The New Frontiers of Civil Rights Litigation

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Carolina Academic Press
Durham, North Carolina

ISBN: 978-1-61163-416-7
LCCN: 2018952158

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

To my family, friends, and, to all
civil rights attorneys, teachers, and activists working hard
to bring equity to all aspects of our society.

Contents

Table of Cases

Preface

The purpose of this book is to provide students with a survey of current and emerging issues in American civil rights litigation. It defines civil rights broadly and incorporates issues related to food justice as well as traditional doctrines addressing discrimination based on race, gender and other identities. As a start, the materials on racial discrimination serve as an anchor. The foundational framework for our civil rights laws is directly related to our racially discriminatory laws. For that reason, the textbook starts with landmark cases and historical developments impacting the social and legal treatment of blacks and other communities of color. Additionally, it asks students to think about what law is, what law is doing, and what it should be.

The coverage, then, expands to the diverse areas of civil rights laws. Throughout, students will learn the contours of each doctrine, the principles that form it and their practical relevance. This begins with a discussion of racial discrimination as the catalyst for civil rights jurisprudence in America. The Civil Rights Act and relevant doctrines of the 14th Amendment, are important to understanding the development of civil rights litigation. Ongoing and emerging issues affecting gay, transgender, women, nonconforming individuals and poor classes are also covered as vibrant parts of civil rights jurisprudence.

To this end, the book is divided into three parts: the first part deals with foundational and historical issues that impact today's jurisprudence. Chapters in this first section examine the road to *Brown* and the struggle for desegregation in school systems nationally. It also discusses pre and post Reconstruction cases and statutes still relevant today.

The second part of this text examines in detail the cases and laws that make up the modern civil rights landscape. As such, it starts with the Civil Rights Act and a close examination of Title VII, Tile IX and Title VI. This section also includes cases that make up the voting rights canon as well as chapters on disability law, language minorities, Section 1989, and gender discrimination.

Finally, the third section delves into a study of emerging issues in the twenty-first century. In these chapters, relevant issues include food rights and the struggle for sustainability as civil rights issues, food justice, gender identity, sexual orientation and same sex marriage, as well as litigation and models for educational equality beyond affirmative action.

To introduce these concepts, we ask students to consider and define what is and should be the role of law. Should law simply reflect the status quo or should it continuously work to serve disadvantaged groups? Depending on the identified role of law, what are the most effective means to achieve these goals? Similarly, each chapter opens by asking students to consider the role and operation of law in the specific doctrines and facts discussed.

Introduction

A. The Role of Law: Logic or Power?

The modern foundations of civil rights were laid in the last decades of the twentieth century. Those last decades ushered in a shift from color centric jurisprudence to the now accepted color blindness. That gargantuan process understandably appropriated jurisprudential energy and resources. Civil rights attorneys and activists remained busy with efforts to dismantle Jim Crow and to implement policies promoting integration. Desegregation, however, turned out to be a difficult task. *See Stout v. Jefferson Cty. Bd. of Educ.*, 250 F. Supp. 3d 1092 (N.D. Ala. May 9, 2017) (finding intentional discrimination, but still allowing the creation of a separate school system); *see also* U.S. Government Accountability Office, K–12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination (May 17, 2016), http://www.gao.gov/assets/680/676745.pdf (finding impoverished schools are concentrated with at least 75% Black or Hispanic children). In time, courts and judges seemed weighed down by it. The move from color consciousness to color blindness was painstaking and took much of the resources of those last decades. Looking back, it is, thus, not surprising that less thought was devoted to crafting a plan for implementing post-de jure desegregation. Much of the last 50 years has been dedicated to remedying and attempting to eradicate formal discrimination. Still, it persists in overt and covert forms.

Think of the shootings of Rodney King, Abner Louima, Michael Brown, and Alton Sterling, just to name a few, and, already, you'll conjure up a picture of some of the ongoing inequities persisting in the United States. *See* Chelsea Matiash & Lily Rothman, *The Beating that Changed America: What Happened to Rodney King 25 Years* Ago, Time (Mar. 3, 2016), http://time.com/4245175/rodney-king-la-riots-anniversary/; Sewell Chan, *The Abner Louima Case, 10 Years Later*, N.Y. Times (Aug. 9, 2007), https://cityroom.blogs.nytimes.com/ 2007/08/09/the-abner-louima-case-10-years-later/; Larry Buchanan et al., *Q&A: What Happened in Ferguson?*, N.Y. Times (Aug. 10, 2015), https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html; Leah Donnella, *Two Days, Two Deaths: The Police Shootings of Alton Sterling and Philando Castile*, NPR (July 7, 2016), https://www.npr.org/sections/codeswitch/2016/07/07/485078670/two-days-two-deaths-the-police-shootings-of-alton-sterling-and-philando-castile. Racial bias, despite anti-discrimination statutes, remains an ongoing ill. Since 2006,

for example, black men have died at the hands of the police at the rate of two a week. *See* Kevin Johnson, Meghan Hoyer & Brad Heath, *Local police involved in 400 killings per year*, USA Today (Aug. 15, 2014), https://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357/ (reviewing FBI report of justifiable homicides for a seven-year period ending in 2012); *see also* Michelle Ye Hee Lee, *The viral claim that a black person is killed by police 'every 28 hours'*, Wash. Post (Dec. 24, 2014), https://www.washingtonpost.com/news/fact-checker/wp/2014/12/24/the-viral-claim-that-a-black-person-is-killed-by-police-every-28-hours/?utm_term=.b4f013560bb6 (citing USA Today's "review of the most recent accounts of justifiable homicide reported to the FBI"). Furthermore, the rate of income inequality is increasing in this country faster than even during the great depression. Additionally, sexual assault cases proliferate, both in higher education, in K-12 settings and in the streets of America, each day, each passing week, revealing a new failure and throwback to gender stereotypes. Recent and ongoing allegations of gender based harassment in virtually all sectors of society bring these realities to the mainstream's consciousness. In the midst of it all, law and courts still struggle to fully grasp the pervasiveness and complexities of these issues.

In 2014, for example, the Department of Education identified at least 50 colleges and universities accused of disregarding sexual assault complaints and of overlooking complaints by victims in contravention of Title IX of the Civil Rights Act. As a result, the Department undertook massive investigation of these schools and of the handling of sexual assault in education. Sadly, this pattern is duplicated in practically every sphere of society. The military, for example, has been under scrutiny for failing to investigate and litigate complaints of sexual abuse, with only 2,892 of the reported 6,172 sexual abuse cases considered for possible action by the Department of Defense. Dep't of Defense, Annual Report on Sexual Assault in the Military, App. B: Statistical Data on Sexual Assault (2016) http://www.sapr.mil/public/docs/reports/FY16_Annual/FY16_SAPRO_Annual_Report.pdf (reporting 14,900 service members experienced some type of sexual assault in 2016). Still more cases of sexual abuse remain unreported due to this hostile climate. In the private sphere, domestic abuse remains one of the leading causes of death for women. *See* Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003–2014,* CDC (July 21, 2017), https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm?s_cid=mm6628a1_ w#suggestedcitation (citing a CDC report finding that one leading cause of death for women is homicide, and nearly half of the victims are killed by current or former intimate partners); *see also* Melissa Jeltsen, *Who Is Killling American Women? Their Husbands And Boyfriends, CDC Confirms.*, Huffington Post (July 21, 2017), https://www.huffingtonpost.com/entry/most-murders-of-american-women-involve-domestic-violence_us_5971fcf6e4b09e5f6cceba87. Similarly, ongoing sexual assault and domestic abuse cases involving the NFL and other athletic contexts are staunch reminders of that reality.

After reading about these reports, you might be asking yourself why the inequities, inherited from past centuries with blatant discriminatory structures, still persist today. That is the right question to ask. Tracing the historical root of specific inequities and interrogating legal doctrines designed to address them are instrumental steps to mastering civil rights law. These steps are also pre-requisites to devising potential solutions to these problems.

Students of the law often feel consternation about the fact that legal rules do not meet their vision of justice; that laws often reveal themselves to be imperfect, and even, that law can cause new problems. While we think of law as a tool for problem solving in helping to create law and order, in the civil and human rights field, there remains constant frustration with the discrepancy between the spirit of justice and the practicality of rulemaking and implementation. *See Gloucester Cty. Sch. Bd. v. G.G.*, 137 S. Ct. 1239 (2017) (remanding the case to the Fourth Circuit for further consideration in light of the guidance document issued by the Department of Education and Department of Justice on Feb. 22, 2017); *Stout v. Jefferson Cty. Bd. of Educ.*, 250 F. Supp. 3d 1092 (N.D. Ala. May 9, 2017) (finding intentional discrimination, but still allowing the creation of a separate school system); *see also* Hiba Hafiz, *How Legal Agreements Can Silence Victims of Workplace Sexual Assault*, The Atlantic (Oct. 18, 2017), https://www.theatlantic.com/business/archive/2017/10/legal-agreements-sexual-assault-ndas/543252/. Why is that? Why is it so difficult for society and legal institutions to reach the ideal of justice espoused, for example, in our Constitution? In other words, what is the nature and role of law? And, how could we work to further meet its promise?

