Lecture Notes

# Chapter 13: Race Discrimination and the Foundations of Equal Protection

## Annotated Chapter Outline

1. Initial Approaches to the Fourteenth Amendment
   1. ***Scott v. Sandford (1857)***
      1. From 1619, when the first slaves were brought to Jamestown, to the ratification of the Civil War amendments nearly 250 years later, people of African ancestry were considered an inferior race; they could be bought, sold, and used as personal property.
      2. Chief Justice Roger B. Taney, delivering the opinion of the Court, described what he believed to be the prevailing view of Black Americans when the Constitution was written.
      3. Although the Court could have disavowed this view, the majority of justices did not.
      4. The majority interpreted the Constitution consistent with what they thought the framers intended: that an enslaved person—even a formerly enslaved person—could not become a full member of the political community and be entitled to the constitutional privileges of citizens.
   2. ***Slaughterhouse Cases (1873)***
      1. The Court interpreted the Fourteenth Amendment’s privileges or immunities clause quite narrowly.
      2. A broader view might have provided opportunities for women and Blacks to bring cases based on this clause to the Court.
   3. *United States v. Harris (1883) and the* ***Civil Rights Cases (1883)***
      1. The justices nullified major provisions of the Ku Klux Klan Act of 1871 and the Civil Rights Act of 1875 on the ground that they attempted to prevent discriminatory actions by private institutions, not by government.
   4. “Separate but Equal”
      1. *Plessy v. Ferguson (1896)*
         1. This case forced the justices to confront directly the meaning of equality under the Constitution.
         2. At odds were the equal protection clause of the Fourteenth Amendment and a host of segregation statutes by then in force in the southern and border states.
         3. The *Plessy* decision’s “separate but equal” doctrine ushered in full-scale segregation in the southern and border states.
         4. According to the Court, separation did not constitute inequality under the Fourteenth Amendment.
         5. These laws, coupled with segregated private lives, inevitably resulted in two separate societies.
   5. Early Battles for Equality
      1. ***Missouri ex rel. Gaines v. Canada (1938)***
         1. Lloyd Gaines, a Missouri resident who had graduated from the all-black Lincoln University, applied for admission to the University of Missouri’s law school.
         2. He was denied admission because of his race.
         3. Missouri did not have a law school for its Black citizens, so the state offered to finance the education of qualified Black students who would attend law school in a neighboring state that did not have segregationist policies.
         4. After the Supreme Court concluded, 7–2, that the Missouri plan to pay out-of-state tuition did not meet the obligations imposed by the equal protection clause, the state then moved to establish a law school for Blacks at Lincoln.
      2. *Sweatt v. Painter (1950)*
         1. The LDF launched a frontal attack on the separate but equal doctrine in public school education.
         2. The Court’s decision was not everything civil rights advocates hoped for, but it nonetheless marked a significant step in the development of race relations law.
      3. ***McLaurin v. Oklahoma State Regents (1950)***
         1. *McLaurin* highlights the fear held by many segregationists that Blacks and whites in school together would lead to interracial dating and marriage.
         2. To comply with judicial decisions, the University of Oklahoma admitted Black graduate students when these students could not obtain the desired degrees at minority schools.
         3. However, to protect against the possibilities of interracial marriage, the university restricted Black students to segregated areas of classrooms, libraries, and dining halls.
         4. The Supreme Court unanimously found Oklahoma’s system in violation of the equal protection clause.
   6. Race Discrimination and the Warren Court: The Demise of *Plessy*
      1. ***Korematsu v. United States (1944)***
         1. The justices were asked whether the internment of Japanese Americans during World War II violated the Constitution.
         2. The Court held that it did not.
         3. Justice Hugo Black wrote: “… courts must subject [legal restrictions which curtail the civil rights of a single racial group] to the most rigid scrutiny.”
         4. Without a compelling reason, the Court would be left to infer that the government was driven by racial antagonism.
         5. In *Korematsu* the Court upheld the classification because the government was advancing a pressing public concern: national security.
      2. *Brown v. Board of Education of Topeka, Kansas (I) (1954)*
         1. Unlike earlier civil rights cases that involved relatively small professional and graduate education programs, the *Brown* case challenged official racial segregation in the nation’s primary and secondary public schools.
         2. The decision affected thousands of school districts concentrated primarily in the southern and border states.
         3. Moreover, it was apparent to all that the precedent to be set for public education would be extended to other areas as well.
      3. ***Bolling v. Sharpe (1954)***
         1. The Court confronted the legal problem of how it could eliminate segregation in an entity of the federal government when the wording of the Fourteenth Amendment covers states.
         2. The Court turned to the Fifth Amendment due process clause.
