

Legal Education in the Era of Black Lives Matter

Marcus Gadson

This summer, with its protests spurred by George Floyd's death and arguments over Confederate statues, has shown that so many Americans have grown up with different versions of America's story. Many have looked upon what happened to Floyd, Breonna Taylor, Ahmaud Arbery, and Christian Cooper as a revelation. They are increasingly thinking about race differently than they did even a few years ago. In 2015, 71% of Americans believed there had been progress in ending racial discrimination; that figure is 56% now.¹ Five years ago, 55% of Americans thought Blacks and whites had an equal chance to get ahead, but that figure is now 45%.² For some, because of their life experience and backgrounds, our struggle to achieve racial equality has always been center stage. For others, also because of their life experience and backgrounds, such issues have been at the periphery.

I was first conscious of this in fifth grade. That year, my class participated in something called "Night of Notables." We received lists of famous historical figures to portray. We would give presentations about their life as though we had lived it personally and describe their importance. When I got home, my parents immediately noticed an issue with the list: Everybody on it was white. Instead of helping me choose someone, they added Thurgood Marshall to the list and informed me I would play him. They found a judge's robes and gave me books to read about him. I learned not just about his role in *Brown v. Board of Education* and his tenure on the Supreme Court, but about how his punishment for misbehavior as a youth was reading the Constitution³ and about how much danger he faced traveling through a segregated South to represent criminal defendants. My parents probably made the assignment more involved for me than it was for the other students, but they gave me a new hero. And an insight that haunts me still: My classmates and teachers had inherited and were perpetuating an impoverished view of history that left out

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1. Jennifer De Pinto et al., *Americans' Views Shift on Racial Discrimination*, CBS NEWS (June 4, 2020), <https://www.cbsnews.com/news/racial-discrimination-americans-views-shift-cbs-news-poll/>.
2. *Id.*
3. *Justice Thurgood Marshall Profile - Brown v. Board of Education Re-enactment*, U.S. COURTS, <https://www.uscourts.gov/educational-resources/educational-activities/justice-thurgood-marshall-profile-brown-v-board> (last visited July 9, 2020).

crucial information about the Black experience in America and robbed them of the chance to be inspired by Black heroes.

I like to think my performance did give my fellow students and teachers a new perspective on history. About how things looked from the perspective of those like Justice Marshall who had been disfavored, ignored, and oppressed, sometimes all at the same time. For my classmates, hearing stories like his was novel. For me, it was normal. With my parents' encouragement, I grew up reading about Arthur Ashe becoming the first Black man to win Wimbledon and rank No. 1 in the world despite not even being allowed to play on many of Richmond's tennis courts.⁴ I cheered when I read about Jackie Robinson protesting the Army's refusal to enroll Blacks in officer candidate's school and about his standing up to a racist bus driver ordering him to move to the back of the bus.⁵ I swelled with pride when I watched the Tuskegee Airmen perform so well in the '90s TV movie portraying their experience that a racist bomber pilot asked for them to escort him during a critical mission.

What would also become normal would be navigating mostly white spaces as one of the only Black students, aware that I had a unique perspective. It was true when I was the only Black student in a gifted and talented program reading *Roll of Thunder, Hear My Cry* and saw its portrayal of Jim Crow not as a distant, unimaginable concept like my white classmates did, but as an uncomfortable reminder of stories my parents told me at home about their childhoods. I wondered why, in a diverse high school with lots of Black and Latinx students, I was the only Black student to wince in my AP English class as white students said the n-word while reading *The Adventures of Huckleberry Finn* and the only Black student in AP U.S. history to listen while white students speculated about whether slavery was the Civil War's true cause. I was one of a handful of Black students on a bus taking students to Dartmouth's admitted students weekend to hear a white student complain that a push for diversity had kept him from getting into even higher-ranking colleges. Millennials are often thought of as post-racial. Yet we struggle with some of the same racial divisions as previous generations have.⁶ The growing awareness around these issues gives me hope that we will work to overcome them.

