



## UC Hastings Law

Dear UC Hastings Community,

I don't know how this ends. But I do know that we cannot go silently into the night.

Since the horrific and unjustifiable death of George Floyd, I have picked up my pen several times to write to our UC Hastings family. I have seen others provide words of comfort and write movingly about his senseless death, a terrible instance of a horrible pattern in American society. About George, his cousin Tera Brown said, "He was everyone's everything." Michelle Obama wrote more generally, "I'm exhausted by a heartbreak that never seems to stop. Right now, it's George, Breonna, and Ahmaud. Before that it was Eric, Sandra, and Michael. It just goes on, and on, and on."

But as I considered my own experiences and my place in the world, I found I had no special perspective to provide and no special solace to offer. Simply put, American society has failed Black Americans.

I do not understand what it means to suffer the indignities, the dangers, and the pain of racism. I am White and have not suffered the large or small realities of racism.

But I have tried to understand racism academically. In graduate school and since, I have studied the psychology of the human tendency toward tribalism. We naturally—biologically—divide the world into us and them. Race, nationality, political party, ethnicity, favorite sports teams, and so forth, are ways for us to identify ourselves and others.

While dividing the world into "us" and "them" is hard-wired, racism is not. Race is simply a construct that serves us/them thinking. It is our environment, the society—societies—that surround us and inform the way we divide the world into tribes; it is our environment that tells us who is on our side and who is not. And the notion that some Americans believe skin color dictates who is on our side and who is not is abhorrent.

This is where the current state of our union comes in and, as a dean of a law school, I have something to add.

It is tragically true that George Floyd, Ahmaud Arbery, Michael Brown, Trayvon Martin, Sandra Bland, Philando Castile, Tamir Rice, Jordan Davis, Atatiana Jefferson, and countless others were victims of a deep and abiding prejudice in American society. It is also tragically true that people of color have reason to believe that an increased police presence doesn't always make our communities safer. But our constitutional democracy had appeared suited, as Martin Luther King believed, to bend the arc of the moral universe toward justice. Sadly, we are at a moment where it appears the arc has flattened, or worse.

Throughout my thirty years of teaching, I have conveyed to every one of my constitutional law classes the same lesson: The survival of our constitutional democracy depends on those whom we—We the People—entrust to safeguard our Republic.

Let's face it, we are a nation of "thems." What has held us together for over 230 years is the singular idea of the United States of America. This has always been a work in progress, and too many have been left out of this vision. But it was always a stated aspiration. It was our national narrative.

It now feels as if we have turned away from the ideal of union and divided into a nation of tribes. We are in a moment of national crisis. The death toll from the COVID-19 pandemic exceeds 100,000—affecting our communities of color disproportionately—the economy is in free fall, and our cities are burning. As a country, we have faced many existential challenges throughout history and, though not unscathed, survived them. Although President Abraham Lincoln faced a crisis of greater proportions, his statement to Congress in December 1862 is especially relevant today:

We can succeed only by concert. It is not "can *any* of us *imagine* better?" but, "can we *all* do better?" The dogmas of the quiet past, are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise—with the occasion. As our case is new, so we must think anew, and act anew. We must disenthrall ourselves, and then we shall save our country.

I have no solution to offer to this crisis. Its enormity instills a sense of helplessness. The Talmud, however, offers a message for managing the immensity of the situation:

Do not be daunted by the enormity of the world's grief. Do justly now, love mercy now, walk humbly now. You are not obligated to complete the work, but neither are you free to abandon it.

This—the state of our union—is on us. We are not free to abandon it. As law students and lawyers, we are guardians of a system that should unite us in a common vision of civil society. None of us had our knee on the neck of George Floyd; but each of us is responsible for the society that allowed this to happen. This is the price of citizenship.

I recognize that many members of our Hastings community, especially our faculty, staff, and students of color, are profoundly impacted by the events of the day. But I hope and expect that

we—together—will be an “us” that supports one another, values one another, and continues to come together especially in times of despair. If you would benefit from emotional health services, please seek them out (for [employees](#) and for [students](#)).

I wish you all safety and good health.

Best regards,

David

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