

This book has been in the making for 20 years. It began when I was appointed an Assistant Public Defender in Orange County, North Carolina, with an enormous, unmanageable caseload of indigent people, mostly African Americans. Day after day, I entered courtrooms filled mostly with African American adults and children who were visibly poor. It was inherently unjust, and it troubled me late into the night—on many nights. Although I had been trained in Critical Race Theory in law school by the late renowned law Professor John O. Calmore, I did not understand that the law had been used as a tool of racial control from slavery to the present. In the midst of my search for answers, I found a calling to teach what I had witnessed in the bowels of the criminal justice system. For the next two years, I researched and designed a course on race and the law that examined the role the legal system has played in legitimizing and institutionalizing racism, from slavery to segregation to the modern-day era of mass incarceration. Then I taught the course at the undergraduate level at the University of North Carolina at Chapel Hill and at Campbell Law School in Raleigh. With each year I taught, I found the need to use many supplemental materials to fill the gaps in an existing textbook’s coverage. Indeed, this nation’s discriminatory policies and practices toward African Americans and the resulting counterprotests have never been limited to laws written by the courts, but include local, state, federal, and even private actors using legislative, judicial, administrative, and even extrajudicial methods.

Thus, this book is the product of my two decades as a criminal defense and civil rights litigator at the trial and appellate level—mostly defending poor African American people—and my experience teaching for almost ten years as an Adjunct Professor of Law. Each semester, law students expressed being profoundly affected by the course and said it should be a mandatory requirement, instead of an elective.

In fact, during the tragic week of May 25, 2020, several of my former law students, who are now practicing lawyers, contacted me to thank me for what they had learned. At the time, a nationwide interrogation had ensued after Minneapolis police officer Derek Chauvin pressed his knee into the neck of George Floyd (a 46-year-old Black man, who was handcuffed and lying face down on the ground for almost nine minutes), suffocating Floyd to death while he screamed “I can’t breathe” more than 20 times.

The question “How could this happen in the United States?” loomed while widespread calls for police reform were made by nationwide protests. At a moment when the U.S. public and even the world were searching for answers, my former students seemed to have them. One wrote that she was able to explain the nation’s long history of racism to her mother. Thus, when I was asked to develop my course curriculum into a textbook, I knew it would fill a need, as there are no textbooks that explain the key role the legal system has played in maintaining systemic racism from slavery to segregation to mass incarceration today.

On the surface, George Floyd’s murder seemed to be one about police brutality. At Floyd’s memorial service, the Reverend Al Sharpton eloquently explained the greater significance:

George Floyd’s story has been the story of black folks because ever since 401 years ago, the reason we could never be who we wanted and dreamed to being is you kept your knee on our neck. We were smarter than the underfunded schools you put us in, but you had your knee on our neck. We could run corporations and not hustle in the street, but you had your knee on our neck. We had creative skills, we could do whatever anybody else could do, but we couldn’t get your knee off our neck. What happened to Floyd happens every day in this country, in education, in health services, and in every area of American life. . . .¹

A deeper analysis reveals that George Floyd’s life represents the United States’s ongoing struggle with systemic racism, which exposed Floyd to a myriad of injustices—each of which are examined at great length in this book.

Floyd’s great-great-grandfather, Hillery Thomas Stewart, Sr., was born a slave in North Carolina.² Chapter 2 discusses early U.S. history with a particular emphasis on the laws that established and maintained slavery. Although Stewart had no formal education, by the time he was in his 20s, he had acquired 500 acres of land. However, white farmers targeted him and stole his land using legally questionable methods. This was a prevalent practice from the Civil War until the twentieth century. Floyd’s grandparents worked as sharecroppers on white-owned farms in North Carolina and were also victims of state-sanctioned discrimination and cheated out of the wages they desperately needed to raise their 14 children—including Floyd’s mother Larcenia. By the time George

1. Reverend Al Sharpton Eulogy Transcript at George Floyd’s Memorial Service, June 4, 2020, <https://www.rev.com/blog/transcripts/reverend-al-sharpton-eulogy-transcript-at-george-floyd-memorial-service> (last accessed September 20, 2023).

2. The facts about George Floyd’s life were obtained from the following articles: Toluse Olorunnipa and Griff White, “Born with Two Strikes: How Systemic Racism Shaped George Floyd’s Life and Hobbled His Ambition,” *Washington Post* (October 8, 2020); Laura Meckler, “Looking for His Ticket Out: At Jack Yates High, No. 88 Pinned His Dreams on Sports,” *Washington Post* (October 12, 2020).

