns adapt in ways that maintain white dominance."<sup>5</sup> Such a sweeping assertion ignores the evolution of events that most people, black or white, have viewed as progressive. To what, after all, would Bell attribute the conditions that made possible the landmark achievements of pioneers like Jackie Robinson, Thurgood Marshall or Colin Powell?<sup>6</sup> To what failure of democracy would he credit the Supreme Court's reversal of its "separate but equal" doctrine,<sup>7</sup> or legislative and judicial efforts to bring about de facto racial integration in the educational system and equal voting rights at the polls,<sup>8</sup> or the institutionalization of "diversity" movements and affirmative-action programs despite popular resistance to them,<sup>9</sup> or the election of blacks as mayors and governors of major cities and states?<sup>10</sup>

Within the last quarter century alone, the number of black college graduates has increased from 4.4 percent to 12.9 percent overall;<sup>11</sup> black employment has increased from 9.2 million people to 14.5 million;<sup>12</sup> and black households with incomes of over \$75,000 or more rose from 1.9 percent to 6.6 percent.<sup>13</sup> Between 1987 and 1992, the number of black-owned businesses jumped 46 percent.<sup>14</sup>

5. *Id.* at 12.

6. Robinson's ascendance to baseball's major leagues broke a barrier that has long since been relegated to history by the large numbers of black athletes in every professional sport. Racist attitudes can no longer be stated publicly without strong condemnation and punishment—witness the censure and dismissal of Al Campanis, Jimmy the Greek, and Marge Schott. On the other hand, there is considerable evidence that black athletes who have achieved enormous financial and artistic success are embraced across color lines. See David Horowitz, *When a White Kid Wants to 'Be Like Mike'*, BALTIMORE SUN, July 28, 1996, at 3E.

One wonders what Marshall, who led the fight for integration in the public schools and became the first black justice on the Supreme Court of the United States, would think of Bell's thesis.

Powell, leader of the nation's armed forces as chairman of the Joint Chiefs of Staff, was also mentioned prominently as a candidate for President and Vice-President during the 1996 election campaign. See, e.g., Gary Lee, *Bush, Clinton Offered Powell Jobs, Book Says*, WASH. POST, September 4, 1995, at A8.

7. The doctrine was first invoked exactly a century ago in *Plessy v. Ferguson*, 163 U.S. 537 (1896), then renounced in *Brown v. Board of Education*, 347 U.S. 483, 494-95 (1954) ("Separate educational facilities are inherently unequal."). See also Kenneth Lasson, *Racism in Higher Education: Brown's Effect on Campus Bigotry*, 7 HARVARD BLACK LETTER JOURNAL 139 (1990) (the Supreme Court conceded both the philosophical and practical failure of the "separate but equal" doctrine).

8. See generally JACK GREENBERG, *WHITE KNIGHT: CRUSADERS IN THE COURTS/ HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (1994).

9. See, e.g., Michael A. Fletcher, *Losing Its Preference: Affirmative Action Fades as Issue*, WASH. POST, September 18, 1996, at A12.

10. The number of blacks holding city and county elected offices rose from 715 in 1970 to 4,819 in 1993, and the number of black U.S. and state legislators rose from 179 in 1970 to 561 in 1993. U.S. Bureau of the Census, *Statistical Abstract of the United States: 1995*, 287 (115th ed. 1995).

11. *Id.* at 157.

12. *Id.* at 399.

13. *Id.* at 474.

14. Paula Mergenbagen, *Black-Owned Businesses*, AMERICAN DEMOGRAPHICS, June 1996, at 24. See also Andrew Hacker, *The Myths of Racial Division*, NEW REPUBLIC, March 23, 1992, at 21. See

Are all these hard-won advances but minor “peaks of progress” (as Bell describes them)?<sup>15</sup> If so, we might as well (as his thesis suggests) abandon the pursuit of civil rights as a futile and cynical exercise in hypocrisy.

One is tempted to ignore such minimalist bombast because challenging it is likely to be equally fruitless: the depth of Bell’s convictions makes them impenetrable by honest debate or logical persuasion. Nor is he likely to be moved by somebody else’s aphorisms (such as “Anger blows out the lamp of the mind”).<sup>16</sup> On the other hand, responding to his rhetoric is bound to elicit more of the same—an academic spitting match.

