FROM PAGE TO PRACTICE

CEDRIC MERLIN POWELL*

I am honored to be here with my fellow alums and all of the members of the *N.Y.U. Review of Law & Social Change*. It is the perfect time to reflect on the theme of this evening's celebratory panel—From Page to Practice. As lawyers, legislators, policy-makers, and academics, this theme resonates with us because it is common to all of our work. This commonality is found on the page where we grapple with theories, doctrines, and rules to understand the societal issues that we seek to address. The page is where this process begins, where we look at everything from judicial decisions that explain and critically analyze pre-existing norms to scholarship that is written to specifically resolve contradictions or doctrinal gaps in the law. My reference to the page is expansive because I want to emphasize the interdisciplinary nature of the page—how the ideas and concepts embodied on the page can be transformed in practice. Our primary objective should be to move from the theoretical to the practical implications of implementing ideas from page to practice. This is not a simple task.

I have always been involved, on some level, with social justice issues. Before I arrived at N.Y.U., I spent my college years at Oberlin College, a very progressive institution in the liberal tradition. So, naturally, I was attracted to the institutional mission of N.Y.U.: a private university in the public service.

My own experience on the *Review of Law & Social Change* had a great impact on my choice to become an academic lawyer: I learned about the dynamics of collegiality, collaboration, and editing, as well as many other practical skills. I also learned the importance of the *page*. I learned that ideas are powerful and that they have tremendous value when you commit them to paper.

My approach has always been to critique and challenge existing systems and how they operate: Do they perpetuate subordination, subjugation, and discrimination? Are there ways in which we can constructively address how these systems reinforce the present day effects

* Professor, University of Louisville, Brandeis School of Law. B.A., Oberlin College; J.D., New York University School of Law. Managing Editor, *N.Y.U. Review of Law & Social Change* (1986-87). I would like to thank Anjali Bhargava, Co-Colloquium Editor, for inviting me to participate, and Katherine Greenberg, Editor-in-Chief, and Alexa Rosenbloom, Senior Articles Editor, for their insightful editorial suggestions. Thank you to all of the members of the *N.Y.U. Review of Law & Social Change* editorial board and staff.

of past discrimination?

As a law professor, my approach has been to critically analyze history and how it provides a narrative for subordination—how it rationalizes oppression by employing neutral rhetoric. For example, in my *Race and the Law* class we have been drawing on analytical and doctrinal parallels between slavery, the cyclical oppression of American Indians, and the conquest-oriented oppression of Latino/as. Many of my students have not been faced so directly with a complete history of race in the United States. Exposing them to the full history is important because it sharpens their perspective, and it will aid them in moving from page to practice. With a broader critical perspective, students will approach issues of social change with flexibility and creativity. Students, drawing upon a full historical understanding of race in the United States, will be able to contextualize and analyze problems without defaulting to the comfortable allure of neutrality.[1] They will move from page to practice by understanding the complexities of race and embracing progressive solutions that will move us toward true inclusion.[2]

For example, lower court decisions and scholarship pertaining to civil rights and Critical Race Theory have contributed to advancements in litigation, legislation, and policy. The text that I use in my *Race and the Law* class has example after example of how an interdisciplinary, progressive, and innovative approach to the law has broken down entrenched societal discrimination.[3]

The school desegregation cases are a paradigmatic example of the central meaning of from page to practice. Theories on the page that challenged the race-based caste system of twentieth century America ultimately became the core principles of our polity. Ideas from the page moved into practice. Everyone knows about *Brown v. Board of Education*[4] and its impact on American society—how it overruled the racist "separate but equal" mandate of *Plessy v. Ferguson*.[5] Yet the *Brown* decision is taught in isolation—*Plessy* is followed by *Brown* with no decisions in between—so it appears as if society finally "woke up" in 1954

1. *See generally* Cedric Merlin Powell, *Rhetorical Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory*, 56 CLEV. ST. L. REV. 823 (2008) (arguing that we must dismantle colorblind constitutionalism and instead adopt a rhetoric of inclusion and substantive equality).

2. For a comprehensive account of the civil rights and Black Power movements and how they shaped and made possible Barack Obama's ascendancy, see PENIEL E. JOSEPH, DARK DAYS, BRIGHT NIGHTS: FROM BLACK POWER TO BARACK OBAMA (2010).

3. JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, JEAN STEFANCIC & STEPHANIE M. WILDMAN, RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2d ed. 2007).

4. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

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

and decided to do the right thing. This was certainly not the case. There was a long and winding struggle to get to *Brown*.[6] This struggle was fueled by ideas on the *page*. For example, in *Mendez v. Westminster School District of Orange County*, the Ninth Circuit Court of Appeals declared that several of California's school boards had violated the Equal Protection Clause in establishing separate schools for Mexican-Americans and affirmed a grant of injunctive relief restraining further discrimination against pupils of Mexican descent.[7] This was a landmark decision because it focused on the inherent evil of *state-sponsored segregation* almost a decade before *Brown*.

We can see that the *page* and *practice* are intertwined.[8] If our ideas mean anything, they should be put into practice. The page can be transformative—the very foundation for *Brown* and its progeny was constructed in decisions like *Mendez*. The ideas on the page in *Mendez*—that state-sponsored segregation was unconstitutional—would later become the doctrinal linchpin of *Brown*. Moving from page (segregated schools are unconstitutional) to practice (fully integrated schools) has proven to be a struggle that has lasted over fifty years.[9] That journey continues today. It is our obligation to ensure that substantive ideas are disseminated in the public sphere. It is here that the move from page to practice can be transformative. Indeed, there is a powerful resonance when ideas from the page are embraced in practice.[10]

I think that we do an effective job of disseminating our scholarship within the academy. However, I think sometimes we do a less effective job of disseminating scholarship to the practicing bar. I think that the *Review*

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6. CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED (2004) (chronicling the work of the lawyers who started the legal fight for racial integration decades before the *Brown* decision, as well as the obstacles they faced and overcame).

7. Mendez v. Westminster Sch. Dist. of Orange County, 161 F.2d 774 (9th Cir. 1947), *aff'g* 64 F. Supp. 544 (S.D. Cal. 1946). "The *Mendez* decision apparently was the first decision to explicitly reject the reasoning of *Plessy v. Ferguson*." PEREA, DELGADO, HARRIS, STEFANCIC & WILDMAN, *supra* note 3, at 754.

8. There were other decisions preceding *Brown* that also moved from the page (or the theory challenging racial subordination) to practice (a constitutional mandate to eradicate systemic segregation). *See, e.g.*, Sweatt v. Painter, 339 U.S. 629 (1950) (holding segregated and vastly unequal facilities and resources in a state university's law school program unconstitutional); McLaurin v. Okla. State Regents, 339 U.S. 637 (1950) (holding segregated facilities in a state university's graduate school education program unconstitutional).

9. *See* Cedric Merlin Powell, *Schools, Rhetorical Neutrality, and the Failure of the Colorblind Equal Protection Clause*, 10 RUTGERS RACE & L. REV. 362 (2008) (detailing the continuing struggle for school desegregation).

10. *See* Johnson v. Bredsen, 130 S. Ct. 541, 542 (2009) (Stevens, J., dissenting) (arguing that "state-caused delay in state-sponsored killing can be unacceptably cruel" (citing Jeremy Root, *Cruel and Unusual Punishment: A Reconsideration of the Lackey Claim*, 27 N.Y.U. REV. L. & SOC. CHANGE 281, 312–13 (2002))).

of Law & Social Change is a natural bridge over the gap between legal scholars and civil rights practitioners. Through symposia, colloquia, and panel discussions like this, we can effectively bridge that gap.

It is also up to us—legal academics, practitioners, policy-makers, and government officials—to come together as often as possible in other contexts that complement the academic environment. There should be a true dialogue—From Page to Practice—to deepen our knowledge of our communities and the underlying problems that plague these communities.

In my own work, I draw on journal articles from a wide range of sources. I try to get a sense of the issue I am addressing from a variety of perspectives. One of the first journals I check is the *Review of Law & Social Change*. I know that the work will be comprehensive, provocative, and relevant. I think the legal scholarship produced in journals like the *Review of Law & Social Change* is particularly important because it broadens the critical perspectives of our students and the practicing bar. Our students should be able to think critically with a flexibility that is enhanced by exposure to a variety of ideas rather than a singular viewpoint or ideological orientation.

Thematically, from page to practice encompasses everything that we do as scholars, policy-makers, and activists. Drawing upon our commitment to social justice, developing a critical approach through the unpacking of ideas on the page, and moving from page to practice, we know that ideas can truly change our world for the better.

We must be actively involved in the pursuit of critical solutions. The scholarship of the *Review of Law & Social Change* does just that—it promotes positive change through an interdisciplinary approach to the law. The *Review* is truly a bridge from page to practice because the ideas that come alive on its pages have blossomed into creative solutions that have been put into practice. I look forward to the fiftieth anniversary celebration and all of the progress that we will have made in the ensuing decade.