Floyd was born in 1973, his family had been sharecroppers for more than a century and had little to show for it. When Floyd was four, his mother, a single mother of three children, hoped to start a new life and moved to Houston in 1977. Without much money, she settled her family in Cuney Homes—the city’s oldest public housing complex, where the median household income was less than \$20,000—and she worked at a neighborhood fast-food restaurant. The public housing complex known as “The Bricks” was located in the Third Ward, a predominantly Black neighborhood plagued by redlining, white flight, underinvestment, and poor public services, especially schools. Chapter 4 examines discrimination in the realm of property and housing by local, state, and federal authorities as well as by private individuals.

The underfunded and underperforming school that Floyd attended, Jack Yates High School, was as segregated as ever despite the ruling of *Brown v. Board of Education*, with a high concentration of poor students and students with needs, as well as a high turnover of teachers and administrators, and left Floyd unprepared for college. Chapter 3 of this book focuses on the many legal battles waged for equal education. In fact, about half the class of Floyd’s senior year took college entrance exams, but almost no one scored at a college-ready level. At the time, in order to graduate from high school, the state of Texas required students to pass a three-part proficiency test. Floyd failed the test three times and did not graduate. But his athletic skills gave him an opportunity to play basketball at a two-year program, at South Florida Community College. He also left that school without a degree and transferred to Texas A&M University-Kingsville, a school known to be a feeder to the National Football League, where he was offered a football scholarship. Yet Floyd could not make the grades or complete the credits to be eligible to play. Floyd never played, and after two years in Kingsville, he left school, again without earning a degree.

Without options, Floyd returned to The Bricks in 1997, where police were an omnipresent force and routinely harassed and arrested residents for seemingly nothing. It did not take long before he was ensnared in the net that the federal government had set for African Americans—the War on Drugs. Floyd was arrested in August 1997 for sale or delivery of less than a gram of cocaine and sentenced to six months in jail. Over the next decade, he was arrested at least eight more times for mostly low-level drug offenses or theft. Although federal data shows that Blacks and whites use drugs at the same rate, Black men are arrested and prosecuted for drug possession and sale at a disproportionately higher rate. The most serious charge Floyd faced was in 2007 for aggravated robbery with a deadly weapon, when he and four others broke into a house looking for drugs and money. After a plea deal, Floyd was sentenced to four years in prison, where he languished. Floyd left prison disheartened and terrified he would be locked up again. Facing discrimination against “convicted felons” in

the labor market, Floyd fled Houston in 2017 for Minneapolis, Minnesota. Floyd's plight is not unique, as Chapter 5 addresses the failed national, state, and local policies of the War on Drugs and how the U.S. Supreme Court has expanded police authority and prosecutorial discretion while limiting judicial discretion, leading to the mass incarceration of African Americans. Thus, George Floyd's story is the story of the masses of Black people who survive in what the Reverend Dr. Martin Luther King, Jr. termed the "The Other America":

Every city in our country has this kind of dualism, this schizophrenia, split at so many parts and so every city ends up being two cities rather than one. There are two Americas. One America is beautiful for situation. In this America, millions of people have the milk of prosperity and the honey of equality flowing before them. This America is the habitat of millions of people who have food and material necessities for their bodies, culture and education for their minds, freedom and human dignity for their spirits. In this America children grow up in the sunlight of opportunity. But there is another America, and this other America has a daily ugliness about it that transforms the buoyancy of hope into the fatigue of despair. In this other America thousands and thousands of people, men in particular, walk the streets and search for jobs that do not exist. In this other America, millions of people are forced to live in vermin-filled depressing housing conditions where they do not have the privilege of having wall-to-wall carpet, but all too often, they end up with wall-to-wall rats and roaches. Almost 40% of the Negro families of America live in substandard housing conditions. In this other America thousands of young people are deprived of an opportunity to get an adequate education. Every year thousands finish high school reading at a seventh, eighth and sometimes ninth grade level. Not because they are dumb, not because they don't have the native intelligence, but because the schools are so inadequate, so overcrowded, so devoid of equality, so segregated if you will, that the best in these minds can never come out. Probably the most critical problem in the other America is the economic problem. There are so many other people in the other America who can never make ends meet because their incomes are far too low if they have incomes, and their jobs are so devoid of quality. And so in this other America, unemployment is a reality and under-employment is a reality.³