Besides, Bell has already been amply rebutted by people uniquely qualified to do so. Among the most notable are fellow black law professors Leroy Clark and Randall Kennedy, both largely products of the post-*Brown* America he so roundly excoriates. Braving the opprobrium of their more politically-correct brethren, they have each offered highly cogent (if little acknowledged) rejoinders to their erstwhile mentor.

Clark:

[L]aying out the disabilities of the black condition and accusing whites of not having the moral strength to act fairly . . . is the ultimate theme in . . . his books and in much of his law review writing. . . . Many whites may feel about the black condition what many of us may have felt about the homeless: dismayed, but having no clear answer as to how the problem is to be solved, and feeling individually powerless . . . Professor Bell does not offer a single programmatic approach toward changing the circumstance of blacks. He presents only startling, unanalyzed prophecies of doom, which will easily garner attention from a controversy-hungry media. . . . At some point it becomes dysfunctional to refuse giving any credit to the very positive abatements of racism that occurred with white support . . . . Professor Bell’s “analysis” is really only accusation and “harassing white folks,” and is undermining and destructive. . . . There is only rage and perplexity. No bridges are built—only righteousness is being sold. . . . Telling whites that they are irremediably racist is not mere “information”; it is a force that helps create the future it predicts.<sup>17</sup>

Nowhere is Bell more predictably disconcerting than in his unwillingness to distance himself from the outrageously racist views of Louis Farrakhan—a failure to which a white male Jewish professor (like the writer of this piece) might take especial offense.<sup>18</sup> Long after Farrakhan

also Leroy D. Clark, *A Critique of Professor Derrick A. Bell’s Thesis of the Permanence of Racism and His Strategy of Confrontation*, 73 DEN. U. L. REV. 23 (1995); Randall Kennedy, *Derrick Bell’s Apologia for Minister Farrakhan: An Intellectual and Moral Disaster*, 2 RECONSTRUCTION 92 (1992).

15. BELL, *supra* note 4, at 12.

16. Attributed to Robert Ingersoll, American lawyer (1833-1899).

17. Clark, *supra* note 14, at 49-50.

18. See Kenneth Lasson, *Political Correctness Askew: Excesses in the Pursuit of Minds and Manners*, 63 TENN. L. REV. 689, 693 n.25 (1996); Cheryl B. Preston, *It Moves, Even If We Don’t: A Reply to Arthur Austin, The Top Ten Politically Correct Law Reviews*, 63 TENN. L. REV. 735, 742 (1996).

informed his followers that "Judaism is a dirty religion"<sup>19</sup> and "Hitler was a very great man,"<sup>20</sup> Bell was calling the Nation of Islam's leader "perhaps the best living example of a black man ready, willing, and able to 'tell it like it is' regarding who is responsible for racism in this country."<sup>21</sup>

Farrakhan has hardly mellowed over the years. One of his most recent profundities (uttered a few months before the "Million Man March" in late 1995) was that "Little Jews died while big Jews made money [during the Holocaust]; little Jews were being turned into soap while big Jews washed themselves with it."<sup>22</sup> Still no denials from Bell, who, quite to the contrary, tells us that "[w]e should really appreciate the Louis Farrakhans . . . while we've got them [because the] new crop of leaders are going to be a lot more dangerous and radical [and] urge that instead of killing each other, they should go out in gangs and kill a whole lotta white people."<sup>23</sup>

Here as well Bell has already been effectively taken to task, this time by Kennedy:

I ask you only to repudiate publicly Minister Farrakhan's expressed bigotry. I ask *you* in particular, Professor Bell, because you often speak out publicly about matters involving race relations and often invite members of the public to join you in struggles against racial injustice that is harmful directly to people of color.

I ask you, Professor Bell, because I think highly enough of your sense of justice to expect that you would be personally affronted by Minister Farrakhan's expressions of contempt, merely on the basis of their identity, for whole groups of people including whites, Jews, and gays.

