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Constitutional Law - Equal Protection - Discrimination Against Negroes in State Recreation Facilities

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CONSTITUTIONAL LAW — EQUAL PROTECTION — DISCRIMINATION AGAINST NEGROES IN STATE RECREATION FACILITIES—Three suits were brought to obtain injunctions to prevent racial segregation at public bathing beaches, bathhouses, and swimming pools. Because the cases raised the same legal issue they were consolidated for trial. The plaintiffs moved for judgment on the pleadings. *Held,* motion denied. The segregation of Negroes and whites at bathing beaches, bathhouses and swimming pools does not per se deny to Negroes any rights protected by the Fourteenth Amendment to the Federal Constitution. *Lonesome v. Maxwell,* (D.C. Md. 1954) 123 F. Supp. 193.

Since the historic case of *Plessy v. Ferguson*[1] the "separate but equal" doctrine has been widely used as authority for the maintenance of racial segregation. This doctrine, in brief, is that there is no violation of the Fourteenth Amendment because of enforced separation so long as the facilities provided for both races are equal. How long the doctrine will continue to have any vitality is now a matter of considerable speculation. In the recent case of *Brown v. Board*

[1] 163 U.S. 537, 16 S.Ct. 1138 (1896). However, Plessy v. Ferguson was not the first case which dealt with segregation. The court in deciding Plessy v. Ferguson relied heavily on the old case of Roberts v. Boston, 5 Cush. (59 Mass.) 198 (1849), which upheld segregation of the races in public schools in Boston. See generally, Frank and Munro, "The Original Understanding of 'Equal Protection of the Laws,'" 50 COL. L. REV. 131 (1950).

of Education,[2] the Supreme Court brought to a dramatic close the application of the doctrine in the field of public education, specifically overruling *Plessy v. Ferguson*.[3] The opinion in the *Brown* case, however, indicates an effort on the part of the Court to limit the scope of the decision to the public education field.[4] Whether the *Brown* case should be applied to a case involving segregation at public recreational facilities was the problem faced by the court in the principal case. It is also a problem that will be widely discussed until it is directly presented to the Supreme Court.[5] In the past, the *Plessy* case has served as the authority for cases involving segregation in the enjoyment of public recreational facilities just as it has in the public education and transportation cases.[6] Where there was inequality in the facilities provided for the segregated races, a violation of the Fourteenth Amendment was found.[7] Where the facilities were equal, segregation was lawful.[8] As recognized in the principal case, however, the function and nature of public recreation cause it to differ inherently from public education.[9] Public education is compulsory, while recreation is by its very nature voluntary; public education plays a substantial role in the development of our society, while the contribution of recreation is relatively small. Although these factors in themselves might allow a court to distinguish the two activities, it would seem that the same social, legal, and psychological reasons which led the Court to its decision in the *Brown* case would apply to the recreational field.[10] It was said in the Brown case that, "To separate [Negroes]

[2] 347 U.S. 483, 74 S.Ct. 686 (1954). In a companion case, Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693 (1954), the Court declared that segregation in public schools in the District of Columbia was unconstitutional. Since the Fourteenth Amendment applies only to state action, the Court utilized the due process clause of the Fifth Amendment to reach this result.

[3] "We conclude that in *the field of public education* the doctrine of 'separate but equal' has no place. *Separate educational facilities* are inherently unequal." (Emphasis added.) Brown v. Board of Education, note 2 supra, at 495. See Kauper, "Segregation in Public Education: The Decline of Plessy v. Ferguson," 52 MICH. L. REV. 1137 (1954).

[4] See note 3 supra.

[5] Thus far the Supreme Court has not taken advantage of the opportunities presented to decide this question. See Muir v. Louisville Park Theatrical Assn., 347 U.S. 971, 74 S.Ct. 783 (1954); Holcombe v. Beal, 347 U.S. 974, 74 S.Ct. 783 (1954).

[6] Boyer v. Garrett, (4th Cir. 1950) 183 F. (2d) 582; Camp v. Recreation Board for D.C., (D.C. D.C. 1952) 104 F. Supp. 10; Hayes v. Crutcher, (D.C. Tenn. 1952) 108 F. Supp. 582.

[7] Kansas City, Mo. v. Williams, (8th Cir. 1953) 205 F. (2d) 47; Beal v. Holcombe, (5th Cir. 1951) 193 F. (2d) 384, cert. den. 347 U.S. 974, 74 S.Ct. 783 (1954); Lopez v. Seccombe, (D.C. Cal. 1944) 71 F. Supp. 769.

[8] See Boyer v. Garrett, and Camp v. Recreation Board for D.C., note 6 supra.

[9] The court justified its decision in the principal case on two grounds: (1) the avoidance of conflicts which might arise from racial antipathies, and (2) the achievement of the "greatest good for the greatest number"; i.e., Negroes are more relaxed among members of their own race than in mixed groups.

[10] It is interesting to note that since the Brown case the Court has given similar treatment to education and recreation cases. Where the lower court held for the Negroes, the Supreme Court denied certiorari. Compare Wichita Falls Junior College District v. Battle, 347 U.S. 974, 74 S.Ct. 783 (1954), with Beal v. Holcombe, note 7 supra. Where the lower court held against the Negroes, the Supreme Court remanded the case with a

from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[11] Although this language refers only to Negro children of school age, it may well be applied to all Negroes, regardless of age. Though the youthful are more impressionable, racial segregation may also generate in an adult an unhealthy attitude "unlikely ever to be undone." Despite these factors, the decision in the principal case illustrates how lower courts can utilize the restricting language[12] of the Supreme Court in *Brown v. Board of Education* to preserve for at least a time the once vital doctrine of "separate but equal."

Sanford B. Hertz, S.Ed.

direction to re-examine in light of the Brown case. Compare State ex rel. Hawkins v. Board of Control, 347 U.S. 971, 74 S.Ct. 783 (1954), with Muir v. Louisville Park Theatrical Assn., note 5 supra.

[11] Brown v. Board of Education, note 2 supra, at 484.

[12] See note 3 supra.