

Podcast Transcript:

Race and Regulation Podcast

Presented by the Penn Program on Regulation

Episode 2: Why Are there So Few Black Financial Regulators? With Chris Brummer

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Music: Joy Ike's "The Fall Song"

Chris Brummer: Rules are designed with assumptions made about the people they are intended to protect or support. And if you don't have the input of those people, rules can be less effective and could well end up undermining, as opposed to improving, their welfare.

Cary Coglianesse: That's Chris Brummer, the Agnes N. Williams Research Professor at Georgetown University, taken from a lecture at the University of Pennsylvania Law School organized by the Penn Program on Regulation. I'm Cary Coglianesse, the director of the Penn Program on Regulation and a professor at the University of Pennsylvania Law School. Welcome to our podcast, *Race and Regulation*. In this series, we are talking about the most fundamental responsibility of every society: ensuring equal justice, and dignity and respect, to all people.

We're focused in particular on two key questions: How does law and regulation create or reinforce structural racism in society? And how might law and regulation advance the cause of racial equity? Advancing racial justice calls for all of us to understand better the racial dimensions of regulatory systems and institutions.

We're glad you can join us as we hear from Professor Chris Brummer, one of the nation's most creative and knowledgeable scholars in the field of financial regulation. His extensive scholarly work transcends the boundaries of academic disciplines, focusing on issues of financial regulation and technology and global finance. In the work he shares with us today, Professor Brummer looks at the lack of racial diversity in the leadership of financial regulators.

Music: Joy Ike's "Time"

In the fall of 2020, Professor Brummer released a widely cited Brookings [working paper](#) that raised a disconcerting question: Where are the Black regulatory leaders?

In his research, Professor Brummer looked at eight major federal financial regulatory agencies — from older agencies, such as the Federal Reserve and the Securities and Exchange Commission, to newer ones, such as the Commodity Futures Trading Commission and the National Credit Union Administration. He found that, out of more than 300 heads of federal financial regulatory bodies appointed by presidents since the creation of the Federal Reserve in 1913 through to the summer of 2020, only 10 of these agency leaders have been Black. That's right. Just 10. Professor Brummer notes that this amounts to one African American appointed to head a federal financial regulator every 10 years. Overall, it is less than three percent of all presidentially appointed agency heads. By comparison, over this same time period, African Americans made up about four times as large a percentage of the overall U.S. population. This stark disparity raises troubling implications for the nation's regulatory agencies and their policies. As Professor Brummer explains, financial regulation affects everyone.

CB: When you don't have Black people in the room, or Latinos in the room, or frankly any other aspect of life, racial and otherwise, it deprives agencies of the input and experience of those hailing from relevant areas. And when you talk about underrepresented minorities, particularly Blacks, Latinos, Native Americans, you're talking about depriving them of a voice in terms of improving the system that has historically most failed them. And without a diversity of experience, regulatory priorities are most likely to be skewed or uninformed, and regulatory approaches can end up serving a narrow sliver of society.

Music: "The Room Where It Happens" from the musical, Hamilton

I wanted to look at who is in the room when it happens, to paraphrase the Hamilton musical. And I want to know who is actually crafting policy. And to do that, we looked at past appointees for that first question. We looked at everything from agency-maintained lists that all your regulatory agencies provide. We looked at background information by looking at everything from employer websites and LinkedIn. You will see that we go through political affiliation, and we went through obituaries, your CVs, your archives of political contributions, and the like, to get a sense

as to the politics of the Black regulators. The list is really short, as you will see, so it wasn't that much work. And then senior appointees and policy advisors were identified through, again, organizational charts and governmental web pages.