I thought that I might be able to enlist your empathies for what remains unfortunately a necessary struggle against pervasive invidious prejudices that afflict a wide array of groups. I ask you for assistance in this struggle because I thought that you would want to help renounce and isolate and discourage such sentiments regardless of whether there exists any immediate payoff to you personally or to blacks in general. I ask your assistance and that of any other person whatever their hue because I subscribe (and thought that you did) to Martin Luther King's wonderful axiom that "injustice anywhere is injustice everywhere."<sup>24</sup>

Unlike Bell, Kennedy has been both vocal in labeling Farrakhan an unreconstructed bigot and condemning his revered mentor Elijah Muham-

19. *The Farrakhan Show*, WASH. POST, August 1, 1984, available in 1984 WL 2024765.

20. *Jackson Resists Pressure From Jews*, SAN DIEGO UNION-TRIBUNE, April 13, 1984, at A4, available in 1984 WL 2284398.

21. Kennedy, *supra* note 14, at 92 (quoting BELL, *supra* note 4, at 118).

22. James Bone, *Prophet of Hate*, LONDON TIMES, February 3, 1996, available in 1996 WL 6471737 (Tape-recorded comments of Farrakhan in a Chicago mosque).

23. *Culture, Et Cetera*, WASH. TIMES, March 22, 1995, at A2.

24. Kennedy, *supra* note 14, at 92-93.

mad.<sup>25</sup> For such clarity of thought Kennedy has been treated like a pariah by many of his fellow minority intellectuals.<sup>26</sup>

Bell's belligerent refusal to distance himself from Farrakhan might suggest that he embraces the minister's overt racism. But it's worse than that. His apologies act as endorsements, and when they emanate from the station and security of the Ivory Tower—delivered in the scholarly voice and printed in prestigious law reviews and appraised by serious book critics—they take on an added stature, an aura of intellectual authenticity.<sup>27</sup>

Professor Bell certainly has a right to his opinions, even those that conjure up a conspiracy of white supremacists or fly in the face of objective fact and clearly-viewed experience. Nor need he publicly repudiate every racist who comes down the pike. But when his own teaching smacks of their patent bigotry, his colleagues in the academy have the right—no, the moral obligation—to challenge and condemn it, and to chastise the teacher:

*The intoxication of anger, like that of the grape, shows us to others, but hides us from ourselves.*<sup>28</sup>

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25. See, e.g., Kennedy, *supra* note 14, at 93. See also JAMES BALDWIN, *THE FIRE NEXT TIME* 92-93 (1963).

26. Bell himself dismisses Kennedy as another of the "black scholar-opportunists who reap fame and fortune by denying that racism is the cause of blacks' distress." BELL, *supra* note 4, at 117. Bell also suggested in the pages of the New York Times that Kennedy is "willing to speak for whites." Derrick Bell, *Letter to the Editor*, NEW YORK TIMES, Jan. 26, 1990, at A30. He also gave him a semi-private rebuke that he ought not publish ideas to the contrary because "we need you on our side, not in our way." Letter from Derrick Bell to Randall Kennedy (Feb. 17, 1989) (on file at Harvard Law School Library). Others have charged Kennedy with reinforcing assumptions of black inadequacy. See Leslie G. Espinoza, *Colloquy: Masks and Other Disguises: Exposing Legal Academia*, 103 HARV. L. REV. 1878, 1884 (1990) (suggesting that he is "insincere" in his arguments); Richard Delgado, *Mindset and Metaphor*, 103 HARV. L. REV. 1872, 1874 & n.20 (1990); *New Voices in Legal Scholarship* (Association of American Law Schools), Sept. 8, 1989 [videocassette on file with AALS] (remarks of panelist Robert Williams, branding him as "dangerously foolish, if not traitorous to his race").

27. "It is precisely because [Professor Bell] is a man of profound integrity . . . that his pronouncements may have an unprecedented powerful influence, especially on developing minority scholars. Moreover, books and public appearances have made him a very visible figure who reaches an audience beyond legal academe; his ideas also impact the views of other critical, black commentators." Clark, *supra* note 14, at 50 nn. 6 & 7 (citing works of Black authors Michael A. Olivas, Toni Morrison and Harry Edwards praising Bell).

28. Caleb Colton, English clergyman (1780-1832) (emphasis added).