Iowa, Bright Radical Star: The Historic Civil Rights Decisions of the Iowa Supreme Court & Their Continuing Relevance Today!

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JANUARY 18, 2017
The slides for the Robert Ray Society course taught by Iowa Supreme Court Chief Justice Mark Cady and Professor Russell Lovell in February 2015 have been prepared and written by Professor Lovell. The analysis and commentary, including any errors or mistakes, are his alone, and do not necessarily reflect the views of Chief Justice Cady.
Great Resources

- Richard, Lord Acton & Patricia Nassif Acton, A Legal History of African-Americans, Ch. 4, Outside In: African-American History in Iowa, 1838-2000
- Michael Higginbotham, Race Law: Cases, Commentary, and Questions
- Robert Dykstra, Bright Radical Star: Black Freedom and White Supremacy on the Hawkeye Frontier
- DVDs on Reserve (e.g., Alexander Clark, Slavery By Another Name, The Road to Brown, Nothing But a Man)
Five Historic Eras of Iowa Civil Rights

- Founding of the Iowa Territory to Civil War: In re Ralph and Iowa’s Promise of Equality in Its 1857 Constitution
- Civil War to 1895: Clark-Coger-Mansfield Led a Golden Iowa Civil Rights Era
- 1896 to 1954: Plessy v. Ferguson Spawned American Apartheid, A Dark Age Dooming Civil Rights to Dormancy
- 1954 to 1989: Brown Revives the Nation’s Commitment to Equality and 1964 Civil Rights Act Adds Momentum
- 1989 - present: Iowa Supreme Court Revitalizes Its Independent Constitutional Analysis under the Iowa Constitution
Founding of the Iowa Territory to the Civil War: In re Ralph and Iowa’s Promise of Equality in Its 1857 Constitution
Racial Laws of the Iowa Territory

- Federal law barred slavery but provided (1) only free white males could vote or hold office, and (2) Blacks or mulattos could not settle in the territory without filing a certificate of freedom and posting $500 bond.

- 1st Iowa Territorial Legislature in 1839 enacted its own certificate of freedom and $500 bond requirement, authorized county commissioners to hire out for 6 months Blacks who did not comply, and allowed temporary visitors to bring their slaves.

- By 1840 Blacks were barred from voting, service in the militia, enrollment in schools, testifying against a white person, service on juries, poor relief assistance, and from marrying a white person.
In re Ralph (1839)

- In 1834 Ralph and his Missouri master Jordan Montgomery had a contract whereby he could go and work the lead mines in Iowa and with his earnings purchase his freedom for $550. He worked in Iowa for nearly 5 years.
- Bounty hunters, claiming Ralph had failed to pay, obtained a justice of the peace order and the sheriff arrested Ralph and delivered him to them.
- Black & White Together. A fellow miner Alexander Butterworth sought and obtained a writ of habeas corpus from Iowa Supreme Court Judge Thomas Wilson sitting as District Judge, and Ralph was rescued from the boat.
- Iowa Supreme Court expedited the appeal. In the 1st Decision of the Court, on July 4, 1839, Chief Justice Charles Mason, first held Ralph was not a fugitive slave as his owner consented to his permanent move to Iowa.
As the Iowa Constitution did not yet exist, the Court relied upon the 1820 Missouri Compromise Federal Statute that declared that “slavery was forever prohibited” in the Northwest Territory. The Iowa Supreme Court held Ralph was free, having spent over 4 years in free territory. Ralph may still owe on contract, but nonpayment did not cause him to lose his freedom.

“When, in seeking to accomplish his object, he illegally restrains a human being of his liberty, it is proper that the laws, which should extend equal protection to men of all colors and conditions, should exert their remedial protection.”

Somerset v. Stewart (Eng. 1772) freed a slave because no statutes in England authorized slavery, a status “so odious, that nothing can be suffered to support it, but positive law.” Yet, Somerset recognized an accommodation that would allow a slave owner to pass through free territory and remain for a limited period of time without losing property rights in a slave who accompanied him.

