

What follows is a message delivered to the members of the Section on Minority Groups, Association of American Law School's as part of the 2007 Section Newsletter. It might be of interest to those who like to think about the institutional aspects of academic life. And it suggests that no relationships are ever as simple as they might appear.

Being a Part and Standing Apart: On the Culture of Law Faculties
Larry Catá Backer
Outgoing Chair, AALS Minority Groups Section
December 2007

Thank you for allowing me to serve you as Chair of the AALS Minority Groups Section this past year. The experience has been a great opportunity for me to work more closely with the members of the section executive committee and individual section members. It has allowed me to develop deeper bonds with you. More importantly, it has been important to put together programs that have been important and instrumental to our community. During the past year, we have planned a number of exciting events for the AALS meeting in New York City, which are described below in this Newsletter.

In my message to you as incoming Chair last year I suggested that the Minority Groups Section remains one of the most vital sections in the Association of American Law Schools. Its institutional presence serves as a constant reminder of the progress that traditionally disadvantaged groups have made within the legal academy in the United States, as well as the progress that remains to be made. It serves as a vehicle through which its members might build communities of interest in the service of people in this country and abroad.

I also ventured that those tasks and accomplishments provide a deeper insight we might do well to consider more fully. Like many of us in our other relationships with the community at large, the Section stands both apart from and comfortably, perhaps too comfortably, within the community of academics in the United States the AALS seeks to serve. And that brings me to the point of this short message to you at the end of my stewardship of this great Section: the Section must, in its programs and actions, remember that while it is a part of this great organization, it stands apart from it as well.

For my message to you today, as outgoing Chair, I want to linger a little over the idea of being a part and standing apart within the legal academy. Is it realistic to think that such a position is possible? Is it possible that

such a stance will become its own perversion? Let me be more specific. I am not sure that in a world in which one dominant culture holds most of the advantages—and then opens those advantages to those previously excluded (assuming for all the best reasons)—it is possible to embrace those advantages without conforming to the expectations of those who have made the advantages available. Consider, as an example, a dean of either sex from dominant racial, ethnic and religious groups and from the interior of the United States who belongs to the “baby boom” demographic cohort. He or she is necessarily a creature of their race, class, and age. They might have had experience with “difference” in their work and travels—but usually from a position of privilege and dominance and protected by the job held at the time of the more exotic contact. Most find value in “doing good” in ways that provide significant personal rewards, for example, by being aggressive in populating the law school (over which either has some official responsibility) with traditionally underrepresented groups. And indeed, underrepresented groups seeking academic positions will benefit. There are more of us here now than when I started and certainly a lot more than when I was in law school. But power remains with the people exercising the largesse. They decide whether, when and whom. And it might be possible to entertain the thought that sometimes they act only when it is in their personal interests within the context of their institutional ambitions. At least at the margin, and among the least selfless among that group, the significance of the benefit might be gleaned from the large sums spent publicizing the program and the appearance of a great solicitude to the objects of this campaign, in which the presence of those responsible for these goods deeds is acknowledged.

But most important, they exert a significant power of choice in hiring, promotion and support. As in all societies, conventional behavior, and good behavior in accordance with the many unstated rules governing academic communities, is rewarded. Centers are bestowed, like old-fashioned benefices in England before the 19th century. People and ideas are promoted. Financial and other support appears. The objective is reasonable—support those who reinforce the system of rules through which power relations, and conventional behavior norms, are deepened. Might the result be the promotion of a generation of academic mimickers? It is certainly true that no community can survive long without a basis in convention of one kind or another. But many of us were not invited to the table when the conventions and power relations were established to govern this community. Most of us have had little to do with the development of the standards for judging what we do and how well we do it. And those who have pushed the boundaries in the past (with few and notable exceptions) have paid some price. Does conformity pay well enough? Is dependency too great a price

(collectively) in terms of maintaining, for example, traditional patterns of dominance?

It might be suggested that those who do best under such regimes are people who have internalized the values of the kindly dean doing “good.” But do they do less good when, having internalized the values and techniques of the dominant power, they then serve as the gatekeepers of the system? Should we have a hand in ensuring that other people of color conform to certain pre-engineered expectations—from a necessary gratitude, to the avoidance of trouble making, to conformity to core values—that might ensure jobs and also contribute to the “success” of the kindly dean and the institutions whose doors are now more open? In such a case, who is the primary beneficiary? And who has not been tempted by the baubles available within the legal academy, including its symbols of status offered through dominant publication venues, the internalization (without much of a whimper) of the forms of scholarship, the scholarly life, the rate and method of scholarly production. What do we lose by aggressively embracing not only conformity and conventionality—but the conformity and conventionality of others who continue to acquire personal benefit from managing the participation of people of color within the Academy. To my brothers and sisters who have embraced the dominant model and have become part of the social and normative basis of that sort of life, only wishes for success and efforts to ensure that they are able to rise as far as they can under the norm rules to which they have submitted are required. But those brothers and sisters might do well to be sensitive to those others among us who have chosen to stand apart.

Those among us who stand apart, in a world in which the institutions of dominance exert very strong techniques for disciplining non-conformity, might do well to be sensitive to the power of dominant institutions to profit from non-conformity. Many have had experiences that touch on this perversion of the value of difference. Indeed, the management of difference, of the value of color, ethnicity and the like might be thought to provide the opportunity to produce an academic culture based on the ritual cultivation of neutered difference. Many of us have had the experience of having to perform for some one or other person in power whose expectations of behaviors was not to be denied. Section members might have experienced everything from conformity to expectations of scholarship, of teaching, of availability for presentation to potential students, potential candidates, and potential donors. Non-conformity controlled by and for the benefit of the well-meaning, well-intentioned dean or administrator, is no non-conformity. It is a technique of subordination that keeps people in their place. But so is conformity when

it comes from a need to please someone else and is not mediated by sensitivity to the value choices made by others. Consider from this perspective the usual mode of academic operation. If something concerns us, or our communities, we are urged (and have to some extent internalized the approach)—organize a conference! Write an article! Network! Act in a way that turns the concern into a positive resume building exercise in a way that the institutions we have been taught to serve understand. There may even be collateral benefit to others as well.

Within the legal academy, there is more than one way: there are no inviolate rules, there are no unalterable mores, there are many people whose claim to dominance is based on more than class, ethnicity and race, and who use the managed privileging of those characteristics among their “special friends” to maintain their own place within subtle but powerful systems of vertical pedigree. It is hard to resist the reflex to create hierarchy—especially when one can find oneself somewhere above the lowest rung of that ladder. Our brother Derrick Bell once warned us of the danger. But the techniques of hierarchy are subtle. And the temptations of the rewards of conformity are great. Who can resist a “chair”, a move to a higher tiered law school, a speaking engagement for the entertainment of people better or equally pedigreed? And why shouldn't we? We deserve it! And in some sense we do! But this way? No, I am by no means suggesting rejection of these badges of success, or the cultivation of non-conformity for its own sake, but rather to consider engaging through those symbols and benefits of conventional success in a different way, a more sensitive way. Indeed, I have tried to pose questions, the answers to which still elude me. My hope is that we may continue to cultivate sensitivity to the difficulties these issues present, to talk about them, to act on our convictions when we can, and to remember, as we find ourselves called to power and leadership, that the temptations of victory are great, the seductions of control are great, and it is easy to become the creature we always sought to avoid.