

When Black Rights Do Not Matter: A Historical Analysis of Civil Litigation and ‘Equal Protections Under Law’

by

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Abstract

In order to be truly American, one must experience one of two things: either privilege or denial. Thus, we develop notions of *conceptual Whiteness* and *conceptual Blackness* that both do and do not map neatly on to biogenetic or cultural allegiances (King 1995). A study of Urban education policy and analysis reveal the subjectivity of equality vs. equity in education. This subjectivity is found in the initial ideology of American citizenship and the perpetual question of “What does it mean to be American?” As a person of color in America, we ask “When will my citizenship be acknowledged”? In the United States of America, property ownership and citizenship are correlates. As one owns property, one’s citizenship is strengthened. In the case of Dred Scott, 1857, being born a slave and therefore, not a citizen, he could not legally sue for his freedom in federal court. This is because Dred Scott himself was considered property. With the continual footage chronicling deaths of Black men and women at the hands of law enforcement without charges being brought against the officers and very few instances of guilty verdicts, it has become increasingly clear that Black men and women, like Dred Scott, remain a caste group or property. Our rights like our lives do not matter. Hope for our future and that of our nation remain in a review and analysis of benchmarks in Urban education such as *Brown v. Board of Education*, 1954 and *Edgewood v. Kirby*, 1989. These benchmark cases provide that the 14th Amendment and *Equal Protection Under Law* provide a civil gateway to economic responsibility when the criminal accountability and justice are absent.

Introduction

When Black lives matter, then All lives will truly matter. Until then, we as a nation will continue to function among a duality of consciousness and contradictions. This is evident by the current slate of protests that are deemed acceptable and unacceptable, depending on the audience. When Colin Kaepernick took a knee in protest of police brutality, several “patriots” claimed that his way of protesting was inappropriate. When pressed as to what would be appropriate none could answer. They could not answer because the way he protested was not the issue, the issue is that he protested at all.

Rosa Parks and several others were arrested for peacefully sitting in protest in the front of a bus. Several college students were beaten and arrested for peacefully sitting at lunch counters. Martin Luther King and several others were beaten and arrested for peacefully walking while singing “We Shall Overcome”. When Kaepernick sat during the national anthem, he was asked to kneel. He did. Yet, a rendered subjectivity is found in the initial ideology of American citizenship and the perpetual question of “What does it mean to be American?” As a person of color in America, we ask “When will my citizenship be acknowledges a Black man, I ask “When will my rights matter?”

Perspective

Daily, one toils with the thought of how far the United States of America has come as a nation and how far it still has to go. Would one dare to say that as a great country, the U.S. has actually digressed despite having a Black president and seeing growth as a culture? Further questions may consider why Blacks continually have to prove that we are equal to the White race. We see this in employment, industry, entertainment, and in education. Anyon (2005) shares that despite more years of education – a smaller percentage of African-American men are working now than in recent decades. Only 52% of young (aged 16 to 24) non-institutionalized, out of school Black males with high school degrees or less were employed in 2002, compared to 62% 20 years ago (p. 42). Leaving Schools (2004) point out that African American students embody 17 percent of the total U.S. population, but African American teachers represent only 6 percent of all teachers in the U.S. (as cited in Goodman and Hilton, 2010, p. 55). As of 2016, not much has changed. Whereas the number of African American teachers has improved to 7.9%, the teaching workforce is still 82% White. Furthermore, less than 2% of all teachers are African American male while African American students embody 17.8% of the student population (Toppo and Nichols, 2017).

Privilege is Not Promised

Why might this be, since education is supposed to be the “great equalizer”? Why is it that although the U.S. had its first Black president and more people of color attending college and attaining careers that it appears the country is going in the reverse? We are digressing as a culture. Despite African American women now being the most educated group and a record number of Black school leaders, there is still a wonder if the 14th Amendment applies to all citizens. The Flint Water Crisis is an example that it does not. Water like education, according to Judge Steven J. Murray is “not a fundamental right” (Fortin, 2018) – and neither is privilege.

Our national outrage or lack thereof among groups who claim a wall along the southern border is a national emergency but not the Flint Water Crises proves that privilege is not promised to everyone, but denial is guaranteed. Denial appears to be color blind while privilege has a distinct preference towards a perpetuated dominant group over others. “White privilege is

like an invisible weightless knapsack of special provisions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks (Macintosh, 1988).

What is American?

A question was asked during one of my undergraduate history classes, “What does it mean to be American...What is American?” At first, I wanted to say anyone living in North, Central or South America. However, the professor restated, “What is American Culture?” First, we defined culture as a system of social norms and beliefs. As we began to truly discuss the question, we discovered quickly that none of us could provide a definitive answer. We mentioned religion, foods, customs, beliefs, and values. We discovered that most of our foods came from Europe, Africa, Asia, or other continents and countries: hamburgers and hotdogs, Germany; spaghetti, China; pizza, Italy; and sweet potato, Africa.

It is safe to say that to this day, I cannot definitively tell anyone what it means to be American without sounding unpatriotic or bitter. Any contradiction to what counts as America through the eyes of the colonizer promotes being called “un-American”. Since Kaepernick and others refuse to accept their place in America as victims of police brutality, they are un-American. As Pat Buchanan laments, “When I grew up in the 1940s and 50s, we were segregated, but we were one culture.” (West, 2011). It is my belief that in order to be truly American one must experience one of two things, either privilege or denial. Thus, we develop notions of “conceptual whiteness” and “conceptual blackness” (King, 1995) that both do and do not map neatly on to biogenetic or cultural allegiances (as cited in Ladson-Billings, 1998).

Notice that I did not indicate that one must experience racism in order to be American. I stated that one must experience privilege or denial to truly be American. In a presentation at the annual American Educational Research Association conference, Deborah Loewenberg Ball discussed a concept introduced by Dan Lordy called Apprenticeship of Observation which was grounded in the Primacy of Personal Experience (2018). These concepts introduced readers and researchers to the idea that teachers (and people in general) reacted and functioned based upon their experiences. This meant that being raised and groomed in a racist, sexist society resulted in shared experiences and further perpetuations of those experiences with people who were victims of those oppressive tenets. As the 2016 Presidential Election proved, rather than address their known explicit bias, White women and poor, rural Whites would rather maintain their perception power and privilege over others even at the expense of their own personal interest.