U of Iowa Professor Lea VanderVelde’s book, Redemption Songs: Suing for Freedom Before Dred Scott, confirms that during this era Freedom suits generally followed the Somerset precedent even in Southern and Border states, such as Missouri, where slavery had the blessing of law.
In re Ralph (July 4, 1839): Shattered Silence Memorial
1846 Iowa Constitution restricted the right to vote, membership in the Legislature, and militia service to white males, and existing Territorial statutes that excluded Blacks from public education and prohibited them from testifying and from interracial marriage continued.

Iowa became the 29\textsuperscript{th} state on December 28, 1846.

1851 Exclusionary Act: “[F]rom and after the passage of this act, no free negro or mulatto, shall be permitted to settle in this state.” Enforced by fine of $2 per day and imprisonment until fines were paid. All free Blacks now living in Iowa were permitted to remain. The Prof. Actons observed the Act does not appear to have been enforced, as the Black population increased from 333 in 1850 to 1,069 in 1860.

The 1851 Iowa Code replaced all Territorial statutes and included provisions that barred Blacks from juries, schools, law practice, service in the militia, poor relief, and from testifying in any cause wherein a white person is a party.
The 1851 Code did not reinstate the bar on interracial marriage found in the 1840 territorial statute! The Professors Acton suggest that the legislators, given their “strong racial bias,” must not have realized that this omission from their enactment of the comprehensive new Code effectively repealed the prohibition and permitted marriages between whites and Blacks.

Even if this racial progress occurred by accident, the omission could easily have been “corrected” in a subsequent session of the Legislature and this never happened.

Iowa was ahead of most of the nation on this important and very sensitive issue. 38 states are reported to have had anti-miscegenation statutes during the 19th century, 29 still barred interracial marriage in 1951 and 16 states prohibited such marriages in 1967.

Loving v. Virginia (1967), U.S. Supreme Court unanimously struck down the bar on interracial marriage, expressly recognizing the white supremacy rationale for such statutes as a violation of equal protection and the fundamental right of marriage. [Cited in Varnum v. Brien]
Blacks Barred from Testifying in Cases Involving Whites

- Motts v. Usher & Thayer (Iowa 1856) upheld application of Iowa statute excluding testimony by Black witness even when offered by the white party. African American businessman sued and won a judgment against white defendants for nonpayment. The defendants appealed the trial court’s exclusion of testimony offered because the witness was Black. The Iowa Supreme Court upheld the statute and affirmed.
- People v. Hall (Cal. 1854), reversed conviction of free white citizen for murder which was based in part on testimony of Chinese witnesses due to statute barring testimony by “Black, or Mulatto, or Indian . . . in favor of, or against a white man.” Court concluded that despite the omission of Chinese from the statutory bar, the Legislature intended that no non-white could testify against a white.
Dred Scott v. Sandford (SCOTUS 1857)

- Scott brought a freedom action based on having lived for 4 years in free territory (1834 – 1838). The Missouri trial court approved his freedom, but Missouri Supreme Court rejected his claim, acknowledging this was a change in its precedent but “times were not now as they once were.”
- Scott’s subsequent suit in Federal Court, based on diversity of citizenship (Scott was a resident of Missouri, his owner Sandford was a New York resident), was also rejected on jurisdictional grounds.
- US Supreme Court (SCOTUS) affirmed, Chief Justice Roger Taney, holding that Scott was not entitled to bring suit in federal court as the Framers of the Constitution never intended that Blacks, even free Blacks, could become citizens of the U.S. Original Intent analysis.
- Infamous racist reasoning by Chief Justice Taney: That at the time of the founding this “unfortunate race” was viewed as altogether unfit to associate with the white race, and so degraded and inferior “that a Black man had no rights that a white man had to respect.”
- (Taney, a Marylander, had personal qualms about slavery and had freed slaves he had inherited before he was appointed to the Supreme Court.)
Dred Scott (cont.)

