

# Slavery in the Constitution

- 1) Nonwhites who also were not Indians counted as 3/5ths of a person for representation in House.**
- 2) 20 year moratorium on federal regulation on "importation of persons."**
- 3) Requirement that fugitive slaves be returned across state lines.**

# Black Codes

Former slaves were “forbidden to appear in the towns in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. There were excluded from many occupations of gain, and were not permitted to give testimony in the courts in any case where a white man was a party.”

*Slaughterhouse Cases (1872)*

**Political barriers, including:**

**literacy requirements**

**poll taxes**

**discretionary registration rules**

**“grandfather” waivers**

**single race primary elections**

**Economic barriers, including:**

**lack of access to capital or land**

**limited skills and literacy**

**significant intimidation,**

**including vagrancy laws**

**licensing procedures excluding**

**blacks**

**Social discrimination, including:**

**laws prohibiting intermarriage**

**use of separate facilities**

**residential segregation**

**school segregation**

# ***U.S. v. Carolene Products (1938)***

**“Prejudice against discrete and insular minorities may be a special condition which tends to seriously curtail the operations of those political processes ordinarily to be called upon to protect minorities and which may call for a correspondingly more searching judicial inquiry.”**

***Justice Harlan Stone***

# ***Korematsu v. U.S. (1944)***

**“all legal restrictions which curtail the rights of a single racial group are inherently suspect” and are “subject to the most rigid scrutiny.”**

***Justice Hugo Black***

# Three Forms of Discrimination

**Facial: uses prohibited classification**

*Loving v. VA*: banned interracial marriage

**Design: use of proxy to discriminate**

*Griggs v. Duke Power*: required high school degree when couldn't use race as factor

**As Applied: policy is fine, application is**

**biased: *Yick Wo v. Hopkins*: waivers granted to whites, but not Chinese**



# **Disparate Impact**

**Law has disparate impact on groups**

**Impact results from discriminatory intent**

**Once challenger proves disparate impact, government or employer must show legitimate, nondiscriminatory purpose OR show other proximate cause for disparity**

# Lynching

**NAACP founded in 1911**

**Primary goal was ending lynching**

**Best estimate of 4,708 Blacks lynched  
from 1882 to 1944 (Tuskegee)**

**More than 200 anti-lynching bills in  
Congress legislation proposed starting  
in 1909, none ever passed since Ku  
Klux Klan Act of 1870**

# Strange Fruit

***SOUTHERN TREES BEAR STRANGE  
FRUIT,***

***BLOOD ON THE LEAVES AND BLOOD  
AT THE ROOT,***

***BLACK BODY SWINGING IN THE  
SOUTHERN BREEZE,***

***STRANGE FRUIT HANGING FROM THE  
POPLAR TREES.***

**BILLIE HOLIDAY**

# ***U.S. v. Price (1966)***

**18 whites involved in the Chaney-Schwerner-Goodman murders in Philadelphia MS**

**Schwerner and Goodman were white.**

**Sup. Court ruled that 14th Amendment gave Congress power to punish deprivation of constitutional rights when state officials were involved.**

# *U.S. v. Guest* (1966)

**Lemuel Penn, an African-American Army Reserve officer and school administrator in D.C., was returning home from Ft. Benning GA with several other black officers 9 days after the Civil Rights Act of 1964 passed.**

**A car passed them and the defendants emptied a shotgun into their vehicle, hitting Penn in the face.**

# *U.S. v. Guest* (1966)

**Guest and others were charged with “conspiring to deprive Negro citizens ... of the free exercise and enjoyment of rights secured to them by the Constitution and laws of the United States, viz., the right to use state facilities without discrimination on the basis of race, the right freely to engage in interstate travel, and the right to equal enjoyment of privately owned places of public accommodation”**

# *U.S. v. Guest* (1966)

**Sup. Ct. finds that Congress could, through the Ku Klux Klan Act of 1870, hold private individuals criminally liable for lynching if they were part of an organized private conspiracy.**

**“if the predominant purpose of the conspiracy is to impede or prevent the exercise of the right of interstate travel ... the conspiracy becomes a proper object of the federal law”**

# ***Missouri ex rel. Gaines v. Canada (1938)***

**MO provides whites with law school education at U of MO, but excludes blacks and lacks black law school**

**MO offers reimbursement for MO blacks accepted at out of state law schools**

**Court finds that states providing professional or graduate training for whites in state must provide comparable in-state education for blacks**



# ***McLaurin v. Oklahoma Regents (1950)***

**Ordained minister and professor at historically black institution enters Ph.D. program**

**Accepted but must sit separately**

**Blacks enrolled in formerly all white schools must be treated equally and cannot be segregated within school**

# **Kenneth Clark's "Doll Test"**

## **smaller version at Brown's school**

- Ten of sixteen Black children chose the white doll as their preference**
- Ten of sixteen also considered the white doll a "nice" doll.**
- Eleven of sixteen said that black doll was a "bad" doll**
- Ratios consistent w/ larger study of 300 children**

# ***Bolling v. Sharpe* (1955)**

**Washington, D.C. schools were  
segregated**

**Because D.C. is federal territory, 14<sup>th</sup>  
Amendment Equal Protection clause  
does not directly apply**

**Supreme Court finds that *Brown* applies  
through 5th Amendment due process  
clause (reverse incorporation)**

# ***Green v. New Kent County (1968)***

**Early desegregation plans allowed individuals to apply to any school regardless of race**

**Court finds that desegregation is more than formal race-blind choice, must be genuinely "unified" school system**

# ***Griffin v. Prince Edward County (1968)***

**Prince Edward County had closed all public schools and leased white schools to private “Christian academies” at preferred rates**

**Supreme Court finds that school boards cannot close public schools to avoid desegregation; cannot privatize schools either**

# ***Milliken v. Bradley (1974)***

**Judge found that state of Michigan drew school district lines to further segregation; ordered all suburban school districts to participate in Detroit desegregation plan**

**Supreme Court finds that courts cannot further desegregation through inter-district solutions where segregation was not fault of local districts**

# ***U.S. v. Fordice (1992)***

**MS maintains higher admissions standards for historically white institutions (HWI) than historically black institutions, racial segregation largely preserved, funds HWIs at higher levels**

**Court finds that different admissions, funding and curricula improperly perpetuated the segregation of the MS university system**