Our Story

The History of Thurgood Marshall School of Law

Urban Research and Resource Center

2018

The "story behind the story" of the blood, sweat and tears-drenched road to the founding of the Thurgood Marshall School of Law, as well as the warrior battles against "powers & principalities" to protect it, the eternal charge to improve it and the ancestral responsibility to pass it on.

OUR STORY

THE THURGOOD MARSHALL SCHOOL OF LAW EDITION

Presented in Four Parts

PART ONE: THE LONG JOURNEY HOME

1776-1947

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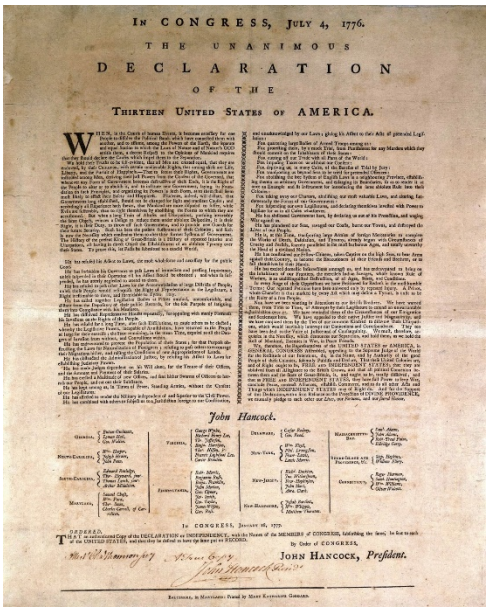
The Long Journey Home: 1776-1947

At almost every turn, the struggle of African people in America for human dignity and civil rights is unfailingly constant. One such struggle is chronicled in this journal, *Our Story, The History of Thurgood Marshall School of Law*. That struggle may appear deceptively simple as it was merely a fight for African Americans to exercise the right to obtain a legal education in Texas. Our journey toward this end…this beginning was long and painfully marked by nefarious intent and effect by a nation unapologetically drenched in the blood of its people. It is ironic that the road along this journey to legal education is burdened by numerous barriers established and nurtured by the law itself. The magic of the law often lies in its fluidity and subjectivity to various interpretations. However, such magic is also the breeding ground for sinister motives and profound inhumanity.

A nation that cloaks itself in the promises of its democracy as emboldened by its organizational documents, the United States Constitution, the Declaration of Independence, the Bill of Rights, a nation that declares itself to be a nation of laws and not one of men has long stood on the necks of many of its people, particularly its African people, denying them the very promises of its freedoms. This is why we begin the exploration of this journey for the right to a legal education in Texas with a review of some basic democratic ideals expressed in the terms of the nation's own promises to its people.

When America's 13 states declared its independence by the action of the second continental congress on July 4, 1776, it did so, in part, with these words…

> **"WHEN** in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation."



IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS

DECLARATION

OF THE

THIRTEEN UNITED STATES OF AMERICA.

John Hancock.

IN CONGRESS, JANUARY 18, 1777.

ORDERED

JOHN HANCOCK, *President.*

> **"WE** hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath

> shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security."…[1]

In 1789, the newly independent nation adopted the supreme law of the land, the United States Constitution which begins with a preamble that states:

> "We the People of the United States, in Order to form a *more perfect Union*, establish *Justice*, insure *domestic Tranquility*, provide for the common defense, promote the *general Welfare*, and secure the *Blessings of Liberty* to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Not a perfect document, the constitution has been amended 17 times. In 1791, the Bill of Rights was enacted to provide for basic civil rights of the nation's people. The Bill also reserved to the states or to the people all powers not delegated to the United States.[2] By virtue of this amendment, the education of its people was reserved to the states because the United States Constitution did not mention education.

In 1845, the Constitution for the State of Texas provided for a perpetual fund to support free public education. In 1871, the Texas Legislature established Texas A & M University and the Texas Constitution of 1876 established the University of Texas, both to be publicly funded by a permanent university fund.

These laws of the land articulate various rights of its people, some natural and unalienable, others instituted by government to ensure these rights are protected. In a most sinister denouncement of those rights to African Americans, the United States Supreme Court, sought to justify the unjustifiable in Dred Scott v. Sandford.[3]

On March 6, 1857, the United States Supreme Court determined that a negro of African descent, whose ancestors were of pure African blood and who were brought into this country and sold as slaves were not citizens of the United States regardless of whether they were emancipated or were born of parents who had become free before their birth, as the term citizen is used in the Constitution of the United States. The court opined that "people of the United States" and "citizens are synonymous and mean the same thing. To support the court's interpretation of the Constitution that African descendants were not citizens, it found that they were not "people" of the United States.[4] The court stated:

> *[Black people] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit.*[5]*… accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought and sold as such, in every one of the thirteen colonies which united in*

the Declaration of Independence and afterwards formed the Constitution of the United States.

The language of the Declaration of Independence is equally conclusive:

It begins by declaring that,

[w]hen in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.

It then proceeds to say:

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed."

But the Court's analysis exposed the nation's embrace of inhumanity in a fundamental way when it stated:

"The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration, for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted, and instead of the sympathy of mankind to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation."

In effect, the court finds that while the failure to acknowledge that African Americans were people and citizens under the Constitution and the Declaration of Independence, to recognize that fact would injure the reputation of the forefathers whose retention of a "good name" was more important than the nation's humanity. Aside from the obvious absurdity of the court's justification, one need only look to the statements of the founding fathers themselves to realize that the Dred Scott argument was an intolerably idiotic interpretation of the founding documents and the understanding and therefore intent of the founding fathers. For example, John Jay wrote in 1786, *"It is much to be wished that slavery may be abolished. The honour of the States, as well as justice and humanity,*

*in my opinion, loudly call upon them to emancipate these unhappy **people**. To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused."*[6] *James Madison wrote, "[W]e must deny the fact, that slaves are considered merely as property, and in no respect whatever as **persons**."*[7] *and Thomas Jefferson wrote ""Nothing is more certainly written in the book of fate than that these **people** are to be free."*[8]

This failure of humanity had practical implications that, coupled with the financial panic of 1857 and the threat that the next Supreme Court ruling might require slavery to be permitted across the United States, fueled the flames of the firestorm that became the civil war.[9]

When the southern states seceded from the nation between 1860 and 1861, it was largely over pro-slavery versus anti-slavery sentiments with the secession in protest over the election of Abraham Lincoln, an anti-slavery Republican, to the presidency of the United States.[10] *On September 22, 1862, that declared that as of January 1, 1863, all slaves in the rebellious states "shall be then, thenceforward, and forever free."*[11]

On December 18, 1865, the Thirteenth Amendment was ratified by the ¾ required. The thirteenth provided:

> ***"Section 1.***
> *Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."*
>
> ***"Section 2.***
> *Congress shall have power to enforce this article by appropriate legislation."*

In the nation's almost 100 years, it had enacted laws that protected the rights of its people, yet judicial decisions and insidious actions of state governments had been able to ignore and circumvent them. The same would occur with the 13th amendment, language apparently clear for the protection of the African people denied rights under former laws, would be misused to deprive African Americans.

CIRCUMVENTING THE LAWS

Black Codes

The periods between the ratifications of the 13th and 14th Amendments were viewed by most as a period of progress. However, these ratifications dovetailed with Black Codes, laws enacted in 1865 designed to replace the social controls of slavery that had been removed by the Emancipation Proclamation and the 13th Amendment.[12] Its text instantaneously freed Slaves, but permitted

involuntary servitude in correctional facilities.[13] Subsequently, Black Codes in the South created new types of offenses for Blacks in order to circumvent the purpose of the 13th Amendment by authorizing enslavement under the criminal justice system.[14] These laws were designed to replace the social controls of slavery so that African Americans would remain virtually defenseless under the law.[15]

The Black Codes had their roots in the slave codes that had formerly been in effect. The premise behind chattel slavery in America was that slaves were property; and, as such, they had few or no legal rights.[16] Black Codes, in their many loosely defined forms, were seen as effective tools against slave unrest, particularly as a hedge against uprisings and runaways.[17] Former slaves were forbidden to carry firearms or to testify in court, except in cases concerning other Blacks.[18] Legal marriage between African Americans was permitted, but miscegenation was verboten.[19] Apprentice laws provided for the "hiring out" of orphans and other young dependents to whites, who often turned out to be their former owners.[20] Some states limited the type of property African Americans could own, and in other states Blacks were excluded from certain businesses or from the skilled trades.[21]

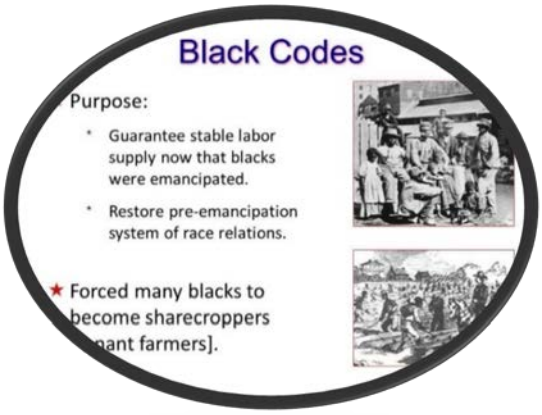
To that end, in 1865 and 1866, each former Confederate state enacted Black Codes to define and limit the rights of former slaves.[22] Mississippi was the first state to enact Black Codes when "An Act to Confer Civil Rights on Freedmen" was passed in the winter of 1865.[23] Its legislation served as a model for other former Confederate states, and although the laws varied from state to state, they all intended to secure a steady supply of cheap labor, and all continued to assume the inferiority of the freed slaves.[24] As an example, vagrancy laws declared an unemployed Black person without permanent residence as a vagrant; thereafter, a person so defined could be arrested, fined, and legally prohibited for a term of labor if unable to pay the fine.[25] Portions of a vagrancy law enacted by the state legislature of Mississippi in 1865 provide an example:

> **Section 2.** Be it further enacted, that all freedmen, free Negroes, and mulattoes in this state over the age of eighteen years found on the second Monday in January 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling themselves together either in the day- or nighttime, and all white persons so assembling with freedmen, free Negroes, or mulattoes, or usually associating with freedmen, free Negroes, or mulattoes on terms of equality, or living in adultery or fornication with a freedwoman, free Negro, or mulatto, shall be deemed vagrants; and, on conviction thereof, shall be fined in the sum of not exceeding, in the case of a freedman, free Negro, or mulatto, $150, and a white man, $200, and imprisoned at the discretion of the court, the free Negro not exceeding ten days, and the white man not exceeding six months.
>
> **Section 5.** Be it further enacted, that all fines and forfeitures collected under the provisions of this act shall be paid into the county treasury for general county purposes; and in case any freedman, free Negro, or mulatto shall fail for five days after the imposition of any fine or forfeiture upon him or her for violation of any of the provisions of this act to pay the same, that it shall be, and is hereby made, the duty of the sheriff of the proper county to hire out said freedman, free Negro, or

> mulatto to any person who will, for the shortest period of service, pay said fine or forfeiture and all costs.[26]

Legislation similar to Mississippi's scraped the bottom of the barrel by extending Blacks the most basic American rights while remnants of pre-Civil War laws remained in place.[27] Texas's Black Codes, for example, granted the right to make contracts and wills, to sue and be sued, and to lease, own, and dispose of real and personal property.[28] However, these permissions of decency were stymied by discriminatory legislation that barred Blacks from participating in political processes guaranteed by the ratification of the 15th Amendment.[29] Texas's Black codes provided that Blacks were not allowed to vote, hold office, and serve on juries; they were however, permitted to testify in cases involving other Blacks.[30]

An important piece of Texas legislation later spurred landmark "separate but equal" cases.[31] In 1866, the state of Texas passed the first separate accommodation legislation.[32] The state required railroad companies to provide a separate railway car for Blacks—thus establishing the precedent for segregation in public facilities.[33] This proscription advanced other public accommodation laws. In 1893, Texas passed a law requiring separate schools for White and Colored children funded by "impartial provisions" made for both races.[34] The same year, an education law passed that established a state school fund which specifically barred any school containing students of both races from receiving state resources.[35]



The intent of the Southern states' legislation was to reaffirm recently freed slaves and Free Blacks' inferior legal and political positions by regulating social hierarchies.[36] Also, many Blacks were punished for petty attitudinal offenses—such as, not showing proper respect like using honorifics when speaking to Whites.[37] Enforcement of Black Codes varied, with many Whites often taking punishment into their own hands; and of course, corporal punishment was widely and harshly employed.[38]

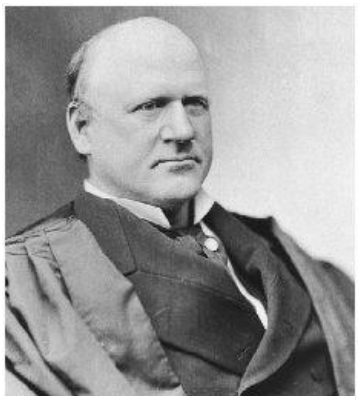
It was Northern Americans' reactions to the Black Codes—and the 1866 bloody anti-Black riots in Memphis, Tennessee, and New Orleans, Louisiana—that helped produce Radical Reconstruction (1865–77) and the 14th and 15th amendments to the U.S. Constitution.[39]

The Fight Against "Separate but Equal"

In 1870, a civil rights act bill was introduced in the United States Congress. The bill provided that racial discrimination in juries, schools, transportation and public accommodations was outlawed. By the time the bill was voted on February 4, 1875 the Civil Rights Act of 1875 passed by a vote of 162 to 99, and stated:

> "That all persons... shall be entitled to full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement."

Despite the Act's fulfillment of the American government's commitment to its people, it was considered controversial because it was viewed by whites as infringing on their personal right of free association and "freedom of choice".



Justice John Harlan

Disregarding Justice John Harlan's sole dissent[40] in the five complaints that challenged the Civil Rights Act, involving acts of racial discrimination on a railroad and in public sites, including a theater in San Francisco and the Grand Opera House in New York, and notwithstanding that the law had passed both houses of Congress, the United States Supreme Court ruled the Act unconstitutional in 1883. In declaring the federal law unconstitutional, Justice Joseph Bradley, writing for the majority, held that the 14th Amendment did not protect Black people from discrimination by private businesses and individuals but only from discrimination by states.[41]

The failure of the Civil Rights Act of 1875 by the Supreme Court ruling in the "civil rights cases" became the foundation upon which a system of legal segregation and discrimination was established that left African Americans unprotected from the harshness of the Jim Crow laws that would follow.

In 1890, the state of Louisiana passed the Separate Car Act, which required separate accommodations for Blacks and Whites on railroads, including separate railway cars.[42] The state required railroads to provide separate accommodations for Blacks and Creoles—away from Whites, thus establishing the proscription precedent for segregation in public facilities.[43] An education law passed in Texas also established a state school fund that specifically barred Black students from sharing in any of these resources.[44]

The intent of the Southern states' legislation was to reaffirm recently freed slaves and Free Blacks' inferior position by regulating social hierarchies.[45] Also, many Blacks were punished for petty attitudinal offenses— such as, not showing proper respect like using honorifics when speaking to White adults and children or stepping aside to allow Whites the right of way while walking on sidewalks.[46] Enforcement of Black Codes varied, with many Whites often taking punishment into their own hands; and of course, corporal punishment was widely and harshly employed.[47]

***Plessy v. Ferguson*: the U.S. Supreme Court upholds segregation**

The United States Supreme Court's landmark decision legitimized the segregated public accommodations laws enacted with Black Codes. *Plessy v. Ferguson* established nearly 90 years of a "separate but equal" system.[48]

In *Plessy*, the statute at issue was the Louisiana Separate Car Act, which required non-Whites into separate railway cars.[49] In Louisiana, a large percentage of Blacks appeared "passant à blanc" or "passe blanc;"[50] thus, officers were tasked with differentiating between Blacks who could and could

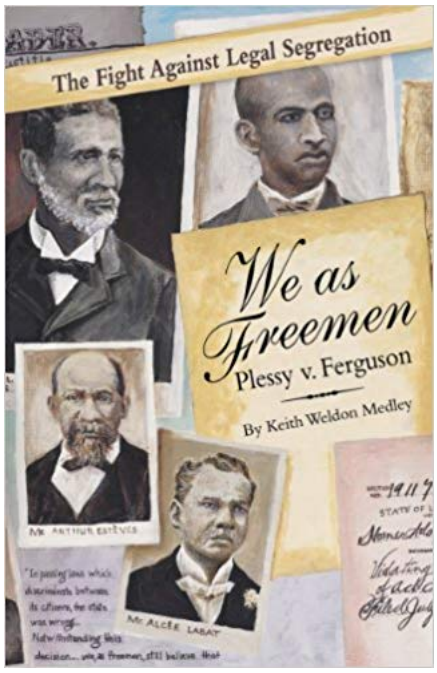
not pass for the purpose of assigning passengers to the appropriate Colored or White railway car.[51] The statute further penalized both a passenger who refused to comply with the statutory required segregation and any officer, directors, conductors, or employees of the railway who either refused or neglected to enforce the statute.[52] Section 1 of the Act reads:

> [a]ll railway companies [to] provide equal but separate accommodations for the white, and colored races" and also states that. "any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison."[53]

On June 7, 1892, the Comité de Citoyens of New Orleans planned to test a then two-year-old Separate Car Act.[54] Their plan was executed by 30-year-old shoemaker Homer Adolph Plessy. Plessy, a Louisiana resident of 1/8th Black and 7/8^{ths} Caucasian, purposely and under the direction of his citizens group, sat in one of the railway cars designated for Whites.[55] He was forcibly removed by an officer when he twice answered affirmatively after being asked, "Are you a colored man?"[56] After Plessy refused to move to the Colored car at the engineer's demands, an officer had him removed, by force, and booked at the Fifth Precinct on Elysian Fields Avenue.[57] The charge: "Viol. Sec. 2 Act 111, 1890" of the Louisiana Separate Car Act.[58]

Plessy, and the members of Comité de Citoyens, challenged the statute as a violation of the 13th and 14th Amendments.[59] Four months later, his attorneys entered a plea claiming that the act was unconstitutional because it imposed a "badge of servitude" in violation of the 13th Amendment—which prohibited slavery—and because it denied to Plessy the equal protection of the laws provided for in the 14th Amendment.[60] They also claimed that the matter of race, both as to fact and to law, was too complicated to permit the legislature to assign that determination to a railway conductor.[61] It was clear that a man's race was so essential to his reputation that it approximated a property right.[62] Take it away without due process, based on a train conductor's casual and arbitrary scan, and you rob a man of something of value.[63]

The United States Supreme Court ruling that followed four years later declared that the statute was within constitutional limitations.[64] The court reasoned that the statute was neither a violation of the 13th Amendment because it did not re-impose slavery, nor the Fourteenth Amendment because laws like the Louisiana Separate Car Act was designed to meet the exigency of providing Blacks basic rights in the aftermath of Reconstruction era regressive laws.[65] Furthermore, the Supreme Court declined to insert itself into states' police powers, saying the Act was a proper exercise of the Equal Protection Clause, which arguably, is usually given great discretion.[66] The court rejected the petitioner's claim that the separation of the races created a state-sanctioned badge of inferiority.[67] The Supreme Court reasoned that while the 14th Amendment's goal was equality, the Court did not believe it to be intended to eliminate every distinction such as color.[68] The court distinguished social equality—voting and jury service—from political equality—choosing a seat on public transportation, and given the separate but equal accommodations, segregation alone did not equal to unlawful discrimination.[69]



Plessy is one of the most significant civil rights cases in American jurisprudence because it established the constitutionality of state imposed segregation based upon the doctrine of "separate but equal". Separate but equal segregation would spread across the nation and was the legally enforced from 1896 until 1954, when the doctrine fell in Brown v. Board of Education. Brown, specifically dealt with segregation in education. It would take several other Supreme Court rulings going into the 1970's before segregation was removed from all laws, including housing laws. Thus, from 1896 to well with into the 20th century, government-sanctioned segregation persisted.[70]

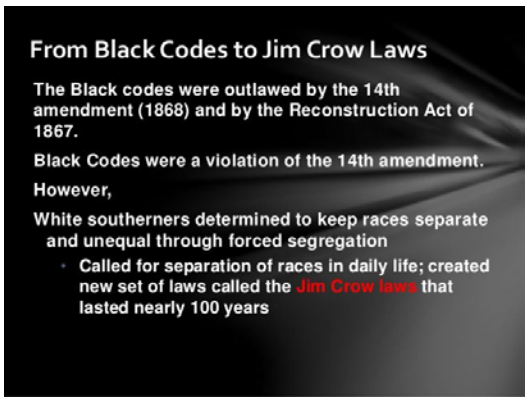
With state imposed segregation having been upheld as constitutional and as a valid use of the states police powers, various other methods intended to further segregation arose resulting in severe limitations on housing for African Americans. For example, at the private level, race restrictive covenants, which usually prohibited non-whites from buying or occupying residences became barriers to African Americans' spatial mobility. At the local level, cities enacted racial zoning ordinances in an effort to control the increase of African American population and the residential expansion of their neighborhoods. At the federal level, the Federal Housing Act of 1954 not only enforced, promoted but also furthered the residential segregation at the national scale.