I want to again, stress, we were going for policy leadership. I want to know who gets to craft, from a leadership position, financial regulatory policy. And so, I excluded in my numbers people coming from IT, admin, minority affairs, the ombudsman, legislative affairs, communications, and even general councils. My research focused on those individuals who had to go through a confirmation process in order to be the leader or a political representative at a major financial regulatory agency. And by financial regulatory agency, I was looking at those that deal with capital markets. The Securities and Exchange Commission, or banking—so, the FDIC, the Federal Reserve, the Comptroller of the Currency, which is the national banking regulator, the derivatives regulator, like the CFTC. I wanted to focus on the people dealing with the money and to see who gets to devise the policy in that space and those individuals who emerged from a political process and those who were immediately hired by them. So, either the political appointee or their immediate deputies to get a sense also as to, once you get a political appointee, who are they hiring once they get into office?

We ultimately identified, out of 327 regulators, ten Black political appointees, starting with Andrew Brimmer to Rodney Hood. So, this is less than three percent of all regulators, were ever Black. You'll notice that they are hardly ever the heads of financial regulatory agencies. The numbers are kind of interesting because there are more Democrats than Republicans, but when it comes to the heads of financial regulatory agencies, especially when you look at Rodney Hood recently, Republicans have actually, at least recently, done better than the Democrats have. When you're going to look at your confirmed appointments at a per agency level, from CFPB, down to again, all of the relevant financial regulators, different agencies have different ages, older agencies have had more appointees than others. But here you can get a sense, the relative sense, as to what the percentages are like in terms of who's been appointed to each regulatory agency. So, you have the FHFA for housing, you have the OCC, the national banking regulator, the NCUA for credit unions. And it's not a pretty picture.

CC: Professor Brummer also looked at the racial makeup of the high-level staff members, who serve under the presidentially appointed heads of these agencies. But yet again, over the same time period, Professor Brummer finds:

CB: That number was pretty bad and the entire percentage of Black staff was only a little over four percent.

CC: What might be causing the scant number of Black professionals' among both presidential appointees and the high-level staff? One possible explanation that Brummer generally invites us to take off the table is partisanship. Of course, it's true that some Presidents have made explicit their desire to make diverse appointments. Here's President Clinton, for example, speaking on the campaign trail back in 1992:

Quote from President Bill Clinton: *"And I think I owe the American people a White House staff, a cabinet, and appointments that look like America but that meet high standards of excellence, and that's what I'll do."*

CC: But despite these kinds of pledges, Brummer documents a paucity of Black regulatory leaders across both Republican and Democratic administrations:

CB: I had also done an interesting comparison looking at both the Democratic and the Republican commissioners to the agencies at the SEC and the CFTC. And what you saw was that there was no ideological upshot. That, in effect, the all-white commissioners at the SEC at that point in time had no Black staffers the same way that the Republicans had no Black staffers. So, we may be working in a political environment, but one of the things I try to emphasize is that this is a bipartisan problem for sure.

CC: If partisanship is not behind the absence of Black financial regulators, what else might be going on?

CB: One of the things that I wanted to go and try to explore was, it's called the 'Senate staffing phenomenon.' So, very often, you will have some people appointed to regulatory agencies who were senior staffers to notable members of Congress. So, it's a way that when you try to go through the confirmation process or if a sitting member of the Senate can make sure that their aide becomes a commissioner or a chairman, it allows them to extend their influence. One criticism that's been lodged before is that Senate staffers are, in contrast to House staffers, overwhelmingly white and it's not a very diverse crew. So, maybe that is the explanation behind those numbers.

Senate experience was significant enough to have had an impact or at least a correlative relationship to a good number of positions, but it wasn't such an overwhelming number so as to be fully explanatory or, frankly, even convincingly explanatory in and of itself. So, in other words, it would help to be a Senate staffer, but it certainly didn't answer all of the questions as to why, because even when looking at both the non-Black and Black financial regulators, there are only fifteen and twenty percent respectively of those nominees had Senate experience. That was not in and of itself a fully robust explanation for the dismal outcomes in racial representation. So, the Senate staffing explanation didn't seem to sit very well.

CC: Professor Brummer then took the question of "where are the black regulators" to a new level, asking if the cause has something to do with the number of qualified, potential regulatory leaders.

