Constitutional History of the United States

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Schmidbauser-Constitutional Law in the Political Process

Desegregation of Public Education

The most controversial and probably the most important decisions the Supreme Court has made in the twentieth century were in the school segregation cases of 1954. In these decisions the court declared that the public educational systems of over one third of our states unconstitutionally discriminated against Negro children by requiring them to attend what has been called “inferior” schools separate from those of white folks. That decision came in May 17, 1954 as a great surprise to many. But it should not have been a surprise because it was in actuality the climax of an evolutionary process of court policy regarding public education extending back over the previous twenty years. The crux of the issues initiated over the question of equality of law in violation of the 14th amendment. The 14th Amendment stipulates that no state shall deprive any citizen of the equal protection of laws.

The evolutionary process of the Separate but Equal Formula.

Because contemporary reactions to the school integration issue have been largely identified with a particular region, it is sometimes overlooked that initially racial segregation was (and still is) a nationwide

problem. This is under scored by the fact that the “Separate but Equal Doctrine” originated not in the south but in New England, in the state of Massachusetts.

Sarah Roberts Case

For half a century schools for the exclusive use of Negro children had been maintained in Boston. Both parties to the Roberts case agreed that the first school was originally established in 1798, at the request of Negro citizens whose children could not attend the public schools on account of the prejudice then existing against them. Boston had refused to incur the expense of the colored school, but it was made possible by the beneficiaries of white philanthropists. In 1806 the basement of the newly erected African Baptist Church in Belknap Street was secured as a permanent site. When Abiel Smith” the merchant price” died in 1815 and left an endowment of $4,000 for the school, it took his name. Not until 1812 had Boston assisted the school. The town’s grant of $200 was continued yearly till 1815 when the Board of Selectmen assumed control. Boston legally fixed the pattern of segregation by establishing a separate primary school for Negroes.

For more than twenty years thereafter, the Smith Grammar School and its primary school appendages continued undisturbed. Meanwhile, the Boston Negros had been growing in political maturity. Once the battle against Jim Crow was won, Negro militants urged on by the Massachusetts antislavery society, turned their faces against the Jim Crow school, once a blessing, now a discriminatory abomination. In 1846 they petitioned the primary school committee for the abolition of

exclusive schools. Despite the protests of its two abolitionist members, Edmond Jackson and Henry I Bowditch, the committee decided against the petition. Candidly naming racial difference as the reason for their action, the majority declared that segregated education for Negroes was not only legal and just, but it is best adapted to promote the education of that class of our population. That very year, the white master of Smith School officially reported that the institution was shamefully neglected, desperately in need of repairs.

For over four years the issue was the occasion of discord among public officials and among the Negroes themselves, who were bitterly divided. In the press, and at public meetings, it was long debated and no less than two majority and two minority school committee reports were published. Without action by the legislature which alone could end the controversy all the circumstances were at hand for a court case.

Benjamin Roberts was one of the Negro leaders in the fight against segregation. Four times he tried to enter his five year old daughter Sarah in one of the white primary schools of the district in which he resided and as many times she was rejected by authority of the school committee solely on the grounds of color. On the direct route from her home to the primary school for Negroes, Sarah passed no less than five other primary schools. Roberts was informed that his child might be admitted at any time to the colored school, but he refused to have her attend there. Determined to test the constitutionality of the school committees power to enforce segregation, Roberts brought suit in Sarah's name under a statue which provided that any child illegally excluded from the public schools might recover damages against the city.

To argue Sarah's Case, Roberts retained Charles Sumner, a man of erudition, eloquence, and exalted moral fervor, he was to become New England's greatest senator and slavery most implacable foe. The city of Boston was represented by its solicitor, Peleg W. Chandler, Massachusetts' foremost expert on municipal law and founder of one of the earliest legal journals, The Law Reporter.

