

# Principles Supplementing the Houstonian School of Jurisprudence: Occasional Paper No. 1

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The purpose of this paper is to address a few of the basic principles that undergird the Houstonian School of Jurisprudence.<sup>1</sup> The principles addressed in this paper were extracted from an article writ-

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1. The call for the study of the Houstonian School of Jurisprudence was first made in 1973. See Smith, *In Memoriam — Professor Frank D. Reeves: Towards a Houstonian School of Jurisprudence and the Study of Pure Legal Existence*, 18 *HOW. L.J.* 1 (1973). (Much of the content of the article for this Houston commemorative issue appeared in a paper presented before the National Conference of Black Lawyers (District of Columbia Chapter) on February 14, 1984. The paper was entitled, "Principles Supplementing the Houstonian School of Jurisprudence: Occasional Paper No. 1.") Since 1973, several articles, papers and books have given meaning to Charles Hamilton Houston's place in American law. See, e.g., G. McNeil, *Groundwork: Charles Hamilton Houston And The Struggle For Civil Rights* n.3 (1983) (quoting Letter from Associate Justice William O. Douglas to J. Clay Smith, Jr. (Apr. 19, 1974) (stating, "I sincerely believe that he was one of the top ten advocates to appear before this Court in my 35 years."); Smith, Book Review: *Forgotten Hero*, 98 *HARV. L. REV.* 482, 490 (1984). This volume was dedicated to Houston at the suggestion of J. Clay Smith, Jr. and the initial suggestion gained the immediate support of Bob Riggle, Stephanie Y. Moore and other editors of Vol. 98 of the *Harvard Law Review*. See, Letter from J. Clay Smith, Jr. to Bob Riggle, (Dec. 15, 1983) (initial request to have a volume of *HARVARD LAW REVIEW* dedicated to Houston); Letter from J. Clay Smith, Jr. to Bob Riggle, (Jan. 17, 1984) (request of dedication renewed); Letter (by hand) from J. Clay Smith, Jr. to Bob Riggle (Jan. 23, 1984) (request renewed); Letter from Professor Gilbert Ware of Drexel University to Conrad K. Harper, (March 21, 1984) ("I have joined the campaign to persuade *HARVARD LAW REVIEW* to dedicate an issue to Charles Hamilton Houston . . . directed by J. Clay Smith, Jr. . . ."); Letter from Professor Gilbert Ware to J. Clay Smith, Jr. (April 12, 1984) ("This note is to let you know that Conrad K. Harper has written to . . . *HARVARD LAW REVIEW* to press the case for Houston."); Letter from Bob Riggle to J. Clay Smith, Jr. (May 13, 1984) ("[I] think your book review and dedication to Charles H. Houston will be one of the more important pieces to be printed in *HARVARD LAW REVIEW* this decade."); Letter from J. Clay Smith, Jr. to Robert D. Fram, president of the *HARVARD LAW REVIEW* (Nov. 19, 1984) ("The dedication of the December 1984, *HARVARD LAW REVIEW* to Houston will usher in a new era . . . The early consideration by your predecessor Scott L. Nelson and Robert Riggle, to dedicate an issue of the *REVIEW* to Houston . . . endorsed by you . . . is gratifying."); see also, 98 *HARV. L. REV.* Index xiii (1985) (index reference to Houston dedication).

The law students at Howard carry on the tradition of Houston in various student publications. Musa, *Toward a Houstonian School of Jurisprudence*, *Barrister*, Dec., 1982, at 1, col. 1. The dedication to Houston of this commemorative issue of the *Howard Law Journal* is further

ten by Dr. Charles Hamilton Houston in 1936 entitled, "Don't Shout Too Soon."<sup>2</sup> I have taken the liberty to revisit eight of these principles and to make them meaningful to contemporary times.<sup>3</sup>

PRINCIPLE ONE: "THE . . . AMERICAN PUBLIC . . . MUST  
BE CONVINCED"<sup>4</sup>

One aspect of Houston's mission was to influence public opinion in order to expose the plight of the Black American to industry and commerce. Houston faced doubt from his own people, who, because

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evidence of the level of esteem that he is held at Howard University School of Law. Established in 1984, the pre-law society at Howard University is named for Houston.

