

Week 5

EQUAL CITIZENSHIP

Section B
(Feb 4, 2008)

CONSTITUTIONAL AMBIGUITY WITH RESPECT TO CITIZENSHIP

- Declaration of Independence: “We hold these truths to be self evident, that all men are created equal”
- The Preamble of the Constitution: “We the people of the United States”
- Article I (Sec 2.3): “Representatives . . . shall be apportioned . . . by adding to the whole number of free persons, and excluding Indians not taxed, three fifths of all other persons.”
- Article IV (Sec 2.1): “The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.”

- Amendment II: “. . . the right of the people to keep and bear arms”
- Amendment IV: “The right of people to be secure in their persons”
- Amendment V: “No person shall be held to answer”
- Amendment X: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

DRED SCOTT V. SANDFORD, 60 U.S. (19 How) 393 (1857)

- The meaning of “people” and “person”
- Privileges and immunities of “citizens of several states”
- “Powers [of granting citizenship] . . . are reserved to the States”

THE ESTABLISHMENT OF EQUAL CITIZENSHIP

- Sec 1 of the 14th Amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

PLESSY V. FERGUSON, 163 U.S. 537 (1896)

- **FACTS**

- The act of Louisiana of 1890 on public railways mandated separate accommodations for the white and colored races
- Plessy, a mulatto, was imprisoned for violating the statute.
- Plessy challenged the constitutionality (i.e., equal protection of the laws) of the Louisiana statute.

- **THE QUESTION BEFORE THE COURT**

- Whether a law that requires the separation of the two races in public conveyances is unreasonable and violates the equal protection of the laws

- **THE OPINION OF THE COURT**

- Justice Brown delivered the opinion of the Court.
- The law is not unreasonable.
- The purpose of the 14th amendment “was undoubtedly to enforce the absolute equality of the two races before the law, but . . . 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.” p. 189

● **THE UNDERLYING RATIONALE**

- Precedents: separable schools; the composition of juries; interracial marriage
- The Court held it a fallacious argument that “the enforced separation of the two races stamps the colored race with a badge of inferiority.” p. 192
- The Court rejected the argument that “social prejudices may be overcome by legislation” p. 192
- “If the two races are to meet upon terms of social equality, it must be the result of natural affinity, a mutual appreciation of each other’s merit, and a voluntary consent of individuals.” p. 192

- **DISSENTING (JUSTICE HARLAN)**

- The Louisiana statute compels the separation of the two races so it violates the 14th amendment: “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States (e.g., freedom of citizens and personal liberty). P. 194
- The words of the amendment . . . are prohibitory, but they contain a necessary implication of a positive immunity or right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discrimination, implying inferiority in civil society” p. 194

- If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so; and no government . . . can prevent it without infringing the personal liberty of each.” p. 194
- “[I]n 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 case here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.” p. 195
- “The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution.” p.196

Readings for Next Class

- Brown v. Board of Education