- The Court went on to hold that the provision of the 1820 Federal statute (Missouri Compromise) that prohibited slavery in the Northwest Territory was unconstitutional and Missouri law controlled.
- Justice McLean’s Dissent argued for a dynamic construction that recognized society’s abhorrence of slavery.
- Justice Curtis’s Dissent argued, from an Original Intent perspective, that all “free inhabitants” were protected under the Art. of Confederation’s Privileges & Immunities Clause; this necessarily included free Blacks as the states expressly rejected an amendment that would have restricted Privileges & Immunities of citizenship to “whites”; in 5 of the 13 original states, Blacks could vote. Thus, they were entitled to the protection of the Art. IV Constitution’s privileges and immunities clause, which mirrored the P & I Clause of the Articles.
- The Court’s ruling, because based on the U.S. Constitution, meant a political solution to the slavery question was no longer possible.
The Opinions in Dred Scott on the proper lens with which to construe constitutional provisions that are almost always somewhat abstract and broad brush reflect a debate, not limited to judges, that is ongoing.

This debate is not limited to SCOTUS, but is engaged in by the highest Court of each State when they engage in interpretation of their State Constitutions. The Chief Justice will provide the framework for constitutional analysis in today’s 1st Session and will return for comprehensive treatment in Session 4: Original Intent vs. Living Constitution approaches.
Old Illinois Capital, Lincoln-Douglass Debates
21 of 36 delegates were Republicans.

George Ells, chairman of the Bill of Rights committee: “[My committee wishes] to make the Bill of Rights as full and perfect as possible . . . . [T]he object we have in view is to protect every man in the enjoyment of the largest liberty consistent with his duties to civil government.”

1857 Constitution was ratified by popular vote, 40,311 to 36,681 on August 3, 1857.
Iowa Constitution of 1857:
Equality Principle Emerges, Including Natural Rights Clause

- Art. I, §1 of Bill of Rights: “Rights of Persons. All men [and women] are by nature free and equal and have certain unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.” Convention substituted “equal” for “independent” in the original constitutional text because “equal” provided broader protection than “independent.”
- Art. I, Sec. 1, is known as the Natural Rights Clause because its language tracks that of the Declaration of Independence. See Clark, Coger, and Varnum.
- “Laws uniform. SEC. 6. All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizen.” Convention added the text following the first clause that addressed the “uniform operation” of laws.
- Art. I, §4: “[A]ny party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person . . . Who may be cognizant of any fact material to the case.”
- Art. 9: “The Board of Education shall provide for the education of all the youths of the state, through a system of common schools.” See Clark.
Despite Real Progress, 1857 Constitution Was Not Colorblind

- Racial restriction of participation in militia and Legislature to whites and exclusion of nonwhites from census and apportionment continued in 1857 Constitution.
- Whether to repeal limitation on suffrage to “whites” was separately rejected by popular vote of 49,267 to 8,479—a margin of 6 to 1—in same election that ratified the new Constitution.
- 1858 Iowa Code: Local school board “shall provide for the education of the colored youths in separate schools, except in cases where, by the unanimous consent of the persons sending to the school in the sub-district, they may be permitted to attend with the white youths.”
- Held unconstitutional in The District v. City of Dubuque (1858), as power to provide a system of education was delegated by Constitution to the board of education with the Legislature’s power analogized to a veto power. Symbolism more important.
- No other race-based statutes regarding education were enacted, and the Code was amended so that Blacks were no longer exempt from property taxes (which funded the public schools).
Civil War to 1895:
Clark-Coger-Mansfield Led a Golden Iowa Civil Rights Era
“The significance of the frontier cannot be understated. It called for men and women who could endure the hardship of pioneer life, flexible and dynamic people with a capacity for adaptation. Iowan pioneers were incredibly self reliant: they slept in straw filled beds, made their own soap from ash, lye, and animal fat, sewed their own clothing, and harvested their own barley, corn, hay, potatoes, rye, and wheat. They protected themselves from hostile Indians, endured the devastations of blizzards, hail, floods and draught, and tolerated grasshopper flights that were sometimes “so dense as to hide the sun.”

