

Chapter 1

The 14th Amendment and the Jim Crow Laws

Although the Civil War, the Emancipation Proclamation, and the Thirteenth Amendment to the Constitution ended slavery, these acts did not end the right to discriminate against the former slaves or their descendants. The first memorable attempt to end discrimination was heralded in the passage of the Fourteenth Amendment to the Constitution. A key provision of this amendment guaranteed all people born or naturalized in the US 'equal protection under the law.' Still, over 100 years after passage of this amendment, Americans had not yet come to a complete agreement on its meaning. For instance, did this phrase mean that all people must be allowed to attend the same schools? Become members of the same private clubs? Use the same rest rooms? Eat at the same place in a high school cafeteria? Belong to the same clubs? Exercise at the same facilities? Even more puzzling was the question of whether it was possible to be equal and also separate.

This chapter will look at the way people attempted to answer these questions at the close of the 19 century.

The Black Codes

Our study of the doctrine of 'equal protection under the law' must start with the infamous black codes passed by Southern legislatures immediately after the Civil War. Among these codes were provisions that freedmen (former slaves) could marry members of their own race, attend (segregated) schools and (in many states) own property. But in states of the Deep South such as Mississippi, black men had to have jobs. If they didn't, they could be made to pay a fine and remain in prison until the fine was paid. Furthermore, they could be forced to work for the person who paid their fine. In many states freedmen (or women) could not be out after dark, carry a knife or gun, or associate with one another. Other black codes prohibited freedmen from marrying whites or testifying against whites in court. Southerners defended these laws as honest attempts to restore order in the South. They also said these codes protected blacks from the results of their own "laziness and ignorance."

The 14th Amendment: A Reaction to the Black Codes

The freedman and his friends disagreed with Southerners on the purpose of the Black Codes. They believed these laws were passed to keep black people in the state of poverty and humiliation they had suffered as slaves. The freedman's friends in Congress, therefore, passed the 14th Amendment to the Constitution, and required southern states to ratify the amendment in order to return to the Union.

The most significant parts of the 14th Amendment were as follows:

- Every person born in a state was made a citizen of that state and a citizen of the U.S.A.;
- No state could deprive citizens of any privileges that other citizens had;
- No state could deny its citizens of life, liberty or property without due process of law
- *No State could deny to any person within its jurisdiction the equal protection of the laws* •

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- The exact wording of the 14th Amendment has been altered here to make it more understandable

Southern Opposition and Military Occupation

Southerners thought the 14th Amendment had been passed to punish them for starting the Civil War, and they refused to ratify it. Indeed there were sections which prevented ex-Confederates **from** voting, holding office, or being paid back for lending money to the Confederacy. But our attention will be focused mainly on *section one*, which gave all people born or naturalized in the US rights of equal citizenship.

When Southern states refused to ratify the Fourteenth Amendment, Congress placed the whole region of the country under military rule. Soldiers were sent to see that the freedmen were allowed to have the same rights as whites. Under military rule, freedmen were allowed to vote and hold political office, attend public schools, buy and sell property, and sue whites. In addition they could sit on juries, carry weapons, and sit on the same streetcar seats as whites

During the brief period that Northern soldiers were present to assure the exercise of their rights, freedmen actually voted and held office in all ex-Confederate states. But this period came to an abrupt



end in 1877 when the last Union soldiers were removed from the South. With the soldiers gone, Southerners restored white rule in the ex-Confederate states. Nevertheless, the 14th Amendment remained in the Constitution, and Southern states, for some 12 years, allowed the former slaves a few rights provided in the amendment. But in the late 1880's, Southern states began to pass laws challenging the equal treatment provisions of the 14th Amendment. One of the early examples of these so called *Jim Crow laws* passed in Louisiana provided that, on railroads in that state, provisions should be made equal *but separate* accommodations for the white and colored races.

Plessy v. Ferguson

On June 7, 1892, an African-American by the name of Homer Plessy bought a first class ticket from New Orleans to Covington, Louisiana. He entered the train, found an empty seat, and sat down. In keeping with the Louisiana law providing for equal but separate' accommodations, the section where Plessy sat was reserved for whites only. Noticing that Plessy wasn't white, the conductor told him to move to a 'colored' car or get off the train. Plessy refused. The conductor called the police and Plessy was forced off the train. Next, Plessy did what fewer than one out of a million victims of discrimination would and could have done. He found a lawyer to argue his case and sued for his right to equal protection of the law. Plessy lost the case because the court ruled that he had broken the Louisiana railroad law. But Plessy appealed his case to the Louisiana Supreme Court, claiming that the law he was accused of breaking was in violation of his 14 Amendment rights. Upon losing in Louisiana, Plessy appealed his case to the Supreme Court of the United States. The case was argued on April 18, 1896.