CB: I then decided to say okay because inevitably people will say, well, maybe, just maybe, the Black nominees are not as qualified. And so maybe it's a pipeline issue relating to the qualifications. And then, if you go back and you start to go through the degrees of all the appointees, and then you compare them, say the Black nominees to the field, the numbers were pretty interesting because overall, in most categories the Black nominees were more qualified and better credentialed than the field for those who did make it through. So, you know, more law degrees, they had more doctorates, fewer masters, so basically the lower you go into the credentialing, the more likely it was that then the field would have the relative advantage in terms of credentials. But the higher up you go, the more you'd see, frankly, Black people had to do more for the same job, in effect, where you see them with higher educational attainments with relatively fewer exceptions. So the qualifications argument didn't seem to sit very well.

CC: What, then, might underlie the disparities? Professor Brummer considered other alternative possible explanations. One of these he called the "disqualification theory," noting that "where you work may hurt you."

CB: The theory here is, well, Black people tend to be poorer, they don't inherit as much. They tend to have to get a job when they graduate from even prestigious Ivy League schools. And, you know, when they get those jobs in the private sector, depending on the political ideology of a party, that could be a disqualification, even if you're one of the first of your family or in your generation to get a job when you, five or ten years later, want to seek a regulatory position, you would be attacked or disqualified for having worked in the private sector. So, you know, maybe that's the case.

CC: And then there is the issue of racial prejudice directly as a source of disqualification. As Professor Brummer explains:

CB: And then, you have the other obvious issues of cognitive bias, basically, Black people are outsiders, you know. People don't necessarily know us when we stroll up into their Senate offices or into their Treasury offices or into the White House. I have walked into rooms personally before where people are a little bit surprised that I was the financial regulatory person and not the civil rights person, although I guess I am a little bit of both.

CC: Although Professor Brummer notes that his data analysis covered a period before the Biden Administration, he also recognizes, as he puts it, that:

CB: It's been kind of interesting looking at how things are playing out. And it is really interesting when you look at the record of financial regulation thus far in the Biden Administration. We see lots of people who are academics or at least have some kind of academic background. And I want to keep this in mind because a lot of times, regulators depend on the academy for ideas. We're the raw material from which they draw their policy, and in this case, now, we're in an era where we're becoming regulators ourselves.

Music: Joy Ike's "Time"

CC: In new research, presented for the first time in his lecture at Penn, Professor Brummer showed how racial disparities in the academic pathways to regulatory leadership may contribute to the overall disparate patterns observed in government. Brummer focused on elite law schools and racial patterns in the ranks of their corporate and financial regulatory law faculty:

CB: I wanted to look at the numbers and the personnel of people at the top five schools who taught corporations or businesses, associations, securities law, regulation, bankruptcy, tax, and anti-trust. I kept the study to tenure and tenure-track faculty. And when you go and you take a look at Yale's Corporate Law faculty, based off of those subspecialties, you have about ten White professors and zero Black, zero Native American, zero Latinx, zero Asian professors; you have seven male professors and three female professors over at Yale. You go to Harvard; you have seventeen total. No Black, no Native American, no Latinx, one Asian professor; sixteen men, one woman. Stanford, fourteen professors; zero Black, zero Native American, zero Latinx,

zero Asian professors. Male professors – thirteen, female professors – one. It's useful because *The New York Times* and other very venerable institutions have focused on the econ departments and the lack of diversity in economics departments because of their spillover effects in terms of economic policy, particularly at the Federal Reserve. The theory being that in the world in which there are not many minorities and women, if then, when trying to staff positions over at the Fed, and if the schools aren't producing many PhDs and if there is little representation on these faculties, what does this mean for the quality and for the ideas of the scholarship that ultimately enters the economics profession?