In so many ways, my educational journey from an international baccalaureate program to Dartmouth College to Harvard Law has been a charmed one. I have had mentors who saw my potential and pushed me to excel and students who sharpened my thinking. Sometimes, when I strolled Harvard Yard or admired the beautiful architecture on Dartmouth's campus,

4. Jim Hodges, *Ashe Returns to His Home: He Left a Segregated Richmond in 1960 and Later Wrought Change*, L.A. TIMES (Feb. 10, 1993), <https://www.latimes.com/archives/la-xpm-1993-02-10-sp-1256-story.html>.
5. Jules Tygiel, *The Court-Martial of Jackie Robinson* (Sept. 1984), <https://www.americanheritage.com/court-martial-jackie-robinson>.
6. Inda Feldman, *Millennials See Themselves as 'Post-racial.' What Does That Mean?* C.S. MONITOR (Apr. 30, 2014), <https://www.csmonitor.com/USA/2014/0430/Millennials-see-themselves-as-post-racial.-What-does-that-mean>.

I stopped to reflect on how lucky I was to be afforded opportunities that my ancestors could only dream of. And yet, as I reflect upon it, that journey was a lonely one. The loneliness was not always caused by overt hostility. More often, it was the nagging feeling that my performance and my comments reflected not just on me, but on my entire race. It was the occasional well-meaning attempt on the part of classmates to show their affinity for Black people by declaring their love of a particular rapper or professional athlete as if they somehow represented the totality of the Black experience. It was the way students would sometimes express horror at Jim Crow and outrage about racists who supported it, yet never seemed to recognize how segregated their classes, study groups, fraternity and sorority houses, and friend circles were.

Tracking students by ability level has inspired considerable debate in education circles.⁷ But growing up, I could not help noticing that hardly any Black students had been in gifted and talented programs that fed into the advanced placement and international baccalaureate track that sent students to some of the most prestigious universities in the nation. As it happens, that is the track that feeds into legal academia, which I recently joined. When I attended Harvard Law School, I do not recall taking a single professor who had not graduated from a “T-14” school. In fact, the majority attended Harvard or Yale. It is sobering to think that the pipeline sending new professors into the academy may have been set up in elementary school.

Feeling like I was on the outside looking in throughout much of my education was difficult at the time, but it also made me a better person. Kinder, more empathetic, more willing to listen and consider the perspectives of different people. As a professor, it led me to attend a meeting of LGBTQ students to tell them I knew they probably felt isolated, that they belonged, and to encourage them to think of me as an ally cheering for their success. The same kind of thing I wish many of my teachers, professors, or classmates had said to me. It has encouraged me to seek out opportunities to mentor women who must notice skewed demographics of their own—equal numbers of men and women entering law school and unequal numbers who make partner at law firms.⁸ And it has encouraged me to speak up for my Black students⁹ reeling after this summer’s events laid bare how much racial progress needs to happen. I knew they were hurting and scared, because I was, too. The concern

7. *The Resurgence of Ability Grouping and Persistence of Tracking*, BROOKINGS INSTIT. (Mar. 18, 2013), <https://www.brookings.edu/research/the-resurgence-of-ability-grouping-and-persistence-of-tracking/> (“In the 1970s and 1980s, a barrage of studies criticized tracking and ability grouping. Race and class figured prominently in the debate. Grouping students by ability, no matter how it is done, will inevitably separate students by characteristics that are correlated statistically with measures of ability, including race, ethnicity, native language, and class. Critics argued that tracking and ability grouping do not separate students into socioeconomic status-related groups by accident.”).
8. Elizabeth Olson, *‘A Bleak Picture’ for Women Trying to Rise at Law Firms*, N.Y. TIMES (July 24, 2017), <https://www.nytimes.com/2017/07/24/business/dealbook/women-law-firm-partners.html>.
9. Marcus Gadson, *Black Lives Matter* (June 6, 2020), <https://www.marcusalexandergadson.com/Black-lives-matter/>.

was not one of an outsider feeling pity or even outrage about what might happen to someone else, but a fear of what could happen to me.

Ahmaud Arbery could have been me, or one of my Black students. I jog most mornings, usually while listening to a podcast or music. But after his murder, I felt myself hyperaware of every person I passed. I felt even more uneasy whenever I heard a car or person coming up behind me. We do not know when the color of our skin will make someone draw a weapon on us.

Christian Cooper could have been me or one of my Black students. If I had been enjoying a cherished hobby and someone's violation of the rules were keeping me from enjoying it, I would have said something. For asking someone to follow the rules, Cooper was wrongfully accused of breaking the law.¹⁰ We do not know when someone will weaponize the color of our skin against us.