“As such, political and social ideas were not informed by tradition or ideology, but rather by practicality. On the frontier, everyone was equal, because “the conditions of life there were such as to make men plain, common, unpretentious—genuine.” Governor Kirkwood remarked, “We are rearing . . . the Western Yankee if you choose to call him so, the man of grit, the man of nerve, the man of broad and liberal views, the man of tolerance of opinion, the man of energy, the man who will someday dominate this empire of ours.”

pp. 6-7
“Perhaps it was the Civil War that galvanized more widespread support for suffrage reform and civil equality. 76,000 Iowans served in the war for the Union—13,000 of which lost their lives due to the war. African Americans also participated in the war by forming the 1st Iowa Volunteers, which was later reorganized by the U.S. Army into the 60th U.S. Colored Infantry Regiment. 287 of the soldiers in the 60th U.S. Colored Infantry claimed to be Iowans.” p. 22
Frederick Douglass urged Lincoln to recruit black soldiers to volunteer for the Union Army from the beginning of the War, but Lincoln feared whites would not serve with blacks. Finally, the Emancipation Proclamation called for the enlistment of black soldiers, and Douglass became a tireless recruiter—as did Alexander Clark.

Both contended that blacks could never secure the full benefits of citizenship unless they fought for their freedom and for the survival of the nation, thereby fulfilling the sacrifice that went with citizenship.

Blacks comprised roughly 10% of the Union Army. Congress equalized pay in June 1864.

Initially assigned non-combat duty, gradually they assumed greater responsibility and served in combat. 40,000 black soldiers died from combat and disease.
76,000 Iowans served in the Union Army, including 700 Black Iowans

Lincoln’s Gettysburg Address’s commitment to “a new rebirth of freedom.” Nov. 19, 1863

Emancipation Proclamation (Jan. 1, 1863) freed the slaves in those states and areas that seceded. The secession limitation was consistent with the President’s rationale based on aiding the military effort.

Harvard Law Professor Derrick Bell, founder of Critical Race Studies, developed the convergence of interest theory that when significant racial progress has been achieved in USA, it has not happened solely because “it was the right thing to do.” The step forward also had to advance important goals of the White community (or at least of its leaders). Emancipation was right for moral reasons but it also helped the war effort, as it disrupted the Confederate food supply as slaves left the plantations and brought 200,000 Blacks into the Union Army.
February 1863, Archie Webb v. Griffith. Polk County Township Trustee sought to compel removal of Webb, an African American, under the 1851 Exclusionary Act.

Polk County District Court Judge John Gray held the statute was unconstitutional under both the Federal and Iowa Constitutions.

Federal Constitution rationale. Despite Dred Scott’s ruling, Judge Gray held the Iowa statute unconstitutional, finding Blacks were “citizens” under the Privileges and Immunities Clause of Article IV of the U.S. Constitution.

Iowa Constitution rationale. In a path breaking ruling, Judge Gray also held the statute unconstitutional under the Iowa Constitution’s Natural Rights Clause, emphasizing its “all men” language indeed meant “all of the human race.” While a notice of appeal was filed, apparently no appeal was processed.
Iowa Civil War Memorial
• 13\textsuperscript{th} Amendment, ratified Dec 6, 1865: “Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States . . . .” § 2 authorized Congress to “enforce this article by appropriate legislation.”

• Congressional power to eradicate “the badges and incidents of slavery”

• Spielberg movie, Lincoln, depicts Lincoln’s committed efforts to speed its passage in Congress before the end of the war and before the Southern states were readmitted to the Union, to ensure freed slaves would not be reenslaved. Among the strategies were the offer of federal jobs to lame duck Congressmen who had lost re-election to secure their support for the Amendment.