In the highly anticipated U.S. Supreme Court affirmative action decision in the summer of 2023, *Students for Fair Admissions, Inc. v. Harvard University and the University of North Carolina*, Justice Ketanji Jackson's dissent, featured in full in the Epilogue, also addressed "The Other America":

3. Reverend Dr. Martin Luther King, Jr., *The Other America*, March 14, 1968, Grosse Pointe Historical Society, <http://gphistorical.org/mlk/index.htm> (last accessed August 28, 2023).

Gulf-sized race-based gaps exist with respect to the health, wealth, and well-being of American citizens. They were created in the distant past, but have indisputably been passed down to the present day through the generations. Every moment these gaps persist is a moment in which this great country falls short of actualizing one of its foundational principles—the “self-evident” truth that all of us are created equal.⁴

Justice Jackson insisted that “[t]he only way out of this morass—for all of us—is to stare at racial disparity unblinkingly, and then do what evidence and experts tell us is required to level the playing field and march forward together, collectively striving to achieve true equality for all Americans.”⁵ This book is about “The Other America.” Its time has come.

A Note on Editorial Choices

- *Scope.* Although U.S. history is filled with volumes on racism toward many racial and ethnic minority groups, this book focuses solely on the legal treatment of African Americans in the United States, with the exception of a brief discussion of the forcible taking of land from the Native Americans at the beginning of Chapter 4. The systems of slavery, Jim Crow segregation and apartheid, and mass incarceration were all designed to specifically oppress Black people. Racial discrimination against African Americans in the areas of education, property and housing, the criminal system, and voting rights have all been founded and fostered by the legal system. African Americans have fought to make the ideals of U.S. democracy a reality. Thus, this book is limited to and dedicated to their arduous struggle to make the United States be true to its highest ideals.
- *Social Sciences.* Law is a social science that draws upon the other social sciences of history, political science, sociology, and psychology, and even in some cases uses mathematical methods such as statistical analysis to establish disparate impact under the Equal Protection Test of the Fourteenth Amendment. In fact, the U.S. Supreme Court recognized the connection between law and history in a 1921 case when it found that “a page of history is worth a volume of logic.” Moreover, the Supreme Court does not render its decisions in a vacuum, sequestered from the current political and social environment. This study of race and law takes an expansive view of the law. This diverges from the traditional casebook, which centers the U.S. Supreme Court as the central architect of U.S. law. Thus, the materials in this book are not limited solely to legal cases but also provide

4. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U. S. ____ (2023), J. Jackson dissent 1 (https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf).

5. *Id.* at 26.

the historical, political, sociological, and psychological climate surrounding cases and laws to provide the reader with context and a thorough understanding. Finally, because I am a litigator and a civil rights movement lawyer, this book has been structured and written to be accessible to the reader. My teaching experience over the past several years demonstrates this to be the most effective method, and it has proven to be very interesting to my students. Where possible, I have conducted extensive research to find the stories of the people in the landmark cases, or people affected by laws or the legal system's failure to act.

- *Race Terminology.* This book opens up the dark and at times torturous legal history of the United States. Thus, in some cases I retained the race language as I found it (e.g., Negro, colored, etc.) to expose the ugly truth. The term *Negro* is not just a race term but is inextricably bound up with discrimination in the United States by law in education, property and housing, and voting rights, as well as by lynchings and the other horrors of Jim Crow. In addition, to describe people of African descent in the United States, I use the term *Black* interchangeably with *African American*. Capitalizing *Black* is meant to describe people and cultures of African origin and to describe a shared history of racism and oppression.
- *Omissions and Additions.* The judicial opinions and materials throughout this book have been edited. Footnotes, citations, internal quotations, and section headings have been deleted in the interest of readability, unless they have some educational value, in which case they have been retained. In some cases, the omissions are indicated by ellipses. Additions or edits are indicated by brackets or in footnotes. All footnotes are numbered consecutively, but where the footnotes are from a case, the original footnote number is identified.
- *Space and Time Limitations.* Like anything in life, writing a textbook poses significant limitations on time and space. Thus, I had to make difficult choices about what to include and what to omit. Due to lack of space, voting rights is examined in the appendix. I welcome comments from readers.

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