Historical Context

We must first look at how our United States history shaped our current trajectory as a nation and a capitalistic culture, a trajectory which persistently leads to discussions about race and equality. Our “advanced ideas” about race include the racialization of multiple cultural forms (Ladson-Billings, 1988, p. 8). For this purpose, we will establish a working definition of the 14th Amendment, specifically, the Equal Protection Clause and its original purpose. Afterwards we will look at the implications and impacts of Plessy v. Ferguson, 1857, the “separate but equal” doctrine, and Brown v. Board of Education, Topeka, Kansas, 1954. One will clearly see a sampling of how the 14th Amendment and its Equal Protection Clause were used to shape and confirm the fears and perceptions of a racialized American society.

It is because of these fears and perceptions that one learns that the 14th Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment (Primary Documents in American History, 2010). The 14th Amendment to the Constitution granted citizenship to “all persons born or naturalized in the United States,” which included former slaves recently freed...forbids states from denying any person, “life, liberty, or property, without due process of law”...or “equal protection of laws” (Primary Documents in American History, 2010). I found it to be most interesting that initially the amendment was ratified to protect the newly freed slaves from the southerners during their travels in and throughout the south. This was because the original constitution only extended to those citizens born in the United States. According to Historical Analysis of the Meaning of the 14th Amendments First Section by P.A. Madison,

Because former slaves were considered emancipated citizens of the United States by Lincoln's Emancipation, Congress felt it was vital to protect their fundamental rights as United States citizens under Article IV, Sec. II of the U.S. Constitution wherever they traveled within the Union (especially in the South)...Under the original Constitution, citizens of the United States were required to be first a citizen of some State - something newly emancipated citizens could not claim. This is why it was imperative for the first section to begin with a definition of citizenship so that no State could refuse recognition of newly freed slaves as U.S. citizens by withholding the right to protection of the laws in life, liberty or property in the courts as enjoyed by white citizens (2010).

Fast forward to 2017, and one wonders if the Flint Water Crisis meets the definition describing the first section of the 14th Amendment. Do the residents of Flint, Michigan have the same fundamental rights of every citizen in the United States? Furthermore, are they guaranteed “protection under law” from harm? The failure of the U.S. Government to hold individuals accountable for the death and long-term effects of the water crisis would indicate, “No.”

What one finds equally interesting is that what was meant to make a difference for Blacks was at first denied by the Supreme Court in *Plessy v. Ferguson* and circumvented in order to avoid segregation in *Brown v. Board of Education* – later used as a greater benefit for white schools and communities. According to Ladson-Billings (2009) “Desegregation often brings big dollars to a school district, which goes toward instituting new programs, creating new jobs, providing transportation, and supporting staff development (p. 6). This occurs when African-Americans are bused to White schools and suburbs. In contrast, when White students are integrated into African-American schools, “desegregation money” is used to transform them into “magnet” schools – schools that attract students from throughout the district because they offer exemplary programs in mathematics, science, technology, the performing arts, and so on (p. 6).

I found in the research that if you want to sue for equality and/or equity, use the 14th amendment, especially when it comes to federal funds such as Title IX, or claims to state’s rights in all decisions regarding education. The Tenth Amendment specifies that powers not delegated to the federal government by the U.S. Constitution are to be reserved to the states, and therefore, education has become a state responsibility (Bierlien, 1993, p. 20). Also, let us remember that every policy has a history and a reason for its implementation. It is for this reason we begin our review with the stain on our great U.S. History, slavery.

Beginning of Black America and Slavery as a “Peculiar Institution” - John Punch, 1640 and Dred Scott, 1857

She came out of a violent storm with a story no one believed, a name no one recorded and a past no one investigated. She was manned by pirates and thieves...her cargo an assortment of African with sonorous Spanish names – Antoney, Isabella, Pedro...A year before the arrival of the celebrated Mayflower, 113 years before the birth of George Washington, 244 years before the signing of the Emancipation Proclamation, this ship sailed into the harbor of Jamestown, Virginia...this “Dutch man of War” that she was no ordinary vessel...The deal was arranged, Antoney, Isabella, Pedro and seventeen other Africans stepped ashore in August, 1619. The history of Black America began (Bennet, 1987).

When students of history begin to examine the history of Black America, it is imperative that they recognize that all blacks born and brought to the United States were not slaves. In fact, when Columbus laid claim to the “New World”, which he thought was the West Indies, Africans were on his voyage. One such African was Pedro Alonso Nino (Jones, 1997). Pedro Alonso Nino was a Spanish explorer nicknamed (El Negro), the Black. He was with Columbus during his second and third voyages seeing the discovery of Trinidad (Ruiz, 2001). Furthermore, visitors from the African Continent arrived to the New World long before Columbus.

During this early period and later, Blacks served as indentured servants along side their European counterparts. Indentured servants in Colonial America were, for the most part, adult white persons who were bound to labor for a period of seven years. There were three well-known classes: the free-willers - those who chose to bind themselves to labor for a definite time to pay for their passage to America, redemptioners - those who were enticed to leave their home country out of poverty or who were kidnapped for political or religious reasons; and convicts – who were sentenced to deportation and on arrival in America were indentured unless they had personal funds to maintain themselves. The West Indies and Maryland appear to have received the largest number of immigrants of the third class (Indentured Servant, 2010).

There was no permanent stigma attached to indentured servitude, and the families of such persons merged readily with the total population. Children born to parents serving their indenture were free. Terms of an indenture were enforceable in the courts, and runaway servants could be compelled to return to their masters and complete their service, with additional periods added for the time they had been absent (Indentured Servant, 2010). That was until 1640.

