The Social History of Crime and Punishment in America: An Encylopedia

Civil Rights Act of 1875

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Book Title: The Social History of Crime and Punishment in America: An Encylopedia
Chapter Title: "Civil Rights Act of 1875"
Pub. Date: 2012
Access Date: December 09, 2014
Publishing Company: SAGE Publications, Inc.
City: Thousand Oaks
Print ISBN: 9781412988766
Online ISBN: 9781452218427

DOI: http://dx.doi.org/10.4135/9781452218427.n114
Print pages: 262-264

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The Civil Rights Act of 1875 prohibited racial discrimination in public accommodations, including inns, modes of transportation, and theaters. The law was found unconstitutional by the Supreme Court in the 1883 *Civil Rights Cases*.

Following the emancipation of slaves and the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, Congress enacted several pieces of legislation designed to ensure that African Americans would enjoy the full rights of citizenship. The Civil Rights Act of 1875 provided that “all persons” would be entitled to use the “accommodations, advantages, facilities, and privileges” of public places, including inns, theaters and other places of entertainment, and forms of transportation. Policies restricting access to those venues must be “applicable alike to citizens of every race and color, regardless of any previous condition of servitude.” The penalty for denying access to public facilities was a fine ranging from $500 to $1,000. Clearly, Congress was responding to the behavior of private businesses that separated the races as well as to state legislation that segregated people on the basis of race. They considered such discrimination both a violation of the Fourteenth Amendment's guarantee of equal protection of the law and the Thirteenth Amendment's ban on slavery and involuntary servitude.

Supreme Court Challenge

In the 1883 *Civil Rights Cases*, the Supreme Court found the Civil Rights Act of 1875 unconstitutional by a majority of 8–1. Justice Joseph Bradley wrote the opinion of the court, which held that discriminating in access to public accommodations is the act of private individuals and does not fall under the Fourteenth Amendment. The court's holding significantly narrowed the application of the Fourteenth Amendment's guarantee of “equal protection of the laws” by asserting that the amendment only prohibited unequal treatment by the states, but that it could not be read to prohibit discrimination by individual proprietors of inns, theaters, or modes of transportation. He wrote that Congress could only make laws in response to discriminatory actions by state legislators or by other state actors. It could not create codes of “municipal laws” that regulated the behavior of some private citizens and upheld the rights to social activities of others. Bradley made a “slippery slope” argument, stating that if Congress could pass

civil rights laws, there was nothing to prohibit it from enacting codes of law for every possible situation. He distinguished the civil rights law from laws enforcing the right to vote or to serve on juries free from racial discrimination, as the latter examples would require that the state itself was directly involved in the forbidden discrimination.

Bradley also stated that the law could not be sustained under the Thirteenth Amendment's prohibition of slavery. Supporters of civil rights argued that discrimination in public places was one of the “badges of slavery,” a form of bias that was held over from the laws that restricted the free movement of slaves. The Supreme Court also rejected this argument, stating that there was no similarity between servitude and the denial of the “accommodations or privileges” of staying at an inn, riding in a public conveyance, or attending a theater. The justices also maintained that it was time for former slaves to “take the rank of a mere citizen” and to stop “being the special favorite of the laws.” They seemed to assume that no civil rights laws were necessary, but that African Americans would “be protected in the ordinary modes by which other men's rights are protected.”

Justice John Marshall Harlan was the only dissenter in the *Civil Rights Cases*, as he was in *Plessy v. Ferguson* (1896). Harlan based his disagreement with the majority on several principles. He argued for judicial restraint, that the court should defer to the judgment of Congress in deciding which laws were “necessary and proper” to carry out the Constitution. Likewise, he argued that discrimination was indeed a “badge and incident of slavery,” and that it was one of the “mischiefs to be remedied and grievances to be redressed” by the Thirteenth Amendment. In addition, he argued that the civil rights laws were permissible under the Fourteenth Amendment, which forbade the states from denying equal protection of the law. Inns and railroads, even if privately owned, were put to public use and were often licensed and regulated by the states. Therefore, the states were complicit in the policies of segregation practiced by those nominally private entities.

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It was not until the Civil Rights Act of 1964 that the 1883 Supreme Court decision was rectified. In the 1964 act, Congress, mindful of the earlier decision, prohibited

discrimination in public accommodations under its authority to regulate interstate commerce, not under the Thirteenth and Fourteenth Amendments.

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http://dx.doi.org/10.4135/9781452218427.n114
See Also:

- African Americans
- Civil Rights Act of 1866
- Civil Rights Laws
- *Plessy v. Ferguson*
- Segregation Laws

Further Readings

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