As we go forth into the twenty-first century, the limitations of the civil rights gains of the twentieth century have become a hotly debated issue. The fact is that, despite anti-discrimination laws, inequality rages on. For example, the gender wage gap persists, the American educational system remains de facto segregated, brutality against vulnerable bodies occurs routinely, economic inequalities are higher than in decades prior, and tensions in American society are at a higher rate than in recent memory. *See* Camille Patti, *Hively v. Ivy Tech Community College: Losing the Battle but Winning the War for Title VII Sexual Orientation Discrimination Protection*, 26 Tul. J.L. & Sexuality 133 (2017) (discussing circuit courts' unanimous holdings that Title VII does not prohibit discrimination based on sexual orientation); *see also Barber v. Bryant*, 860 F.3d 345 (5th Cir. 2017) (reversing an injunction on HB1523, and reinstating Mississippi's "Protecting Freedom of Conscience from Government Discrimination Act"); *Gloucester Cty. Sch. Bd. v. G.G.*, 137 S. Ct. 1239 (2017) (remanding the case to the Fourth Circuit for further consideration in light of the guidance document issued by the Department of Education and Department of Justice on Feb. 22, 2017). In addition, the gains of the twentieth century seem to have reached an impasse as the ranks of the marginalized are steadily increasing. *See* Claire Zillman, *Law Firms' Gender Diversity Programs Aren't Keeping Women in the Industry*, Fortune (April 19, 2017), http://fortune.com/2017/04/19/ big-law-firms-women/ (citing an ALM Legal Intelligence report finding that women make

up 30% of lawyers at the nation's 200 largest law firms, and women account for 17% of equity partners and 25% of non-equity partners); Laura Kann, *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015*, U.S. Dept. of Health and Human Servs. & Centers for Disease Control and Prevention (Aug. 12, 2016), https://www.cdc.gov/mmwr/volumes/65/ ss/pdfs/ss6509.pdf (finding 29.4% of LGBTQ students had attempted suicide one or more times in the year preceeding the survey); Ann P. Haas, Philip L. Rodgers & Jody L. Herman, *Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey*, American Foundation for Suicide Prevention & The Williams Institute (Jan. 2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf (reporting that 41% of transgender survey respondents had attempted suicide in their lifetime); NAACP, Criminal Justice Fact Sheet (last visited Nov. 8, 2017), http://www.naacp.org/criminal-justice-fact-sheet/ (reporting that, in 2014, African Americans constituted 34% of the total correctional population and are incarcerated at more than five times the rate of whites). Further, it is becoming more apparent that our laws need to be ameliorated and expanded to address new realities and the interests of those neglected for far too long. Still, what of the civil rights movement that ushered in these twentieth century laws? Why were its efforts and laws not enough to cure past and present problems? More specifically, what could we learn from its invaluable contributions to craft a successful twenty-first century civil rights movement? To answer these questions, it is imperative to investigate the underlying ideals and structures promoted by our legal system.

In this task, consider philosopher Jacques Derrida's description of law formation as inherently external:

> La loi, est la décision d'un autre, extérieur à ce qu'il instaure. Cette décision peut toujours arriver. Elle se présente comme un coup de force, un événement imprévisible, hors-la-loi, irréductible à la pensée de l'être, irracontable. Le droit qui en résulte est incalculable. Il excède, il disloque, il altère. Il n'a pas d'histoire, de genèse, de dérivation possible: c'est la loi de la loi, une loi qu'on ne peut ni approcher, ni représenter, dont on ne peut pas connaître l'origine, et pourtant qui s'impose, qui s'enforce, comme on dit en anglais (*to enforce the law*), dont la légitimité tient à une force interne, performative, mystique, à la fois justifiée et injustifiable.
>
> [Law is the decision of another, external to what it institutes. This decision can always come to fruition. Law presents itself like a blow, an unpredictable event, outside of the law, incapable of being reduced in one's thought, impossible to explain. The right that results is immeasurable. It exceeds, it displaces, it changes. There is no past, no genesis possible. It's law's law, a rule to which one cannot get close, nor represent or know its origin, but which nonetheless imposes itself, as it is said in English (*to enforce the law*),

its legitimacy deriving from an internal force, performance based, mystical, both justified and unjustified.][1]

As Jacques Derrida captures so well, law has two components that often come into conflict: the big ideas motivating it and its practical manifestation. The two can seem quite contradictory. One way to think of it is to imagine law *as simultaneously capturing the essence of justice, the whole structure so to speak, with legislation acting as parts of that whole.* Sometimes, ideas of what things should be are much more perfect than the steps we create to get to that image. So also are law's illustrations of steps created to reach the ideal, the essence of a fair world. Still, when looking at law via legal rules and manifestations, it is sometimes impossible to trace its origins to a big ideal, to a uniform concept of justice. Instead, law with a small "l" often results from political wrangling and backroom compromises. As a result, linking lawmaking, the big "L," to an ideal of justice often seems like a farfetched endeavor. These are the inherent conflicts and contradictions present in the legal system.

For Derrida, then, justice is both unknowable in its ideal form and knowable through processes of deconstruction that lead to the enactment of rules. In that process, though, Derrida sees violence and imposition of hierarchy that comes from the deference to law and enforcement. Visualize your idea of how laws should be enforced. Is the image inextricable from force? Do you see Derrida's criticism play out in your vision? Is it really impossible for law, law with a small "l" or justice with a small "j," to be enforced without force? Is our interaction with law enforcement laden with fears?

Alternatively, take any of the legal changes we ushered in during the twentieth century. The process of racial integration, for instance, involved force and violence by law enforcement and private resisters alike.

Integration is a perfect illustration of Derrida's point. Due to its dual nature, then, law becomes a powerful sovereign which, when unexamined, could run counter to the spirit of justice.

> On ne peut faire la loi, fonder, inaugurer ou justifier le droit que par un coup de force, un acte violent à la fois performatif et interprétatif. C'est une loi de structure: un pouvoir souverain ne se pose qu'en distinguant *lui-même* entre violence légale ou illégale. Sa structure fondamentale est tautologique. Si l'on obéit à ses lois, ce n'est pas parce qu'elles sont justes, mais parce qu'elles sont lois; si l'on y croit, ce n'est pas sur un fondement légal, mais mystique . . . Le pouvoir du souverain tient à la parole: c'est un effet de fable, de fiction. Il lui suffit de s'avancer silencieusement, à pas de loup, ou de se montrer dans son évidence visible, éclatante, dans la toute-puissance de son savoir, pour légitimer la violence.

1. Force de Loi— Le "Fondement Mystique de l'autorité" (Jacques Derrida, 1994) [FDL].

> [Law cannot be created, right cannot be instituted or justified but by a strike of violence, a sort of violent act both performative and interpretative. That is a structural rule: dominating power only asserts itself by making a distinction between legal and illegal violence. It is a tautological structural foundation. If one obeys its rules, it's not because they are just, but because they are the laws; if one believes in them, it is not based on a legal foundation, but of a mystical one . . . Sovereign power is deeply attached to speech: it's a product fantasy and fiction. To legitimize violence, a powerful sovereign is equally contented to, either move silently, stealthily, or, to move ostensibly in all its resplendence, its all knowing power.]

Jim Crow, and its rules and cultural implementation, are vivid illustrations of the danger that law could evolve to be an unexamined sovereign maintained through violence and rigid implementation. Law can be tyrannical and wholly unreasonable in its enforcement. Consequently, just laws require thoughtfulness and work. They don't just happen. The fiction of inferiority underlying Jim Crow laws and practice further crystallizes the importance of constant deconstruction and interrogation in law making. If force and violence are inevitable in law making, it is incumbent on all to re-evaluate relevant laws and their by-products to ensure that they remain closer to the ideal of justice rather than based on contingent and subjugating biases.

Together with that process, then, is the reality that law making and interpretation are often conducted by those already in power. Thus, deconstruction and analysis are not enough. Inclusion and periodic re-evaluation are also necessary.