John Punch, 1640

In 1640, John Punch along with two White Indentured servants one a Scottish and the other a Dutchman ran away to Maryland from their owner, Hugh Gwyn. Upon being captured all three were returned to Jamestown, tried in court, received 30 lashes for running, and had time added to their servitude. The two White men were given one additional year to serve their master and three more to serve the colony. However, the Black man, John Punch was ordered to "serve his said master or his assigns for the time of his natural Life here or elsewhere" (Africans in America, 2010). John Punch became the first legally documented slave for life. Why was

Punch's punishment more severe? According to A. Leon Higginbotham (1980), it exemplified the courts attempt to deliberately exercise partiality in its dealings with Blacks (p. 28).

What we find is an early indication of the legal process's view of blacks as inferior. We see as early as 1640, the courts were activist in perpetuating disparate cruelty to blacks (Higginbotham, 1980, p. 28). The author poses the question if there was a belief that a runaway Black served as a greater threat to society than a white runaway. This appears to be an ongoing belief in American society as we see this belief play out in the job setting and in the classroom. According to Butler, Joubert, and Lewis (2009) research "Whose Really Disrupting the Class?" ... there is a disproportionate amount of African American males facing suspensions. In some instances, teachers may not explicitly connect their disciplinary reactions to negative perceptions of Black males, yet systematic trends in disproportionately suggest that teachers may be implicitly guided by stereotypical perceptions that African-American males require greater control than their peers and are unlikely to respond to non-punitive measures (p. 3).

Dred Scott v. Sanford, 1857

Before Plessy was reminded that he was "Separate but Equal", and before Brown wanted to go to a school closer to her home, there was Dred Scott – a slave wanting his FREEDOM. Dred Scott was a slave who lived with his master, Dr. John Emerson, in free territory for five years - three years in Illinois and two years in Wisconsin. Dred Scott was a slave in Missouri prior to these five years. His owner, who served as an officer in the U.S. Army, a military surgeon, took Dred to every ordered post. After five years in free territory, the U.S. Army ordered Dr. Emerson back to Missouri. In 1846, Dr. Emerson died, resulting in Dred being willed to the owner's wife. Helped by Abolitionists in 1846, Dred sued for his freedom.

Dred Scott lived in free territories but made no attempt to end his servitude. It is not known for sure why he chose this particular time for the suit (National Park Service, 2010). Historians consider three possibilities for why he chose the particular time in 1846 to file suit: He may have been dissatisfied with being hired out; Mrs. Emerson, the owner's wife, might have been planning to sell him; or he may have offered to buy his own freedom and been refused (National Park Service, 2010).

The case was first heard in 1847, then in 1850, followed by 1857. The 1857 case went before the Missouri Supreme Court where Chief Justice Roger Taney, a former slave owner from Maryland, overturned the initial ruling by the St. Louis Court which granted Dred Scott his freedom. Taney gave the opinion of the court in which he stated that since Dred Scott was born a slave, and as a slave was not a citizen, therefore, could not legally sue in Federal court (History Place, 1996). He in essence declared that Scott must remain a slave. Like the John Punch case of 1640 where John Punch was ordered to serve his entire life as an indentured servant, Dred Scott would remain in servitude as "property" to another human being. As a result, African Americans represented a particular conundrum because not only were they not accorded individual civil rights because they were not White and owned no property, but they were constructed as property (Ladson Billings, 1998).

Throughout the Dred Scott case three important issues were presented: 1) Whether Scott was a citizen of the state of the state of Missouri and thus entitled to sue in Federal Court – during Reconstruction, the 14th Amendment would stipulate that all persons born in the nation are

citizens of the United States and of the state in which they live; 2) Whether his temporary stay on free soil had given him a title to freedom that was still valid upon his return to the slave state of Missouri - Scott felt that he was a citizen since he had lived in free territory; and 3) the constitutionality of the Missouri Compromise, whose prohibition of slavery applied to the Wisconsin territory (Lazarevic, 2003) Justice Taney disagreed with Dred Scott's assertion that he was a citizen. Taney declared that when the framers of the constitution penned "all men are created equal" there was no way to justifiably determine that they meant Negroes (Africans in America, 2010).

This quote sent shockwaves of discontent throughout the union. Furthermore, Taney pointed out that the Constitution's 5th Amendment which prohibits Congress from depriving persons of their property without due process of law was violated by the Missouri Compromise of 1820. Basically, Taney placed slaves in the same category as cattle, horses, automobiles, and property. Essentially declaring that African American would forever be non-American citizens for to be an American citizen one could not be property but own property. "They were constructed as property" (Ladson-Billings, 1998). Finally, by declaring that the Missouri Compromise violated the 5th Amendment, the Supreme Court of Missouri declared the Missouri Compromise unconstitutional since it prohibited slave owners from taking their property – slaves into free territories north of 36°30' in the Louisiana Purchase (History Place, 1996).

The Rise and Fall of "Separate but Equal": Plessy v. Ferguson, 1898 and Brown v. Board of Education, 1954

Plessy v. Ferguson, 1898

On June 7, 1892, Homer Plessy was arrested for allegedly not following the 1890 Louisiana Separate Car Act as part of a planned challenge by the Citizens' Committee, a New Orleans political group composed of African Americans and Creoles like Plessy (Robinson, 2010). Homer was a Creole who happened to pass for White being 7/8 white and 1/8 black. This would have made him an "octoroon". There was a building resentment for having to pay for separate cars. The residents of black and Creole residents felt it unnecessary (Plessy v. Ferguson, 2010). The plan was hatched by the Citizen's Committee, the train conductor and a sheriff. The goal was to challenge this legality of the East Louisiana Railroad to have separate cars for Whites and Blacks. They wanted to test the Constitutionality of the Separate Car Law (Zimmerman, 2010).

Seeing that Homer Plessy passed for a White person, he entered the railroad car and prominently sat in the White section. He then informed the conductor that he in fact was colored, Creole and would not move to the colored section. Mr. Plessy was then arrested for sitting on the White only car even though he was 7/8 White. The Louisiana law stated that if you had any Black ancestors, you were considered Black (Zimmerman, 2010).

