

Equal Protection: Race

"It is impossible for us to suppose these creatures to be men, because, allowing them to be men, a suspicion would follow that we ourselves are not Christians."

Montesquieu

Slavery in the Constitution

- 1) Nonwhites who 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. Art IV, cl 3.**

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)

Plessy v. Ferguson (1896)

- Louisiana requires separate train cars for blacks – provided in each class of service
- Railroads finance suit
- Plessy is 1/8th African descent – LA law classifies down to 1/64th

Barriers to Voting

literacy requirements

poll taxes

discretionary registration rules

“grandfather” waivers

single race primary elections

Economic Barriers

lack of access to capital or land

limited skills and literacy

significant intimidation, including

vagrancy laws

licensing procedures excluding

blacks

Social Discrimination

Laws Prohibiting Intermarriage

Use of Separate Facilities

Residential Segregation

School Segregation

Lynching

NAACP founded in 1911, primary goal was ending lynching

Best estimate of 4,708 Blacks lynched from 1882 to 1944

Federal anti-lynching legislation attempted 200 times, never passed

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. 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

Design: use of proxy to discriminate

Griggs v. Duke Power

As Applied: application is biased

Yick Wo v. Hopkins

Disparate Impact

Law has disparate impact on groups

Impact results from discriminatory intent

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

***Loving v. Virginia* (1967)**

Facial Discrimination

VA “Racial Integrity Act” law prohibited marriages between any white person and any “non-white” person, penalized both parties equally

VA claimed that law followed *Plessy v. Ferguson* – separate and equal

Loving v. Virginia (1967)

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.

Trial Judge Leon Bazile

Griggs v. Duke Power (1971)

Discrimination by Design

**Duke had segregated plant until 1964
CRA, Blacks only worked in labor
dept**

**Following CRA, Duke requires HS
degree or passage of aptitude test
for any position, including truck
driving, outside Labor Dept.**

Griggs v. Duke Power (1971)

Results of Segregated Education

% of NC male high school grads, 1966

Black Men: 12%

White Men: 34%

Applicants who passed aptitude test

Black Men: 6 %

White Men: 58%

***Yick Wo v. Hopkins* (1887)**
“As Applied” Discrimination

San Francisco bans laundries in wooden buildings

Grants waivers to all white applicants, denies waivers to all Chinese applicants

Supreme Court approves ordinance, condemns application