• Southern States responded by enactment of Black Codes in 1865.

• Congress passed 1866 Civil Rights Act granting citizens the same right to make and enforce contracts, sue, give evidence, acquire property and to full and equal benefit of all laws for the security of person and property “as is enjoyed by white citizens” notwithstanding state laws to the contrary. 42 U.S.C. §1981
Abraham Lincoln Museum, Springfield, Illinois
Alexander Clark: Lost in History, Iowa Public Television special on its web site:  http://www.iptv.org/iowastories/detail.cfm/alexander_clark

Born free in Pennsylvania, moved to Muscatine in 1842.

Barber, businessman, political leader. Actons: most important African American in Iowa in 19th century; Paul Finkelman: most important African American west of the Mississippi in 1840-1880

A leader in Iowa’s Underground Railroad; opposed 1851 racial exclusion law; recruited Blacks for Union Army; led right to vote campaign to amend Iowa Constitution; publisher of Chicago newspaper; U.S. Ambassador to Liberia

Named Plaintiff in law suit that led to landmark Iowa Supreme Court decision requiring desegregation of public schools in Muscatine

Kent Sissel, honored at the 2012 State of Iowa Martin Luther King, Jr. Day Celebration, for his 35-year effort to tell the Alexander Clark story
Alexander Clark House, Muscatine: U.S. Register of National Historic Places
“Come and Join Us Brothers”
U.S. Army Civil War Recruitment Poster
“He who has been trusted with the musket shall also be entrusted with the ballot.” Alexander Clark, 1868

- Removing Race from the Iowa Constitution. The 1866 and 1868 Iowa Legislatures approved, for submission to the electorate, Iowa constitutional amendments that would delete “white” from militia service, census, legislative apportionment, and suffrage, thereby extending the right to vote to Black males.
- During the 1867 gubernatorial campaign, the Republican candidate Samuel Merrill supported these color blind amendments, and the Democratic candidate Charles Mason, the former Chief Justice who wrote In Re Ralph, opposed the suffrage amendment. Merrill won the election by 26,000 votes.
- The Constitutional Amendment supporting suffrage for Black males was on the ballot in the 1868 election.
Setting the Stage for Clark v. Board of Ed.: Roberts v City of Boston (1850)

- Roberts v. City of Boston (Mass. 1850), Chief Justice Levander Shaw, upheld racial segregation of Boston schools despite the Massachusetts Constitution proclamation that “all persons without distinction of age or sex, birth or color, origin or condition, are equal before the law.”
- The Massachusetts Supreme Court found the legislature delegated broad discretion to the school boards and each board’s judgment as to separate schools was conclusive as long as reasonable. If prejudice against Blacks exists, it is not created by law and probably cannot be changed by law or by requiring colored and white children to associate together in the same schools.
- Massachusetts Chief Justice Shaw has been deemed by some commentators as one of the outstanding jurists of the nineteenth century.
- Although the Massachusetts Legislature enacted, in 1855, a statute that effectively overruled Roberts v. City of Boston by prohibiting segregation by race, Roberts’ separate but equal rationale proved to be an incredibly powerful precedent for upholding racial segregation in public schools.
In 1867 Alexander Clark made his plea in a letter to the Muscatine Journal about the unequal quality of the segregated schools, noting the distance to the Black school, the better funded White schools, and the reality that the colored school had never qualified a student to pass the entry exam for high school.

On behalf of his 12-year old daughter Susan, Alexander Clark sought a writ of mandamus that would allow her to attend her neighborhood white school. The District Court ruled for Clark, and the school board appealed to the Iowa Supreme Court.

The school board argued that it had plenary power to make rules and regulations to govern the school, that segregation was the policy preference of the district’s inhabitants, and therefore the separate but equal rule was not unconstitutional.