I think that when you look at just the top five schools, which tend to sort of dominate norm-setting in the academy, similar kinds of questions arise both normatively within the academy and also have other spillover effects when you think about a world in which law professors and corporate law professors comprise the primary pool from which regulatory officials are ultimately being named. And just as a matter of comparison, the day before yesterday, I asked my research assistant just to pull together some numbers looking at the econ departments of those five top five schools where you still have over—now granted, it's a much larger denominator, it's a larger base but still, ultimately, your percentages look a lot better over at Harvard, Yale, Stanford, Columbia, Chicago, in some instances, than they do at the law schools. And what the driving point here is that elite corporate law has a bigger problem in diversity, arguably, than elite econ. And that has a real impact on the production of scholarship and the production of ideas. And I am able to sort of at least estimate that about two and a half percent of corporate law professors are Black.

Music: Joy Ike's "Time"

CB: One of the things I have always stressed is that there is a tendency, it's a bipartisan problem, to talk at communities of color and not to let those communities speak for themselves and from their own experience. What does that mean even for good-natured people when you don't have people from those communities talking about things like economic power and what, frankly, capitalism should look like? Does diversifying the ranks of the far left and the far right necessarily involve less personal and ideological rigidity and purity? And if so, does this create other structural barriers for Blacks, Latinx, and Native Americans' participation in financial regulatory policymaking?

In short, if you are ultimately knocking on pools that are rather homogeneous and you have to go and reach individuals with more diverse professional experiences and as a result, potentially, less homogeneous and pure ideological views as per the extremes of the party, does this ultimately end up with outcomes that lead to a less representative regulatory makeup when looking at the

underrepresented minorities in the country? The Native Americans, Blacks, and Latinx. And these are uncomfortable questions, these are hard questions, but I think that they deserve serious study. I tried to do a little bit myself with this, and to the extent possible, a serious reckoning.

CC: That kind of reckoning is important today as technology introduces many disruptions to the economy and society. Professor Brummer, a leading scholar in the area of financial technology, makes clear the importance of ensuring a full range of voices as regulators help to shape the future terms of financial transactions.

CB: Today, I had the greatest email, and Cary you know these emails, you know, when you hear from a former student from a couple of years ago who's like, "oh my God, you changed my life! I'm now doing this really cool stuff." I had one of those emails from a student who is doing stuff relating to financial technology. And financial technology is the greatest example ever of this kind of disparate kind of world, right? Maybe what you call the Uber-ification of the financial technology conversation, right? So, when Black people talk about Uber, it's totally different from how white liberals talk about Uber, right? White liberals say, "Oh, they're coming around, they're destroying jobs, and the poor cab drivers, and et cetera." Black people are saying, "But before Uber, I couldn't get a cab out of Harlem! I literally could not move through time and space." Uber may have a whole lot of problems, but if you overlook the nature of the problem that they are trying to solve, you're not going to come up with the kind of policy solution that you need. When you get to teaching young people things, young people see in different kinds of financial technology solutions to problems that frankly, either by the market or by our financial regulatory community, they haven't really done a very good job in terms of providing. And some of these solutions may need an intervention. But if you don't understand the nature of the problem, and you don't understand that people have very different perspectives about, you know, what those tools, or the problems that those tools are trying to solve, you're going to end up with like horrible policy.

CC: Yet in the end, correcting the imbalances in regulatory leadership that Professor Brummer has identified may be easier said than done.

CB: It's is going to require the same amount of attention, the same doggedness that was required with swimming pools, gas stations, lunch counters. And that's not hyperbole. If you look at the data, I mean, it's pretty clear, it's going to take a lot of very persistent attention if you really want to bend that historical curve.

Music: Joy Ike's "Walk"

CC: This podcast has been adapted from Professor Brummer's lecture in the fall of 2021. He spoke in the Penn Program on Regulation's series on Race and Regulation, co-sponsored by the Office of Equity and Inclusion at the University of Pennsylvania Law School.

I'm Cary Coglianese, the Director of the Penn Program on Regulation. For more about our program and free public events, visit us at pennreg.org.

This podcast was produced by Patty McMahon, with help from Andy Coopersmith, our program's managing director. Our music is by Philadelphia-based artist, Joy Ike.