

HOUSING AND THE LAW: LESSON 6: HANDOUT 2 SCAFFOLDED

OPINION: JONES V. MAYER (1968)¹

Argued: April 1-2, 1968

Decided: June 17, 1968

Justice Stevens delivered the opinion of the court.

Primary Source Quote 1

“The fact that § 1982 operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem. If Congress has power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective can be thought to exceed the constitutional power of Congress simply because it reaches beyond state action to regulate the conduct of private individuals. The constitutional question in this case, therefore, comes to this: does the authority of Congress to enforce the Thirteenth Amendment "by appropriate legislation" include the power to eliminate all racial barriers to the acquisition of real and personal property? We think the answer to that question is plainly yes.

Secondary Description

§ 1982 appeared as a part of the 1866 Civil Rights Act. Justice Stewart claims this code bans discrimination in property sales and rentals. He outlines the parts of the code that justify his stance. They also argue that the 13th Amendment, which abolished slavery, allows Congress to forbid this type of racial discrimination in housing, regardless if it is private or public action.

In My Words

Justice Stewart says...

¹ Retrieved from https://www.law.cornell.edu/supremecourt/text/392/409#writing-USSC_CR_0392_0409_ZD.

Primary Source Quote 2

"By its own unaided force and effect," the Thirteenth Amendment "abolished slavery, and established universal freedom." Whether or not the Amendment itself did any more than that -- a question not involved in this case -- it is at least clear that the Enabling Clause of that Amendment empowered Congress to do much more. For that clause clothed "Congress with power to pass *all laws necessary and proper for abolishing all badges and incidents of slavery in the United States.*"

Those who opposed passage of the Civil Rights Act of 1866 argued, in effect that the Thirteenth Amendment merely authorized Congress to dissolve the legal bond by which the Negro slave was held to his master. Yet many had earlier opposed the Thirteenth Amendment on the very ground that it would give Congress virtually unlimited power to enact laws for the protection of Negroes in every State. And the majority leaders in Congress -- who were, after all, the authors of the Thirteenth Amendment -- had no doubt that its Enabling Clause contemplated the sort of positive legislation that was embodied in the 1866 Civil Rights Act. Their chief spokesman, Senator Trumbull of Illinois, the Chairman of the Judiciary Committee, had brought the Thirteenth Amendment to the floor of the Senate in 1864..."

Secondary Description

The justice argues that the 13th Amendment gives Congress the ability to create laws that would address the remaining effects of slavery that still exist in the country. Previously, courts and those against the Civil Rights Act of 1866 were against this interpretation of the 13th Amendment. They feared it would give Congress too much legislative power. Those who disagreed, however, felt that Congress should be able to address any remnants of slavery.

In My Words

Justice Stewart says...

Primary Source Quote 3

“Just as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.

Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom – freedom to "go and come at pleasure" and to "buy and sell when they please" – would be left with "a mere paper guarantee" if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.”

Secondary Description

Black Codes were laws passed to regulate what free African Americans could and could not do. The justice compares exclusionary housing practices to these codes. Just as these codes were an attempt to replicate slavery, racial discrimination in housing would do the same. As a result, Congress should have the ability to intervene if the country is to live up to its original “promise.”

In My Words

Justice Stewart says...