Plessy was represented by Albion W. Tourgee, who worked on civil rights cases for African Americans. He was already appointed to represent the case before Plessy had been arrested (Robinson, 2010). Mr. Tourgee already had their arguments ready. They planned to challenge the Plessy's arrest indicating that his civil rights had been violated under the 13th and 14th

Amendments. Upon first reading the case, I wondered how they attached the 13th Amendment to the case seeing that Plessy was not a slave. The Judge overseeing the case, Judge John Ferguson disagreed. He had already overseen a case of similar circumstances except that the railroad in question was interstate. In this case, the East Louisiana Railroad was operating within the state. As a result he concluded that the state had the right to set segregation policies within its own boundaries (Robinson, 2010). This statement to me was another setback as the 14th Amendment guarantees an “equal protection of laws”. I wondered how segregation falls under the “equal protection of laws”. I received my answer upon reading the Justice Henry Billings Brown statement for the majority once the case was taken to the Louisiana Supreme Court (Zimmerman, 1997):

Legislation is powerless to eradicate racial instincts or to abolish distinctions based on physical differences, and the attempt to do so only result in accentuating the differences of the present situation. If the civil and political rights of both races are equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane.

In other words, the Constitution cannot make Blacks and Whites equal. If the Constitution does not guarantee equality in all institutions, social, political, cultural, and civil, then the Constitution in itself is a false document. Left up to interpretation, we find through history, at least in this paper in *Dred Scott v. Sanford*, the highest courts and law makers make decisions based on their unique interpretation. What we find in this case is a court repeating the same perpetuation of inferiority we found in *John Punch, 1640*. At that time, there was no Amendment to protect John Punch. In this case there was. The lone dissenter, Justice John Harlan stated, “Our Constitution is color-blind,”...our country is not divided up into Blacks and Whites, or men and women, but we are all equal (*Plessy v. Ferguson, 2001*). His concern was that Blacks and Whites would fight over the 13th and 14th Amendments and that Blacks and Whites would not be treated equally. He was correct in both regards.

“Separate but Equal” and “Jim Crow”

In this case, the primary concept we have learned is “separate but equal”. The Plessy decision was huge in that it now gave the Deep South permission to revert back to the pre-Reconstruction era. “Reconstruction” defines an era after the Civil War (1867 to 1877) in which the Union attempted to put back together the war-torn South (*Plessy v. Ferguson, 2010*). As earlier noted, the 14th Amendment’s ratification of 1868 came as a result of Reconstruction efforts in order to ensure that the newly freed blacks would receive an “equal protection of law”. “Separate but Equal” meant quite simply that Blacks and Whites having separate facilities was Constitutional as long as they were equal. The doctrine quickly spread to cover many areas of public life: restrooms, hotels, schools, transportation, hospitals, etc., but they facilities would all be equal (Wormser, 2002). This did not mean that there would be equal resources. During the decision of the *Brown v. Board of Education* case, which will be discussed momentarily the chief Justice Taney remarked:

Plessy v. Ferguson has no place in education. The ‘tangibles’ mentioned earlier refers to buildings, materials, desks, etc. The Court further quoted the Kansas court, which had held that “Segregation of white and colored children in public schools has a detrimental

effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn” (Pearson Education, Inc., 2005).

The very systems the 14th Amendment was put into place to stop were now being enacted. The southern states begin to immediately enact a term called Jim Crow Laws. Jim Crow was a fictional character created by Thomas Dartmouth Daddy Rice who one day was singing the song when he happened upon an old crippled slave, some say a stable boy. He then appeared on stage in “Black Face” utilizing a highly stereotypical demeanor for blacks (Pilgrim 2000). The Jim Crow song was to the following affect:

"Come listen all you galls and boys,
I'm going to sing a little song,
My name is Jim Crow.
Weel about and turn about and do jis so,
Eb'ry time I weel about I jump Jim Crow."

Jim Crow as system was a racial caste system, a way of life which taught Blacks and Whites that Blacks were inferior. Blacks were relegated to second class citizenship (Pilgrim, 2000). “Black Face” is the term used to describe White actors who would wear black make up on their faces and poke fun at Blacks.

Brown v. Board of Education, 1954

The system of “separate but equal” remained until 1954 when Linda Brown, an eight year old African-American girl, was denied access to an all White school located four blocks from her home. Instead, she was ordered to attend a non-White school located twenty one blocks from her home. The NAACP argued the case on her behalf. In order to gain legal leverage, they filed a class action law suit and filed the case on behalf of her dad, Oliver Brown. Within this case, other cases were added: *Belton v. Gebhart* – Delaware, *Briggs v. Elliot* – South Carolina, *Davis v. County School Board of Prince Edward County* – Virginia, and *Bolling v. C. Melvin Sharpe* – Washington D.C.

The ruling of *Brown v. Board of Education, Topeka, Kansas 1954* argued that the landmark case *Plessy v. Ferguson, 1896* was unconstitutional based upon the 14th Amendment’s equal protection clause which guarantees all citizens equal protection of the laws (Brown Foundation for Educational Equity, 2004). The question posed by the court was “Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprives the children...of equal educational opportunities (Pearson Education, Inc., 2005). The Board of Education testified that based on the *Plessy* decision of 1896 to support segregation that they in good faith created “equal facilities,” even though races were segregated (Pearson Education, Inc., 2005).

Chief Justice Warren summarized that *Plessy v. Ferguson* does not apply to the current times. In the South, the movement toward free common schools, supported general taxation, had not yet taken hold. Education of White children was largely in the hands of private groups. Education of Negroes was almost non-existent, and practically all the race was

illiterate. In fact, any education of Negroes was forbidden by law in some states. Today in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as the professional world” (Brown v. Board of Education, 2010).

He concluded that Plessy v. Ferguson has no place in education. The ‘tangibles’ mentioned earlier refers to buildings, materials, desks, etc. The Court further quoted the Kansas court, which had held that “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn” (Pearson Education, Inc., 2005). We find such an inferiority complex in today’s educational system as the media, policy makers, and the movie industry show urban communities, which are predominantly Black and Hispanic to be “a signifier for poverty, nonwhite violence, narcotics, bad neighborhoods, an absence of family values, crumbling housing, and failing schools” (Kincheloe, 2010, p. 1-2).