In 1976, the Washington Bar Association inaugurated the Charles Hamilton Houston Medallion of Merit. The inaugural speech marking the occasion was made by Judge Spottswood W. Robinson, III. See Robinson, *No Tea for the Feeble: Two Perspectives on Charles Hamilton Houston*, 20 HOW. L.J. 1 (1976); Smith, *The First Recipients of the Charles Hamilton Houston Medallion of Merit*, 20 HOW. L.J. 10 (1976). There have been other occasions to address Houston's importance in American law. See statement by J. Clay Smith, Jr., Howard University School of Law, (March 9, 1985) (made during the unveiling of a bust of Charles Hamilton Houston) entitled, *The Wilderness of the Matrix of Ideas (Toward a Houstonian School of Jurisprudence)*; Reed, *The Contribution of Charles Hamilton Houston to American Jurisprudence*, 30 HOW. L.J. 803 (1987).

For several years Herbert O. Reid, Sr., held the honor of being the first law professor designated as the Charles Hamilton Houston Distinguished Professor of Law until his retirement in 1988 enabling Professor Reid to expose Howard law students to Houstonian methods in the study of law. In 1980, Professor Reid was himself a recipient of the Charles Hamilton Houston Medallion of Merit by the Washington Bar Association. Professor Reid's response to the award further illuminates the meaning of Houstonian jurisprudence. As Reid stated, "Houstonian jurisprudence . . . observes law as an organism for social justice through social engineering [and] espouses and demands scholarship, discipline, perseverance, vigilance and dedication in the totality of the legal, social and governmental framework. [It] challenges man to leadership and service [and] operates through the instrumentality of law to disrobe and destroy the encumbrances and trappings of birth, origin, color, creed or religion." Response by Reid to Charles H. Houston Award (April 25, 1980).

Other scholars continue to write papers and articles about their interpretations on Houston; see, e.g., Professor Michael D. Newsom, *Charles Hamilton Houston: The Amherst Connection*, paper before the Annual Amherst University Charles H. Houston Forum, 1981; Note, *Alumnus Says Amherst Must Nurture The Black Elite*, *Amherst Alumni Magazine* 9 (Summer, 1981); Conrad K. Harper, *Charles Hamilton Houston and the Origins of a Master Plan for the School Segregation Cases of 1954*, paper before the Zeta' Boul, Sigma Pi Phi Fraternity (April 20, 1985); Ware, *Shelley v. Kramer and the Restrictive Covenant Cases*, 2 NBA Mag., Dec., 1988 at 24; (Professor Leland Ware's recent article about Houston's involvement in the restrictive covenant cases). Note, *Charles Hamilton Houston: The Leading Strategist Against Restrictive Covenants*, 2 NBA Mag., Dec., 1988 at 24.

2. Houston, *Don't Shout Too Soon*, *Crisis*, March 1936 at 79. [Hereinafter, *Don't Shout Too Soon*].

3. Other statements are available as sources to Houstonian values and ideas. See, Smith, *supra* n. 1, at 492-93.

4. *Don't Shout Too Soon* at 79. Smith: *Forgotten Hero*, 98 HARV. L. REV. 482, 492-93 (1984).

of ignorance, fear, pain and inattention, laid exposed 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 afford 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*<sup>5</sup> was decided by the United States Supreme Court. Black people must be convinced that existing liberties are not guaranteed forever without dogged vigilance, and that this will always be the case.<sup>6</sup>

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."<sup>7</sup> 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."<sup>8</sup> Although Houston articulated these words in 1936, fifty-three years ago, they still 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 are vicious.<sup>9</sup> To the contrary, and sometimes to their detriment,

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5. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

6. Black Americans are no different than other American citizens when it comes to the maintenance of the many facets of liberty and the equally important concept of equality. Perhaps the civic virtue of black Americans should be more heightened in the fight to maintain liberty and to expand equality given their historical experience of involuntary servitude in America and the use of the law to deny pure legal existence to their group. Smith, *Toward a Pure Legal Existence: Blacks and The Constitution*, 30 HOW. L.J. 629, 642, (1987); M. BERGER, *EQUALITY BY STATUTE* 4-5 (1967).

7. *Don't Shout Too Soon*, *supra* n. 2, at 79.

