Loren Miller, The Petitioners: Supreme Court and the Negro[1966]

Notes from book pertaining to the Civil War civil Rights cases. . . .

The overturning of the 14th Amendment in the 1883 Civil Rights cases(8 to 1) was not reversed until the Civil Rights Act of 1964.

The point of Miller's introductory chpt is to outline why the S Court has become the guardian of the black man's civil wights. Why the Negro became the ward of the court. The Court assumed this role for itself when it tortured the Civil War Amendments all out of shape. The enforcement cluses in the 13 and 14th Amednmdnets originally gave Congress the role of guardian . . .But by 1883 the Court struck down and declared essentially invali these rulings. It reverted back to the Dred Scott decision in that blacks and their civil rights were depndent upon the pleasures of the states and the Congress could not intervene in these affiars to all intent and purposes. . .

Part II An Uncertain Sound

Miller begins with the 13th Amenment and the enforcing clause that stated that "Congressshall have the power to enforce this article by appropriate legislation." This placed the tauthority in the legislature and excluded the Court.

LM notes the "trouble" with the Court. The suspicion of Republicans with a Court still under Taney, the architect of the Dred Scott decision. Still a majority of the Court were those sitting at the time of the Taney decion. . . The impression is that the Republicans rested power of enforcement in the Congress to deny the Court the authority to intervene. . .
He cites other cases; Ex-parte Merryman, the Prize cases, the Valladingam and the Legal Tender case. . .In all but the first, the Court either ruled or abstained from making a ruling that was unfavorable to the Lincoln administration . .

Following logically on the path of the 13th Amendment was the Civil Rights Act of 1866. The act provided: It provided dual citizenship, thus overriding the Taney decision in the Dred Scott case that blacks had no rights in terms of the states; or only those rights the states saw fit to honor or extend.

This act was later encorporated into the 14th Amendment for the same reasons that the EP was transformed into the 13th Amendment, for fear that another Congress might repeal the Act or the Court might declare it unconstitutional. . .

The intent of the Framers and the plain sense of the language was that all three clauses(privelges and immunities, due process, and equal protection of the laws)were all linked together: it meant equal protection of the laws respecting ~~equal~~ rights of life, liberty, and property as outlined in the due process clause and the laws proetcing priveleges and immunities(using and traiditonally regarded the responsibility of the state). Under the contract theory of Govt. and under the natural rights of free men, these were all to be extended to the blacks. The same unalienable righst of white men were now extended to the freedman . . .

Congress, in showing its intent, passed the Enforcement Act of 1870, KKK Act of 1871 and the Civil Rights(equal accommodations act of 1875). . . .

Miller points out that from the debates that surrounded these Amedments and Acts that the Republican defenders were certain that the new laws and amendments were positive or affirmative in the Constitutional scope and reach.
That Congress had unlimited powers to protect constitutional rights against both official and private action, even to the extent of displacing state authority altogether . . .
The consensus that emerged from the debates was that equal protection clause did more than condemn official or state action, and that at the very least it vested Congress with power to set aside unequal state legislation and with power, when needed, to afford protection to all persons in the enjoyment of their constitutional rights when states failed either throigh neglect to enact needed laws or by refusal or impotence to enforce them, Consistent with these views and inherent in hehem, was the proposition that wherever racial segregation provoked inequality, it, too, fell under the constitutional ban.

The Court's eroding away of these sweeping powers invested in Congress by the Amendments and the attending acts.

He begins with the SlaughterHouse Cases(1869) 1873

In this decision Justice Miller, speaking for the majority(5-4 decision)argued that there were still two categories of citizenship --state and national, and that the priveleges and immunities clause did not protect the rights flowing from state citizenship. National citizenship righst were very limited; state citizenship rights were broadly defined to include all civil rights, and it was said that it was not the intention of the 14th Amendmemt to transfer the security and protection of civil rights from the states to the federal government. The S Court had breathed into the life the once defunct Dred Scott dogma that there were two categories of citizenship rights, with civil rights under the state control. This duality boded ill for the Negro.

US vs Cruikshank(1875) This was second ruling to come under the 14th Amendment and enforcement legislation; and the first to actually involve blacks.

It raised the questions of just what rights were protected by the Constitution. The majority decision reached for the precedent set under the Slaughterhouse cases in dragging back into "repute" the dual citizenry concept. . .The key rendering in this decision was the Court's treatment of the Government's argument that the blacks were deprived of their equal protection under the laws in that state officials in La, had failed to protect them against the actions of the mob. The Court ruled that the action was mob action . . .action of individuals and not of the state. It went onto state that the equality of rights is a duty that rests with the state. In this case the state did not deny or prohibit that protection that there was no case. This was an act of judicial doublespeak. The states would not protect the civil rights of Negroes; and the Court would not allow Congress to do so.