Although Reconstruction did away with the Black Codes, many of the repressive provisions were reenacted in the Jim Crow laws, which were not legally done away with until passage of the Civil Rights Act of 1964. The Black Codes and their successor Jim Crow Laws, born immediately after the institution of slavery was formally abolished[71], except for individuals incarcerated in U.S. prisons, sought to legally reinstitute the very controls and restrictions upon the liberties and freedoms of Blacks that emancipation theoretically granted. Jim Crow laws created a system of racial apartheid in the U.S. that lasted well into the 20th century.[72]

JIM CROW AND OUTWARD MANIFESTATIONS OF SEGREGATION

The laws founded upon the notion of segregation impacted every aspect of life and was the norm in schools, places of worship, parks, libraries, drinking fountains, restrooms, movie theaters, restaurants and in modes of public transportation (busses, trains, trolleys, etc.). To fully appreciate the significance of an institution such as the Thurgood Marshall School of Law, one must understand the lengths individuals, institutions, businesses and governmental entities went for decades in order to thwart the educational, social, economic and political advancement of Blacks through the maintenance of the Jim Crow system.

Officially, Jim Crow laws were laws at both the state and local levels laws that enforced racial segregation in the states that made up the former Confederate States of America.[73] Jim Crow laws were so fundamentally built upon the premise of maintaining segregation that the terms "Jim Crow" and "segregation" became synonymous in usage by many scholars of the period. Some historians place the founding of these laws at 1877 with the end of Reconstruction which ended with the Compromise of 1877.[74] It was at this point that Jim Crow laws were passed by state legislatures establishing a strict code of racial segregation while also severely restricting the labor rights, voter registration abilities, movement and organizing freedoms of Blacks.



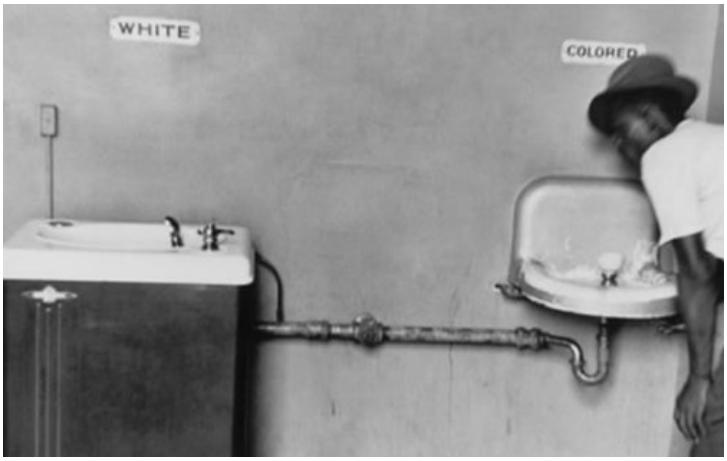
These restrictions were viewed as necessary from the perspective of southern lawmakers who sought to counteract the freedoms enjoyed by Blacks after their emancipation thanks to amendments to the Constitution and four socially transformative Reconstruction Acts. The 13th Amendment abolishing slavery, 14th Amendment making all individuals born or naturalized in the United States, U. S. citizens, and the 15th Amendment forbidding individuals or institutions from blocking citizens from exercising their constitutional right to vote partially cleared the path for formerly enslaved individuals to vote and hold political office. This path brought the governments of the Confederate states to an end, and instituted conditions upon their ability to re-establish their states as voting members of the United States Congress. One of the main conditions placed upon these states required them to ratify state constitutions that conferred upon Blacks all the rights of full citizenship. Failure of these former Confederate states to adhere would mean forfeiting that state's representation in Congress. As a result, many of these southern states elected Blacks to the U.S. Senate and House of Representatives.[75]

Some former members of the Confederacy resisted the enforcement of the new laws with violence as the tool of choice. Immediately after January 31, 1865 with the formal, constitutional end of slavery in the U.S. violence led at times by singular vigilantes and at other times coordinated by what today would be termed paramilitary groups, was a common occurrence between 1868 and 1877. Domestic terrorist groups like the Ku Klux Klan, White League and Red Shirts sought to instill fear in Blacks, hoping to intimidate them to the point of not voting, or physically stop them with lethal force, to achieve the same objective.

An often overlooked aspect of Jim Crow codes and laws was its continuation of a practice that was foundational to the institution of slavery—operant 5-step conditioning for the purposes of controlling an entire population.[76]

The first step called for establishing and maintaining strict discipline. The strict enforcement of segregation's lines of demarcation show adherence to this part of the process. These lines of demarcation were pervasive, and included "Whites Only" signage as well as signs marked "Colored" for water fountains, building entrances, restrooms, etc. earmarked for Blacks. This strict

enforcement of segregation carried behind it the full weight of the criminal justice system and the elected officials who enacted the laws.[77]



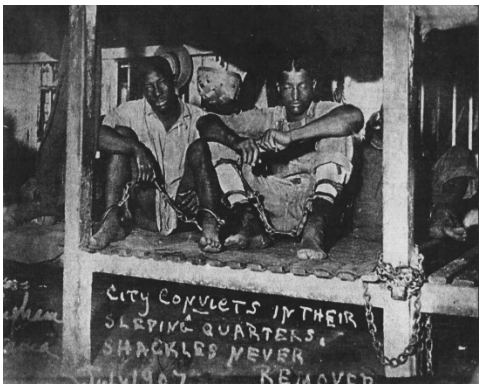
"The second step was to implant in the bondsmen themselves a consciousness of personal inferiority. They had 'to know and keep their places,' to 'feel the difference between master and slave,' to understand that bondage was their natural status…that their color was a badge of degradation."[78] It can be argued that everything about the Jim Crow laws sought to implant in Blacks a "consciousness of personal inferiority." The "separate but equal" facilities which became symbolic of the Jim Crow era were certainly separate but a far cry from equal, with bathrooms, schools, water fountains, etc. designated for Blacks being of obvious inferior quality, cleanliness and investment via government funds.

To train a human being to accept enslavement also required a third process, to "awe [the enslaved] with a sense of their master's enormous power…to make them stand in fear."[79] Violence, threats of violence and/or public beatings of those who acted in ways displeasing to the Jim Crow segregationists, were all designed to make the newly emancipated Blacks stand in awe and fear of whites' enormous power.

This fear, along with the Jim Crow system of sharecropping, which most historians consider an extenuation of the slave system, worked to enact the fourth step listed by Stampp—to "persuade the bondsmen to take an interest in the master's enterprise and to accept his standards of good conduct."[80] Even if only for self-preservation, Blacks took an interest in the enterprises within which they labored, as their livelihood, reduced as it was, still very much depended upon the good fortunes of the person for whom they worked.

The final step involved impressing upon the enslaved their utter helplessness for the purpose of creating in them "a habit of perfect dependence upon their masters." A huge factor adding to the sense of "utter helplessness" was the ever-present specter of the Convict Leasing System.

Similar to the "Black Codes," "Pig Laws" were enacted after the end of Reconstruction (1877). These laws unfairly penalized and criminalized Blacks for minor offenses and countless activities that were not considered crimes for any persons other than Blacks, e.g. selling produce after a certain hour, walking along a railroad track after dark, failure to produce proof of employment, and speaking "disrespectfully" to a white person. Moreover, several misdemeanors and trivial offenses were punished as felonies with harsh sentences and fines that often ended up being, for all practical purposes, life sentences.



The Convict Leasing System dominated the roughly 80-year period that writer/historian Douglas A. Blackmon called one of the nation's darkest periods for African Americans. Between the signing of the Emancipation Proclamation and the end of World War II, the Convict Leasing System, labeled "Slavery by Another Name"[81] created a sense of fear, impending doom and utter helplessness to the whims of any and all whites.

Blackmon's book contends that Black people were no better off during that period, and in many ways were worse off than when shackled in America's legal system of human bondage. Blackmon's premise lies in the idea that the lives of enslaved Blacks held a relative value as wealth-generators that incentivized "owners" to at least provide enough sustenance and basic needs to keep these money-making beings alive. That incentive died with the end of enslavement and the birth of the Convict Leasing System[82]; a practice employed by states all across the U.S. but especially in the south of leasing imprisoned Blacks to local businesses with the cities, counties, states and participating businesses reaping countless profits off free labor.[83]

Though Blacks at the end of the Civil War were not enslaved in the historic, "Peculiar Institution"[84] sense, the clause in the 13th Amendment[85] that allowed for slavery within the penal system meant that labor supplied by incarcerated individuals—predominately Black men—could be exploited to the full, and its workers literally worked to death with no consequence, as businesses using their labor could easily lease another money-generating prisoner. Though some, like scholar Michelle Alexander, argue that convict leasing exists to this day, it officially ended in the 1940s[86]. The cheapening of the value of Black life impacted not only those imprisoned and leased, but all Blacks during the Jim Crow era who at any moment could find themselves in the same precarious[87] predicament. Ironically, this system also weakened the position of working-class whites by drastically depressing wages due to the existence of an exploitable free labor pool.

After 1877, with their voting and office holding rights stripped, sharecropping and convict leasing systems providing figurative and literal death sentences, and their voices within the political and criminal justice systems almost completely silenced, an environment of dependence was created and forced upon Blacks by threat of violence, imprisonment, increased debt or death.

Still, Blacks' responses to Jim Crow segregation took on many forms, with not all of them pleasing to the segregationists.

