

February 2012

Remarks of Michelle Adams

Michelle Adams

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Adams, Michelle (2004) "Remarks of Michelle Adams," *St. John's Law Review*. Vol. 78 : No. 2 , Article 7.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol78/iss2/7>

This Symposium is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

REMARKS OF MICHELLE ADAMS†

I would like to thank the organizers of this conference for inviting me to speak. I think it is incredibly important and timely to be speaking about *Brown v. Board of Education*¹ and about where we are and where we are going. While the question of achieving diversity in the classroom in light of *Brown's* Fiftieth Anniversary is a broad topic, I would like to touch on what I think *Brown* said about diversity, and then, to link that to the recent Supreme Court decision in *Grutter v. Bollinger*² and its understanding of diversity. Ultimately, I want to suggest that there is a direct link between the two cases and that *Grutter* can be seen, arguably, as this generation's *Brown*, because it provides official recognition of the Court's shift in emphasis from desegregation in kindergarten through twelfth grade to the possibilities for racial diversity and integration in higher education.

Brown held that segregation of minority children in public schools, even under conditions equal to those in schools attended by white children, deprives them of equal educational opportunities. The challenge of *Brown* was to create a solution to the incredibly divisive issue of state-mandated segregation in public schools. The Supreme Court responded to that challenge by elevating racial integration to a constitutional ideal.

In its most basic form, *Brown* can be seen as providing minority group members with access to white-dominated institutions such as Southern public schools. According to this view, *Brown's* desegregation mandate arose from the understanding that the only way to undo segregation's myriad of harms was to disestablish the architecture of subordination that had defined that system. Equalizing facilities at black schools would not satisfy the demands of equal protection for an important reason: Even if the facilities at the black public

† Professor of Law, Seton Hall Law School. B.A., Brown University; J.D., City University of New York; LL.M, Harvard Law School.

¹ 347 U.S. 483 (1954).

² 539 U.S. 306, 123 S. Ct. 2325 (2003).

schools were equal to those of the white schools, black children would still be kept at a significant and continuing disadvantage because of their lack of access to the power structure.

This vision of integration was necessitated by the idea of injecting African-Americans into the structures of American power and was viewed as the remedy for the continuing and systematic lack of access that defined the system of racial segregation in public schools. Thus, *Brown* stood for the proposition that integration was the appropriate remedy for the victims of state-mandated segregation. From this perspective, the victims of the segregated system were the true focus. Now, of course, as many participants in this Symposium have already discussed, the implementation of that proposed remedy was the truly difficult problem. In *Brown*, the Supreme Court declared a general remedial mandate, but the burden of implementing it was left to the district courts.

In *Brown*, the Court recognized that integration had a significant and independent value outside of opportunities created for minority group members. Integration benefited society generally given the intimate relationship among education, democracy, and citizenship. The *Brown* Court's ruling hinged on the significance of education in American public life, thus the Court's statement that education was "perhaps the most important function of state and local governments."³ The Court reasoned that education was the foundation of good citizenship, enabled the enhancement of stable values, and provided children with a foundation for professional study in the future, and thus, it had to be provided to all on equal terms. The Court also emphasized the relationship between access to education and more positive social outcomes, such as service in the armed forces and the ability to undertake other kinds of public responsibilities. Thus, the Court suggested, requiring that all children receive an equal educational opportunity transcends the specific needs of black children and benefits society in general.

Brown contained the great promise of integration, that by eliminating segregation, the architecture of white subordination would crumble, thereby benefiting black Americans. At the same time, all Americans, through enhanced intergroup and

³ *Brown*, 347 U.S. at 493.

interpersonal contact, would become more fully equipped to meet the challenges of a complex and ever-changing modern society.

However, an analysis of the *Brown* implementation cases reveals that the Supreme Court has never been able to deliver on *Brown's* promise. *Milliken v. Bradley*,⁴ *Board of Education of Oklahoma City Public Schools v. Dowell*,⁵ *Freeman v. Pitts*,⁶ and *Missouri v. Jenkins*⁷ all suggest that the Supreme Court has essentially withdrawn or will withdraw from the continuing and extraordinarily difficult problem of desegregating the public schools on the kindergarten through twelfth grade levels. As a result, school segregation is on the rise. Therefore, if one of the questions of this Symposium is "Have we achieved *Brown's* goals?," my response would be that we still have a very long way to go, at least in the kindergarten through twelfth grade levels. To the extent that *Brown* survives today, it does so not because of any firm and incontrovertible mandate that secondary schools must be desegregated, but because of the idea of racial integration that it championed.

