

PLESSY v. FERGUSON (1896)

DRED SCOTT

Dred Scott v. Sandford (1857)

Blacks are not “persons” or “citizens” under the Constitution. [Original Intent]

So, blacks possess none of the rights granted to persons or citizens under the Constitution.

Civil War (1861-65)

POST-WAR AMENDMENTS

13th Amendment [1865]

Abolition of slavery and involuntary servitude, except as punishment for a crime.

14th Amendment† [1868] [Section 1]

“All persons born or naturalized in the United States...are citizens of the United States and of the State wherein they reside.” [Reverses *Dred Scott*]

Privileges and Immunities Clause (PI Clause)

Due Process Clause (DP Clause)

Equal Protection Clause (EP Clause)

14th Amendment [1868] [Section 5]

“The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

15th Amendment [1870] [Section 1]

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

PRECEDENTS

The Slaughter-House Cases (1873)

Held that the PI Clause concerns rights held by citizens of the United States qua citizens of the United States (rather than qua citizens of the States in which they reside).

Rights held by citizens of the United States qua citizens of the United States are very limited: not much more than “the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts.”

Strauder v. West Virginia (1879)

Struck down a state law that prohibited blacks from sitting on juries.

“The Fourteenth Amendment makes no attempt to enumerate the rights it is designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution.”

Civil Rights Cases (1883)

Struck down the Federal Civil Rights Act (1875), which had declared that all persons “shall be entitled to the full and equal enjoyment of the accommodations” in restaurants, theaters, hotels, and railroads.

Held that Congress had exceeded its authority under Section 5 of the 14th Amendment by enforcing the Section 1 prohibitions against private parties (rather than against State agents).

Yick Wo v. Hopkins (1886)

Struck down a San Francisco municipal ordinance that was enforced against laundries owned by persons of Chinese descent, but not against laundries owned by Caucasians.

“Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.”

BACKGROUND TO PLESSY

Louisiana Statute (1890)

“All railway companies carrying passengers in their coaches in this state shall provide equal but separate accommodations for the white, and colored races.”

Exception for “street railroads”.

“The officers of such passenger trains...are required to assign each passenger to the coach or compartment used for the race to which such passenger belongs.”

Exception for “nurses attending children of the other race”.

Facts of the Case

In 1892, Homer Plessy, an octoroon, was forcibly ejected from a “whites-only” train car on a trip from New Orleans to Covington.

The Issue

Are State laws mandating racial segregation in “equal but separate” accommodations on intrastate railway journeys constitutionally permissible?

PLESSY’S CLAIM

Plessy argued that the Louisiana Statute violated the 13th Amendment and the PI Clause, DP Clause, and EP Clause of the 14th Amendment.

Holding (Henry Brown): The Louisiana Statute is perfectly consistent with the 13th and 14th Amendments.

BROWN’S OPINION: 13th AMENDMENT

13th Amendment Does Not Apply

The 13th Amendment abolished all forms of “involuntary servitude”. But racial segregation is not a form of involuntary servitude.

Appeal to Plain Meaning

HARLAN'S DISSENT

13th Amendment Does Apply

The 13th Amendment was intended to abolish not merely involuntary servitude, but also all “badges” thereof.

The 13th Amendment “decreed universal civil freedom in this country”.

Appeal to Original Intent/Abstract Principle.

BROWN'S OPINION: PI CLAUSE

Statute Does Not Violate PI Clause

Controlling Precedent: Slaughter-House Cases

State-imposed racial segregation does not violate any right that blacks possess qua citizens of the United States.

No Reply from Harlan

BROWN'S OPINION:DP CLAUSE

Statute Does Not Violate DP Clause

Plessy had argued that the reputation of being white is a form of property, the right to which he was being denied by the State.

Brown: There is no relevant property right in this case, since a “colored” man “is not lawfully entitled to the reputation of being a white man”.

HARLAN'S DISSENT

Statute Violates DP Clause

Forget PROPERTY, think LIBERTY.

No State shall deprive any person of liberty without due process of law.

Statute infringes Plessy's right to be free to sit where he pleases.

Presupposition: Substantive Due Process, not merely Procedural Due Process

BROWN’S OPINION: EP CLAUSE (I)

Statute Does Not Violate EP Clause (I)

Equality protected by EP Clause is Political Equality, not Social Equality.

Reason: EP Clause could not have been intended as a way to promote social equality, given that the same legislators who enacted the 14th Amendment also passed laws segregating D.C. schools by race.

Appeal to Original Intent

Distinguishes *Plessy* from *Strauder*

HARLAN’S DISSENT

Statute Violates EP Clause (I)

Equality protected by EP Clause is Civil Equality (broader than Political Equality, but narrower than Social Equality).

“There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”

Appeal to Abstract Principle

No good reason to distinguish *Plessy* from *Strauder*

BROWN’S OPINION: EP CLAUSE (II)

Statute Does Not Violate EP Clause (II)

EP Clause prohibits States from enacting laws that discriminate on their face or in their application (see *Yick Wo*) in an unreasonable manner.

A classification is reasonable if it follows the “established usages, customs, and traditions of the people” and is intended to promote “comfort” and “preserve the public peace and good order”.

By this principle, the Statute is not unreasonable, and hence does not violate the EP Clause.

HARLAN'S DISSENT

Statute Violates EP Clause (II)

EP Clause prohibits States from enacting laws that discriminate on their face or in their application in an arbitrary manner.

Statute discriminates on its face in an arbitrary manner

Black nurses aiding white adults, but not black nurses aiding white children.

Railroad cars, but not streetcars or sidewalks.

Race, but not religion or nationality.

HARLAN'S WARNING

Even if we accept Brown's "reasonableness" standard of constitutionally permissible discrimination, the Statute is unreasonable in that it does not come close to promoting the public good.

State-imposed racial segregation will have "pernicious" consequences, by "planting the seeds of race hate" and thereby "stimulating aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens".