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INTRODUCTION:

A TRIBUTE TO JOHN CALMORE'S WORK

CHARLES E. DAYE*

University of North Carolina School of Law Dean, John C. “Jack” Boger, asked me to help organize an appropriate tribute to Professor John Calmore—our colleague and, better yet, our friend. As a signal part of our celebration, we decided to seek contributors for a special edition of the *North Carolina Law Review* focusing on John’s work.¹ I wrote to a select list of national scholars and advocates seeking their participation.² Solicited contributors were informed that the University of North Carolina School of Law was “planning a program to honor and recognize” John Calmore’s work.³ I noted that, “Our goal is simple: we want to support John in the hope that it will help to steel his endurance and sustain his will as he faces and fights serious health challenges”⁴ My letter explained that, “We contemplate a celebration of John’s scholarship, advocacy, teaching, and intellectual leadership. Our interest is as wide as the scope of John’s remarkable work, although we want to emphasize themes of social justice and critical race theory.”⁵ The entreaty continued:

I write to you (and a highly selected few other of John’s esteemed colleagues) to ask you to participate in our celebration by contributing a piece that discusses an aspect of John’s scholarship, his work, his advocacy, his intellectual

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1. Other aspects of our celebration included a reception and a conference devoted to issues John Calmore champions, entitled “One People, One Nation? Housing and Social Justice: The Intersection of Race, Place, and Opportunity.” This event was held on October 12, 2007 in Chapel Hill, North Carolina.

2. Letter from Charles E. Daye, Brandis Professor of Law, UNC School of Law, to friends and colleagues of John Calmore (Feb. 21, 2007) (on file with the North Carolina Law Review).

3. *Id.*

4. *Id.*

5. *Id.*

insights, or his abiding belief that each of us can make a difference.⁶

Responses were immediate and affirmative.

The wonderful pieces collected in the following pages meet the stated goal of discussing “an aspect of John’s scholarship, his work, his advocacy, his intellectual insights, or his abiding belief that each of us *can* make a difference.”⁷ The pieces have eclectic dimensions that reflect characteristics of John’s work. Yet they share the overarching theme that unifies John’s work and exemplifies his vision: we must continue to engage in a rigorous and relentless pursuit of social justice.

All of us associated with this event are enormously grateful to each contributor for making this part of our celebration resoundingly successful.

Prolegomenon: Why Does John Calmore Sing?

For years, in my introductory comments on my first day of meeting a new Torts class, I have advised my students that

In a philosophical sense, a social sense, and a political sense, we study law because law is the framework and structure for the organization of our society. In a normative, even a moral sense, we study law to produce a just society and to do justice.

There are at least two big problems with justice:

- (1) First, justice does not appear the same even to all reasonable people, for it is not a “brooding omnipresence in the sky”⁸ which everyone can see if only they will look up.
- (2) Second, even if justice were a “brooding omnipresence,” all people are not reasonable anyway!

6. *Id.*

7. *Id.* (emphasis added).

8. United States Supreme Court Justice Holmes stated, “The common law is not a brooding omnipresence in the sky but the articulate voice of some sovereign or quasi-sovereign that can be identified . . .” *S. Pac. Co. v. Jensen*, 244 U.S. 205, 222 (1916) (Holmes, J., dissenting). Holmes’s felicitous phrase, “brooding omnipresence,” may have entered into the public domain by frequent citation such that attribution is no longer required. It might be noted that Justice Holmes uttered the term in dissenting from a decision that overturned an award by New York’s Workmen’s Compensation Commission, affirmed in the New York courts, to the dependents of a longshoreman killed on an ocean-going steamship. *See id.* at 209–10.

In our society, justice is a shared aspiration, tempered by self-interest, personal conflict, institutional constraints, our collective resolve, and our understanding, as well as (mis)understanding about ourselves and about each other as individuals and as members of groups.

