

**“The road to hell is paved with good intentions”
H.G. Bohn, Handbook of Proverbs #514**

After the Civil War, there is little doubt that the Congress of the United States had all good intentions. The passage of the so-called Civil War amendments, to wit, the Thirteenth, Fourteenth and Fifteenth, all showed that Congress was interested in promulgating the rights of the former slaves. There is a progression in the above amendments that lead to enfranchisement of the former slave with the one item available only to citizens, the right to vote.

The Thirteenth Amendment, ratified on December 6, 1865, essentially banned slavery in the United States. This was not a revelation for anyone as it expanded the Emancipation Proclamation. According to Amar, “The Thirteenth Amendment cast a wide net not merely over the nation’s economy but also over its social structure and its domestic institutions”. (Amar 360) With the abolition of slavery and /or involuntary servitude, Congress and the nation changed dramatically and quickly. The southern planters immediately sustained two substantial losses. The first was the loss of a free workforce and the second was an uncompensated loss in the capital investment that the slaves represented. “Slaves were worth more than any other capital asset in the nation except land “. (Amar 360) The ratification of the amendment created, instantaneously, a new social class in the south. Southerners were not too pleased with this outcome, but had no choice to accept the situation. Many southern states, most specifically South Carolina and Mississippi enacted Black Codes. While these statutes did not actually enslave former slaves, they did restrict certain social interactions with both themselves and whites. These

restrictions ranged from vagrancy laws to marriage laws to employment contracts. While the former slaves were free from their labor situation, they were not completely free, socially.

Before getting to the main object of this paper, the Fifteenth Amendment must be noted. There is no doubt as to the intention of Congress in drafting this amendment. It was designed to enfranchise the former slaves with the ability to have a say in government. Here, again, the southern populace was none too pleased. Southern states found ways to legally impede poor, illiterate former slaves from voting. Some of these measures included literacy tests, and poll taxes. In that the various states have, as a power reserved to them, the right to qualify voters, the above impediments were legal.

It is not necessary to belabor the issues surrounding the Thirteenth and Fifteenth Amendments. The intent of Congress, in both cases, was quite clear. Where the waters get muddy is with the Fourteenth Amendment. On its face, it appears that the intent was to take the second step in the enfranchisement process for the former slaves. This step was to grant citizenship, without which, voting would not be possible. Section 1 of the amendment is the most important and most open to interpretation.

“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 of 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”. (14th Amendment, Section 1)

This section has four distinct parts. The first is that of the granting of citizenship. This had to be done in order for the former slaves to be enfranchised. The second part applies all federal law to the states, thus making state law subordinate to the Constitution. The third part is the reinforcement of the due process clause of the Fifth Amendment. The fourth part is the equal protection clause that was designed to make the races equal, under law.

There is little to question in the first part. Citizenship was granted through this section. However, because of their separate nation status, Native Americans were not granted citizenship and were thus ignored by the law.

It would not take long for the second and fourth parts of the amendment to come under fire with disastrous results. In 1875, Congress, with all good intentions, passed the Civil Rights Act of 1875. This act has five parts. The first part explains the nature of the act.

“...That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitation established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.” (Civil Rights Act of 1875, 18 Stat. Part III, p. 335)

The challenge to this act was swift. The question that came to the fore was whether or not the national government was intruding on state law making function. Once again, the issue of the rights of the states versus the rights of the national government rears its ugly head. In 1873, the United States Supreme Court was asked to rule on the validity of a state law that required all slaughtering in the city of New Orleans to be done in a single facility. In the *Slaughter House Cases*, Justice

Miller stated “The Fourteenth Amendment did not change the whole theory of the relations of the State and Federal governments to each other and of both governments to the people”. He further stated “Such a ruling (for the petitioners) would constitute this court a perpetual censor upon all legislation of the states on the civil rights of their own citizens, with authority to nullify such as it did not approve”. Justice Miller also stated “The Fourteenth Amendment conferred on the national government the duty of protecting rights adhering to national, not state citizenship”. (*Slaughterhouse Cases*, 83 U.S. 36. This case seems to indicate that the Supreme Court was not willing to interfere with those laws that are specific to individual states. Certainly, the advocates for the advancement of civil rights on a state level must have been dismayed with this case and its implications. Further, the door is now open for states to make their own laws, rules and regulations regarding trade within its borders.