Certainly, thousands of Blacks endured the indignities of the Jim Crow system by simply working within the confines of the racist system simply to survive and live another day. However, others chose different ways to respond. The hardships of Jim Crow are said to be one of the main drivers that led to this country's largest migration ever—the Great Migration. Pulitzer Prize-winning writer Isabel Wilkerson's book *The Warmth of Other Suns: The Epic Story of America's Great Migration*, provides a broad yet very personal view of this event that lasted from 1915 – 1970 and involved over six million Blacks leaving the Jim Crow south for states in the northern and western United States.

Another response to the violence and precariousness of life under Jim Crow that also involved distancing one's self from the Jim Crow south was military service. During the Great War (WWI), over 350,000 Blacks enlisted to serve. Though some soldiers were driven to the military by a lack of prospects for a better existence than sharecropping, one of the most consistent responses to this query was the drive to achieve full citizenship. The thinking behind this position was that by volunteering to go to war and fight for the United States and its interests, soldiers would prove the courage and valor Blacks possessed, along with a commitment to the ideals of America, and thus win the respect and admiration of their fellow white soldiers and the entire nation, and thus be granted full citizenship and an end to segregation. This same motivating force led Black men and women to serve their country during WWII. According to the website of the National Museum of the Pacific War "over 2.5 million Black men registered for the draft, and Black women also volunteered in large numbers."[88]

Unfortunately, these WWI U.S. military veterans who fought so valiantly in foreign theaters of war that they were declared heroes by multiple European nations and peoples, came home to a society bent on putting Black veterans back in their social/political place by any and all means. The Red Summer of 1919, a term that refers to a series of approximately 25 "anti-Black riots" that erupted in major cities throughout the nation in 1919, including Houston, Texas; East St. Louis and Chicago, Illinois; Washington, D.C.; Omaha, Nebraska; Elaine, Arkansas; Tulsa, Oklahoma; and Charleston, South Carolina and other cities, was fueled in large part by this drive by whites to preserve the Jim Crow social order and resist change to the racial hierarchy that ensured legal, political and social preference for whites.[89]

Yet another response to Jim Crow segregation, one deployed by Blacks who remained in the Jim Crow south, was for Blacks to invest in self-determining efforts to build and support their own businesses, schools and whole towns. Greenwood, Oklahoma, a community which existed within the city of Tulsa, was one such community. Segregation laws forbid Blacks from shopping at white stores, attending white schools or even visiting white sections of town without permission. The response of Greenwood's Black citizens was to create for themselves over 600 businesses, 21 churches, 21 restaurants, 30 grocery stores, two movie theaters, multiple schools, libraries and law offices in addition to a hospital, bank, post office, and bus system. The community became so prosperous that there were six private planes owned by various residents of 1921 Greenwood. This community was known to some as Black Wall Street and to others as Little Africa. Each moniker was meant as a sign of respect for the community's accomplishments of self-reliance and self-determination in the face of Jim Crow barriers.[90]

And Greenwood was not alone. Rosewood, Florida and Slocum, Texas were considered prosperous all-Black communities, as well.[91] Additionally, Anthony Crawford of Abbeville, South Carolina was so successful as a farmer, he amassed a land holding of over 400 acres, enough to build homes for his 11 children and their families. [92]

The prosperity of these communities and individual families was ended by the domestic terrorism of whites in each case. News reports claim crimes by Blacks caused the unlawful retaliations by whites resulting in successful Black communities being destroyed by mob violence, that left hundreds of people murdered and displaced. However, survivors testify to the fact that Black economic success and competition for white business owners often was the more accurate motivator.[93] Their tales provide some of the many historic examples of entire Black communities ravaged by the domestic terrorism violence of white citizens during the taking of their resources (land, farms, homes, businesses, etc.).[94]

However, no story illustrates the threats and very real dangers to Black life during the Jim Crow era than the story of the Elaine Massacre in Elaine, Arkansas, September 30, 1919. The sharecropping system that dominated the Jim Crow south and kept Blacks in perpetual debt and de facto slavery also kept this source of cheap labor tied to the land and to dependence upon the benevolence and whims of white land owners. Recognizing the inherent unfairness of the system that stole labor and earnings from Blacks, one sharecropper, Robert Hill, chose to organize fellow sharecroppers, many of whom were U.S. military veterans, into a union to strengthen their negotiating position. Their goal—to receive fair wages for their work. These individuals became card-carrying members of the Progressive Farmers and Household Union of America, believing that via their dues-paying membership and participation they could receive the services of union lawyers and sue land owners for cotton that had essentially been stolen from them via the false reporting of the amounts of cotton picked that were logged into land owner tally books.

White landowners confronted these union members during a meeting, and gunshots were fired, leading to the rumor that Black sharecroppers had organized an uprising and were in the streets killing whites. The backlash was said to be brutal, with homes burned, belongings confiscated, and 237 Blacks killed, including women and children hiding from white mobs. Ordinary citizens, police officers and members of the U.S. Army that many of the Black sharecroppers served in during WWI, were involved in the murders of these Elaine Blacks, and in the rounding up of 87 survivors who were tortured in order to force a confession of a planned Black insurrection. Twelve of the 87 prisoners were sentenced to be executed by the electric chair. However, the NAACP stepped in and helped take their case to the U.S. Supreme Court where the high court ruled that the 12 defendants had been denied their constitutional rights and were thus set free.[95]

In spite of the violence that dominated the Jim Crow south and other parts of the nation, Blacks persisted in creating a self-determining existence—segregated communities of relative safety. Jim Crow laws also solidified the Criminal Justice System as one committed to policing and criminalizing Blacks at all costs.

Yet, the daunting challenges and roadblocks, legal and illegal, which cut off pathways to wealth accumulation did not dissuade countless Blacks from continuing to strive for their piece of the American Dream.

While the fight against Jim Crow's "separate but equal" existed for nearly as long as Jim Crow itself, fearless warriors armed with law degrees or the passion to obtain one, set out to destroy Jim Crow and its culture of inhumanity.

The Legal Assault Against Jim Crow

Gaines v. Missouri

Lloyd Lionel Gaines was class valedictorian at his high school and earned an academic scholarship to Lincoln University in Jefferson City, Missouri where he graduated with high honors, was president of the senior class and a member of the Alpha Phi Alpha fraternity.[96]

After graduating college, Gaines sought admission to the University of Missouri School of Law in 1936 but his application was denied solely because he was Black. Gaines sued and in 1938, the United States Supreme Court ruled that the separate but equal doctrine required Missouri to either admit him or to set up a separate law school for Black students.[97] It also ordered the Missouri Supreme Court to rehear the case to conform to its ruling. Following the decision, the Missouri General Assembly voted to establish the Lincoln University School of Law in St. Louis Missouri for Black students.[98] While waiting for the legal battle to end, Gaines completed a master's degree in economics in the state of Michigan.

Gaines had been represented in his lawsuit by the National Association for the Advancement of Colored People (NAACP) attorney of record, Charles Hamilton Houston. After the trial Houston hired Thurgood Marshall to work with him on the appeal.[99] Thurgood Marshall would later become an associate Supreme Court justice on the United States Supreme Court.

Boone County Courthouse
Where Gaines's case was tried

Houston, Marshall and the NAACP believed that the doctrine of separate but equal was unconstitutional and they planned to challenge the court's decision and sought a rehearing in state court. However, Mr. Gaines was nowhere to be found, he had vanished. Since only Gaines had been denied admission to the University of Missouri School of Law, only he had standing to pursue the case before the Supreme Court of Missouri, and the case could not proceed without him. In January 1940, the state of Missouri moved to dismiss the case due to the absence of the plaintiff. Houston did not oppose the motion, and it was granted.[100]

Later, Justice Thurgood Marshall would remember the Gaines case as one of his greatest legal victories.[101] While the United States Supreme Court decision had not dismantled the separate but equal doctrine altogether, it quietly stood for the proposition that anything short of integration would not survive constitutional scrutiny.

The NAACP persisted in its challenge to segregation in several cases including the cases of Ada Lois Sipuel Fisher, George McLaurin and Sweatt v. Painter.

Ada Lois Sipuel (Fisher)

Tate Hall—University of Missouri School of Law in the late 1930s

Ada Lois Sipuel was born February 8, 1924, in Chickasha, Oklahoma. She graduated first in her high school class from Lincoln High School in 1941. Following graduation, she enrolled in Arkansas A&M College at Pine Bluff and after one year transferred to Langston University where she majored in English. But her dream was of becoming a lawyer. On March 3, 1944, she married Warren Fisher with whom she had two children, Bruce and Charlene. On May 21, 1945, Ada Lois Sipuel Fisher graduated from Langston University with honors.

In 1946, Ada Lois Sipuel applied to but was denied admission to the University of Oklahoma law school, then the only taxpayer-funded law school in Oklahoma, because she was Black. Sipuel sued the school, alleging that because the state of Oklahoma did not provide a comparable facility for African American students under the doctrine of "separate but equal," she would have to be admitted to the university. [102] She then petitioned the District Court of Cleveland County, Oklahoma. Represented by attorneys Thurgood Marshall and Amos T. Hall, the lower court denied Sipuel relief.[103]

In lieu of admitting Sipuel, the state of Oklahoma hurriedly created the Langston University School of Law for Black students, which was made up of a few Senate rooms in Oklahoma's capitol. Sipuel again took her case to the courts, ultimately appealing to the United States Supreme Court.

On January 12, 1948, the United States Supreme Court ruled and unanimously mandated that the University of Oklahoma law school admit Ada Lois Sipuel. Sipuel became the first African American woman to attend an all-white law school in the South.[104]

The immediate result of her lawsuit was the admission of the first Black graduate student to the University of Oklahoma. George McLaurin would later file suit against the University of Oklahoma which was decided by the United States Supreme Court as a companion case to Sweatt v. Painter.[105]

On June 18, 1949, Sipuel was admitted to the law school.[106] However, she was forced to sit on a chair marked "colored" and was separated from the rest of the class by a barrier. At the school cafeteria she had to eat in a separate area, which was chained off from the rest of the cafeteria and guarded. These conditions persisted until 1950 when the United States Supreme

Court struck down such discriminatory action in McLaurin v Oklahoma State Regents.[107]

George W. McLaurin

George W. McLaurin was born on September 16, 1894. He earned his master's in education from the University of Kansas and taught at Langston University, Oklahoma's historically all-Black institution, for 33 years. In 1948, 61-year-old George W. McLaurin applied to the University of Oklahoma College of Education to pursue a doctorate in school administration. His application was denied, because he was Black.[108]

McLaurin filed a complaint seeking injunctive relief, alleging that the university's action as well as the laws upon which their action was based were unconstitutional and deprived him of the equal protection of the laws.[109]

A statutory three-judge District Court, citing the United States Supreme Court decisions in Missouri ex rel. Gaines v. Canada[110], and Sipuel v. Board of Regents[111], held that the State had a Constitutional duty to provide him with the education he sought as soon as it provided that education for applicants of any other group.[112] It further held that to the extent the Oklahoma statutes denied him admission they were unconstitutional and void. The court refused to grant the injunction, however, retaining jurisdiction of the cause with full power to issue any necessary and proper orders to secure McLaurin the equal protection of the laws.[113]

George W. McLaurin, a 54-year-old African-American, sat in an anteroom, apart from the other students, as he attended class at the University of Oklahoma in 1948. The university insisted that segregation be maintained, but a U.S. Supreme Court ruling forced the institution to accept McLaurin as a student.