   7. Remedying Racial Segregation in Primary and Secondary Schools
      1. *Brown v. Board of Education (II) (1955)*
         1. In the final paragraphs of its unanimous decisions in Bolling and Brown, the Court asked the attorneys to return the next year and argue the issue of remedies.
         2. The result of the Court’s request, commonly referred to as *Brown II (1955)*, set the stage for public school desegregation battles that were to dominate the national agenda for the next decade and still linger today in some districts.
         3. In Brown I, Chief Justice Warren effectively gutted *Plessy v. Ferguson*.
         4. In Brown II, he laid out a plan for the implementation of that constitutional principle.
         5. The justices held that the primary duty for ending segregation rested with local school boards.
         6. To ensure that the school boards acted properly, the Court gave oversight responsibilities to the federal district courts, the trial courts of general jurisdiction for the federal system.
         7. During the 1950s, southern politicians adopted the strategy that “as long as we can legislate, we can segregate” and enacted hundreds of laws designed to thwart integration.
   8. School Desegregation in the Aftermath of *Brown II*
      1. ***Cooper v. Aaron (1958)***
         1. The Court responded firmly to popular resistance in Arkansas by declaring that violence or threats of violence would not be allowed to slow the progress toward full desegregation.
      2. ***Griffin v. Prince Edward County School Board (1964)***
         1. The Court stopped a Virginia plan to close down public schools rather than integrate them.
      3. ***Green v. School Board of New Kent County (1968)***
         1. The justices struck down a “freedom of choice” plan as failing to bring about a nondiscriminatory school system.
      4. ***Swann v. Charlotte-Mecklenburg Board of Education (1971)***
         1. This case involved challenges to a desegregation plan imposed by a district judge on North Carolina’s largest city.
         2. A unanimous Court approved a wide array of desegregation tools, including mandatory busing of students, teacher transfers, court supervision of spending and new construction, and the altering of attendance zones.
         3. The Court made clear that such remedial actions could be imposed in a school district only if it could be proven that a violation of the Constitution had occurred there.
      5. ***Board of Education of Oklahoma City Public Schools v. Dowell (1991)***
         1. The Court confronted the issue of resegregation caused by residential patterns.
         2. It held that judicial supervision of the district could end as long as state-sanctioned discrimination had ceased and resegregation was the result of the private residential choices of parents.
      6. ***Freeman v. Pitts (1992)***
         1. This case permitted district judges to release school districts from supervision incrementally as the schools met desegregation goals for various parts of their programs.
   9. Racial Integration of the Schools in the Contemporary Era
      1. *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education (2003)*
         1. These are recent cases in which the justices have faced integration plans attacked for placing excessive emphasis on race in an effort to improve the level of racial integration in the schools.
      2. ***Grutter v. Bollinger (2003)***
         1. The Court evaluated the University of Michigan’s affirmative action program under the strict scrutiny standard, and upheld it.
         2. It found that “student body diversity is a compelling state interest that can justify the use of race in university admissions” and that the school did not use a quota system—or other form of “racial balancing”—to attain that end.
         3. The program considered each application individually, though it did give special consideration to historically underrepresented minorities in an effort to create a “critical mass” of minority students.
2. State Action Requirement
   1. *Civil Rights Cases (1883)*
      1. In these cases the Court emphasized that the Constitution does not prohibit discrimination that takes place exclusively in the private sector.
   2. *Buchanan v. Warley (1917)*
      1. This decision struck down state laws that mandated racial segregation in housing.
      2. Racially restrictive covenants were a response to Black migration into northern cities and to this decision.
   3. *Shelley v. Kraemer (1948)*
      1. This case was among the LDF’s first attempts to use imaginative arguments before the Supreme Court.
      2. The Court found the presence of state action in an essentially private matter: the purchase of a house.
      3. The Vinson Court adopted the LDF’s broad approach to the state action requirement of the Fourteenth Amendment—at least in the area of restrictive covenants.
   4. *Burton v. Wilmington Parking Authority (1961)*
      1. In this case a Black man was discriminated against by a privately owned and operated business, and, therefore, the equal protection clause did not seem to apply.
      2. But the attorneys representing William Burton argued that the state was indeed a participant in the discrimination.
      3. *Burton* demonstrated the Warren Court’s willingness to impose an expansive view of state action.
   5. *Moose Lodge No. 107 v. Irvis (1972)*
      1. This case demonstrated that the court did not eliminate the public–private distinction in Burton.
      2. Although the Supreme Court ruled in that state action had not contributed to the discrimination, several states have used the power to regulate alcoholic beverages as a means of combating racial bias.