It is the very same idea of racial integration that *Brown* championed that the Supreme Court recently reaffirmed in *Grutter v. Bollinger*.⁸ Where *Brown* provided the bare outlines of the importance of racial integration, *Grutter* is an explication of this reasoning in twenty-first century America, shifting the idea of racial diversity or integration to higher education. In *Grutter*, the Supreme Court ruled that the University of Michigan Law School's affirmative action plan, which used race as a factor in order to have a class comprised of a critical mass of underrepresented minority students, was consistent with the Equal Protection Clause of the Fourteenth Amendment. More specifically, the Court ruled that this desire to achieve student body diversity, as opposed to simple racial balance, was important enough to constitute a compelling interest in order that the admissions plan survive strict scrutiny.

Consequently, the Court's holding raises the issue of "What is so compelling about student body diversity?" The short answer is that the Court identified this interest as compelling

⁴ 418 U.S. 717 (1974).

⁵ 498 U.S. 237 (1991).

⁶ 503 U.S. 467 (1992).

⁷ 515 U.S. 70 (1995).

⁸ 123 S. Ct. 2325, 2347 (2003).

because of the importance of the promise of racial integration that the Court had identified fifty years earlier in *Brown*. Again, in *Grutter*, we see a fuller articulation of that vision, and I think that in order to get more specific about that vision, it is necessary to break it down into three component parts consisting of three values emanating from racial diversity.

The first benefit of racial diversity that the Court discussed related to the educational experience itself. The law school believed that attaining a critical mass, or a meaningful number of minority students, was necessary to impede feelings of isolation on the part of minority students, thereby enhancing an interchange of ideas both inside and outside of the classroom. From this perspective, racial diversity promoted better learning outcomes not because minority students speak with one voice or because they hold the same views, but because "the unique experience of being a racial minority in a society" likely affects one's views, and the presence of a wide variety of views was critical to the educational experience.⁹

The second benefit of the Court's decision was cross-racial understanding. The Court affirmed the idea of the contact hypothesis, the perspective that we advance the larger societal goal of breaking down stereotypes when we enable students to better understand each other in the educational environment. From this perspective, racial integration, particularly in the classroom, contributes to a world where people can begin to see each other as individuals and learn to appreciate those individuals as members of unique groups that have specific histories, cultures, and attributes.

The third benefit of racial diversity advanced by the Court was solidly utilitarian. There is a compelling interest in obtaining a critical mass of underrepresented minority students in law schools because our society, our military, and our economy in the global marketplace demand students who are prepared to work in diverse settings. Through this understanding, diversity or racial integration was seen as a vehicle designed to promote societal goals consistent with the vision of diversity coming out of *Brown v. Board of Education*. At the same time, the Court noted that educational institutions, and in particular law schools, have to be racially diverse because they shape and

⁹ *Id.* at 2341.

develop future leaders who would lack legitimacy in the eyes of the public if they didn't reflect it. I believe *Grutter v. Bollinger* is a stunning reaffirmation of the importance of racial diversity in the classroom, very much linked to the core of *Brown*, which envisioned a world that could be enhanced by full participation of all of its members.

In affirming the law school's desire to achieve student body diversity so that it could provide a superior academic experience for all students, and against the background belief that racial diversity enhances economic competitiveness and military readiness, I think that *Grutter* affirmed the importance of integration in our society, first articulated in *Brown*. However, I think it is important to remember exactly how the Court did that. I believe it did so from the perspective that integration and racial diversity enhance the lives of Americans in general, not because they enhance the lives of minority group members. As a result, the Court upheld Michigan's desire to obtain a critical mass of underrepresented minority students not because of the presence of the continuing effects of past discriminatory conduct and the resulting inequalities, but because participation by racial and ethnic minorities in the civic life of our Nation is essential if the dream of one nation indivisible is to be realized. Accordingly, I think that *Grutter* is a triumph of the utilitarian notion of racial integration.

Grutter suggests reason for optimism about the ability to craft an argument stating that racial diversity and integration are absolutely imperative to society's process of becoming one nation rather than an unstable mass of competing groups. If we seek a leadership class with legitimacy in the eyes of our citizenry and hope to be competitive in the twenty-first century, I think that this is the kind of argument that will carry the day in the implementation of the ideas set forth in the *Grutter* case. From that perspective, we might then be able to critique the difference between our embrace of diversity in the context of higher education and our retreat from integration on the kindergarten through twelfth grade levels.