Following this decision, the Oklahoma legislature amended the statutes to permit the admission of Negroes to institutions of higher learning attended by white students in cases where such institutions offered courses not available in the Negro schools. The amendment provided, however, that in such cases the program of instruction "shall be given at such colleges or institutions of higher education upon a segregated basis". Mr. McLaurin was admitted to the school but was required to sit apart from his classmates at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, prohibited from using the desks in the regular reading room; and required to sit at a designated table and to eat at a different time from the other students in the school cafeteria.[114]

McLaurin challenged these conditions by filing a motion to modify the order and judgment of the District Court but the court held that such treatment did not violate the provisions of the 14th Amendment and denied the motion.[115] McLaurin appealed.[116]

The United States Supreme Court concluded that the conditions under which McLaurin was required to receive his education deprived him of his right to the equal protection of the laws. The court further held that under these circumstances the 14th Amendment precludes differences in treatment by the state based upon race. In reversing the lower court's ruling, the United States Supreme Court held that McLaurin, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races.

McLaurin was the companion case of another lawsuit that appealed segregation in higher education in Texas. That case is *Sweatt v. Painter*.[117]

Heman Marion Sweatt

Heman Marion Sweatt was born in Houston, Texas on December 11, 1912. He was the fourth child of James Leonard and Ella Rose Perry Sweatt. Sweatt's great great grandfather was one of the first 10 graduates of Prairie View A&M University.[118] Later he became a principal in Beaumont but moved to the Third Ward community in Houston, Texas for better economic opportunity.[119] At that time, the Third Ward was considered to be an integrated community but Heman Sweatt attended racially segregated schools. He graduated from Jack Yates High School in 1930 and in 1934 earned an undergraduate degree from Wiley College in Marshall, Texas. After graduation, Sweatt returned to Houston where he pursued several occupations before teaching at a grade school in Cleburne in 1936 and serving as the school's acting principal for a year.[120] He entered medical school at the University of Michigan in 1937 but left after completing his second semester. He returned to Houston, where he worked as a substitute mailman. In April 1940 he married his high school sweetheart, Constantine Mitchell.[121]

Sweatt has been described as a soft-spoken, civil man of small physique. But he was no milquetoast. In fact, as a boy, Sweatt had attended several meetings of the Houston branch of the National Association for the Advancement of Colored People. During the early 1940s he participated in voter-registration drives and raised funds for lawsuits that challenged the Texas all-white primary. He wrote several articles for Carter W. Wesley, publisher of the Houston Informer.

Sweatt fought discrimination against Blacks in the post office and in his capacity as local secretary of the National Alliance of Postal Employees, he challenged discriminatory practices against Black postal workers. After an attorney helped him document the charges of discrimination, Sweatt became more interested in the law. By the mid-1940s he decided to go to law school and sought admission to the University of Texas School of Law. At the time there was no law school in the state of Texas that admitted Black students. Sweatt not only sought admission but, responding to an appeal by community activist and NAACP-Houston branch secretary Lulu White, he agreed to serve as a plaintiff in a lawsuit challenging Texas's segregation law.[122]

Heman Marion Sweatt applied to University of Texas law school on February 26, 1946, and was denied admission because he was Black.[123] Then university president Theophilus Painter informed Sweatt in a letter, that the state's attorney general, Grover Sellers, had advised him that admitting Sweatt would be a violation of the state's segregation laws.[124] Notwithstanding the fact that Sweatt had met all admissions criteria except race, it would be that one that would be the sole basis for denial of his admissions. The Texas Constitution,[125] stated "Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both." [126]

On May 16, 1946, Sweatt filed suit against the University of Texas, seeking a writ of mandamus to compel his admission to the law school. He argued that UT denied his admission to law school thereby infringing on rights guaranteed to him under the equal protection clause of the 14th Amendment to the United States Constitution.[127]

On December 17, 1946, Travis County district judge Roy C. Archer denied the writ based on Respondents' claim that the A & M (Texas Agricultural and Mechanical College) Board had provided for a first year law school at Houston that would open with the February 1947 semester, as a branch of Prairie View University.[128] Sweatt appealed.[129] On March 26, 1947, the Court of Civil Appeals of Texas set aside and remanded the trial court's decision.

Almost one month prior, on March 3, 1947, the Texas legislature passed the Act of 1947.[130] The Act provided for the "establishment of 'The Texas State University for Negroes' to be located at Houston, with a governing board of nine 'to consist of both white and negro citizens of this state,' and appropriated $2,000,000 for land, buildings and equipment, and $500,000 per annum for maintenance for the biennium ending August 31, 1949. And that: 'The Texas State University for Negroes shall offer all other courses of higher learning, including, but without limitation, (other than as to those professional courses designated for The Prairie View Agricultural and Mechanical College), arts and sciences, literature, law, medicine, pharmacy, dentistry, journalism, education, and other professional courses, all of which shall be equivalent to those offered at The University of Texas. Upon demand being made by any qualified applicant for any present or future course of instruction offered at The University of Texas, or its branches, such course shall be established or added to the curriculum of the appropriate division of the schools hereby established in order that the separate universities for Negroes shall at all times offer equal educational opportunities and training as that available to other persons of this state."[131]

Between May 17 and June 17, 1947, the case was retried. The trial court denied the writ again, specifically finding that the state was in compliance with the Act of 1947. The court stated that the "Respondents: '* * * have established the School of Law of the Texas State University for Negroes in Houston, Texas, with substantially equal facilities and with the same entrance, classroom study, and graduation requirements, and with the same courses and the same instructors as the School of Law of the University of Texas. Moreover, the court found that such new law school offered Sweatt privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas."[132]

Sweatt had no intention of abandoning his fight for full constitutional rights and therefore appealed the ruling. Both the Texas Court of Civil Appeals and the Texas Supreme Court affirmed the trial court's ruling. In November 1949, the United States Supreme Court granted Sweatt's writ of certiorari. In June 1950, the Court decided that the "basement" law school was not substantially of the same quality as the UT law school and that Sweatt could therefore not receive an equal education in the separate law school.

The historical ruling struck a deadly blow to Jim Crow schools. On September 19, 1950, Heman Marion Sweatt registered at the UT law school.[133] His time at the law school was marked by failing health and emotional and physical exhaustion. His grades were poor and his marriage failed, ending in divorce.[134] By the summer of 1952 Sweatt gave up law school and

returned to Houston. In 1954 he moved to Cleveland, where he worked for the NAACP and the National Urban League for eight years before moving to Atlanta and becoming assistant director of the Urban League's southern regional office. During his 23 years with the Urban League, Sweatt worked in a variety of projects, ranging from voter registration drives to the study and establishment of programs for southern Blacks migrating to the North. He also taught classes at Atlanta University.[135]

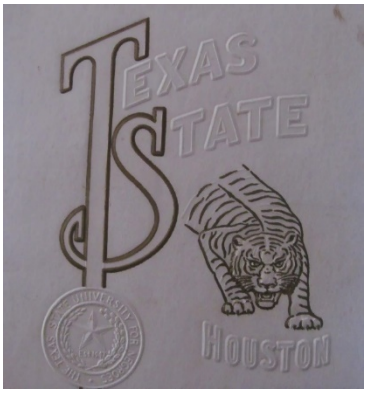
In 1963, Sweatt married Katherine Gaffney with whom he had a daughter and adopted another. He died on October 3, 1982. Years later, the law school that Heman Sweatt refused to attend became known as "the House that Sweatt Built."

Black Lawyers in Texas Before Sweatt

Texas law did not prohibit the education of Black lawyers, it merely prohibited Blacks to be trained alongside whites in the state's Historically White Colleges and Universities (HWCU). Black lawyers who practiced law in Texas from 1870 to 1947 were educated outside of Texas. The first two African American lawyers to practice in Texas were Allen W. Wilder, a North Carolinian with a background in engineering and W.A. Price, an Alabama native.[136] By 1890, there were 12 Black lawyers in Texas[137] and by 1946, 23 practicing Black lawyers were members of the Texas bar, none of whom had received their legal education in Texas.[138]

CONCLUSION

To understand how radical a notion it was to found a law school for Blacks the reader must understand that it was illegal for Blacks to read for hundreds of years in the U.S.[139]; Blacks were dehumanized for purposes of determining the number of representatives to Congress a state was entitled;[140] the U.S. Supreme Court ruled that Blacks had no rights which whites were bound to respect (The Dred Scott Decision)[141]; Blacks could not bring charges against a white person in a court of law; or serve on juries; and although Blacks won the right to vote with the Civil Rights Act of 1866 they were denied by threat of domestic terrorism and legal means from exercising their rights as citizens for nearly 100 years after slavery had ended.[142]



The notion of a law school for Blacks flew in the face of centuries of inhumanity and indignities, denials to pursuing education, prohibitions from meaningful participation in the justice system, and denial of access to any of the means and vehicles for social, political or economic gain. Jim Crow and all the laws and policies giving preference to whites to the detriment of Blacks served as both literal and symbolic affirmative action for white people.[143]

The founding of the Texas State University for Negroes Law School (later Thurgood Marshall School of Law) cannot begin to be fully appreciated without acknowledging the many layers of bondage, segregation and discrimination that had to be weathered for the school, fathered by Jim Crow, to emerge as a citadel for justice. It was a long journey home that marked the beginning of legal education for Blacks in Texas.

[1] United States Declaration of Independence (1776) text available at http://www.ushistory.org/Declaration/document/
[2] Article IX states "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
[3] Scott v. Sandford, 60 U.S. 393, 404 (1857)
[4] *Id* at 405
[5] *Id* at 408
[6] Jay, John, Letter to R. Lushington, March 15, 1786, http://econfaculty.gmu.edu/wew/quotes/slavery.html
[7] Madison, James, Federalist Papers: No. 54 http://avalon.law.yale.edu/18th_century/fed54.asp
[8] Jefferson, Thomas, Letter to George Washington (1786)
https://www.nps.gov/thje/learn/photosmultimedia/quotations.htm
[9] *See* e.g. Sarah Bell (University of Kansas), Dred Scott v. Sandford (1857), http://www.civilwaronthewesternborder.org/encyclopedia/dred-scott-v-sandford-1857; and see Charles W. Calomiris and Larry Schweikart, The Panic of 1857; Origins, Transmission, and Containment, 51 J of Eco History, No. 4; 816 (Dec. 1991) and see James L. Huston, The Panic of 18578 and the Coming of the Civil War, Louisiana State University Press, ISBN 0-8071-2492-3 (pbk) (1987)
[10] *See* Phillip Shaw Paludan, Lincoln and Negro Slavery: I Haven't Got Time for the Pain, 27 J of the Abraham Lincoln Assoc, Vol 27, No.2 (2006) citing Roy P. Basler et al., eds., The Collected Works of Abraham Lincoln, 9 vols. (New Brunswick, N.J.: Rutgers University Press, 1953–1955), 3:15. At Ottawa, Lincoln was quoting an October 16, 1854, speech in Peoria available at https://www.nps.gov/liho/learn/historyculture/peoriaspeech.htm. Abraham Lincoln was inaugurated as the 16th President of America on March 4, 1961, however, the southern states, whose economy depended heavily on slavery, had already made their intentions to secede from the Union if Lincoln won the election of 1860, although Lincoln had repeatedly made it known that he was neither constitutionally authorized to abolish slavery, nor had any plans to do it.
[11] While the Emancipation Proclamation did not free a single slave, it was an important turning point in the war, transforming the fight to preserve the nation into a battle for human freedom. Moreover, Lincoln seemed convinced that abolition was both a sound military strategy as well as morally right. Before becoming president, in his 1854 speech, Lincoln referred to the "monstrous injustice of slavery" and in his debates with Stephen Douglas declared that "slavery is an unqualified evil to the negro, to the white man, to the soil, and to the State."
[12] *See* The Editors of Encyclopedia Britannica, *Black code*, (2016), https://www.britannica.com/topic/black-code (last visited Oct. 7, 2018) [hereinafter *Code*].
[13] "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." USCS Const. Amend. 13, USCS Const. Amend. 13, § 1.
[14] *See Code*, *supra* note 12.
[15] *Id*.
[16] Texas Slave Codes, http://afrotexan.com/laws/slave_codes.htm (last visited Oct. 7, 2018). (stating The institution of slavery in Texas was supported by the legal system. The entire life of the slave was controlled by rules and regulations. In addition to those passed by individual masters for their own plantations there were many local and state laws. The slave had no property rights and no legal rights of marriage and family. Slave owners had broad powers of discipline subject only to constitutional provisions that slaves be treated "with humanity" and that punishment not extend to the taking of life and limb.)
[17] *See Code*, *supra* note 12.
[18] Texas Black Codes, Digital History, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=3681 (last visited Oct. 7, 2018); *see also Robert A. Calvert & Arnoldo DeLeon, The History of Texas* 148-49 (2d ed. 1996), *available at* http://ebookcentral.proquest.com/lib/tsu-ebooks/detail.action?docID=1566392.
[19] *Id*.
[20] Under Texas's code, minors could be apprenticed until the age of 21, with parental consent or by order of a county court. "It shall be lawful for any minor to be bound as an apprentice, by his or her father, mother or guardian, with their consent, entered of record in the office of the Clerk of the county of which the minor is a resident, or without such consent, if the minor, being fourteen years of age, agree in open Court to be so apprenticed; Provided, there be no opposition thereto by the father or mother of said minor." *An Act establishing a General Apprentice Law*, Ch. 82, Sect.

1, H.P.M.N. Gammel, éd., The Laws of Texas, 1822-1897 Vol. X, pg. 80 (Austin, 1898), (texashistory.unt.edu/ark:/67531/metapth6733/: accessed Oct. 9, 2018).

[21] The laws also served as a means to stifle financial independence, with many Blacks forced into forms of involuntary servitude by way of sharecropping. "Every laborer shall have full and perfect liberty to choose his or her employer, but when once chosen, they shall be allowed to leave their place of employment, until the fulfillment of their contract, unless by consent of their employer, or on account of harsh treatment or breach of contract on the part of the employer, and if they do so leave without cause or permission, they shall forfeit all wages earned to the time of abandonment." *An Act Regulating Contracts for Labor*, Ch. 80, Sect. 1, H.P.M.N. Gammel, éd., The Laws of Texas, 1822-1897 Vol. X, pg. 76 (Austin, 1898), (texashistory.unt.edu/ark:/67531/metapth6733/: accessed Oct. 9, 2018).

[22] *See* David M. Oshinsky, Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice, Free Press, April 22, 1997.

[23] *See id*. at 21.

[24] *See Code*, *supra* note 12.

[25] *Id*.

[26] *Id*.

[27] *See Oshinsky*, *supra n. 22*.

[28] *See* Supra note 18

[29] "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." USCS Const. Amend. 15, USCS Const. Amend. 15, § 1.

[30] *See Alwyn Barr, Black Texans: A History of Negroes in Texas, 1528-1995* at 42 (2d ed. 1996). Under Texas Republic laws, free persons of one-eighth Negro blood could not vote, own property, testify in court against Whites, or intermarry with them; *Handbook of Texas Online*, Carl H. Moneyhon, Black Codes, accessed Oct. 8, 2018, http://www.tshaonline.org/handbook/online/articles/jsb01.

[31] "All railroad companies shall attach one passenger car for the special accommodation of freedmen." *Railroads—Separate Coaches Required*, Ch. 34, Sect. 4, H.P.M.N. Gammel, éd., The Laws of Texas, 1822-1897 Vol. V, pg. 1015 (Austin, 1898), (https://texashistory.unt.edu/ark:/67531/metapth6727/m1/1031/: accessed Oct. 9, 2018).

[32] *Id.*

[33] *Id*.

[34]Public Free Schools, Ch. 122, Art. VII, Sects. 14-15, H.P.M.N. Gammel, éd., The Laws of Texas, 1822-1897 Vol. X, pg. 616 (Austin, 1898), (https://texashistory.unt.edu/ark:/67531/metapth6733/m1/618/?q=public%20school%20fund: accessed Oct. 9, 2018).

[35] *Id*.

[36] *See Oshinsky*, *supra* note at 22 (Noting that the laws were designed to drive freed slaves back into disadvantageous labor contracts with former owners)

[37] Honorifics i.e., Mister, Miss or Mrs. honorific | Definition of honorific in English by Oxford Dictionaries, Oxford Dictionaries | English, https://en.oxforddictionaries.com/definition/honorific (last visited Oct 9, 2018); *See Does an Exception Clause in the 13th Amendment Still Permit Slavery?*, History.com, https://www.history.com/news/13th-amendment-slavery-loophole-jim-crow-prisons (last visited Oct. 7, 2018).

[38] *See id*.

[39] *See Code*, *supra* note 12.

[40] *See Kentucky v.* Powers, 201 U.S. 1, 26 S.Ct. 387 (1906) where Associate Justice Harlon wrote: "Whereas it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law; I am of opinion that such discrimination is a badge of servitude, the imposition of which congress may prevent under its power, through appropriate legislation, to enforce the thirteenth Amendment; and consequently, without reference to its enlarged power under the fourteenth Amendment, the act of March 1, 1875, is not, in my judgment, repugnant to the constitution."

[41] The five cases, which were collectively known as The Civil Rights Cases, were United States v. Stanley; United States v. Ryan; United States v. Nichols; United States v. Singleton and Robinson and Wife v Memphis and Charleston Railroad Company, 109 U.S. 3 (1883)

[42] The Louisiana Railway Accommodations Act, Railroads and the Making of Modern America, available at http://railroads.unl.edu/documents/view_document.php?id=rail.gen.0060 (last visited Oct. 9, 2018). The statute provided:

> [A]ll railway companies carrying passengers in their coaches in this State, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger

coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations ....

[43] *Id.*

[44] see Republic of Texas Constitution 1836, General Provisions, Sections 6, 9 and 10 excluding Africans, descendants of Africans from citizenship and the rights thereto appertaining

[45] *Id*. (Noting that the laws were designed to drive freed slaves back into disadvantageous labor contracts with former owners)

[46] Honorifics i.e., Mister, Miss or Mrs.

[47] *Supra n. 12*

[48] *See generally Plessy v. Ferguson*, 163 U.S. 537 (1896) (challenging the segregation statute passed by Louisiana).

[49] *See supra* note 42.

[50] An antiquated term elders in Louisiana use/used to refer to White passing Creole Blacks as *passe blanc* or "*passant à blanc*." John Lowe, Louisiana Culture form the Colonial Era to Katrina, 42 (2008); Troy Lenard Simon, *Black Creoles in New Orleans (1700-1971): the life of the educated, talented, and civilized black Creoles"* (2016). Senior Projects Spring 2016. Paper 108. http://digitalcommons.bard.edu/senproj_s2016/108.

[51] The Louisiana Railway Accommodations Act, supra n. 42.

[52] *Id.*

[53] *Id.*

[54] Henry Louis Gates, *'Plessy v. Ferguson': Who Was Plessy?* THE ROOT (2017), https://www.theroot.com/plessy-v-ferguson-who-was-plessy-1790896805 (last visited Oct. 5, 2018); the Comité de Citoyens were a group of Creole professionals in New Orleans formed the Citizens' Committee to Test the Constitutionality of the Separate Car Law.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id; supra*, note 42.

[59] *See Plessy supra n. 54* ("The constitutionality of this act is attacked upon the ground that it conflicts both with the Thirteenth Amendment of the Constitution, abolishing slavery, and the Fourteenth Amendment, which prohibits certain restrictive legislation on the part of the States.")