I have not discussed this particular explication with John directly, but I think his social justice work puts flesh on the bones of my skeletal introduction about justice by situating social justice in its context in which some people are “marginalized, subordinated, and underrepresented”⁹ precisely because of self-interest, personal conflict, institutional constraints, our collective resolve, and our understandings and misunderstandings about each other.

In America, as John has aptly pointed out, “marginalized, subordinated, and underrepresented” people are disproportionately blacks and minorities,¹⁰ both groups of which he is himself a member.¹¹ Therefore, the quest for social justice is not just professional work but a deeply and intensely personal endeavor. John is advertent about the matter: “This teaching and learning—this work—ain’t easy.”¹²

If teaching and learning social justice advocacy “ain’t easy,” *practicing* social justice advocacy, *a fortiori*, must be equally, if not more, difficult. That may be why one can detect both despair and rage in some of John’s work.

Almost bespeaking despair, John noted that, “Throughout African-American history, the quest for affordable, decent, safe, and sanitary housing—for ‘fair housing’—has been a Sisyphean rock”¹³ Whether John meant that the phenomenon applied to him personally as a social justice advocate or to the social condition he sought to remedy, or to both, does not matter. Ceaselessly pushing the social justice rock up a mountain only to be thwarted in the

9. John O. Calmore, “*Chasing The Wind*”: Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY. L.A. L. REV. 1167, 1168 (2004) [hereinafter Calmore, “*Chasing the Wind*”].

10. John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1931 (1999) [hereinafter Calmore, *A Call to Context*].

11. John O. Calmore, *Random Notes of an Integration Warrior*, 81 MINN. L. REV. 1441, 1457 (1997) [hereinafter Calmore, *Random Notes*].

12. Calmore, “*Chasing the Wind*,” *supra* note 9, at 1173.

13. John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-To-The-Future Essay*, 71 N.C. L. REV. 1487, 1489 (1993).

attempt to get it to the top and watching it roll back down is a despair-generating condition.¹⁴

John's work can express a sense of impatience and, arguably, rage.¹⁵ John has confronted concepts that claim to be liberating and has affirmed upon close analysis that implementing these concepts carried forward consequences that marginalized, subordinated, and impoverished underrepresented people. This phenomenon manifestly can induce at least extreme impatience,¹⁶ if not rage.¹⁷

So why does John Calmore sing of social justice?

Reading John's work evokes the poignancy of Countee Cullen's ironic question in his marvelous poem, "Yet Do I Marvel."¹⁸

14. "The gods had condemned Sisyphus to ceaselessly rolling a rock to the top of a mountain, whence the stone would fall back of its own weight. They had thought with some reason that there is no more dreadful punishment than futile and hopeless labor." ALBERT CAMUS, *THE MYTH OF SISYPHUS* 107 (Justin O'Brien trans., Penguin Books 2000) (1942). See generally John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair,"* 143 U. PA. L. REV. 1233 (1995) (describing the inability of the civil rights movement to combat imposed segregation and expendability, and advocating the use of more grass-roots efforts).

15. John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1069–70 (1998) [hereinafter Calmore, *Race/ism Lost and Found*] ("I write, however, with some trepidation, because many will not only dislike the message, but will dislike even more the messenger. There is, however, no euphemistic, polite way to say what must be said about racism. Less offensive terms sacrifice fundamental accuracy. Indirectly approaching the subject of white racism detours us. The racism that was found thirty years ago has been discarded—imagined away or explained away or ruled away. This article finds racism again and assesses its significance in frustrating the ability of fair housing to render a more inclusive and open society." (footnotes omitted)).

16. John O. Calmore, *Airing Dirty Laundry: Disputes Among Privileged Blacks—From Clarence Thomas to "The Law School Five,"* 46 HOW. L.J. 175, 176 (2003) [hereinafter Calmore, *Airing Dirty Laundry*] ("I grow increasingly impatient with those who hold the view that our judiciary, especially the nation's Supreme Court, is an impartial institution that stands independently against the tide of racial politics and ideology.").