Review of Literature

While researching the three benchmarks, it was happenstance that I discovered that the 14th Amendment happened to be the grounds on which each benchmark was fought, more specifically citing the Equal Protection Clause: the Portion of the Fourteenth Amendment to the U.S. Constitution that prohibits discrimination by state government institutions. The clause grants all people "equal protection of the laws," which means that the states must apply the law equally and cannot give preference to one person or class of persons over another (Equal Protection Clause, 1995). What must be noted again is that the object of the Fourteenth Amendment according to Justice Brown for the majority in Plessy v. Ferguson, was undoubtedly to enforce the absolute equality of the two races before the 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 (Zimmerman, 2010). In other words, “equal protection” under law was irrelevant to the Plessey case specifically because there was no distinction being made by any laws.

In the Historical Analysis of the Meaning of the 14th Amendments First Section by P.A. Madison, I found it to be interesting that initially the amendment was designed to protect the newly freed slaves from the southerners during their travels in and throughout the south. This was because the original constitution only extended to those citizens born in the United States. Furthermore, according to Gloria Ladson-Billing (1998) “it is the foundation of property rights that make civil rights legislation so painfully slow and sometimes ineffective” (p. 15). It was through property rights that citizenship was first established in the early history of the nation. Therefore, those who owned property had rights as citizens. The Dred Scot decision ensured that African Americans would remain property and therefore could not own property making them forever non-citizens. This made the first section of the 14th amendment necessary in order to ensure what happened to Dred Scot would not occur again.

Additional information regarding the implications of these benchmarks as a result of the 14th Amendment are found in Jonathan Kozol’s, *Savage Inequalities*; Farai Chideya’s, “Don’t Believe the Hype; and Beverly Daniel Tatum’s, “Why Are All the Black Kids Sitting Together in the Cafeteria?” These additional readings provided up to date insight into the current state and

impacts of the benchmarks. For instance, Chideya (1995) shares the results of “white flight” as a result of “white communities simply circumventing the ruling by pulling their children out of the public school system and developing private schools” (p. 72). Additionally, she shares the lament of a Black lawyer who runs a tutoring program in Maryland, “Back then (before integration), while you had more racial conflict than you do now, there was also much more a commitment to excellence. It’s almost like we expect children to do worse as the system becomes darker” (p. 74). Furthermore, Kozal (1991) talked about blatant “restructuring” policies in which “the fact of ghetto education as a permanent America reality appeared to be accepted (p.4). Allan Greenspan is quoted as saying “Poverty in America may be ‘good for business’ (Anyon, 2005, p. 59). Sadly, this is what it means to be American in my opinion. Someone has to be poor and someone has to be rich because there is not enough pie for everyone.

Other readings that added to this research are *Controversial Issues in Educational Policy* by Louann A. Bierlien; *19 Urban Questions*, edited by Shirley Steinberg; and *Radical Possibilities* by Jean Anyon. It was imperative to utilize these resources in order to diagnose if the policy was serving its stated goal. There are two specific clauses, which are used as grounds of law suits. They are the “equal protection clause” and the “general welfare” clauses. The “equal protection” clause was used to debate the *Brown v. Board of Education*. The declaration that “separate but equal” was unconstitutional opened the door to court ordered desegregation and busing debates that still impact the educational system (Bierlien, 1993, pp. 17-18). The “general welfare” clause grants Congress the power to provide for the common defense and general welfare of the United States (p.17).

I utilized historical readings, such as *Before the Mayflower*, by Lerone Bennett, Jr; *African Americans: Their History* by Howard Jones; and *From Slavery to Freedom* by John Hope Franklin and Alfred A. Moss, Jr., I was able to put the historical significance of the 14th amendment in a historical perspective. This paper began with a look at John Punch, 1640 and the implementation of slavery in America. Slavery and “the Peculiar Institution” as it became to be known has served as the back drop for Blacks being viewed as inferior to whites culturally and intellectually despite the fact it was the ingenuity of a slave which revolutionized cotton picking with the invent of the Cotton Gin. Additionally, the historical perspective of these books, I feel adds a human perspective, showing the plight of the African America race from its inception in the “New World.”

Finally, the use of Critical Race case studies by Gloria Ladson-Billings (1998) and Sonya Douglas Horford (2010) provided a lens which allows readers to discover “mixed feelings”, implications and impacts of the *Brown* decision and how citizenship and race are conceptualized. According to Ladson-Billings, “the salience of property often is missed in our understanding of the USA as a nation” (p. 15). Property established ownership in the early history of our nation, an establishment procured by White males. Harris (1993) argues “property functions of whiteness” (p. 1731) – rights of disposition, rights to use and enjoyment, reputation and status property, and the absolute right to exclude – make the American dream of “life, liberty, and the pursuit of happiness” a more likely and attainable reality for Whites as citizens (as cited in Ladson-Billings, 1998). Further conceptualizations are that of “conceptual whiteness” – school achievement, middle class, and intelligences – and “conceptual blackness” – gang, welfare recipients, and underclass (p. 9).

Horsford (2010) shares “counter narrative” stories from African American superintendents who grew up during the Brown era where they were initially segregated and then desegregated. These superintendents, born between 1932 and 1947, were responsible for maintaining or fully integrating their districts which were in the Northwest, West, Midwest, Mid-Atlantic, Northeast, and South (p. 296). The case study reveals one perceived problems with desegregation are “de facto segregation” where although schools are integrated, students are still separated by race according to perceived abilities or lack of ability: Special Education and Gifted and Talented; low self concept of African American learners due to persistently perceived academic and behavioral deficiencies; and the loss of African American administrators and teachers along with the closing schools in largely African-American communities, and confirming the assumptions of Black parents that White schools were better than Black schools (p. 302).