8. *Id.*

9. M. King, Jr., *WHERE DO WE GO FROM HERE CHAOS OR COMMUNITY* 69 (1968). Indeed, it would be a tragic error for black Americans to conclude that all of white America has been the cause of their political and social condition. As early as 1869, the all-white Supreme Court of the State of Georgia determined that Blacks were qualified to hold public office in that state as citizens of the United States. *White v. Clements*, 39 Ga. 232 (1869). This case is discussed in Smith, *Toward Pure Legal Existence: Blacks and The Constitution*, 30 HOW. L.J. 629, 640-41 (1987); see also, WRIGHT, *A Voice for Personal Liberty*, U.S. NEWS AND WORLD REP., June 10, 1963 at 21 (regarding Justice John M. Harlan); *Why the South Took Civil Rights Law Quietly*, BUSINESS WEEK, July 11, 1964 at 28; *Mississippi Versus the United States*, NEWSWEEK, Oct. 8 1962 at — (referring to the bravery of U.S. Marshal James P. McShane and John Doar, a Justice Department civil rights lawyer); Wright, *Color-Blind Theories and Color-Conscious Remedies*, 47 U.CHI. L. REV. 213 (1980). (The author is Judge Shelly Wright); Marcus, *Court That Shaped Southern History Ends Long and Busy Life*, N.Y. Times, Oct. 2, 1981, at A14, col. 1.

black Americans have placed their destiny in the hands of the white majority.<sup>10</sup> Many of these 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 lost ground and support of their white brethren when they have least expected it—when both groups were poor, and when both were without political power.<sup>11</sup> When white Americans are told that Blacks are doing better than their white counterparts and that the courts are favoring Blacks by allowing unjust quotas for jobs and preferences for governmental contracts—without constitutional or historical justification—such assertions are too often interpreted as encouraging a white backlash against black America.<sup>12</sup> The opinion that is being sifted in some quarters of the nation is that Blacks have made it and if they have not, they are lazy and ignorant. This, of course, is absurd. However, this opinion must be rebutted when uttered and against whomever utters them. Black Americans and their friends are presently in a historical decathlon to maintain and influence public opinion and to maintain, protect and expand their political rights.<sup>13</sup> 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

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(reference made to the contributions of four white federal judges whose opinions advanced the equality of Blacks in the South: John Minor Wisdom, Elbert Tuttle, Richard T. Rives and John R. Brown. However, there is concern that even white judges with moderate and liberal records may be excluded from consideration for appointments to the United States Supreme Court and other federal courts solely on the basis of their views on equality. Kamen & Marcus, *A Chance to Deepen Stamp on Courts*, Wash. Post, Jan. 29, 1989, at 1, col. 4. A dearth of black lawyers have been appointed to the federal courts in recent years. See generally, Jones & Robinson, *Choice: Appointing Blacks to the Federal Judiciary*, NBA MAG., July 1988, at 17.

10. M. Berry, *BLACK RESISTANCE WHITE LAW* 123-135 (1971); E. Foner, *RECONSTRUCTION* 558 (1988); R. Current, *THOSE TERRIBLE CARPETBAGGERS* 357-360 (1988).

11. See C. Murray, *LOSING GROUND* 53-134 (1984); T. Cross, *THE BLACK POWER IMPERATIVE* 189-196 (1984).

12. Such statements have been used in the past to generate white anger against constitutionally guaranteed rights. See, e.g., *Political Side of the Race Issue*, U.S. NEWS AND WORLD REP., Nov. 4, 1963, at 72; *Crisis in Race Relations*, U.S. NEWS AND WORLD REP., Aug. 10, 1964, at 23.

13. Smith, *A Black Lawyer's Response to the Fairmont Papers*, 26 HOW. L.J. 195 (1983).

ten thousand white people who do not.<sup>14</sup>

Houston was right in 1936 and he is right today. The old channels of publicity must be supplemented. In addition, our educated population must churn out more opinions in journals and newspapers, and increase their use of the air waves on matters of political and social equality.<sup>15</sup> Blacks must fight to reinstate the Fairness Doctrine, to have their views expressed on the editorial pages of every newspaper in this nation, and for greater coverage by the broadcasting networks.<sup>16</sup> The continued demands by black Americans to be hired in policymaking positions in broadcast and cable television newsrooms and the continued portrayal of Blacks in America and Black political aspirants in negative images, confirm Houston's notion that white Americans see "Negro life" mainly through the eyes of white people.