[60] *Id.*

[61] Melvin I. Urofsky, Supreme Decisions, Combined Volume Great Constitutional Cases and their Impact (2012).

[62] Who Were Plessy and Ferguson? African American History Blog, PBS (2013), http://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/plessy-v-ferguson-who-was-plessy/ (last visited Oct 9, 2018).

[63] *Id.*

[64] *See Plessy supra*, note 54, at 551. The Court concluded that the segregation statute separating the races did not promote the inferiority of African Americans and stated, "If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." Brian Duignan, Plessy v. Ferguson, Encyclopedia Britannica (2018), available at https://www.britannica.com/event/Plessy-v-Ferguson-1896#ref1077313 (last visited Oct. 7, 2018).

[65] *Id.* "It was intimated, however, in that case that this amendment was regarded by the statesmen of that day as insufficient to protect the colored race from certain laws which had been enacted in the Southern States, imposing upon the colored race onerous disabilities and burdens, and curtailing their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value; and that the Fourteenth Amendment was devised to meet this exigency." *See Plessy supra*, note 4.

[66] *Id.* at 443. "Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the states' legislatures in the exercise of their police power."

[67] *See* PLESSY ENCYCLOPEDIA *supra*, note 6; *Id.* at 551. "If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals.",

[68] *See id.*

[69] *See id*. "If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals."

[70] With state imposed segregation having been upheld as constitutional and as a valid use of the states police powers, various other methods intended to further segregation arose resulting in severe limitations on housing for African Americans. For example, at the private level, race restrictive covenants; which usually prohibited non-whites from buying or occupying residences became barriers to African Americans' spatial mobility. At the local level, cities

enacted racial zoning ordinances in an effort to control the increase of African American population and the residential expansion of their neighborhoods. At the federal level, the Federal Housing Act of 1954 not only enforced, promoted but also furthered the residential segregation at the national scale.

[71] Editors of Encyclopedia Britannica, Black Code, crediting their beginning in 1865, available at https://www.britannica.com/topic/black-code

[72] See generally, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, The New Press, January 5, 2010 reporting that the vestiges of Jim Crow are still being confronted and fought against today

[73] Fremon, David, The Jim Crow Laws and Racism in American History. (2000). Emslow. ISBN 0766012972. The Confederate States of America included (in order of secession from the United States) South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, Tennessee and North Carolina. Though Missouri and Kentucky were later accepted into the Confederacy, neither Missouri nor Kentucky ever officially seceded from the United States.

[74] With the Compromise of 1877 came the withdrawal of Union army troops from the south, and thus the institutional protections that allowed Blacks to exercise full rights of citizenship.

[75] Eric Foner, Forever Free: The Story of Emancipation and Reconstruction; Vintage reprint edition November 14, 2006)

[76] Reverend Albert B. Cleage Jr., *Black Christian Nationalism: New Directions for the Black Church*, wherein Cleage refers to a process of conditioning or breaking the human spirit of captured Africans in an attempt to reduce their humanity to the point where they would accept their enslavement. Kenneth Stampp dedicates an entire chapter to this process in his classic book *The Peculiar Institution: Slavery in the Ante-Bellum South*. The book's chapter four, "To Make Them Stand in Fear," outlines this five-step process of breaking the spirit of enslaved Africans, a process mimicked by the entire system of Jim Crow.

[77] Some examples of laws meant to maintain a strict discipline and adherence to the rules of segregation include the following:

- "It shall be unlawful for a negro and white person to play together or in company with each other in any game of cards or dice, dominoes or checkers." (Birmingham, Alabama, 1930)
- "Any person...presenting for public acceptance or general information, arguments or suggestions in favor of social equality or of intermarriage between whites and negroes, shall be guilty of a misdemeanor and subject to a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both fine and imprisonment in the discretion of the court." (Mississippi, 1920)
- "Separate free schools shall be established for the education of children of African descent; and it shall be unlawful for any colored child to attend any white school, or any white child to attend a colored school." (Missouri, 1929)
- "Marriages are void when one party is a white person and the other is possessed of one-eighth or more negro, Japanese, or Chinese blood." (Nebraska, 1911)
- "Any white woman who shall suffer or permit herself to be got with child by a negro or mulatto...shall be sentenced to the penitentiary for not less than eighteen months." (Maryland, 1924)
- "All railroads carrying passengers in the state (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the cars by a partition, so as to secure separate accommodations." (Tennessee, 1891)

[78] Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South*, originally published 1956; republished 1989, Vintage Books, p.145.

[79] *Id. at* p.146.

[80] *Id. at* p.147.

[81] Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, Random House, March 25, 2008

[82] *See Id* and see Gilda Graff, "Redesigning Racial Caste in America via Mass Incarceration" The Journal of Psychohistory, October 1, 2015; Michelle Alexander, *supra n 72.*

[83] David M. Oshinsky, supra n. 22 basing his title on L.G. Shivers, A History of the Mississippi Penitentiary stating, "The convict's condition [following the Civil War] was much worse than slavery. The life of the slave was valuable to his master, but there was no financial loss…if a convict died."

[84] "Peculiar institution" was a term used predominantly in the 19th century to refer to the U.S. system of slavery. In addition, Kenneth M. Stampp, supra n. 78.

[85] Section 1 of the 13th Amendment states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Historians and scholars have labeled this the "slavery loophole" as it allows for the furtherance of slavery within the criminal justice system.

[86] Michelle Alexander, supra n 72.

[87] Martin McKee, Aaron Reeves, Amy Clair, and David Stuckler, "Living on the Edge: Precariousness and Why it Matters for Health," *Archives of Public Health*, March 3, 2017, the official journal of the Belgian Public Health Association, focuses on 1980s Europe, the concepts (the mental, physical and emotional ramifications of living in a precarious situation/environment) still apply to Black life before, during and after the 1940s and are the topic of focus of many books and journal articles including Ibram X. Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America*, Public Affairs (the publisher) April 12, 2016; Ralph Ginzburg, *100 Years of Lynchings* Reprinted by Black Classic Press, November 22, 1996; Dr. Joy Leary DeGruy, *Post-Traumatic Slavery Syndrome: America's Legacy of Enduring Injury and Healing*, Joy Degruy publications, January 1, 2005; Norm Stamper, *Breaking Rank: A Top Cop's Expose of the Dark Side of American Policing*, Nation Books, May 24, 2006; Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* by W.W. Norton & Company, August 17, 2006.

[88] National Museum of the Pacific Ware, African Americans in WWII, available at http://www.pacificwarmuseum.org/your-visit/african-americans-in-wwii/

[89] Genna Rae McNeil, *Before Brown: Reflections on Historical Context and Vision*, 52 Am. U. L. Rev. 1431, 1435-36 (2003).

[90] Fred Williams, Black Wall Street: A Legacy of Success, Ebony available at https://www.ebony.com/black-history/black-wall-street-a-legacy-of-success-798 and see Smithsonian Institute, A Long-Lost Manuscript Contains a Searing Eyewitness Account of the Tulsa Race Massacre of 1921, The National Museum of African American History and Culture, available at https://www.smithsonianmag.com/smithsonian-institution/long-lost-manuscript-contains-searing-eyewitness-account-tulsa-race-massacre-1921-180959251/

[91] *The Burning: Massacre, Destruction, and the Tulsa Race Riot of 1921* by Time Madigan, St. Martin's Griffin, reprint edition, February 1, 2003; *Black Holocaust: The Paris Horror and a Legacy of Texas Terror* by E.R. Bills, Eakin Press, August 24, 2015; *The 1910 Slocum Massacre: An Act of Genocide in East Texas* by E.R. Bills, The History Press, May 13, 2014; *Riot and Remembrance: America's Worst Race Riot and its Legacy* by James S. Hirsch, Mariner Books, reprint edition June 6, 2003; and *The Chicago Race Riots: July 1919* by Carl Sandburg, Dover Publications, February 21, 2013 are a few books that address the racial violence that dominated America between 1910 and 1920.

[92] *See* Jae Jones, Anthony P. Crawford: The Lynching of One of the Richest Black Men in Abbeville, South Carolina, Black Then and Now available at https://blackthen.com/anthony-p-crawford-the-lynching-of-one-of-the-richest-black-men-in-abbeville-south-carolina/

[93] Doria Johnson, "The Lynching of Anthony Crawford" recounted at http://www.ccharity.com/contents/transcriptions-wills-property-tax-rolls-inventory-lists-and-newspaper-clippings-contributed-website/lynching-anthony-crawford/ and see Conshandra Dillard, An Armed white mob in Texas massacred their black neighbors in 1910, and none of them were prosecuted, available at https://timeline.com/slocum-massacre-texas-mob-4a212cle63e7; and see Victor Luckerson, "Black Wall Street: The African American Haven That Burned and then Rose from the Ashes" available at https://www.theringer.com/2018/6/28/17511818/nlack-wall-street-oklahoma-greenwood-destruction-tulsa

[94] *See 100 Years of Lynching* by Ralph Ginzburg and *Black Holocaust: The Paris Horror and a Legacy of Texas Terror* by E.R. Bills spotlight the violence used to maintain the Jim Crow system. Multiple articles and books reveal these same tensions in 1917 Houston that resulted in what is called the Camp Logan Rebellion of 1917 and see Edgar A. Schuler, "The Houston Race Riot, 1917" *The Journal of Negro History*, Vol. 29, No. 3, July 1944), pp. 300-338, (published by the University of Chicago Press on behalf of the Association for the Study of African American Life and History)—talked about how "there was no recognition in the Houston press of the ominous indications regarding local racial friction" even as the Houston press readily reported on such happenings elsewhere, like the race riots in East St. Louis—August 16-19—that happened just days before the Houston Rebellion/Riot. Other works that cover this event include "The Houston Mutiny of 1917" by Garna L. Christian, *Trotter Review*, volume 18, issue 1, pp14, 2009); "Houston" by Martha Gruening, NAACP's *Crisis Magazine* pp14-19, November 1917; "The Houston Mutiny and Riot of 1917" by Robert V. Haynes, *The Southwestern Historical Quarterly*, Vol. 76, No. 4, April 1973, pp. 418-439 (published by the Texas State Historical Association); and others.