17. See, e.g., Calmore, *Race/ism Lost and Found*, *supra* note 15, at 1073 ("*Racism is embedded, while the genius of today's advanced racism is to convince us that it is not embedded.* Racism in today's America is now state-of-the-art. Severing historical origins and legacies, it introduces itself anew and covertly to the breadth of contemporary institutions, culture, and society. This advanced, insidious racism operates so effectively that we seldom distinguish serious racist harms from a variety of other harms that categorically run from 'bad luck' to 'natural catastrophes.' The oppressive features of racism become a misfortune rather than an injustice. As we view racial misfortune that disproportionately impacts colored people, we must 'ask the other question': Where is the racism in this?" (emphasis added) (footnotes omitted)).

18. COUNTTEE CULLEN, *Yet Do I Marvel*, in *COLOR* 3, 3 (1925).

Yet Do I Marvel

I doubt not God is good, well-meaning, kind,
 And did He stoop to quibble could tell why
 The little buried mole continues blind,
 Why flesh that mirrors Him must some day die,
 Make plain the reason tortured Tantalus
 Is baited by the fickle fruit, declare
 If merely brute caprice dooms Sisyphus
 To struggle up a never-ending stair.
 Inscrutable His ways are, and immune
 To catechism by a mind too strewn
 With petty cares to slightly understand
 What awful brain compels His awful hand.
 Yet do I marvel at this curious thing:
*To make a poet black, and bid him sing!*¹⁹

I hope John will think I am correct, at least partially, when I note that the answer to “why John sings” of social justice has been articulated in Maya Angelou’s powerful poem, “Caged Bird.”²⁰

Caged Bird

A free bird leaps on the back of the wind
 and floats downstream till the current ends
 and dips his wing in the orange sun rays and dares to
 claim the sky.

But a bird that stalks down his narrow cage
 can seldom see through his bars of rage
 his wings are clipped and his feet are tied so he opens
 his throat to sing.

The caged bird sings with a fearful trill
 of things unknown but longed for still
 and his tune is heard on the distant hill
for the caged bird sings of freedom.

The free bird thinks of another breeze
 and the trade winds soft through the sighing trees
 and the fat worms waiting on a dawn-bright lawn and
 he names the sky his own.

19. *Id.* (emphasis added).

20. MAYA ANGELOU, *Caged Bird*, in *THE COMPLETE COLLECTED POEMS OF MAYA ANGELOU* 194, 194–95 (1994).

But a caged bird stands on the grave of dreams
his shadow shouts on a nightmare scream
his wings are clipped and his feet are tied so he opens
his throat to sing.

The caged bird sings with a fearful trill
of things unknown but longed for still
and his tune is heard on the distant hill
*for the caged bird sings of freedom.*²¹

John Calmore sings of freedom for marginalized, subordinated, and underrepresented people. This song focuses on blacks and minorities, but at its essence, includes all people. As long as America cages us in racism, we all need to sing of freedom. John has said that, "I describe myself as working toward achieving a more just society."²² But while noting that minorities are disproportionately affected by poverty,²³ his vision does not reject the idea that all Americans need to contribute to social justice solutions.²⁴ Nor does John see individual success of blacks, not even his own, as presaging the ability of all blacks to achieve, or even get close to, a measure of true justice.²⁵ We are all, in America, caged by racism. John would have all people sing with him about social justice, indeed sing of freedom.

The contributors to this edition do just that.

21. *Id.* (emphasis added).

22. Calmore, *Random Notes*, *supra* note 11, at 1457.

23. Calmore, *A Call to Context*, *supra* note 10, at 1931.

24. Calmore, *Random Notes*, *supra* note 11, at 1443 ("I conclude that blacks cannot fall prey to alienation from whites or debilitating fatigue with integration. That is, we must not give up on ourselves nor give up on white people.").

25. Calmore, *Airing Dirty Laundry*, *supra* note 16, at 198–200.