

Case 6: Civil Rights Cases (1883) Private Discrimination

THE ISSUE Under the Constitution, can Congress pass a law preventing private businesses from discriminating against people because of their race or color?

WHAT'S AT STAKE

Whether Americans can be discriminated against in their daily life.

FACTS AND BACKGROUND

After the Civil War (1861–1865), Congress passed the Civil Rights Act of 1875. The Act made it a crime to deny to anyone the “full and equal enjoyment” of railways and other transportation. It also required that all people be treated equally in hotels, theaters, and other places of public amusement. The law applied to people of every race and color, regardless of any previous condition of *servitude* [slavery]. Under the Act, privately owned businesses could not discriminate, either.

Some private business owners did not obey the law. They discriminated against African Americans. The U.S. Supreme Court combined and heard five such cases and issued one decision.

THE DECISION

The eight-member majority struck down the law. Justice Joseph P. Bradley wrote the opinion. In the Court’s view, the 14th Amendment (which outlawed discrimination by a state) did not authorize the Act. “Individual invasion of individual rights is not the subject-matter of the amendment,” Bradley wrote. “The wrongful act of an individual . . . is simply a private wrong.” Congress could pass a law prohibiting a *state* from violating individual rights. It could not pass a law prohibiting private individuals or businesses from discriminating.

Bradley then turned to whether the 13th Amendment (which outlawed slavery) authorized the Act. Wasn’t private discrimination against former slaves a *badge* [mark] of slavery? The Court said that it was not. Bradley’s opinion added that such a broad reading of the 13th Amendment would make a freed former slave “the special favorite of the laws.”

THE DISSENT

Justice John Marshall Harlan was the only dissenter. He said the majority was wrong. To Harlan, the 13th Amendment should be read broadly to give Congress the power to ensure the rights of freed people. Harlan said that

Case 6: Civil Rights Cases, *continued*

Private Discrimination

private discrimination was a "badge of slavery" that Congress had a right to outlaw under the 13th Amendment. "It is not the words of the [amendment] but the internal sense of it that makes the law," he wrote. "The letter of the law is the body; the sense and reason of the law is the soul."

THE IMPACT OF THE DECISION

The decision helped usher in the "Jim Crow" era of discrimination against African Americans. (During the Jim Crow era, roughly the 1880s to the 1950s, African Americans, Hispanics, and Native Americans were segregated and suffered discrimination.) The justices said that *states* could outlaw discrimination, and some did eventually. But many states did not act. Businesses were free to discriminate. Not until the Civil Rights Act of 1964 did a federal law outlaw private discrimination.

HARLAN: THE GREAT DISSENTER

Justice John Marshall Harlan was a Kentuckian who had owned slaves. However, on the Court he became a great defender of equal treatment for all races. He wrote his blistering dissent in the *Civil Rights Cases* with the same pen and inkwell that Chief Justice Taney had used to write the *Dred Scott* decision. (Taney argued that African Americans had no rights. Harlan believed they had equal rights.) In *Plessy v. Ferguson* (1896) he was again the only dissenter.

QUESTION

1. What do you think Justice Harlan meant by "The letter of the law is the body; the sense and reason of the law is the soul"?

2. Do you think the amendment outlawing slavery also outlaws discrimination? Why or why not?

ONLINE EXTRA

Read the online case of *Heart of Atlanta Motel v. United States*. In it, the U. S. Supreme Court ruled on whether the Civil Rights Act of 1964 was constitutional. What did the Court decide? What was its reasoning? What provision of the Constitution did the Court base its decision on?