[95] Moore v Dempsey, 261 US 86 (1923), and see America's Forgotten Mass Lynching: When 237 Black Sharecroppers were Murdered in Arkansas, The Daily Check available at https://thedailycheck.net/americas-forgotten-mass-lynching-237-black-sharecroppers-murdered-arkansas/

[96] Lloyd Lionel Gaines biography, available at https://everipedia.org/wiki/Lloyd_L._Gaines/#early-life

[97] Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938)
[98] Ernesto Longa, A History of America's First Jim Crow Law School Library and Staff, 7:1 Conn. Pub. L.J. 78 (2007)
[99] Rawn James, Jr. Root and Branch, p. 113 Bloomsbury Press, N.Y. (2010)
[100] *See* David Stout, Quiet Hero of Civil Rights History: A Supreme Triumph, Then Into The Shadows, N.Y. Times, Page A19, 2009; also available at https://www.nytimes.com/2009/07/12/us/12gaines.html
[101] Crowe, Chris, Thurgood Marshall: Up Close. Penguin. p. 116. (2008) ISBN 978-0-670-06228-7.
[102] Sipuel v. Board of Regents, 332 U.S. 631 (1948)
[103] Sipuel v. Board of Regents of University of Oklahoma, 180 P.2d 135, Supreme Court of Oklahoma, 1947, where the Oklahoma Supreme Court upheld the decision of the lower district court.
[104] *See* Norman African-Americans: City of Norman, http://www.normanok.gov/content/norman-african-americans last visited July 16, 2018.
[105] Sweatt v Painter, et al., 339 U.S. 629 (1950)
[106] Fisher (Sipuel's married surname) graduated in 1951 and practiced law in her hometown of Chickasha, Oklahoma. In 1992 Oklahoma Governor David Walters appointed Ada Lois Sipuel Fisher to the Board of Regents of the University of Oklahoma. Sipuel died on October 18, 1995 at the age of 71.
[107] McLaurin v. Oklahoma State Regents for Higher Education et al.,339 U.S. 637 (1950), Supreme Court of the United States
[108] 70 Okla. Stat. (1941) 455, 456, 457, which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught.
[109] Supra note 105; 638 (1950)
[110] Missouri et rel. Gaines v. Canada et al. 305 U.S. 337 (1938),
[111] Supra Note 102
[112] McLaurin v. Oklahoma State Regents for Higher Education, et al. (87 F. Supp. 526; 1948 U.S. Dist.-Western District of Oklahoma).
[113] *Id.*
[114] McLaurin v. Oklahoma State Regents for Higher Education, et al. 87 F. Supp. 528.
[115] *Id.*
[116] McLaurin v. Oklahoma State Regents, 339 U.S. 637, 639 (1950) "In the interval between the decision of the court below and the hearing in the United States Supreme Court, the treatment afforded appellant was altered. For some time, the section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, "Reserved For Colored," but [by the time the case reached the Supreme Court] these ha[d] been removed. [Instead] he [wa]s assigned to a seat in the classroom in a row specified for colored students; he [was] assigned to a table in the library on the main floor; and he [was] permitted to eat at the same time in the cafeteria as other students, although here again he [was] assigned to a special table."
[117] *Sweatt v. Painter*, 210 S.W.2d 442 (Tex.Civ.App.-Austin, 1948)
[118] Acts 49th Leg., Ch. 308, p. 506, Vernon's Ann. Tex. Rev. Civ. Stat. Art. 2643a establishing the Prairie View Normal and Industrial School for Negroes in the 1870's, which operated under the governing board of the (Texas) A. & M. The name of Prairie View was changed by the Act of June 1, 1945, to Prairie View University; and it was provided: 'Whenever there is any demand for same, the Board of Directors of the Agricultural and Mechanical College, in addition to the courses of study now authorized for said institution, is authorized to provide for the establishment of courses in law, medicine, engineering, pharmacy, journalism, or any other generally recognized college course taught at the University of Texas, in said Prairie View University, which courses shall be substantially equivalent to those offered at the University of Texas.' also see Gary Lavergne, Before Brown: Heman Marion Sweatt, Thurgood Marshall and the long road to justice, University of Texas Press, 2010, ISBN 978-0-292-72200-2 also see BlackPast.org, Prairie View A & M University (1878--) http://www.blackpast.org/aaw/prairie-view-m-university-1878 stating In 1876 the Texas legislature mandated separate higher education opportunities for African Americans. Two years later the Alta Vista Agricultural & Mechanical College for Colored Youths opened its doors. The school's original curriculum was the training of teachers, but in 1887 it expanded to include agriculture, nursing, arts and sciences, and mechanical arts. The school became a land grant school in 1890 and in 1919 began offering baccalaureate degrees. And see Prairie View A & M University available at https://en.wikipedia.org/wiki/Prairie_View_A%26M_University stating Article 7 of the Texas Constitution of 1876, created near the end of the Reconstruction Era after the American Civil War. In that year, State Senator Matthew Gaines and State Representative William H. Holland – both former slaves who became leading political figures – crafted legislation for the creation of a state-supported "Agricultural and Mechanical" college. In the article, the constitution stated that "Separate schools shall be provided for the white and colored children, and impartial provisions shall be made for both." For additional interesting information see http://www.pvamu.edu/about_pvamu/college-history/

[119] *Id.*
[120] Richard Allen Burns, "*Sweatt, Heman Marion*," Handbook of Texas Online http://www.tshaonline.org/handbook/online/articles/fsw23.
[121] *Id.*
[122] *Id.*
[123] Lavergne, Gary, *Before Brown*, supra n 118 stating that "The first attempt to integrate The University of Texas at Austin began in 1885, when an African American student applied for admission. The school denied him admission based solely because he was black. The second attempt came in October 1939, when George L. Allen, the Austin district manager for the Excelsior Life Insurance Company, arrived on campus to attend a business psychology and salesmanship class. His mere presence stunned the students and administrators. No such defiance or challenge to the unwritten, yet enacted regulations of racial discriminatory policy of the school had ever taken place, but to the disbelief of Allen, UT allowed him to take the class, completely undermining Allen and the National Association of the Advancement of Color People (NAACP) plan to use the opportunity to sue the state. A few days later, Professor C.P. Brewer arranged to meet with Allen to notify him the school was asking him to withdraw from the class. After Allen refused, his registration was cancelled and he was prevented from attending class. He and the NAACP threated to sue, and in response to the threat, an out-of-state scholarship program was established."
[124] Andre Hsu, *Sweatt v. Painter: Nearly Forgotten, But Landmark Texas Integration Case, October 10, 2012* https://www.npr.org/sections/thetwo-way/2012/10/10/162650487/sweatt-vs-texas-nearly-forgotten-but-landmark-integration-case reporting that Painter's letter stated: "This applicant is a citizen of Texas and duly qualified for admission to the Law School at the University of Texas, save and except for the fact that he is a negro."
[125] Tex. Const. Art. 7 § 7
[126] *Id.*
[127] *Sweatt v. Painter*, No. 74, 945, 126th District Court, Travis County, Texas, Filed May 16, 1946
[128] *Id.*
[129] *Sweatt v. Painter*, 210 S.W. 2d 442 (Tex. App. 1948)
[130] Tex. Rev. Civ. Stat.Art. 2643b
[131] *Sweatt v. Painter*, supra n. 129 citing Vernon's Ann.Civ.St. art. 2643b, § 2.
[132] The school was located in the basement of a three story office building at 104 East 13th Street, Austin, TX.
[133] Another African American, George Washington, Jr., also registered for law school at the University of Texas that fall. He was the first African American to graduate University of Texas Law School in 1954.
[134] Handbook of Texas Online, Richard Allen Burns, "Sweatt, Heman Marion," accessed March 05, 2018, http://www.tshaonline.org/handbook/online/articles/fsw23.
[135] *Id.*
[136] John G. Browning and Chief Justice Carolyn Wright, Unsung Heroes: The earliest African American lawyers in Texas, Vol. 77, No. 11 Texas Bar Journal 960 (2014)
[137] John G. Browning, Dallas's First Black Lawyers, Dallas Bar, (2015) available at http://www.dallasbar.org/book-page/dallas%E2%80%99-first-black-lawyers
[138] Dwonna Goldstone, Integrating the 40 Acres: The Fifty-Year Struggle for Racial Equality at the University of Texas, University of Georgia Press, p. 161; (2006) ISBN 978-0-8203-2828-7
[139] E.g. Excerpt from South Carolina Act of 1740

Whereas, the having slaves taught to write, or suffering them to be employed in writing, may be attended with great inconveniences; Be it enacted, that all and every person and persons whatsoever, who shall hereafter teach or cause any slave or slaves to be taught to write, or shall use or employ any slave as a scribe, in any manner of writing whatsoever, hereafter taught to write, every such person or persons shall, for every such offense, forfeit the sum of one hundred pounds, current money.

Excerpt from Virginia Revised Code of 1819

That all meetings or assemblages of slaves, or free negroes or mulattoes mixing and associating with such slaves at any meeting-house or houses, &c., in the night; or at any SCHOOL OR SCHOOLS for teaching them READING OR WRITING, either in the day or night, under whatsoever pretext, shall be deemed and considered an UNLAWFUL ASSEMBLY; and any justice of a county, &c., wherein such assemblage shall be, either from his own knowledge or the information of others, of such unlawful assemblage, &c., may issue his warrant, directed to any sworn officer or officers, authorizing him or them to enter the house or houses where such unlawful assemblages, &c., may be, for the

purpose of apprehending or dispersing such slaves, and to inflict corporal punishment on the offender or offenders, at the discretion of any justice of the peace, not exceeding twenty lashes.

[140] Article I, Section 2, of the U.S. Constitution of 1787, known as the three-fifths clause declared that for purposes of representation in Congress, enslaved blacks in a state would be counted as three-fifths of the number of white inhabitants of that state. The three-fifths clause was part of a series of compromises enacted by the Constitutional Convention of 1787.

[141] Dred Scott decision, supra n. 3

[142] Juan Williams and Quinton Dixie, *This Far by Faith* (ISBN 00601188634; William Morrow; 2003); Aswad Walker, *Princes Shall Come Out of Egypt: A Comparative Study of the Theological and Ecclesiological Views of Marcus Garvey and Rev. Albert B. Cleage Jr.* (ISBN 978-1-4652-0580-3; Kendall Hunt Publishing, August 2012).

[143] Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* supra n. 27

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