Sumner's argument before Shaw turned on a single proposition, the equality of man before the law. Noting the paragraphs of the Massachusetts Constitution, which courts of a later day were to construe as meaning the same as the Equal Protection Clause of the Fourteenth Amendment, Sumner observed that every form of inequality and discrimination in civil and political institutions was thereby condemned. He alleged the unconstitutionality of the segregated school on the grounds of its "Caste" nature, and proved that the school committee had been motivated by social prejudice. The power of the committee, delegated by the state legislature, was merely to superintend the public schools and to determine the number and qualifications of the scholars, a power to segregate could not be implied, argued Sumner, for the committee cannot brand a whole race with the stigma of inferiority and degrading. To imply the existence of that power would place the committee above the Constitution. It would enable them, in the exercise of a brief and local authority, to draw a fatal circle, within which the Constitution cannot enter, nay, where the very Bill of Rights shall have a dead letter. Only factors of age, sex and moral and intellectual fitness might be considered by the committee as qualifications, not complexion, just as the law required the regulation and by-laws of municipal corporations to be reasonable, Sumner asserted, so must the acts of the school committee be reasonable. But on a prior assumption by the committee that an entire race possess certain qualities which make necessary a separate classification of that

race was an unreasonable exercise of the committees' discretion, and therefore an illegal one.

Anticipating the separate but equal doctrine, Sumner argued that the segregated school could not be an equivalent because of the inconveniences and the stigma of caste which it imposed, and because a public school, by definition, was for the equal benefit of all. The right of the Negro children was to previse equality. Before closing, Sumner discussed certain matters not strictly belonging to the judicial aspect of the case, yet necessary for understanding it. His remarks, which have been validated by modern sociological scholarship, were in part as follows:

The white themselves are injured by the separation…with the law as their monitor…they are taught practically to deny that grand revelation of Christianity-the Brotherhood of Mankind". Their hearts, while yet tender with childhood, are necessarily hindered by this conduct, and their subsequent lives, perhaps, bear enduring testimony to this legalized charitableness. Nursed in the sentiment of caste, receiving it with the earliest food of knowledge, they are unable to eradicate it from their natures. The school is the little world in which the child is trained for the larger world of life. It must, therefore, cherish and develop the virtues and the sympathy which are employed in the larger world beginning there those relations of equality which our Constitution and laws promise to all. Prejudice is the child of ignorance. It is sure to prevail where people do not know each other. Society and intercourse are means established by Providence for human improvement. They remove antipathies, promote mutual adaptation and conciliation, and establish relations of reciprocal regard.

Justice Shaw said, "All animals are equal but some animals are more equal than others". In terms of constitutional history Shaw's opinion

was tremendously important. It was the origin of the separate but equal formula. The case was later cited by the territory of Nevada in 1872, California two years later. Courts of New York, Arkansas, Missouri, Louisiana, West Virginia, Kansas, Oklahoma, South Carolina, Oregon, all have relied on Roberts's case as a precedent for upholding the separate but equal doctrine. The influence was immeasurable. Thus, Shaw's doctrine in the Roberts case became the law of the land and remained so more than a century after he originated it.

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At the end of the Civil War it appeared that the Negro had his freedom. The Civil War was hardly over when the south began to think literally to turn back the clock. The Negro was relegated to a position of complete inferiority, not very different form his pre-Civil War status. To have compliance the south asserted a host of state laws and local ordinances enacted after 1880 which separated whites and blacks in every possible area of activity. Some communities went to seemly ridiculous ends to insure segregation. Examples.

In New Orleans there was desegregated prostitution. In Atlanta blacks and whites were not to visit the zoo at the same time. Oklahoma required telephone companies to have separate telephone booths for blacks and whites. The separate but equal policy was designed to keep the Negro in his place.

Some people in the north and south protested this madness. These protests were of little affect. In 1896 the Supreme Court finally approved the pattern of segregation established in the south in the famous Plessy VS Ferguson Case.