14. *Don't Shout Too Soon*, *supra* n. 2, at 79.

15. A need continues for more Black ownership of print and telecommunications properties, and demands for positive news coverage and programming about minority communities. See, e.g., Mothner, *Blackout — The FCC Encourages Minority Ownership, But Local Opposition — Including Threats and Vandalism — Has Been Keeping Blacks Off The Air*, CHANNELS, June/July, 1981, at 52; Carter, *The Future Blacks in Media*, METRO MAG., May, 1984, at 26; *Protecting Black Radio*, BLACK ENTERPRISE, Feb., 1984, at 14; *Blacks and Broadcasting*, 8 TELEVISION Q. 5 (1969); *Minority Workshop Hears Complaints on Rating Services Bias*, BROADCASTING, April 14, 1975 at 47; Wells, *Mass Media and the Negro Community: A Study of Perceptions*, 36 NEGRO HISTORY BULLETIN 180 (1973); Price, *Program Shows No 'quest' to Eliminate Black Stereotypes*, NAT'L LEADER, Dec. 9, 1982, at 20, col. 1; see also, D. R. Bachman, DYNAMICS OF BLACK RADIO, A RESEARCH REPORT 35-44 (1977); Smith, *Telecommunications and Black Americans: The Unmeasured and Untold Marketplace Factor*, paper before the Fifteenth Annual Communication Conference, Howard University, (Feb. 13, 1986).

16. The Fairness Doctrine requires broadcasters to air controversial issues of public importance. Shaw, *FCC To Drop Fairness Doctrine*, Wash. Post, Aug. 4, 1987, at E1, col. 6. In 1986, the National Bar Association reminded the Court that in considering whether the Fairness Doctrine was constitutional to remember an historical fact: "We remind the Court of our views and historical perspectives: fairness in broadcasting did not exist when black men and women were being routinely lynched and raped as a matter of American custom. The broadcast medium in some geographical locales did not report nor did [they] consider as controversial. . . human beings on the . . . end of a hangman's noose." Amicus Brief at 2, *Meridith Corp. v. FCC*, 809 F.2d 863 (D.C. Cir. 1987); see also, *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989). *Repeal of Fairness Doctrine By F.C.C. Upheld in Court*, N.Y. Times, Feb. 11, 1989 at 50, col. 6 (the court did not decide the constitutionality of the Fairness Doctrine); *Congress Revives Push for Fairness Doctrine*, BROADCASTING, Feb. 13, 1989 at 33. There are other broadcast issues which need closer attention if minorities are to have opportunities to share in the public interest allocation and assignment policies of the electromagnetic spectrum. Honing, *The FCC and Its Fluctuating Commitment to Minority Ownership of Broadcast Facilities*, 27 How. L.J. 859 (1983); Smith, *Toward Minority Visibility In Tele-communications Ownership*, 12 Nat'l B.A.J. vii (1983). According to Professor Vernon A. Stone of the University of Missouri, recent trends appear bleak in the employment of minorities in broadcasting, particularly among black males. See Stone, *Trends In Employment of Minorities and Women in Broadcast News*, paper presented before the Federal Communication Commission's National Conference on Equal Employment Opportunity in the Broadcast and Cable Industries (Jan. 23, 1989).

PRINCIPLE TWO: WE MUST PERSISTENTLY "AGITATE FOR MORE TRUTH"

Houston firmly believed that Blacks and those who believed in their cause had to "agitate for more truth about the Negro in the history, economic and sociology courses in the schools, colleges and universities."<sup>17</sup> The agitation that Houston spoke of demands a preoccupation with scholarship to defend, protect and secure the black colleges of this nation;<sup>18</sup> a more intense passion to stamp out the Shockly and Jensen-type theories alleging Black genetic inferiority;<sup>19</sup> and urges, if not compels, continued investigation of realistic theories of economics that will increase the number of black Americans who compete in the free enterprise system.<sup>20</sup>

The agitation for truth is a special ingredient of Houstonian jurisprudence because it calls upon the law to recognize and adjust to the fundamental interests of legal outcasts. It seeks to establish thought

17. *Don't Shout Too Soon*, *supra* n. 2, at 91.

18. Perkins, *A Survival Plan for Black Colleges*, Wall St. J., June 12, 1987, at 30, col. 3 (viability of black colleges questioned); see *Suicide Plan for Black Colleges*, Wall St. J. Aug 4, 1987, at 35, cols. 1-2, (for rebuttal to Joseph Perkins' article by Kenneth S. Tollett, Frederick D. Patterson and Congressman Major R. Owens); see also, Fiske, *Enrollment of Minorities In Colleges Stagnating*, N.Y. Times, April 4, 1987, at 1, col. 1; McCarthy, *Colleges Press Drives To Inspire and Enroll The Minority Student*, Wall St. J., June 2, 1987, at 1, col. 1. The need to crack closed educational doors continues. Houston, *Cracking Closed University Doors*, 42 CRISIS 364 (15).

19. RACE AND INTELLIGENCE 182-183 (A.R. Jensen) (William Shockley) (K. Richardson, D. Spears and M. Richards eds. 1972). Jensen asserts "that compensatory education has been tried and has apparently failed. The reason he suggests is that black-white IQ differences are genetic in origin and so cannot be removed by education." *Id.* at 182. His views have been published in influential journals and though far from accepted by psychological and testing academics, Jensen's views must be monitored. See, e.g., Jensen, *How Much Can We Boost IQ and Scholastic Achievement*, 39 HARV. EDUC. REV. 1 (1969).

20. T. L. Cross, *Black Capitalism* x (1969) ("If much of our society suffers from the disease of a dreary middle class concerned only with material values, the Negro does not. [Black] Americans can elect for themselves whether they will move in the total market as producing employers and employees, sell in the whole economy as entrepreneurs, and enjoy the benefits of credit and a taste of wealth and affluence like [whites])." T. L. CROSS, *THE BLACK POWER IMPERATIVE* 775 (1984) (recommending the establishment of an independent national minority development corporation); Blackstone, *New Report Counters Earlier Studies on the Health of Black-owned Banks*, Wash. Post, Mar. 5, 1987, at H7, col.3. It would be wise for Blacks to review the business strategies of Booker T. Washington and other Black thinkers on business and minority enterprise policy. B. WASHINGTON, *THE NEGRO IN BUSINESS* 2 (1907) (referring to the activities of The National Negro Business League); M. HALL & O. SCOTT, *MINORITY ENTERPRISE AND PUBLIC POLICY* 2-6 (1977). It is certain that Blacks as consumers can support more Black business ventures than currently exist. Since 1960 white businessmen have taken advantage of the rising income and numbers in the Black community, a point that Blacks should consider in their strategies for economic liberty and equality. See, e.g., Martz, *The Negro Market—Business Courts Its 19 Million Customers*, NEWSWEEK, July 31, 1961, at 67.

beyond the norm of common acceptability, toward levels of possibilities. It encourages and compels the established segments of society to move to a higher level of intellectual recognition and refinement of its principles and its notions of what a free, open and robust society entails.

### PRINCIPLE THREE: WE MUST PARTICIPATE

The Houstonian tradition commands black Americans to "participate in and share all the conflicts in the main stream of economic and political life of the country."<sup>21</sup> Every American conflict, whether domestic or international, is a conflict that affects black America. Every federal deficit, tax increase and drop of government waste; every drop of acid rain, threat of nuclear war, polluted stream; every agreement made by the Federal government reducing the property of the United States; every procurement contract that allows costly overruns; and every broadcast license that is granted to a licensee who uses the airwaves to demean Blacks and Jews, is a conflict calling for a response by all Americans.<sup>22</sup> Today, black America is sending a message to the world that it is participating in the political life of this nation, and supplementing the meaning of "liberty and justice for all."<sup>23</sup>

The Houstonian principle of participation is not to be defined narrowly. The intellectual energy that is massed within the physiology of black America is the ultimate blueprint to achieve economic liberty and equality in America. The Houstonian principle of participation

21. *Don't Shout Too Soon*, *supra* n. 2, at 91.