It should come as no surprise that there would be a challenge to the Civil Rights Act of 1875. The United States Supreme Court was asked to rule on the above act and did so through various complaints in the named *Civil Rights Cases*, 109 U.S. 3 (1883). This case decided a number of individual cases at one time. “Two of the cases, those against Stanley and Nichols, were indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two of them, those against Ryan and Singleton, were, one on information, the other on indictment, for denying individuals the accommodations of a theatre...”(109 U.S. 5). Looking at the situations of the petitioners, the actions taken against them certainly fall under the 1875 law. In a rather lengthy and verbose decision, the United States Supreme

Court ruled the Civil rights Act of 1875 unconstitutional. In the opinion, “Justice Bradley held that the excluded Negroes had suffered private wrongs to their ‘social rights’ not the invasion of their political or civil rights by the state or under state authority”. (Kluger 65) This case seems to indicate that there was a difference between legal and social rights and that the court would not rule on the social implications of various state laws. “Invoking the increasingly familiar state-action argument, the eight-man majority opinion said that the amendment outlawed discriminatory action only when taken by the states themselves and not by individual persons”. (Kluger 65) It is also important to note that the court made a distinction between the actions of individuals and the state. By implication, the individual may discriminate on the basis of color, race, ethnicity etc., but not the individual state, by enactment of a law.

This case puts the issue of the Fourteenth Amendment in an entirely different light. There are some unanswered questions. Was the intent of Congress to expand the rights of the former slaves and free Blacks to include those actions by both individual and states? Was the intent of Congress to try to solve social ills as well as legal ills after the Civil War? Was the amendment ill conceived and by its lack of specificity, doomed to be picked apart like a carcass left to buzzards?

Any hope that Congress had of general desegregation in the United States was dashed with the Supreme Court ruling in *Plessy v Ferguson* 163 U.S. 537 (1896). In this case, Homer Plessy was a citizen of the United States and a resident of the State of Louisiana. He was “of mixed descent, in proportion of seven eighths Caucasian and one eighth of African blood; that the mixture of colored blood was

not discernable in him..." (*Plessy v Ferguson* 163 U.S. 537). He attempted to sit in a section of a train that was reserved for white travelers only. When he was asked to move, he refused and was forcibly removed from the train. He was arrested, tried and fined \$25.00. Plessy challenged the Louisiana statute that reads as follows:

"The statute of Louisiana acts of 1890, c111 requiring railway companies carrying passengers in their coaches in that State; to provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the the passenger coaches with a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them..." (Plessy v Ferguson 163U.S. 537)

There is little doubt as to the intent of this statute. There will be separation of the races in the trains that run and carry passengers within the State of Louisiana.

Further, the statute provided for fines and/or imprisonment for violation.

The main issue in the case is stated by Justice Brown "The constitutionality of this act (Louisiana Acts 1890. c.111) is attacked upon the ground that it conflicts with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain legislation on the part of the States". (*Plessy v Ferguson* 163 U.S. 542) The question, once again, is whether or not legal equality is tantamount to social equality. If the answer is yes, then the Louisiana statute must be found to be unconstitutional and the conviction of Plessy reversed. If, however, legal equality does not mean social equality, then any state that wants to segregate the races may do so legally and within the Constitution.

In this case, Justice Brown, speaking for the Supreme Court, states the decision and seems to imply the intent of Congress regarding the Fourteenth Amendment.

"The object of the amendment was undoubtedly to enforce the absolute

equality of the two races before 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.” (Plessy v Ferguson 163 U.S. 544)

This statement leaves little doubt as to how Justice Brown viewed the intent of Congress when the Fourteenth Amendment was ratified.

Plessy raised the issue that might have changed the court’s mind regarding his case. This was the issue of interstate commerce. If the train on which Plessy rode was one that crossed state lines, then the jurisdiction of the Louisiana statute could be challenged. This argument was quashed when Justice Brown stated” In the present case, no question of interference with interstate commerce can possibly arise, since the East Louisiana Railway appears to have been a purely local line with both its termini within the State of Louisiana” (Plessy v Ferguson 163 U.S. 548)

Justice Brown summed up his decision with a very telling statement. “We consider the underlying fallacy of the plaintiff’s argument to consist of 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 found in this act, but solely because the colored race chooses to put that construction upon it”. (Plessy v Ferguson 163 U.S. 551) The court has spoken. There is a vast distinction between legal and social equality. It is interesting how the court made that distinction. It did so by stating that Plessy’s due process rights were not violated. He was treated the same way as any other person would have been treated in the same circumstance.

Further, Plessy's claim that his reputation had been damaged and as a result, he was deprived of his property, Justice Brown stated "he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man". (Plessy v Ferguson 163 U.S. 549)

The three amendments that were ratified after the Civil War represented Congress' attempt to allow the freed slaves to have the rights and privileges afforded other American citizens. The intent was there on the part of the legislative branch of the government. The problems arose when the Supreme Court would not find the legal ability to continue the work of the Congress by finding separate but equal state statutes unconstitutional. Within the structure of the Constitution, the Supreme Court was acting within the area of judicial review. The court would not rule unconstitutional those laws that were specific to particular states. The fact that there were many southern states that all enacted similar laws notwithstanding. The court allowed segregation to run rampant in the south by enabling states that wanted separate but equal policies to have them and have them constitutionally. The intent of Congress was subverted by the Supreme Court with cases law of the day, especially Plessy v Ferguson. All of the good intentions of Congress lay in ruins and the segregationists opened the door to the hell for the non-white in America.

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