Implications and Impact

Dred Scott Decision

As a result of the Dred Scott decision, we find that in Urban Education, there are policies in place which support the notion that non-Whites are not full citizens or not citizens of the United States at all. Many White elite’s families and insurance providers such as Merrill-Lynch allegedly profited from slavery as their ancestry were slave owners. According to three federal law suits filed in New York on behalf of 35 million African Slave descendants, more than 60 current companies including AETNA had a role in slavery (Law and Justice, 2002). Blacks are still fighting for the rights to equal opportunity, resources, property, education and even the right to protest. In “Resistance to Affirmative Action: The Implications of Aversive Racism,” John Dovidio, Jeffrey Mann, and Samuel Gaertner argue that White opposition to affirmative action programs is largely rooted in a subtle but pervasive form of racism they call “aversive racism” (as cited in Tatum, 1997, p. 118). Aversive racism is defined as “an attitudinal adaptation resulting from an assimilation of an egalitarian value system with prejudice and racist beliefs” (p. 118). Our cases must still be fought in Federal court since states rights typically outweigh the constitution – especially in educational issues which are highlighted in *Edgewood v. Kirby*, 1989.

People of color must cite Title IX, Title III, or the protection clauses under the 14th Amendment in order to gain equal access to those things promised under the 1st Amendment – “the right to the pursuit of happiness.” To be told that I am another human being’s property is a travesty. I can only imagine the sinking feeling in Dred Scott’s heart when Justice Taney informed him of this fact. He was told that he was equal or lesser value than cattle, an automobile or furniture, and that his owner had the property right to keep him under the same Constitution, which the Supreme Court declared was not meant to protect him. He essentially was not human; he was no more than an animal called “Negro.”

Plessy Decision

We find implications from *Plessy v. Ferguson* in the inequalities in educational funding. There are those that believe that additional funding is not the key to “fixing” the education system but efficiency. Bierlien (1993) writes that Liberals believe additional resources are necessary for excellence, while conservatives contend that increased revenues are unwarranted because

schooling can become more efficient (p. 27). Interestingly, these are the same proponents for the privatization of education and the parent choice. Furthermore, the educational financial system is still “broken” as more and more schools are going into the red because of state budgetary short falls. We find the arguments over school zoning to be a much contested issue in “affluent” districts such as Cy-Fair, Katy, and Klein of Texas. In 2007, residents of Northgate subdivision in Spring ISD petitioned to move to Klein. The petition was rejected. The interest in the move is to protect the property values of the affluent subdivision. “It could be a relatively minor case in the sense of the number of kids, but the structural impacts of a decision like that are very large,” said Myron Orfield, who directs the Institute on Race & Poverty at University of Minnesota Law School. “This would be a signal to the affluent, white parts of diverse suburban districts, and there are a lot of those in Texas, that they could petition to secede. And that...would begin the process of deepening the racial and social segregation” (Mellon, 2007). For example, in 2017, a suburb of Alabama was permitted to secede from the school district in order to form its own school district. Gardendale, which is 88% white was allowed to do so with several conditions to ensure they would not return to their racists past (Siemaszko, 2017). Nevertheless, in 2018 another court ruled that they could not secede after finding that there was a racial intent to exclude Black children from attending the Gardendale schools. (Faulk, 2018).

Even though we are in the 21st century, this particular benchmark continues to resurface when any indication of separate but equal appears. Although not as blatant as the Jim Crow era, “separate but equal” is still present. Educational researchers have to question and challenge policies such as Special Education and the Gifted and Talented Programs, which label students in order to establish equity for policy sake. Further, the current president of the United States, in his crusade against immigration, has called for a rollback of the 14th Amendment that grants citizenship by birth and for a stop to chain migration, which allows the family members of naturalized citizens be allowed to become citizens. Ironically, the First Lady is an immigrant and so was his first wife. A roll back of the 14th Amendments citizenship clause would mean that his sons and daughter by his first wife would no longer be citizens and nor would his youngest son by the First Lady. Furthermore, rolling back chain migration means the First Lady’s parents would no longer be permitted to remain in the United States.

Brown Decision

Through *Brown v. Board of Education* one can see the effects of an equal education for minorities. Minorities have made numerous strides in industry, law, medicine, the arts, and education. In addition, we began to see the sports industry desegregated as well. However, I feel that the *Brown v. Board of Education* decision did some harm too many black professionals. As a result of the decision, “inferior” all black schools were closed and black teachers and administrators lost their jobs. McCray (2007) indicates that Black schools were closed and their students were bused to White schools (as cited in Kinchelo, 2010, p. 58). Less and less black students entered college with the aspirations to become a teacher since jobs were no longer available. Kunjufu (2002) shares that the lack of Black educators for our urban students, young African American college students opted to major in fields of study other than education (as cited in Kinchelo, p. 58).

Another implication is found in “Radical Possibilities” by Jean Anyon (2005, p. 62) She shares an examination of federal policies during the 20th century which provided strong encouragement

for business enterprises to move from urban locations to suburbs – “Redlining”. In addition, these guidelines forbade bank loans for housing rehabilitation or purchase in city neighborhoods. Essentially, the white middle class began to move with the businesses out into the suburbs leaving the poorer lower class whites and minorities in the urban city. Rather than integrate, many white communities simply circumvented *Brown v. Board of Education* by pulling their children out of the public school system and developing private schools (Chideya, 1995, p. 72). As earlier noted, in some areas, local governments shut down the public schools entirely, leaving black students worse off than when they had inferior, segregated schools (p. 72).

This re-created *Plessy v. Ferguson* all over again. Denial of home loans in Urban-defined areas but lower interest rates and incentives to move into the suburbs is a “separation and inequality” in itself. Furthermore, gentrification of historically Black and Latino areas is becoming a major political hot spot in major cities such as New York, Houston and Denver. In these cities, historically Black neighborhood – Brooklyn, 3rd Ward, and 5 points – are becoming increasingly White with high property values forcing families to sell their home and move out of the cities. Kozal (1991) shared his finding from a trip he took to the Deep South. He indicated that most of the Urban schools he visited were 95 to 99 percent nonwhite. “In no school that I saw anywhere in the United States were nonwhite children in large numbers truly intermingled (p. 3). In 2018, there is evidence that supports that schools are still separate and unequal (Cook, 2015).

