

HOUSING AND THE LAW: LESSON 6: HANDOUT 4 SCAFFOLDED

DISSENT: JONES V. MAYER (1968)¹

Argued: April 1-2, 1968

Decided: June 17, 1968

Justice Harlan delivered the dissent.

Primary Source Quote 1

“In sum, the most which can be said with assurance about the intended impact of the 1866 Civil Rights Act upon purely private discrimination is that the Act probably was envisioned by most members of Congress as prohibiting official, community-sanctioned discrimination in the South, engaged in pursuant to local "customs" which in the recent time of slavery probably were embodied in laws or regulations. Acts done under the color of such "customs" were, of course, said by the Court in the *Civil Rights Cases*, [109 U.S. 3](#), to constitute "state action" prohibited by the Fourteenth Amendment.² Adoption of a "state action" construction of the Civil Rights Act would therefore have the additional merit of bringing its interpretation into line with that of the Fourteenth Amendment, which this Court has consistently held to reach only "state action." This seems especially desirable in light of the wide agreement that a major purpose of the Fourteenth Amendment, at least in the minds of its congressional proponents, was to assure that the rights conferred by the then recently enacted Civil Rights Act could not be taken away by a subsequent Congress.

Secondary Description

He justice claims that 1982 does not apply to private discrimination, only state-sanctioned discrimination. He also argues the 1866 Civil Rights Act and 14th Amendment have historically only applied to “state-action.”

In My Words

Justice Harlan says...

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

² See *id.* at 16, 17, 21.

Primary Source Quote 2

“The foregoing, I think, amply demonstrates that the Court has chosen to resolve this case by according to a loosely worded statute a meaning which is open to the strongest challenge in light of the statute's legislative history. In holding that the Thirteenth Amendment is sufficient constitutional authority for § 1982 as interpreted, the Court also decides a question of great importance. Even contemporary supporters of the aims of the 1866 Civil Rights Act doubted that those goals could constitutionally be achieved under the Thirteenth Amendment, and this Court has twice expressed similar doubts.³ Thus, it is plain that the course of decision followed by the Court today entails the resolution of important and difficult issues.”

Secondary Description

The justice believes that the court majority have made too broad of an interpretation of the 1866 Civil Rights Act and § 1982. He does not think the original intents of these acts extend to private actions and they should be viewed on more restrictive terms.

In My Words

The amendment says...

³ See *Hodges v. United States*, [203 U.S. 1](#), 16-18; *Corrigan v. Buckley*, [271 U.S. 323](#), 330. *But cf. Civil Rights Cases*, [109 U.S. 3](#), 22

Primary Source Quote 3

“The occurrence to which I refer is the recent enactment of the Civil Rights Act of 1968, Pub.L. 90-284, 82 Stat. 73. Title VIII of that Act contains comprehensive "fair housing" provisions, which, by the terms of § 803, will become applicable on January 1, 1969, to persons who, like the petitioners, attempt to buy houses from developers. Under those provisions, such persons will be entitled to injunctive relief and damages from developers who refuse to sell to them on account of race or color, unless the parties are able to resolve their dispute by other means.

Thus, the type of relief which the petitioners seek will be available within seven months' time under the terms of a presumptively constitutional Act of Congress. In these circumstances, it seems obvious that the case has lost most of its public importance, and I believe that it would be much the wiser course for this Court to refrain from deciding it.”

Secondary Description

Justice Harlan argues that the passage of the 1968 Civil Rights Act and Fair Housing Act have made this case less important. Since the Joneses would be able to seek relief under these new provisions, he does not think the court should decide this case.

In My Words

Justice Harlan says...
