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Constitutional and Legal History*

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VOLUME II: FROM THE AGE OF  
INDUSTRIALIZATION TO THE PRESENT



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measure for the promotion of the comfort, safety, and welfare of society. . . . There is nothing in the title of the act of 1893 to indicate that it is a sanitary measure. The first three sections contain provisions for keeping workshops in a cleanly state, and for inspection to ascertain whether they are so kept. But there is nothing in the nature of the employment contemplated by the act which is in itself unhealthy or unlawful or injurious to the public morals or welfare. . . . It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is sought to sustain the act as an exercise of the police power upon the alleged ground that it is designed to protect woman on account of her sex and physique. It will not be denied that woman is entitled to the same rights, under the constitution, to make contracts with reference to her labor, as are secured thereby to men. . . . It has been held that a woman is both a "citizen" and a "person" within the meaning of [the Fourteenth Amendment]. . . . As a "citizen," woman has the right to acquire and possess property of every kind. As a "person," she has the right to claim the benefit of the constitutional provision that she shall not be deprived of life, liberty, or property without due process of law. Involved in these rights thus guaranteed to her is the right to make and enforce contracts. The law accords to her, as to every other citizen, the right to gain a livelihood by intelligence, honesty, and industry in the arts, the sciences, the professions, or other vocations. Before the law, her right to a choice of vocations cannot be said to be denied or abridged on account of sex. . . . As a general thing, it is the province of the legislature to determine what regulations are necessary to protect the public health and secure the public safety and welfare. But, inasmuch as sex is no bar, under the constitution and law, to the endowment of woman with the fundamental and inalienable rights of liberty and property, which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the state for the purpose of limiting her exercise of those rights, unless the courts are able to see that there is some fair, just, and reasonable connection between such limitation and the public health, safety, or welfare proposed to be secured by it.

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163 US 537  
(1896)*Plessy v. Ferguson* (1896)

Although the *Civil Rights Cases* left Congress the power to respond to state-sponsored discrimination, by the 1880s, little interest remained among Northern whites in safeguarding Negro rights. The South, recognizing that it could now deal with race relations without federal interference, began to establish a complex social, legal, and economic system designed to keep blacks in an inferior status. The Court helped this process along in *Hall v. DeCuir* (1878), ruling that a state could not prohibit segregation on common carriers, and a dozen years later approved a Mississippi statute requiring segregation in intrastate carriers.

In the best-known of these segregation cases, the majority ruled that distinctions based on race were not unconstitutional, and the Fourteenth Amendment had never been intended to bring about absolute equality. Plessy, a person of mixed blood, was refused a seat in a railroad car reserved for whites, under a Louisiana law requiring racial segregation in public transportation. He sued the state under the Equal Protection Clause of the Fourteenth Amendment, claiming that mandatory segregation was by definition discriminatory. The majority opinion of Justice Brown is notable for its casual indifference to racial discrimination and its obvious bias against the black race. Compare Justice Harlan's eloquent dissent to the majority ruling in *Brown v. Board of Education* (Document 199).

See C. Vann Woodward, *The Strange Career of Jim Crow* (rev. ed., 1966); Pauli Murray, *State Laws on Race and Color* (1952); Joel Williamson, *The Crucible of Race: Black-White Relations in the American South Since Emancipation* (1984); and Charles A. Lofgren, *The Plessy Case* (1987).

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Justice Brown delivered the opinion of the Court:

This case turns upon the constitutionality of an act of the General Assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. . . .

The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the States.

1. That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. . . .

. . . The proper construction of the 14th amendment was first called to the attention of this court in the *Slaughter-house cases*, . . . which involved; however, not a question of race, but one of exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the negro; to give definitions of citizenship of the United States and of the States, and to protect from the hostile legislation of the States the privileges and immunities of citizens of the United States, as distinguished from those of citizens of the States.

The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either.

Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced. . . .

So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. . . .

Justice Harlan, dissenting:

While there may be in Louisiana persons of different races who are not citizens of the United States, the words in the act, "white and colored races," necessarily include all citizens of the United States of both races residing in that State. So that we have before us a state enactment that compels, under penalties, the separation of the two races in railroad passenger coaches, and makes it a crime for a citizen of either race to enter a coach that has been assigned to citizens of the other race. . . .

In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one within the United States. . . .

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. 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. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott case*. . . . The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana. . . .

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. . . .

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community called the People of the United States, for whom, and by whom through representatives, our government is administered.

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**141***People's Party Platform (1896)*

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Farmers as a group did not share in the general prosperity of the latter nineteenth century, and beginning in the 1870s, attempted in a number of ways to mount an effective political campaign to rectify the corruption of government and economic power they attributed to big business and railroads. The most successful of these agrarian revolts was the People's party, which, after the 1892 presidential campaign, appeared to have the strength to become a potent force in American politics.

The People's party platform of that year is notable for several reasons. First, it summed up two decades of resentment by the farmers against a system that they believed ignored their needs and exploited them mercilessly. Several of their complaints were directed against the structure and operation of government, including what they believed to be the unfair actions of the courts against labor. The demand for an income tax, of course, was a direct response to the Pollock case. One should also note how many of these proposals, such as the direct election of senators, moved into the mainstream of American reform and were adopted over the next generation.

See John D. Hicks, *The Populist Revolt* (1931); Richard Hofstadter, *The Age of Reform* (1955); and Lawrence Goodwyn, *The Populist Movement* (1978).

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The People's Party, assembled in National Convention, reaffirms its allegiance to the principles declared by the founders of the Republic, and also to the fundamental principles of just government as enunciated in the platform of the party in 1892.

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Source: Johnson and Porter, eds., *National Party Platforms, 1840-1972* 104 (1973)