The Iowa Supreme Court, Justice Chester Cole, began by stating its analytical framework begins with the “principle of equal rights to all, upon which our government is founded,” a clear reference to the Iowa Constitution’s first article, first sentence—the Natural Rights Clause of its Bill of Rights. It added that justification of “a denial of equality of rights to any one” can only be done if there is “some express sovereign authority for such denial.”
Justice Cole concluded the education statutes did not provide the school board with the discretion to discriminate, on the basis of nationality, religion, color, clothing or the like, and affirmed the trial court’s mandamus admitting the plaintiff to her neighborhood school:

“[I]t is not competent for the board of directors to require the children of Irish parents to attend one school, and the children of German parents another; the children of catholic parents to attend one school, and the children of protestant parents another. * * * [A]ll youths are equal before the law . . . . The board cannot, in their discretion, or otherwise, deny a youth admission to any particular school because of his or her nationality, religion, color, clothing or the like.”

The Court spoke of our national goal of an American nationality, one harmonious people. Were the Court to sustain the school board’s policy of racial segregation, or nationality segregation, it would “sanction a plain violation of the spirit of our laws” and “would tend to perpetuate the national differences of our people and stimulate a constant strife, if not a war of races.”
The Court analyzed the legislative history of the Iowa statutes that set up the school system, noting that the initial statutes included references to race and that a 1858 statute that required racial segregation had been struck down by the Court as beyond the Legislature’s power. There had been no racial discrimination in the statutes passed since 1858.

Both the 1857 Iowa Constitution and the education statutes required the school district to educate “all the youth” of the district, and provided no exemption from taxation for property owned by blacks. The Court held that the deletion of the racial designations in the statutes over the next ten years reflected an intent of the Legislature that students not be segregated on the basis of race.

Justice Wright’s Dissent argued that the racial distinctions were reasonable and within the discretion of the school board. The Court should not interfere as as there is no right for a colored child to attend a white school, just as there is no such right in a white child to attend a colored school. “[T]he principle of equal rights to all does not demand that all the children of the district should be taught in the same building.”
The Greatness of Clark

- Justice Cole didn’t wait for the election returns. The Iowa Supreme Court decided Clark on April 14, 1868, 3 months prior to the ratification of the 14th Amendment to the U.S. Constitution and 7 months prior to the November election, in which Ulysses S. Grant was elected President and in which Iowa voters passed the amendments to the Iowa Constitution deleting racial designations, and granting Blacks the right to vote.
- It was a courageous decision by the Iowa Supreme Court, as the statutory language was sufficiently ambiguous that segregation could have been construed as authorized by the Legislature and the Iowa Constitution could have been construed to allow separate but equal segregation.
- In the years that followed Roberts v. City of Boston was cited by the high courts of at least 10 states, including California and New York, and by the U.S. Supreme Court in Plessy v. Ferguson, to uphold racial segregation in schools.
- The Iowa Supreme Court’s Clark decision unquestionably has GREAT symbolic value for racial justice and equality, as the Iowa Supreme Court was a solitary exception in its rejection of segregation. Iowa stood alone!
- Imagine! What our country might be like today had the U.S. Supreme Court followed the Iowa Supreme Court’s Clark decision and rejected Separate but Equal Segregation in its 1896 Plessy v. Ferguson decision.
Drake & U Iowa Law Schools Can Be Proud

- Justice Chester Cole and Alexander Clark were heroes
- Both of the State’s Law Schools can be rightfully proud.
- Alexander Clark, Jr., the son of the named plaintiff, became the first African American graduate of the U. of Iowa College of Law in 1879. Clark, Sr., at age 60, also graduated from U of I College of Law—8th in his class of 80! http://law.uiowa.edu/150.
- Iowa Supreme Court Justice Chester Cole, the author of the Majority Opinion in Clark, went on to become the Founder of the Drake University Law School.
Chester Cole was born in New York in 1824. He came to DSM in 1857 from Kentucky, where he had practiced law. He quickly became a very successful lawyer in DSM.