Impacts include “de facto segregation” where within integrated schools one finds segregated classrooms and segregated programs. “Desegregation often brings big dollars to a school district, which goes toward instituting new programs, creating new jobs, providing transportation, and supporting staff development (Ladson-Billings, 2009, p. 6). This occurs when African-Americans are bused to White schools and suburbs. In contrast, when White students are integrated into African-American schools, “desegregation money” is used to transform them into “magnet” schools – schools that attract students from throughout the district because they offer exemplary programs in mathematics, science, technology, the performing arts, and so on (p. 6).

Furthermore, integration resulted in the overrepresentation of Black students assigned to low-ability tracks, enrolled in special education programs, and counted as discipline statistics (Horsford, 2010, p. 301). The over representation of Black students, particularly male, receiving suspensions and expulsions, has caused a national stir or at least concern for local school districts who serve a population where Black students are a minute part of the population but they represent the majority of special education students and discipline referrals. According to IDEA (U.S. Department of Education, 1997), “...poor African American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart (as cited in McIntosh, 2002, p. 47). On the contrary the U.S Department of Education Department of Civil Rights (Richert, 1985) indicates that minority groups...African American, Hispanics, and Native Americans are underrepresented in gifted education programs by 30% to 70% (as cited in Daniels, 2002, p. 95).

Recommendations

The right to simply exist has become ever more contentious, evidenced by the rash of 911 calls to police on Black men and women for simply living their lives. Police are now being

weaponized in an attempt to exact control and compliance over Black and Brown people. This paper has shown how the 14th Amendment was used in order to gain monumental Benchmark case wins. As a result, recommendations for future inquiry into the 14th Amendment include a review of *San Antonio v. Rodriguez*, 1973 and *Edgewood v. Kirby* 1989. In addition, with the immigration issue in the nation currently, research and analysis of how the 14th Amendment provides protection or does not provide protection to both legal immigrants and the children of undocumented immigrants born in the United States. The current detainment and deportation policy resulting in the separation of children from their parents and families being held in ICE centers until trial should result in litigation against the United States under the “equal protection clause”.

Conclusion

Imagine the sinking feeling in Dred Scott’s heart when Justice Taney informed him that he was another human’s property. He was told that he was equal or lesser value than cattle, an automobile or furniture, and that his owner had the property right to keep him under the same Constitution which the Supreme Court declared was not meant to protect him. Similarly, imagine the feeling of being told that despite the fact that you are majority White, your 1/8 blood makes you inferior. It is as if your blood is some how tainted or stained. Ironically, it is because of that period from 1619 to 1865 that the United States is forever stained.

I close with the hope and belief that somehow our system for working toward equity equality will be improved. However, I know it will not. I can see the darkness creeping eloquently into the minds of our youth as our politicians have no longer placed the good of the country as their top priority. Rather, policy is driven by the interests of business and capital. America is a capitalist country, not a democratic one as demonstrated by the candidate who can garner the most money usually winning the election. In this paper, we have seen three benchmarks which show the reasoning, the wisdom, the ideals, and the ultimate fall of the 14th Amendment. In the movie, “With Honors”, the history professor asked the question, “What is the genius of the American Constitution?” To which, Joe Pesci, playing a homeless person in the movie “With Honor”, replied, “The genius of the Constitution was that the fore fathers were wise men who knew that they were not great men...they were farmers. They knew they did not know everything, so they gave themselves a loop hole in the form of amendments” (Keshishian, 1994).

It is that genius that allows us to correct our mistakes and learn from them as in the case of *Brown v. Board of Education* breaking down the barriers set by *Dred Scott v Sanford* and *Plessey v. Ferguson*. None of us are great people although our nation is built upon the premise that one racial group is greatest of all others. Despite our failings as a society and nation, we remain a leader in the world. How long depends on whether the focus is entirely on equality without equity. After all we can no longer focus on what is good for the least regardless of how it negatively affects the most. That is the genius of capitalistic society and the ultimate destruction of a democratic nation.

Reference

- Anyon, J. (2005). *Radical possibilities*. New York: Routledge.
- Africans in America. (2010). *Virginia recognizes slavery: 1661 – 1663*. Retrieved from: <http://www.pbs.org/wgbh/aia/part1/1p262.html>.
- Africans in America. (2010). *Dred Scott Case: The Supreme Court Decision, 1857*. Retrieved from: <http://www.pbs.org/wgbh/aia/part4/4h2933.html>.
- Ball, D. L. (2018, April 15). *Just dreams and imperatives: The power of teaching in the struggle for public education*. Presidential Address. Annual American Educational Research Association Conference. New York, New York.
- Bierlein, L. A. (1993). *Controversial issues in education policy*. California: SAGE.
- Bennett, Jr. L. (1987). *Before the mayflower*. New York: Penguin Books.
- Brown Foundation for Educational Equity (2004, April 11). *Brown v. Board of Education*. Retrieved from: <http://brownvboard.org/summary>.
- Brown v. Board of Education, 347 U.S. 483 (1954) (USSC+). (2010). *The National Center for Public Policy Research*. Retrieved from: <http://www.nationalcenter.org/brown.html>.
- Brown v. Board of Education of Topeka, 1954 (2010). *Pearson Education, Inc.* Retrieved from: <http://www.infoplease.com/us/supreme-court/cases/ar04html>.
- Butler, B.R., Joubert, M.D., & Lewis, C.W. (2009). Who's really disrupting the classroom? An examination of African American male students and their disciplinary roles. *African American Males in Urban Schools*, 3 (1), 1-10.
- Chideya, F. (1995) Don't believe the hype. New York: Plume.
- Cook, L. (2015). U.S. Education: Still separate and unequal. *U.S. News & World Reports*. Retrieved from: <https://www.usnews.com/news/blogs/data-mine/2015/01/28/us-education-still-separate-and-unequal>
- Daniels, V. I. (2002). Maximizing the learning potential of African American learners with gifts and talents. In F.E. Obiakor and B. A. Ford (Eds.), *Creating Successful Learning Environments for African American Learners with Exceptionalities*, pp. 95-105. Thousand Oaks, CA: Corwin.
- Equal Protection Clause. (1995). *Lectric Law Library*. Retrieved from: <http://www.lectlaw.com/def/e027.html>.

