
A REASONABLE AND WELL-REASONED TEACHING TOOL IN UNREASONABLE TIMES

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Devon Carbado's most recent book, *Unreasonable: Black Lives, Police Power, and the Fourth Amendment*, is a must-read for anyone studying or concerned with criminal procedure or policing. Unlike some of Professor Carbado's other work, the brilliance of this book is not necessarily new conceptualizations or theorizations—for which he is well known—but rather centers on accessible pedagogy. If you have studied race and policing, you are not likely to find a new case, study, or reference to scholarship in the book. But, you are going to understand anti-Black racism, policing, the Fourth Amendment, and their intersections better than you did before. You will also benefit from the key sources being skillfully assembled and connected. If you are new to race and policing, you will get up to speed thoroughly and quickly through an easy read—which is no easy feat when writing about complex constitutional law and sensitive issues of structural racism for a general audience who may have a diversity of ideological leanings. This book is an approachable, engaging, one-stop read for the subject.

The pedagogical utility of this book is manifold and includes providing an unmatched overview of the substantive law of search and seizure as it relates to policing. Equally, if not more, importantly it teaches the reader how to identify and understand the following issues: structural racism, which is the way the law works to maintain traditional racial power structures; racial privilege under the law; and colorblindness. The book also teaches readers how to conduct a more fair and balanced analysis of the law by considering impact on racially subordinated populations. Further, the book invites the reader to not only know what the law is but to actively envision more equitable legal approaches and policing practices.

Unreasonable provides a clear explanation of Fourth Amendment search and seizure doctrine in the law enforcement context. Professor Carbado covers the constitutional and racial implications of pedestrian checks, traffic stops, stop and frisk, stop and strip, arrest, no-knock warrants, border entry, and use of deadly force. In doing so, he persuasively demonstrates how what are supposed to be the rights of the people under the Constitution, have instead become the rights of police through Supreme Court jurisprudence. Carbado's analysis of the Fourth Amendment has tremendous academic and legal practice value, but it also informs lay readers of their rights—or, more troubling, their lack of rights. Carbado's examples of vehicle code violations (such as failing to use turn signal

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far enough in advance or driving too slowly) and low-level offenses (such as jaywalking or riding bicycle on the sidewalk)—many of which are every drive and everyday events—can lead to being policed and criminalized are eye opening.

What *Unreasonable* particularly opens our eyes to is the existence of structural racism. Professor Carbado encourages us to not get stuck on individuals—good cop v. bad cop—and instead think about the systemic empowerment of the police through the law. He describes a web of power—qualified immunity, indemnification, police standards shaping constitutional standards (rather than the reverse), and broad unfettered police discretion—which work together to subordinate Black people in the United States. He speaks to a vicious judicial cycle where courts only narrowly answer the “clearly established” prong of the qualified immunity question and fail to reach whether the underlying behavior is constitutional. This protects police officers from liability for future egregious acts of violence on the people they are charged to protect.

If any of this comes as a surprise to you, then you can thank your racial privilege. Carbado gets personal and shares his interactions with police and how becoming a Black American occurs through dehumanizing, traumatizing, humiliating, and life-threatening encounters with law enforcement. Those of us who have not had “The Talk”—on how to survive police—with our parents or children need to learn about the risks that Black Americans must take when they leave their houses each day. Carbado handles these revelations adeptly, speaking to racially privileged audiences and those who might be resistant to such racialized reality with compassion and without judgement. He is prepared for skepticism and responds by facilitating critical thinking and active learning, through hypotheticals and inviting the reader to argue from multiple perspectives.

In addition to asking the reader to argue for the state and the accused, Professor Carbado tasks readers with arguing on behalf of Black Americans. Through this exercise he challenges the notion of race neutrality in law and explores colorblindness as a constitutional technique which facilitates and obfuscates racism. A central example here is the myth of consent and voluntariness when subject to “non-custodial” questions and searches by police. Reasonable Black people often do not feel free to decline or walk away considering rampant police brutality. Carbado also shows the numerous ways where racially-motivated intrusion by the police is allowed and even incentivized because the police conduct is not considered to be a seizure—although it is certainly would be experienced that way by many, if not most, people of color.

Unreasonable does not stop at critique. Rather, it encourages the readers to imagine a path forward by providing an antiracist re-write of *Whren v. United States*. The famous (or infamous) unanimous Supreme Court decision which codified driving while black as criminalized conduct. This undertaking encourages students—and by Chapter 7 we have all willingly become students

of Professor Carbado—to imagine more equitable public safety and constitutional regimes.

Recently the American Bar Association, imposed a new accreditation standard for law schools requiring teaching about racism, bias, and cross-cultural competency: ABA Standard 303(c). For anyone teaching Criminal Procedure or Criminal Law and wanting or needing to incorporate the study of racism, Professor Carbado has done the work for you. Similarly, if you are a student, attorney, or just someone interested in Criminal Law, Criminal Procedure, or policing, and want to know how to do a rigorous racial analysis, this book will teach you how. As the United States experiences a backlash from the 2020 racial reckoning with policing, *Unreasonable: Black Lives, Police Power, and the Fourth Amendment* recenters and re-energizes the pursuit of racial justice and safety for all Americans.