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# Constitutional Law - Equal Protection - Racial Segregation of Spectator Seating in Courtroom

Thomas W. Van Dyke
*University of Michigan Law School*

CONSTITUTIONAL LAW — EQUAL PROTECTION — RACIAL SEGREGATION OF SPECTATOR SEATING IN COURTROOM — Defendant, judge of a municipal court in Virginia, assigned seating on the basis of race in that part of his courtroom reserved for spectators and for those awaiting the call of their business before the court. The same number of seats were provided for Negroes as for whites. There was no separation of the races in the area immediately before the bench nor was there any complaint of discrimination in the administration of justice. Plaintiffs are Negroes who have been

required on more than one occasion to occupy seats in the spectator section on a racially-segregated basis. In a suit brought in the federal district court for a declaratory judgment and injunctive relief,[1] *held*, complaint dismissed. Plaintiffs had no rights granted or guaranteed by the Constitution which were violated by the practice of racially-segregated seating in the spectator portion of a state courtroom. *Wells v. Gilliam*, 196 F. Supp. 792 (E.D. Va. 1961).

The fourteenth amendment requires that no state shall "deny to any person . . . the equal protection of the laws."[2] To come within the purview of the equal protection clause a particular action must be attributable to the state and must be discriminatory. The acts of a judge pursuant to his judicial function have long been recognized as within the concept of "state action."[3] In determining whether state action is discriminatory it is generally accepted that some classification by the states must be permitted, and that considerable discretion should be allowed in defining the class.[4] Originally the Supreme Court announced that reasonable classifications pursuant to valid legislative objectives would satisfy the constitutional standard.[5] Requiring segregation of the Negro and white races where separate but equal facilities were provided was considered to be reasonable. However, the concept of equal protection was substantially expanded in *Brown v. Board of Educ.*[6] The Court there held that the "separate but equal" doctrine has no place in public education,[7] thus rendering unconstitutional racial segregation in public schools. It has been suggested that the Supreme Court, in *Brown*, declared that all classification by race is unconstitutional per se, and that public school segregation is merely one example of discrimination.[8] The *School Segregation Cases* of 1954 were followed by a series of per curiam opinions extending the invalidity of racial segregation to public theaters,[9] public beaches,[10] public golf courses,[11]

1 In addition, each plaintiff sought an award of $130,000.04 in satisfaction of compensatory and punitive damages for "willful, deliberate, persistent, infuriating and unlawful conduct of the defendant." The court dismissed this part of action which it said was instituted in bad faith. Principal case at 793.

2 U.S. CONST. amend. XIV, § 1.

3 *Ex parte* Virginia, 100 U.S. 339 (1880). See generally St. Antoine, *Color Blindness But Not Myopia: A New Look at State Action, Equal Protection, and "Private" Racial Discrimination*, 59 MICH. L. REV. 993 (1961).

4 KAUPER, FRONTIERS OF CONSTITUTIONAL LIBERTY 188 (1956).

5 Plessy v. Ferguson, 163 U.S. 537, 550 (1896).

6 347 U.S. 483 (1954).

7 *Id.* at 495.

8 BLAUSTEIN & FERGUSON, DESEGREGATION AND THE LAW 145 (1957). *But see* HAND, THE BILL OF RIGHTS 54 (1958).

9 Muir v. Louisville Park Theatrical Ass'n, 347 U.S. 971 (1954), *vacating and remanding per curiam* 202 F.2d 275 (6th Cir. 1953).

