

Why “Separate But Equal” is Constitutionally Objectionable

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“Separate but equal” is constitutionally objectionable because it is not compatible with the idea of a republic, which the constitution is designed to maintain. Separate means “keep apart” (Merriam-Webster). That is not compatible with a republic system of government, which supreme power resides in the body of citizens. Thus in state actions, there should not be any hindrance to that interaction between citizens. The fourteenth amendment sought to extend the body of citizens to “all persons born or naturalized in the United States” [with the exception of voting and representation being only for males over twenty-one years of age]. In early cases involving the fourteenth amendment, it was considered enough to have separate but equal. A half a century later it was realized that for the democratic aspects of American society, separate was in fact unequal.

The writers of the constitution were concerned about establishing a republic, a system of government in which the people hold sovereign power and elect representatives who exercise that power. A power that is formed by what Gandhi defined as people acting and speaking together. This can only happen if there is interaction among all of the people or citizens. The constitution was set up to be a framework by which the people it governed could interact. The very existence of the 1st Amendment, with its provisions for free speech and the right to assemble, shows how much the authors’ valued the interaction of the people. The Supreme Court has generally maintained the interaction of all citizens should be on an equal basis, primarily based on the values set forth by the original construction of the Constitution.

From 1896 to 1954 the United States operated under the “separate but equal” doctrine given by *Plessy v. Ferguson*. By the laws of Louisiana, passengers of the colored race were required to sit in a separate section of the train than whites. Mr. Plessy was arrested for sitting in the white section when the officer of the passenger train discerned him as not being white. Plessy only challenged the classification of himself as colored, but the question of the constitutionality of the Louisiana law was still discussed in the case. In the court’s opinion, Justice Brown expresses the necessity of political and civil equality. “If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically.” Justice Brown believes “the object of the [fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law” (*Plessy v. Ferguson*). However, he sees separate but equal treatment to be constitutionally acceptable because of the impossibility of erasing the distinctions between races. This turns out to be a flaw in logic under the ideas of a republic. It is later found that separate can not be equal in a system where interaction is so vital.

In the situation of *Brown v. Board of Education of Topeka*, Negro children were seeking the courts help to be admitted to the public schools of their community on a non-segregated basis. They all had been denied admission to schools attended by white children under laws requiring or permitting segregation by race. The plaintiffs contended the segregated schools are not equal and could not be made equal. Where “separate but equal” was permissible in *Plessy v. Ferguson*, this case now involved the question of public education and its place in American life throughout the nation. *Brown v. Board of Education of Topeka* found that separate educational facilities were inherently unequal. Justice Warren recognized the importance of education in a democratic society. As part of the equal education opportunities that should be available, Justice Warren cites the findings of *McLaurin v. Oklahoma State Regents*: “those qualities which are incapable of objective measurement but which make for greatness in a law school... his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.” There is an intangible value of the interaction with others’ perspectives that is an important part of a good education and is even more important for children in grade and high schools.

The educations were unequal because they were not learning how to interact with each other. Before reaching the Supreme Court, the Kansas case even identified 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. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.” This decision put the equal protection provided by the fourteenth amendment as not just equality, but the right to interact. Bringing it into terms of interaction, brings it back to the idea of the constitution providing the framework for the interaction of the citizens, necessary for a healthy republic.

Although “separate but equal” hasn’t always been held as constitutionally objectionable, eventually the value of interaction is recognized. The rationale that created the “separate but equal” doctrine was rejected by *Brown v. Board of Education of Topeka*. That case only argues against “separate but equal” on the grounds of the benefits of interaction on education. However, in that, are the sounds of Jefferson’s ideas of an educated public necessary for the maintenance of a republic. A public that is critically aware would be able to be on guard of threats to the values and direction of the country’s policies and the preservation of democracy. Under the theory the Constitution is established to set up the boundaries and protect the interaction of the people for the health of a republic, then any action or policy of separation has to be constitutionally objectionable.

Bibliography

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