Not surprisingly, and because of this violent tendency inherent in law, the relationship of law to civil rights has been, at times, a contentious one. In fact, at various times in our history, law has been overtly hostile to civil rights. *See* Defense of Marriage Act, 1 U.S.C. § 7 (1996) (defining marriage as between a husband and wife, but later held unconstitutional by *United States v. Windsor*, 133 S. Ct. 2675 (2013); Public Law 503, 18 U.S.C. § 97a (1942) (permitting Japanese internment camps in the United States during World War II); Fugitive Slave Act of 1850, Ch. 60, 9 Stat. 462 (1850) (requiring escaped slaves to be returned to their owners); *see also* Plessy v. Ferguson, 163 U.S. 537 (1896); *Dred Scott v. Sandford*, 60 U.S. 393 (1857). Still, with all its contradictions, the promise of equity has always resided in the foundation of a progressive legal system structurally and textually (See generally the Bill of Rights, specifically the Due Process Clause of the U.S. Constitution, etc.). The tension creates a complex legacy of repression with a promise of liberty. For this reason, we must constantly take stock, re-evaluate our journey toward our democratic ideals and implement whatever new equity models are needed for evolving times. We are a nation of constant evolution; therein lies our greatest strength and discomfort.

We are at that re-evaluation point again today. The beginning of the twenty-first century marked just fifty years of civil rights reform in America. Though fifty years seem short, an exploration of the landscape reveals clearly that this is the perfect landmark for evaluation. A time to reconsider old strategies and devise new ones.

This type of introspection is a necessary part of progress. Legal reforms, when neglected, risk stagnation and paralysis. Further, key cases in the last 10 years indicate that current civil rights frameworks have reached an impasse. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 137 S. Ct. 2290 (2017); *Gloucester Cty. Sch. Bd. v. G.G.*, 137 S. Ct. 1239 (2017); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); *Shelby Cty. v. Holder*, 133 S. Ct. 2612 (2013); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012). Still, it is one thing to know that methods have lost their luster and efficacy, but it is yet another to create and test new frameworks, to galvanize individuals and groups toward common interests. Those efforts and that task are yet to be concretized in the second phase of the long civil rights movement.

In light of the above discussion about the violence inherent in unchecked law making, consider the following questions: How is enforcement of the existing laws dependent on or comingled with violence, in the materials below? In the face of resistance, how easily did violence rear its head? Think, for example, of efforts to integrate the University of Mississippi with the admission of James Meredith. Think of the standoff between federal law enforcement and protestors resistant to integration. Think also of the role of the state law enforcement, of the Governor of Mississippi, defending the discriminatory state laws of the time. These events presented a classic clash between two entities trying to enforce two opposite laws, both demonstrating that lawmaking can lead to violence when met with resistance. Knowing this, how do we check laws and push them to manifest their most redemptive and transformative potential without devolving into repression? How could we inspire governments to curb their impulse to utilize violence in the name of efficiency? And, how do we, individually, resist modeling violence in our every day life, so we may live up to the ideals of justice that we want states and institutions to emulate?

B. If Law Is Power, Then What?

Using Derrida's concept of law as power and violence, much could be learned from the twentieth century's civil rights models and implementation. Equally as important are their limitations and shortcomings. Consequently, this book is a call for understanding the legacy of the civil rights movement, the deliberate application of these twentieth century seeds, and their import for emerging and current issues. A modern twenty-first century civil rights movement could learn from them and include, as part of its agenda: 1) relentless critical evaluations of laws' underpinnings to denounce and unearth patterns of marginalization; and 2) deliberate incorporation of *Brown*-based coalition building to secure consensus and solidify coalitions across groups. As we face the impasse caused by the limitations of the twentieth century identity-based laws, consider whether this two-prong model might prove more effective today. In so doing, think about current twenty-first century issues.

How could maximizing interests across differences and questioning the law's relationship to power help overcome current impasses?

To answer this question, twenty-first century activism and legal scholarship could benefit from a focus on life and inequities present at the margins of society. Further introspection could also include a strict review of past and existing civil rights cases. In so doing, a twenty-first century vision of the role of law could be extrapolated. In the twenty-first century, the role of law should be to address inequities by taking into account the lived realities of those at the margins of society. That translation and transposition from margin to mainstream is crucial to creating the type of understanding and empathy necessary to bridge the current gaps present in society today. Law and activism, thus, could move beyond social interests to incentive building.