US vs. Reese(1875)Court reversed a convixtion of an election official because he refused the vote or register the vote of a blackman in Tennessee. . .The Court made another lovely abstraction . . .

US vs. Harris(1883). This ruling meerely extended the Cruiksnak ruling. . .The facts were that an armed-mob had taken some Negroes from the custody of a Tennessee sheriff. . .One was killed and others beaten . .
Once again the Congress was denied the right to act because the malefactors here once again was not the state but individuals. . .The important aspect of the Wood ruling here was that the Court insisted that the equale protection-of the laws clause of the 14th Amendment was limited to a "guaranty of proec protection against the acts of State Governemtn itself," In short, the 14th Amendment had validity when it was a matter of sins of commission by a state but not in cases in which the state was quilty of sins of mmmission . . . .

Miller sees these changes and distortions of the intentions of the Framers as a result of the 1877 Compromise. . .and the climtae of the times. He notes that the 14th Amendment did not fall into disuse. But that it was transformed into a charter to protect the corporate interests against regulatory legislation by the states

The Civil Rights Cases(1883)

Series of Cases that reached the Court in 1883.. ..Including one from a black in San Franscico, who was denied a seat in the dress circle at a thearte; another from New York invilving admission of a Negro to the Grand Opera house; and the last from Missouri respecting denial of hotel accommodations to blacks; and the last from Tennessee in which a Negro women had been refused a seat in the "ladies car" of a train.

The regional distribution of the cases was evidence of the wide spread discrimination outside the deep south.

The nub of the Bradley decsion(8 to 1, with only Harlan dissenting)was that the 13th Amendment was not applicable and the the 14th Amendment interdicted discriminatory action only by states and not by private persons. Under these views Congress had no constitutional warrant to enact legislation under review. Therefore, the Court ruled that sections 1 and 2 under the Civil Rights Act of 1875 were unconstitutional and void.

Bradley could not see or refused to see that the 13th amendment should have ruled here. . ..That full rights enjoyed by whites should be open to blacks or their freedom was illusory. He answered: "It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will admit to his coach or cab or car, or admit to his concert or theatre, or deal with in other matters. . . . .Mere discrimination on account of race or color," Bradley went on,// was not a badge of color or slavery. Positive rights and priveleges are undoubtedly secured by the 14th Amendment and Fifteenth Amedments. . .These rights and priveleges are secured by way of prohibition against state laws and state proceedings.

Congress could therefore legislate only against state action. This of course, amp amplified the rulings of the Cruikshank and Harris cases, and Bradley put the holding plainly: "It is proper to state that civil rights such as are quaranteed by the Constitution against state aggression, cannot be impaired by the wrongful acts of individuals, unsupported by state authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual unsupported by the state authority, is simply a private wrong, or a crime of that individual . . .and that the injured party may be vindicated by resort to the laws of the State for redress."

He discusses Harlan's lone dissent. . .Harlan saw that the rulings of the Court were leading to a caste society. . .

The warnings of Harlan were to become real with the Plessy vs. Ferguson ruling. . and the introduction of Jim Crow in the South in the 1890s. .

Harlan would prove right also in terms of the authority of Congress under the 14th Amendment. . .But this would have to wait one-hundred years with the 1964 Civil Rights Act. In this case the Court was left out of the decisions by the Congress' role to enforce the 14th Amendment and enforce public accoommodation legislation. . .based on the constitutional right to regulate interstate commerce. . .

The work of the Court by 1883: The Court had sapped the 13th Ameddment of all vitality, except to abolish slavery and enforce servitudes; ot had narrowed the scope of the 14th to make it operable only against discriminatory prqctices sanctioned by the states through legislative, judicial, or executive action. It had decided that individuals or corporations were free to practice racial discrimination at their will, even when engaged in operating places of public accommodation, so long as they did not call upon the state for assist ance.
In effect the Court had decided that there was a white public, and a negro public of which the Constitution took cognizanxe; the supreme law validated the conduct of an indivudual who choose to discriminate against a freeman and a citizen who was a member of the Negro public. Caste lines could be drawn; the S Court would recognize them in law. There was a priveleged class--of whites--born into perfect freedom, with power to dole out to Negroes just such priveleges as they choose. Congress could not curbm but the Court would protect this priveleged class.
The Civil Rights Case proved the doctrine of the Slaughter House Cases: that there were two categories of citizens: national ad state; that national citizenship rights were very limited; that civil rights were under the protection of the states.

Could the black man protect his civil rights in the states by the use of the franchise. Was this indeed a final power still left open to him.