22. Madden, *Radio Announcer Maligns Black People on the Air*, *Wash. Afro Am.*, Sept. 12, 1987, at 1, col. 4. Licensees have also used the airwaves to transmit anti-semitic programs. Stuart, *F.C.C. Bars Penalty on Racism on Air*, *N.Y. Times*, April 29, 1985, at C16, col. 4 ("The Federal Communications Commission has ruled that the broadcast of programs advocating racial hatred. . . is not ground for denying the renewal of a radio broadcast license."). The station involved was KTTL Radio in Dodge City, Kansas. Regarding KTTL, see FCC Public Release Report No. DC-71, April 29, 1985; see also *In re Applications of Charles C. Babbs, et al.*, 50 Fed. Reg. 37272 (FCC 1985) (statement of Commissioner Henry Rivera); Although infrequently, the FCC recently denied the renewal of a radio licensee for racial bias in hiring and other misconduct, *FCC Denies New License for a Small Radio Station*, *Wall St. J.*, Feb. 23, 1989, at A20, col. 3.

23. The participation of Blacks at the state and local level has grown since the passage of the Voting Rights Act of 1965, and its extension in 1980. M. MORRIS, *BLACK ELECTORAL PARTICIPATION AND THE DISTRIBUTION OF PUBLIC BENEFITS, MINORITY VOTE DILUTION* 271, 278 (C. Davidson ed. 1984). However, it is interesting to note that a liberty as fundamental as voting required the intervention of the federal government to secure it in several states.

requires black Americans to support and to build their communities at every level, and to aid the young, who are desperately in need of positive role models. Liberty and equality are values far too important for Blacks not to participate in political organizations whose goals, objectives or missions are directed at enhancing the elements of human survival in America. To guarantee liberty and to secure equality, Blacks must participate in the body politic.

#### PRINCIPLE FOUR: WE MUST NOT FORGET

Another Houstonian principle is that "we must not forget . . . to educate many of our own race brethren to proper American practices and ideals."<sup>24</sup> One of these practices is to exercise the right to vote.<sup>25</sup> Another Houstonian principle is to recognize that ignorance is a state of slavery and that the practice and the process of learning—yes, the quest for excellence—is a *sine qua non* of freedom.<sup>26</sup> The Houston tradition requires that black Americans police their ranks and preach American practices and ideals. Houstonian jurisprudence recognizes that the law is a tool for social engineering and may be conceptually applied to free human beings from a status of legal nonbeing to pure legal existence.<sup>27</sup> Houstonian jurists use law as a tool for social engineering as one method to restore and to reclassify the legal metaphysics of black Americans, and others similarly situated. Blacks must never forget the jurisprudence of the past that locked them out of every definition of their personhood and their claim of citizenship.<sup>28</sup> Therefore, they must initiate new and supplemental ideas to the nation in the field of politics, religion, education, law and economics aimed at securing liberty and equality.

#### PRINCIPLE FIVE: SELLING OUT THE RACE FOR PROFIT

Houston was constantly aware that his advocacy and the advo-

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24. *Don't Shout Too Soon*, *supra* n. 2, at 79.

25. H. MOON, *BALANCE OF POWER: THE NEGRO VOTE* 11, 39 (1948).

26. Houston, *Personal Observations On The Summary of Studies In Legal Education As Applied To The Howard University School of Law* 2-4 (1929); Smith, *The Right To Education Is A Human Right*, paper before Title I Educational Institute, Washington, D.C. (Nov. 17, 1979).

27. Smith, *supra* n. 1, at 1.

28. *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); see also Diamond, *No Call to Glory: Thurgood Marshall's Thesis on the Intent of a Pro-Slavery Constitution*, 42 *VAND. L. REV.* 93, 104-13 (1989).



cacy of the people who supported his aims might lead to political ambush or sabotage. However, one of Houston's strengths was his vision to see the future as well as to see around corners. Houston was a strong and confident person who never stooped to backbiting and midnight raids. He had power and influence. To our knowledge, he was above acrimony and was never betrayed 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 from this.

Today there is an increasing tendency for some black people and organizations to sell 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 that 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 solely for profit.