Redefining the role of law as margin identifying would allow justice work to address current issues. As it stands, one of the perpetual complaints of law is its failure to systematically reflect subjugated interests. Rather, for most of its existence, American law has tended to reflect positions of power rather than that of the marginalized. As a consequence, those advocating for the interests of the excluded often feel like they are playing with inadequate tools. As Justice Holmes pointed out:

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.[2]

Thus, tackling legal precepts armed only with jurisprudential doctrines and individual fact patterns only maintains the stagnant status quo.

Lessons and deconstruction of twentieth century civil rights laws deepen understanding of the contributions of this prior movement. For example, the famed scholar, Derrick Bell, affirmed that civil rights lawyers working on desegregation were "serving two masters."[3] By this, Bell meant that the dual goals of integration and educational equality were often at odds with each other during litigation of the desegregation cases. As such, sometimes, the desire to achieve integration might have caused attorneys to evaluate proposed integration models inadequately, instead of making quality education for the plaintiffs the sole priority. Indubitably, it is easier 50 years after *Brown* to see the danger of an exclusive focus on integration. At the time, the emergency and the dire conditions of segregation often blurred the lines. As a result, Bell's observation or discussion of the twentieth century's shortcomings should not be viewed as an indictment of the civil rights attorneys then. Instead, Bell simply reminds us all with these words of the importance of critical analysis at

2. Oliver Wendell Holmes, The Common Law 1 (Boston: Little, Brown, & Co. 1881).

3. Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litogation* 85 Yale L.J., 470–516 (1976).

in every stage of a movement. Critical evaluation is crucial to tweaking and improving models inherited from prior generations. After all, as Frantz Fanon so aptly observed, "each generation must, out of relative obscurity, discover its mission, fulfill it, or betray it." Frantz Fanon, *On National Culture, in* The Wretched of the Earth (trans. Constance Farrington, Penguin: Harmondsworth 36 (1967). What is then our generation's task? How should we fulfill the promise inherited from twentieth century civil rights activists and scholars? To fully grapple with these issues, one must engage constantly with the foundational doctrines and structure of civil rights jurisprudence. This book starts this process by discussing key cases. To start, it examines cases that serve as the cornerstone of our civil rights jurisprudence so that students can understand the substance and methodology of today's litigation landscape. In so doing, it asks students to consider the efficacity of current standards and their effectiveness in promoting identified purposes. For example, our discrimination laws, as students will see here, are based on harm done to others based on race, sex, religion, etc. While these protections provide a good starting point, endorsement of these laws becomes restricted to those who fit these types of identity. What more, these laws constitute such a blueprint that most of activism around civil rights issues tends to follow the identity points. How much more powerful would it be if, instead of more routine single cause and identity movements, more models designed to serve multiple intersecting interests were crafted? What effects could that coalition building and merging of interests have on civil rights movements' lasting success?

Desegregation cases and the regression of twentieth century civil rights gains illustrate, partly, the limitations of the jurisprudence's reliance on singular characteristics like race, gender, religion, etc. *Brown v. Board of Education*, for example, remains often identified in the legal narrative, as a decision beneficial for African Americans, or protecting against racial discrimination generally. Nonetheless, a closer look at *Brown* and its progeny makes clear that its tenets ushered in laws that provided legal protections across racial, gender, ability, and orientation. Furthermore, the grassroots activism leading to *Brown* also demonstrates deep benefits stemming from coalition building across racial groups. Such coalition building at the grassroots level changed the conscience of a nation as well as, eventually, that of the Supreme Court.

As you study the foundational cases and literature, think about an alternative model for advancing the ball in civil rights litigation. Perhaps, this alternative perspective could be two-fold. It could (1) define the purpose of civil rights laws then, now, and in the future, as protecting the marginalized. If, as we discussed above, law tends to organically reflects existing hierarchies, then it is always at risk of being a conduit for marginalization. Thus, all in society have a vested interest in preventing its potential negative effects. This means that there might be a danger of marginalization and fear of marginalization that unites, rather than divides. This realization should lead to the second step, which is: (2) to continuously identify sites in society of unchecked power and marginalization. This should be understood as

an ongoing process. Sites of power shift, develop, and evolve periodically depending on circumstances, context, and resources. Law tends to reflect these shifts. The result could be a sort of unified vigilance, a common awareness of issues that build bridges, causing an ongoing critical evaluation of law.

What about you? What would you suggest as a solution or methodology to prevent the type of destruction that oppressive legal structures can wreak on individuals' civil rights? Do you agree that law is inherently based on power and opposed to civil rights, when not deconstructed and checked? What model might you propose to address its limitations?