AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Equality/Race/The Fall of Jim Crow

The Montgomery Bus Boycott

On December 1, 1955, Rosa Parks was arrested by Montgomery, Alabama, police officers after she violated a city ordinance by refusing to move to the back of a bus as ordered by the driver. What neither the driver nor the police officers knew was that Parks was a member of the local NAACP and had been looking for a vehicle to protest the way African-Americans were treated on city buses. That night, civil rights organizations began distributing leaflets throughout the African-American community declaring "Don't ride the buses to work, to town, to school, or anywhere on Monday." The Montgomery bus boycott had begun. Initially, the protestors demanded only polite treatment and the right to sit in the front of the bus when there were no white riders. Two months of local intransigence and violence convinced the Montgomery Improvement Association (MIA), led by a young pastor named Martin Luther King, to make greater demands. By February 1956, the MIA was insisting that Montgomery buses desegregate and sponsoring a lawsuit aimed at declaring segregation on city buses unconstitutional.

The federal district court in Browder v. Gayle *by a divided vote and the Supreme Court of the United States by a unanimous vote declared unconstitutional segregation on city buses. While the Supreme Court in* Brown v. Board of Education *(1954) did not explicitly overrule* Plessy v. Ferguson *(1896), Judge Rives's majority opinion for the district court assumed that* Plessy *for all practical purposes had been overruled. Was he correct in making that assumption? Should lower federal courts have waited for an explicit declaration that* Plessy *had been overruled? Could lower court justices have at some point inferred that* Plessy *had been overruled from the Supreme Court's practice of issuing one sentence opinions in segregation cases?* Gayle v. Browder *is an example of a one sentence Supreme Court opinion declaring segregation unconstitutional in light of* Brown. *The Supreme Court issued similar one sentence per curiam opinions when reviewing lower federal court rulings on the constitutionality of laws mandating segregation in state dining facilities and restrooms, athletic contests sanctioned by the state, state parks, state golf courses, state beaches, state entertainment facilities, state buildings, jails and courthouses. What do you make of this practice? Were the justices implicitly asserting that the unconstitutionality of segregation was obvious? Did the per curiam opinions mask disagreement over the reasons why segregation was unconstitutional? Was this part of the judicial strategy not to unduly antagonize the South?*

Browder v. Gayle, 142 F.Supp. 707 (D.C.Ala. 1956)

RIVES, Circuit Judge.

. . .

Each of the four named plaintiffs has either been required by a bus driver or by the police to comply with said segregation laws or has been arrested and fined for her refusal so to do. The plaintiffs, along with most other Negro citizens of the City of Montgomery, have since December 5, 1955, and up to the present time, refrained from making use of the transportation facilities provided by Montgomery City Lines, Inc. Plaintiffs and other Negroes desire and intend to resume the use of said buses if and when they can do so on a non-segregated basis without fear of arrest.

. . .

In the field of college education, beginning in 1938 and continuing to the present time, the Court has first weakened the vitality of, and has then destroyed, the separate but equal concept. . . .

The separate but equal concept had its birth prior to the adoption of the Fourteenth Amendment in the decision of a Massachusetts State court relating to public schools. *Roberts v. City of Boston* (MA 1850) . . . . The doctrine of that case was followed in *Plessy v. Ferguson* (1896). . . . In . . . *Brown v. Board of Education of Topeka* (1954) . . . the separate but equal doctrine was repudiated in the area where it first developed, i.e., in the field of public education. On the same day the Supreme Court made clear that its ruling was not limited to that field when it remanded 'for consideration in the light of the Segregation Cases . . . and conditions that now prevail a case involving the rights of Negroes to use the recreational facilities of city parks. *Muir v. Louisville Park Theatrical Association* (1954). . .

. . .

We cannot in good conscience perform our duty as judges by blindly following the precedent of *Plessy v. Ferguson*, supra, when our study leaves us in complete agreement . . . that the separate but equal doctrine can no longer be safely followed as a correct statement of the law. In fact, we think that *Plessy v. Ferguson* has been impliedly, though not explicitly, overruled, and that, under the later decisions, there is now no rational basis upon which the separate but equal doctrine can be validly applied to public carrier transportation within the City of Montgomery and its police jurisdiction. The application of that doctrine cannot be justified as a proper execution of the state police power.

We hold that the statutes and ordinances requiring segregation of the white and colored races on the motor buses of a common carrier of passengers in the City of Montgomery and its police jurisdiction violate the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States. . . .

LYNNE, District Judge (dissenting).

. . .

The majority recognize, it was conceded in oral arguments by counsel for plaintiffs, that *Plessy v. Ferguson* (1896) . . . is precisely in point, and that its holding has been repeatedly followed in later transportation cases. . . .

. . .

My study of *Brown* (1954) has convinced me that it left unimpaired the "separate but equal" . . . doctrine in a local transportation case and I perceive no pronounced new doctrinal trend therein.

Of course I appreciate the care with which the Supreme Court limits its pronouncements upon great constitutional questions to the narrow issues before it and the only issue in *Brown* involved a collision between the Fourteenth Amendment and state laws commanding segregation in the public schools. But in *Brown* the Court's opinion referred to *Plessy v. Ferguson* six times and to its "separate but equal" doctrine on four occasions. . . .

It seems to me that the Supreme Court therein recognized that there still remains an area within our constitutional scheme of state and federal governments wherein that doctrine may be applied even though its applications are always constitutionally suspect and for sixty years it may have been more honored in the breach than in the observance. Granted that the trend of its opinions is to the effect that segregation is not to be permitted in public facilities furnished by the state itself and the moneys of the state, as in the case of public schools, or public parks, . . or municipal golf courses, . . . on the plain theory that if the state is going to provide such facilities at all, it must provide them equally to the citizens, it does not follow that it may not be permitted in public utilities holding nonexclusive franchises.

. . .

While any student of history knows that under our system of government vindication of the constitutional rights of the individual is not, and ought not to be, entrusted to the Congress, its reticence to intrude upon the internal affairs of the several states should caution us against doing so where the path of duty is not plainly marked and when we must hold a clear precedent of the Supreme Court outmoded.

Because I would dismiss the action on the authority of *Plessy v. Ferguson*, I do not reach the procedural questions discussed in the majority opinion. I respectfully dissent.

Gayle v. Browder**,** 352 U.S. 903 (1956)

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed. *Brown v. Board of Education* (1954).