Philando Castile could have been me or one of my Black students. It is safe to say that most citizens would rather not interact with police, especially when being pulled over. But for us, the screaming of police sirens and footsteps of an officer approaching are accompanied by existential questions we should not have to ask: Will I be deemed a dangerous threat the moment the officer sees me? Will I be roughed up or made the victim of excessive force? And of course, before the officer gets to us, have I been singled out unfairly, not because of anything I have done wrong, but because I have the wrong color skin? These fears are not just driven by viral videos, but by our life experience. I remember walking through a park close to home and having a police officer come up to me, tell me there was suspicious activity in the area, and pat me down while I stood there feeling humiliated and angry, wondering if he had been stopping white people and patting them down. I remember being stopped while driving in the early morning and feeling my muscles tense up as I rigidly grabbed the steering wheel. My mounting anger that I had been stopped for doing nothing was matched by fear as I rolled the window down and handed over my license and registration. I could not help glancing over at the officer's gun while he stared at me. He never did explain why he pulled me over and sent me away without so much as a warning. I kept thinking back to the gun the rest of the day. What is perhaps most discomfiting of all is not that something might happen to me, but that something could happen to my son, and that as much as I love him and am willing to sacrifice for him, I cannot ultimately protect him.

The protests over racial disparities in policing and in other areas of American life took place amid the devastating coronavirus pandemic. With foreboding headlines about death counts and infection rates, it is telling that so many people took to the streets. For one thing, they felt that racism is so important an issue that they were willing to risk getting the virus. For another, it illustrated an important truth: Various crises have come and gone

10. Elizabeth Joseph & Eric Levenson, *Attorney for White Woman Who Called Police on Black Birdwatcher Decries 'Cancel Culture,'* CNN (July 7, 2020), <https://www.cnn.com/2020/07/07/us/amy-cooper-central-park/index.html>.

throughout our history, but our need to grapple with racial inequalities has always been with us, and will be with us for the foreseeable future.

Law schools have an important role to play here. Years after I went through my own education feeling alone, Black law students are largely going through the same thing. Although Blacks comprise 13.4% of the broader population, they are only 7.94% of law school students.¹¹ Even more worrisome, Blacks comprise only 4.76% of associates in U.S. law firms.¹² The figure is even worse when it comes to partners; only 1.97% of partners are Black.¹³ Preparing students to succeed in these environments does not just entail helping them master difficult subjects or gain important skills. It means preparing them for the reality that if they choose to strive for employment at certain places, few if any of the lawyers will look like them.

This summer, I engaged in discussions among civil procedure faculty about how to make our subject address race more rigorously. At first glance it is a subject that is ostensibly about race-neutral concepts such as jurisdiction, venue, and the proper standard for motions to dismiss. And yet, even here, there is so much room to help students see the racial implications of what they study. A race discrimination claim might seem “plausible”—the standard to survive a motion to dismiss—to a Black judge who has faced discrimination and implausible to a white judge who has not.¹⁴ Last year, I taught a seminar on how race has shaped the American legal system, and I saw the logical result of not giving Black history its due, which I’d first noticed all the way back in elementary school. Students were about to graduate from law school having never read an interview with a slave to understand how horrible slavery truly was or thought rigorously about whether *Brown* really accomplished its goal of integrating schools. We may have limited ability to change curricula offered during earlier education stages, but it is critical for law schools to see the role the legal system has played in perpetuating racism and to see how it can remedy it.

Eventually, the pandemic will pass, and it will no doubt have changed legal education. But those of us in the academy must not lose sight of how important a subject race is. We must resolve to produce lawyers ready to hold our nation to its ideal of racial equality and think about how we can contribute to that effort. What fills me with hope is that our students want us to do this. Last year, the students in my seminar were enthusiastic, diligent, and eager to be part of the solution to racial inequalities lingering with us. So far, there is a

11. *Law School Enrollment by Race & Ethnicity (2019)*, <https://www.enjuris.com/students/law-school-race-2019.html> (last visited May 27, 2021).

12. *2019 Report on Diversity in U.S. Law Firms*, NATIONAL ASSOCIATION FOR LAW PLACEMENT 1, 16 (Dec. 2019), https://www.nalp.org/uploads/2019_DiversityReport.pdf.

13. *Id.* at 6.

14. See Jill D. Weinberg & Laura Beth Nielsen, *Examining Empathy: Discrimination, Experience, and Judicial Decisionmaking*, 85 S. CAL. L. REV. 313, 343 (2012) (“white and minority judges dispose of race discrimination summary judgment motions at different rates.”).

large waiting list to get into my seminar this year. They are ready to engage on these issues if we give them the chance.