PRINCIPLE SIX: "IT TAKES MONEY TO FIGHT FOR THE SURVIVAL OF THE NEGRO"<sup>29</sup>

Houston did not believe that justice was free. He knew that the fight for equality and the maintenance of equality as a jurisprudential force required more than political vigilance. It required money. If Houston faced any limitations in his career as a resident vice-dean of Howard University School of Law 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 help to finance their survival or risk the possibility of losing their respectability. This does not mean that black Americans are barred or disqualified from or should not seek to participate in 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 they must make it on their own and that it is unethical and contrary to the creed of the free enterprise system to request or depend upon any assistance from

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29. *Don't Shout Too Soon*, *supra* n. 2, at 91.

our government for the uplifting of their group. Black people should not be misled by such notions. Those are not the rules that apply to the wealthy and those are not the rules that citizens seeking to participate in the wealth of this nation are going to accept.

PRINCIPLE SEVEN: THERE IS "NO EASY ROAD AHEAD"

For black Americans, Houston believed that there was "no easy road ahead."<sup>30</sup> He stated that the best efforts and money of every Negro, and all the Negro's friends were 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."<sup>31</sup> Houston stated, but could hardly believe that "[m]aybe the next generation will be able to take time out to rest."<sup>32</sup> The "next generation" is here and now. Do they have time to rest?

There is no easy road ahead. However, black Americans cannot travel the road ahead without the maps of the past.<sup>33</sup> At what fork in the road will Blacks turn? Over what river do Blacks build their political bridges? Around what mountains do they go? What box of the jurisprudential matrix shall they open or attempt to influence or close? Who shall they support for public office? Who shall they ban together to support or to defeat? Perhaps the answer to these questions is written in the lines of a poem or is hidden on the canvas of a painting or in a footnote to a book. Do they have time to rest?

PRINCIPLE EIGHT: "WE HAVE GOT TO LOOK IN THE FACE [OF FACTS] AND REALIZE WHAT WE ARE UP AGAINST"<sup>34</sup>

Houstonian approaches to problem solving require that black Americans look in the face of facts that limit the upward mobility of twelve 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

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30. *Id.*

31. *Id.*

32. *Id.*

33. See, e.g., A. BLAUSTEIN & C. FERGUSON, JR., DESEGREGATION AND THE LAW 81-114 (1962); AMERICAN MINORITIES THE JUSTICE ISSUE 1-53 (E. Long, J. Long, W. Leon and P. Weston eds. 1975).

34. *Don't Shout Too Soon*, *supra* n. 2, at 79.

from the lack of medicare and health care, 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 are using outdated 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 financial difficulties of more and more historically black colleges is to look in the face of fact. The recognition that the failure to enforce civil rights statutes is part of a mandate for the election of federal and state political candidates is to look in the face of fact.<sup>35</sup>

Black Americans believe in the ideals and creeds of their nation. They seek no other.<sup>36</sup> Hence, it is difficult, perhaps too painful to realize that there are officials within the government and persons outside of it who would push black America to the brink of ruin and cause others to believe that they deserved it. Blacks must look in the face of fact and realize what they are up against.

One of the elements of the Houstonian School of Jurisprudence is that groups faced with a condition that restricts their growth and development in the body politic must look in the face of fact. Where the condition drains the strength of or demoralizes the people, or involuntarily redirects their goals, confuses their mission or confounds their presence in America, the Houstonian tradition compels them to look in the face of fact. Black America and those sympathetic to its plight are called upon to ascertain and to formulate a direct response to the conditions that cause black America to confine its interests, to lose its strength and to believe that it is futile to hope for a better day.

#### CONCLUSION

In conclusion, one is bound to ask: how do ideas like Houston's find sanctuary in the jurisprudential matrix? It is not an easy entry. Access to the matrix requires study, discussion and an investigation of law and the history of law by scholars who believe that the Houstonian ideas merit preservation. At present, Houstonian scholarship is

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35. Smith, *supra* n. 13 at 244 n. 90; H. Wallon, Jr., *WHEN THE MARCHING STOPPED* 86-121 (1988); N. AMAKER, *CIVIL RIGHTS AND THE REAGAN ADMINISTRATION* 103-137 (1982).

36. *Lift Every Voice and Sing*, written by James Weldon Johnson in 1927 and acclaimed as the Negro National Anthem, attests to the American Negro being true to their national heritage.

underdeveloped, but the principles embodied in Houstonian jurisprudence keep marching on.