- Faulk, K. (2018). Court rules Gardendale can't form school system, finds racial motives; city to Appeal. *AL.com*. Retrieved from: https://www.al.com/news/birmingham/index.ssf/2018/02/federal_appeals_court_rules_ga.html
- Fortin, J. (2018). 'Access to literacy' Is not a constitutional right, Judge in Detroit rules. *New Times*. <https://www.nytimes.com/2018/07/04/education/detroit-public-schools-education.html>
- Goodman, G. S. & Hilton, A. A. (2010). Urban dropouts: Why persist? In S.R. Steinberg, (Ed.), *19 Urban Questions: Teaching in the City* (pp. 55-67). New York: Peter Lang.
- Higgonbotham, A. L. (1980). *In the matter of color: Race and the American legal process – the Colonial period*. New York, New York: Oxford.
- Horsford, S. D. (2010). Mixed feelings about mixed schools: Superintendents on the complex legacy of school desegregation. *Educational Administration Quarterly*, 46(3), 287-321, DOI: 10.1177/103161X10365825.
- Indentured Servant. (2010). *Gail Encyclopedia of U.S. History. Answers.com*. Retrieved from: <http://www.answers.com/topic/indentured-servant>.
- Johnson, N. (2010, September 28). *Lack of Black teachers rued in Western, Pa. schools*, [Blog]. Retrieved from: <https://courses.cehd.tamu.edu/mod/forum/discuss.php?d=3031>.
- Jones, H. (1997). *African Americans: Their history*. New York, New York: American Heritage.
- Kinchelo, Joe L. (2010). Why a book on urban education? In S. R. Steinberg, (Ed), *19 Urban Questions: Teaching in the City* (pp. 1-25). New York: Peter Lang Publishing.
- Kishishian, A. (1994). *With Honors*, [movie]. New York: Warner Bros.
- Kozal, J. (1991). *Savage inequalities*. New York, NY: HarperCollins.
- Ladson-Billings, G. (2009). *The dream keepers: Successful teachers of African American children*. San Francisco, CA: Jossey-Bass.
- Ladson-Billings, G. (1998). Just what is critical race theory and what's it doing in a nice field like education? *Qualitative Studies in Education*, 11(1), pp. 7-24.
- Law and Justice. (2002, April 15). Federal suits filed in New York seek slavery reparations. *Jet Magazine*. A Johnson Publication.

- Lazarevic, S. P. (2003) United States of America chronology: The Dred Scott decision, 1857. *The Web Chronology Project*. Retrieved from: <http://www.thenagain.info/Webchron/usa/DredScott.html>.
- Primary documents in American history: 14th Amendment to the U.S. Constitution. (2010). *The Library of Congress*. Retrieved from: <http://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html>.
- McIntosh, P. (1988). *White privilege and male Privilege: A personal account of coming to see Correspondences through work in women's studies*. Working paper number 189. Center for Research on Women, Wesley College, Wesley, Massachusetts.
- Mellon, E. (2007, April 5). School board rejects Northgate Forest petition. *Houston Chronicle*. Retrieved from: <http://www.chron.com/disp/story.mpl/metropolitan/4689566.html>.
- National Park Service (2010). *The Dred Scott Decision*. Retrieved from: http://americancivilwar.com/colored/dred_scott.html.
- Pilgrim, D. (2000, September). *What Was Jim Crow?* Ferris State University. Retrieved from: <http://www.ferris.edu/news/jimcrow/what.html>.
- Plessy v. Ferguson. (2010). *Infoplease: All the Knowledge You Need*. Retrieved from: <http://www.infoplease.com/ce6/history/A0839368.html>
- Plessy v. Ferguson: Separate isn't Equal. (2010). Ferris State University. Retrieved from: www.ferris.edu/jimcorw/micslink/plessy/.
- Plessy v. Ferguson. (2001). *Projects by students for students*. Retrieved from: http://library.thinkquest.org/J0112391/plessy_v_ferguson.html.
- Robinson, S. (2010). *A Day in Black History: The Plessy vs. Ferguson, 1892*. Retrieved from: www.gibbsmagazine.com/Plessy.html.
- Ruiz, B. C. (2001). *Pedro Alonso Nino*. Retrieved from: http://bruceruiz.net/PanamaHistory/pedro_alonso_nino.htm
- Siemaszko, C. (2017). Judge lets white Alabama town secede from school district despite 'Race' being a factor. NBC News. Retrieved from: <https://www.nbcnews.com/news/us-news/judge-lets-white-alabama-town-secede-school-district-despite-race-n752581>
- Tatum, B. D. (1997). *Why are all the black kids sitting together in the cafeteria: And other conversations about race*. New York, NY: Basic Books.

The History Place: Abraham Lincoln. (1996). *The Dred Scott Decision*. Retrieved from: <http://www.historyplace.com/lincoln/dred.html>.

Toppo, G. & Nichols, M. (2017). Decades after civil rights gains, black teachers a rarity in public schools. USA Today. Retrieved from: <https://www.usatoday.com/story/news/nation-now/2017/02/01/decades-after-civil-rights-gains-black-teachers-rarity-public-schools/96721684/>

Wormser, R. (2002). *The Rise and Fall of Jim Crow: Plessy v. Ferguson*. PBS. Retrieved from: www.pbs.org/wnet/jimcrow/stories_events_plessy.html.

Zimmerman, T. (2010). *Plessy v. Ferguson*. Retrieved from: [http://schools.fwps.org/tbhs/staff/nbirklid/Class%20Content/US%20History%20\(Beamer\)/Plessy%20v%20Ferguson.docx](http://schools.fwps.org/tbhs/staff/nbirklid/Class%20Content/US%20History%20(Beamer)/Plessy%20v%20Ferguson.docx)