The Issues

The Plessy case was one of the most important ever decided by the Supreme Court. It set a precedent that for over 60 years has been used as legal cover for racial discrimination. It provided the South with an answer to the question raised in the beginning of this chapter: *Does the doctrine of separate but equal' facilities for each race discriminate against either?'* and to others like the ones below:

- Did the Louisiana law discriminate against blacks or was that only how black people chose to look at it?
- Could a verdict against Plessy set an unreasonable precedent or provide only for separation for good and reasonable cause?

<p>Plessy: The Louisiana Law Discriminated Against Black People</p>	<p>Louisiana: The Louisiana Law Didn't Discriminate against Black people</p>
<p>Everyone knows that the law in question had its origin in the purpose not to exclude white persons from railroad cars occupied by blacks, but to exclude colored people from coaches occupied by whites. The thing to accomplish was to force the latter [blacks] to keep to themselves while traveling in railroad passenger coaches. The fundamental object—to the law is that it interferes with the personal freedom of citizens. If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right. No government, proceeding alone on grounds of race, can prevent it without infringing on the personal liberty of each.</p>	<p>We consider the underlying fallacy in Plessy's argument to consist in the assumption that forced separation of the races stamps the colored with a badge of inferiority. If this be so, it is solely because the colored race chooses to put that interpretation upon it. Legislation is powerless to eradicate racial instincts or to abolish distinctions based on sodal differences and the attempts to do so can only result in accentuation of the difficulties of the present situation. If one race be inferior to the other socially, the Constitution of the United States can not put them on the same level.</p>

<p>An Unfavorable Verdict Would Create an Unreasonable Precedent</p>	<p>Segregation Would only Result for Good and Reasonable Causes</p>
<p>If a State can prescribe, as a <i>rule of civil conduct</i>, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its towns to compel white dtizens to keep on one side of the street and black dtizens to keep on the other? Why may it not, upon like grounds, punish those who ride together in streetcars? Why may it not require sheriffs to assign whites to one side of a courtroom and blacks to another? Why may not the State require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics?</p>	<p>It is suggested by the learned counsel for the plaintive [Plessy's lawyer] that the same argument that will justify the state legislature in requiring railroads to provide separate accommodations for the two races will also authorize them to require separate cars for people whose hair is of a certain color, or who are aliens, ... or to enact laws requiring colored people to walk on one side of the street and white people upon the other.... The reply to all this is that every exercise of the police power must be passed in good faith, for the promotion of the public good, and not the annoyance or oppression of a particular class.¹</p>

*In case the reader had any doubt, the decision in the Plessy case was 8-1, favoring the arguments on the right hand part of this page.

Student Exercises:

1. Compare the positions taken by the opposing justices on the issues of discrimination and precedent. Which does each say about 'separate being equal'? Which one makes more sense to you? Why?
2. After reading the appendix to this chapter, name the five most unreasonable Jim Crow laws and explain whether these laws support Harlan's or the Court's reasoning.

¹ Plessy v. Ferguson (1896) 163 US 537, pp.540-42 (edited)

Epilogue

There was no doubt that Justice Harlan's prediction as to the possible extremes of segregation was prophetic. No longer restrained by outraged northern citizens concerned with the plight of African-Americans, Southern State legislatures passed thousands of Jim Crow laws. They regulated even the most minute details of black/white relations. Some of the more bizarre examples have been collected by the historian C. Vann Woodward in his book *The Strange Career of Jim Crow*:

The South Carolina Code of 1915, with later additions, prohibited textile factories from permitting workers of different races from working together in the same room, ...using the same entrances, pay windows, exits, doorways, and stairways at the same time, or using the same toilets, drinking water buckets, pails, cups or glasses at any time.

In 1909 Mobile, (Alabama) passed a curfew law applying only to Negroes and requiring them to be off the streets by 10 P.M. The Oklahoma legislature in 1915 required telephone companies to maintain separate booths for 'white and colored patrons/North Carolina and Florida required that textbooks used by the public school children of one race be kept separate from those used by the other, and the Florida law specified separation even while the books were in storage. A New Orleans ordinance segregated white and Negro prostitutes in separate districts. An Atlanta ordinance in 1932 prohibited amateur baseball dubs of different races from playing within two blocks of each other, A Birmingham ordinance got down to particulars in 1930 by making it 'unlawful for a Negro and a white person to play together or in company with each other it dominoes or checkers. ²

2. Quoted in C. Vann Woodward *The Strange Career of Jim Crow*, New York, 1966), pp. 101-102, 227-28