Plessy VS Ferguson

The Plessy Case grew out of a Louisiana law passed in 1890. The law required that railroads in Louisiana would provide separate but equal accommodations for its patrons. On June 2, 1892 Homer Plessey, 1/8 Negro, appeared to be white, boarded a train in New Orleans. He took a seat in the white coach rather than taking a seat in the Jim Crow car, thus violating the law. Where upon, the conductor tapped Plessy on the shoulder and said, Plessy, remove yourself". Plessy said, "No". Here's I's sat and here's where i's stay". With the aid of a policeman Plessy was taken to a New Orleans jail. He was taken before Judge Ferguson. The Supreme Court of Louisiana affirmed Plessy's conviction. Then Homer Plessy appealed to the Supreme Court of the United States. The United States Supreme Court was than occupied by eight Yankees and one southerner. The decision that Homer had gotten a raw deal was 1:8. The southerner said that Plessy had been mistreated. The Yankees said no. Plessy's lawyers argued that the Louisiana segregation laws unconstitutional under both the 13th Amendment which abolished slavery, and the Legal Protection Clause of the 14th Amendment.

Associate Justice of the Supreme Court Henry Billings Brown very quickly brushed aside these arguments with the assertion that segregation was lawful when equal facilities were provided for both races. Then Plessy's lawyers argued that segregation branded Negroes with a badge of inferiority. That argument was dismissed but Brown who said that if that was so it was not because of anything within the act but colored people chose to put that construction upon it.

The solitary descending Judge was Justice John Harlan. He had been a slave owner in Kentucky. He took his stand in very eloquent language. Haran said that the 13th and 14th Amendments were designed to end

discrimination based on color. Segregation is discrimination. Everyone knows that the statue in question really had its origin in not so much to exclude whites from black coaches but to exclude black people from white coaches. The thing to accomplish was under the guise to give equal accommodation to blacks and whites, to compel the blacks to keep to themselves. Harlan said no one could be liking in since to assert the contrary. He said that the fundamental objection was that it interferes with the personal rights of the citizens. If a black man and a white man choose to occupy the same public conveyance it is their right to do so. No one can prevent that without infringing upon personal liberty of each man. Harlan said our Constitution is color blind. It neither knows not tolerates. All citizens are equal before the law. Civil rights concerned humbleness are the peer of the most powerful because according to Judge Harlan the law regards man as man. It takes no account of his color when civil rights are involved. It is to be regretted that the Supreme Court has reached the conclusion that it is competent for a state to regulate the enjoyment by its citizens of their civil rights solely on the basis of race. This cannot be justified on any legal grounds. The interest of both require that the common government of all shall not permit seeds of racial hatred to be implanted by the sanction of laws. What can more certainly arouse racial hatred among man then state enactments on the grounds that blacks are so inferior and degraded that they cannot set in public coaches occupied by white folks. This disguise want mislead anyone, nor will it atone, for wrong this day done.

Brown 8:1 Supreme Court of the United States beheld that the state of Louisiana law requiring railroads to provide equal but separate accommodations did not violate the equal protection law in the 14th Amendment. The Supreme Court insisted that the law was the proper exercise state police power in maintaining order within her borders.

State police power is a very ambiguous term, nowhere defined in the Constitution. It is said to be an undefined depository of government authority which falls under the 10th Amendment by which the state may protect the health, welfare and the morals of its citizens. With very few exceptions newspapers in both the south and the north endorsed the court's opinion. The Atlanta Journal very proudly announced that Georgia was the very first southern state to provide for separate but equal train accommodations. It went on to point out that separate cars were advantageous to both races. It insisted that Negroes themselves preferred this arrangement. The New York Journal said they did not understand why people were upset about this. Any state had a perfect right to sanction such laws. The result of this opinion was the passing of Jim Crow laws by many states legislatures in the south-provided for separate but equal accommodations for each race. The Plessy VS Ferguson decision was later applied to schools.

1899-1900 Case of Cumming VS County Board of Education in Richmond County, state of Georgia

In the Cummings Case Negro tax payers sought an injunction requiring the Richmond County School Board to discontinue the segregation of the high school until the board operated a high school for black children. The Supreme Court found no denial of equal protection. Richmond school provided for whites but not for black children in the district.

Berea College VS Kentucky-1922

In this case the Supreme Court maintained that the individual state could forbid a college to teach white and black at the same time. And at the same place. The Court said states could pass some separate laws pertaining to private schools. For a long time there was no serious challenge to the separate but equal doctrine.

1927-Case of Gong Lum VS Rice. Occurred in the state of Mississippi. The case involved a Chinese girl. She applied to the Mississippi public school for whites. Mississippi said absolutely not. She will have to attend black schools.