10 Mayor of Baltimore v. Dawson, 350 U.S. 877, *affirming per curiam* 220 F.2d 386 (4th Cir. 1955).

11 Holmes v. Atlanta, 350 U.S. 879, *vacating per curiam* 223 F.2d 93 (5th Cir. 1955).

state-regulated transportation,[12] public parks,[13] and state-regulated athletic contests.[14] There would appear to be little doubt today that all state-enforced racial segregation is unconstitutional.[15]

The opinion in the principal case offered three reasons to justify the decision. The court first stated that the record showed no violation of rights granted to plaintiffs by the Constitution.[16] This conclusion was based upon the premise that the fourteenth amendment does not grant any rights to citizens of the United States. Even accepting this premise, it would seem that the amendment is at least a restriction upon the states, guaranteeing to citizens protection from infringement by state action of rights they already possess. And since a right to non-segregated treatment has been established for public theaters[17] and seating on buses,[18] which are difficult to distinguish from that presented by the principal case, the court's first justification is unconvincing. The second ground relied upon was the federal policy of abstinence from interference in state affairs. However, implicit in the policy of abstinence is that no violation of the Constitution has occurred, a questionable assumption in this case in view of the Supreme Court's recent interpretation of equal protection. Indeed, two of the cases[19] quoted and cited as authority involved decisions to remand for construction of state statutes, and the third[20] denied federal equity relief because of an adequate legal remedy available in the state courts. The third justification promulgated by the court involved the purpose of defendant's action, namely, to preserve decorum and to assure the orderly administration of justice to all, regardless of race or color. The Constitution secures a right to public trial in criminal cases,[21] thus placing upon the states a duty to have courtrooms open to the public on certain occasions. Moreover, the effective operation of courts is so important that judges are permitted to punish summarily for contempt in order to pre-

12 Gayle v. Browder, 352 U.S. 903, *affirming per curiam* 142 F. Supp. 707 (M.D. Ala. 1956).

13 New Orleans City Park Improvement Ass'n v. Detiege, 358 U.S. 54, *affirming per curiam* 252 F.2d 122 (5th Cir. 1958).

14 State Athletic Comm'n v. Dorsey, 359 U.S. 533 (1959), *affirming per curiam* 168 F. Supp. 149 (E.D. La. 1958).

15 See GREENBERG, RACE RELATIONS AND AMERICAN LAW 46 (1959); Kauper, *Trends in Constitutional Interpretation*, 24 F.R.D. 155, 179 (1959); St. Antoine, *supra* note 3, at 994.

16 Principal case at 794.

17 See note 9 *supra*.

18 See note 12 *supra*.

19 Harrison v. NAACP, 360 U.S. 167 (1959); Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941).

20 Mathews v. Rodgers, 284 U.S. 521 (1932).

21 Federal courts are explicitly required to grant public trials in criminal cases. U.S. CONST. amend. VI. The due process clause of the fourteenth amendment has been interpreted as placing a similar requirement upon the states. *In re* Oliver, 333 U.S. 257 (1948), 46 MICH. L. REV. 979.

serve decorum.[22] Similar discretionary power is not even available to other state officials in the exercise of the police power for maintaining public peace. With such powerful control over the conduct of persons in the courtroom, it seems that a court has little need to require segregated seating. Indeed, it is suggested that separation of races in a courtroom is more difficult to justify than segregated recreational facilities.

Although no attempt was made in the principal case to distinguish the recent interpretations of equal protection, the court obviously felt that it was not bound by decisions involving schools and recreation facilities. This indicates that all federal courts[23] are not convinced that state-enforced classification by race is unconstitutional per se. Some judicial doubt is perhaps justified. The fundamental principle enunciated in *Brown v. Board of Educ.*, that separate facilities are inherently unequal, was expressly limited to public schools.[24] The principle has been developed and given new application by the per curiam process, a method which several writers have criticized.[25] The result in the principal case indicates that a broader opinion is needed to clarify the scope of the equal protection restriction upon racial classification. Forthcoming in such an opinion should be the recognition that all state-enforced racial segregation is inherently discriminatory.

*Thomas W. Van Dyke*

22 Defendant in the principal case had power to punish summarily for contempt. VA. CODE ANN. § 16.1-.26 (1960).

23 In addition to the principal case, see the dissent in Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala. 1956).

24 347 U.S. 483, 495 (1954).

25 *E.g.*, Kauper, *supra* note 15, at 181; Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 22 (1959).