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The first court decisions resulting in the eventual repudiation of the separate but equal doctrine in the field of public education came in the year 1937. This was the first in favoring the Negro.

Missouri el rel. Gaines VS Canada

The case which arose out of the refusal of the University of Missouri, a state institution, to admit a Negro applicant to the university law school. Although Missouri had no law school for Negroes, the state in accordance with established policy had offered to pay the students' expenses at any of the law schools in neighboring states which admitted colored students. The question was whether or not the equal protection guarantee was violated by sending blacks out of the state and paying their tuition.

The Supreme Court in a 7:2 decision decided that Floyd Gaines had been denied the equal protection of the laws. The court reasoned that the state of Missouri policy was that Negroes attend their own university (Lincoln) and white students attend the University of Missouri. Nevertheless, Lincoln University did not offer instruction in law. The attorney General said, “You don’t understand that we have a very limited number of Negroes in our state desiring legal training”. The Supreme Court said that is irrelevant, immaterial and beside the point. The fact that Gaines could not attend an equal law school in Missouri left him deprived. The Attorney General said, “We do help him to study in a nearby school and we pay his tuition”. The Supreme Court said that is irrelevant, immaterial and beside the point. The state statue violated the 14th Amendment by discrimination and the court maintained that the state of Missouri had to provide within her borders equal facilities.

Chief Justice **Charles Evans Hughes** stated that Missouri could have fulfilled its obligations by providing legal instruction for Negroes by providing equal facilities in separate schools. He was suggesting that Missouri had fallen down on its original bargain that had been made in the Plessy VS Ferguson, and Gong Lum VS Rice decisions. The Constitution guaranteed Gaines a legal education in the state of Missouri.

7:2 decision. Two members, McReynolds and Butler, dissented with the court’s opinion. Missouri chose to set up a law school for Negroes at Lincoln University. Floyd Gaines disappeared shortly before the decision was announced. The decision was a big step forward in interpreting the separate but equal policy in favoring blacks. The mere payment of tuition is not affording the blacks an advantage by not establishing them a law school at hand. It was significant in that a positive duty was placed on the state to establish schools of equal facilities in its borders.

The Attorney General said, “We are going to detest”. The Supreme Court said that is irrelevant, immaterial and beside the point. As a result, the

southern states were giving a warning that that they had to do something. The Court maintained that the separate but equal policy was an actuality a double edged sword. The court implied that the southern states had better get to work if this policy was to be maintained.

Following 1938 there was a resurgence on the part of the states adhering to the separate but equal policy. Chief Justice Hughes majority opinion held that the Missouri refusal to admit the applicant to the state law school constituted a violation of the Equal Protection Clause of the 14th Amendment by the operation of the laws of Missouri, said Hughes," a privilege has been created for white law students which is denied to Negroes by reason of their race". The state's offer of tuition fees in another state, he thought, does not remove the discrimination.

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Then came World War II during which time the movement for equal rights in all fields became equally strong. It was in the military establishment that the great breakthrough came. Beginning in 1946 the NAACP began its concerted efforts in the desegregation of the school systems. After the Gaines decision, approximately a decade elapsed before the Supreme Court made another important decision similar to the decision in the Gaines Case.

Sipuel VS Oklahoma Case – 1948

In the Case of Sipuel VS Oklahoma the Supreme Court reaffirmed the ruling it had made in the Gaines Case. The court decided that the Negro applicant, Ada Sipuel, was entitled to an immediate enrollment in the University of Oklahoma Law Scholl unless the University of Oklahoma suspended all enrollment of entering students until the state could establish a separate law school for Negroes. Sipuel was admitted. Today she is a successful lawyer in Dallas Texas. The Supreme Court reiterated its position

that the states had to provide a legal education in harmony with Equal Protection Clause in the 14th Amendment.

Against this background the shifts in the court's policy announced two years later was more dramatic. The court took a giant step toward paving the way for the school segregation case of 1954. Two decisions were announced on June 5, 1950. Chief Justice Vinson delivered the unanimous opinion of the court.

Case of Sweatt versus Painter

The state of Texas had been watching these developments with great interest and the white politicians in question decided to establish a separate law school for Negroes. Heman Sweatt attended the Texas State University for Negroes. He attended the school for one week when he applied for admission at the University of Texas Law School. The politicians in Texas said, "Heman, we went through a lot of expense, a lot of trouble and effort to establish this law school for your people. You stayed there one week and then applied to go to the University of Texas law School, why?". "Mr. Politicians, said Heman, that Black School is inferior to that of the University of Texas".

Practically speaking, any law school hastily established, whether segregated or not, could be inferior to an established institution and could remain inferior for a long time to come. The Supreme Court could have stopped in the case after listing the physical differences between the old and new school because those differences demonstrated a line of issues between the two schools. The court did not stop there. Unlike the mandate in earlier cases, the court ordered that Heman Sweatt be admitted to the University of Texas Law School as a requirement of the Equal Protection Clause of the 14th Amendment.

Chief Justice Vinson said, what was even more important was the fact that the University of Texas Law School possessed to a far greater degree those

qualities which are incapable of objective measurement but those qualities which go to make for greatness in a law school, such qualities would include the reputation of the faculty, experience of administration, the position and influence of the alumni, the standing of the institution in the community, the tradition of the institution and the prestige of the institution. Vincent continued that although the law school is highly learned profession everyone knows that if it is also an intensely practical profession and the law school proving good for legal learning and prestige could not be affective in isolating from it the individuals and the institutions with which the law interacts. Few students would choose to study the subject in a vacuum removed from the interflow of ideas. Vinson also pointed out that the law school to which the Negroes of Texas was willing to admit students excluded from the student body members from racial groups which numbered 85% of the population of the state of Texas. That 85% would include most of the judges, lawyers, witnesses, jurors, and all other court officials with whom Heman Sweatt would inevitably be dealing with when and if he became a member of the Texas Bar Association. Vinson concluded that the Negro law school was unequal to that of the University of Texas Law School.

Asa result of the Sweatt decision we have the first mention on the part of the court what may be called intangible qualities which make for greatness in a law school. This case suggest that no law school can ever be equal under a segregated system. For the first time the Supreme Court turns its ear to psychological argument that psychological influences on a student are important.

McLaurin VS Oklahoma State Regents – 1950

George W. McLaurin was a citizen of the state of Oklahoma. He had already acquired the Master Degree and he applied for admission to the Oklahoma State University as a doctoral candidate in the field of education.

Not with standing, the decision in the decision in Gaines Case he was denied admission because of his race. There was no Negro institution in Oklahoma granting a doctoral degree. According to the Oklahoma state statue it would have been a crime for the University of Oklahoma to have admitted McLaurin.

The federal district court knocked down all those statues as being unconstitutional. Where upon, the Oklahoma state legislature responded with a new statue which authorized admission of qualified Negroes to white colleges when the state Negro institutions did not offer programs leading to degree applications. But instruction of any Negroes admitted to any school of higher learning of the white race was on a segregated bases. The school authorities required segregation.

The school authorities required McLaurin to sit in a special class section marked “reserved for colored”, to use a special desk in the library and to eat at a special table at meal time. Pictures of the scene are to be found in the following magazines: U.S. News and World Report, Vol.28 part 1 February 17, 1950, page 22, part 2 June 16, page 18.

In the courts opinion the result was that McLaurin was tremendously handicapped in affective graduate instruction. Segregation inhibited his ability to study. His ability to exchange ideas with other students were impaired. Chief Justice Vinson said that our society was growing increasingly complex and our need for trained leaders increased correspondingly. The restrictions in question, Vincent said, impaired McLaurin’s ability to study to engage in discussion and exchange views with other students, and in general to learn his profession, so that appellant is handicapped in his pursuit of effective graduate instruction. He concluded that state imposed restrictions which produce such inequality cannot be sustained. McLaurin was attempting to obtain an advanced degree in education, a leader and trainer of others. All those coming under his guidance and influence would be directly affected by the education he received. The court stated that imposed restrictions producing such inequalities could not be tolerated. The

appellant having been admitted to the state supported institution must receive equal treatment.