A supporter of Abraham Lincoln, he was appointed by Governor Stone to the Iowa Supreme Court in 1864, and was elected and re-elected, serving until 1876 when he resigned.

Justice Cole also authored Smith v. Keokuk Schools, which in 1875, reaffirmed the vitality of Clark v. Muscatine Schools.

He was “recognized for his outstanding abilities, as a pleader and “a master of persuasive speech.” He was described as “an opponent to be feared by the opposition.”

Justice Cole was the Founder of the Drake Law School and taught at Drake for nearly a third of a century. Cole served as Dean of Drake Law School from 1892 to 1907, and the first law building on campus was named for him.

http://drakeapedia.cowleswiki.drake.edu/Chester+Cole.
14th Amendment to U.S. Constitution

- 14th Amendment, ratified July 9, 1868, overruled Dred Scott in §1, providing all persons born or naturalized in the U.S. are citizens of the U.S.
- §1 also provided: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US.; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
- Text, construed in light of Federalism, became basis for the “State action” requirement
- §5 authorized Congress to “enforce, by appropriate legislation, the provisions of this article.”
In November 1868 General and Presidential Candidate U.S. Grant expressed hope that “the people of Iowa, whose soldiers achieved such immortal renown in the field, would be the first state to carry impartial suffrage unfalteringly.”

While Black suffrage had lost in other states, Grant “trusted that Iowa, the bright Radical star, would proclaim by its election in November that the North is consistent with itself, and willing to voluntarily accept what its Congress has made a necessity in the South.” Marvin Bergman, Iowa History Reader and Robert Dykstra, Bright Radical Star: Black Freedom and White Supremacy on the Iowa Frontier.

Iowa Constitutional Amendments. At the November election Iowa voters, as Grant predicted, passed the amendments to the Iowa Constitution deleting racial designations, and granting Blacks the right to vote, by 105,384 to 81,119—25,000 votes.

Fifteenth Amendment, ratified in 1870, provided that the right of citizens to vote shall not be denied or abridged by the U.S. or any State on account of race, color, or previous condition of servitude, and authorized Congress to enforce by appropriate legislation.
Arabella Babb Mansfield (1869)

- Born in Des Moines County, Iowa, in 1846; public schools in Mt. Pleasant, Iowa; B.A. from Iowa Wesleyan University
- Apprenticed in law office of H & R Ambler; she passed the bar examination with high honors and was admitted to the Bar on June 15, 1869 by District Judge Francis Springer
- Though Iowa Code provided that “any white male person” was eligible to admission to the Iowa Bar, Judge Springer construed it so “the affirmative declaration that male persons may be admitted is not a denial of the right of females.”
- In 1870 Iowa Legislature struck the words “white male” from the statute governing licenses to practice law.
- Enjoyed successful academic career as Professor at Iowa Wesleyan and as Professor and Dean at DePauw University
- Other Iowa “firsts” on gender equality were taken by the University of Iowa: First public university to admit women and men in 1855 and to its medical school in 1870
- First public university to grant law degree to a woman in 1873
Supreme Court of Illinois refused to grant a woman a license to practice law on the ground that females are not eligible under the laws of Illinois.

U.S. Supreme Court affirmed (J. Samuel Miller, Keokuk, Iowa), holding that Illinois’s decision did not violate the Privileges & Immunities or Equal Protection Clauses of the Federal Constitution.

Justice Bradley Conc. Op.: “The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. * * * The harmony . . . to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. * * * The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. * * * [I]n view of the peculiar characteristics, destiny, and mission of woman, it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men . . . .”
Smith v. Directors of Keokuk Sch. Dist. (Iowa 1875), the school district admitted that the 16-year old Black boy was qualified for admission to the high school, but refused to admit him. The School Board denied that its refusal was because of the boy’s descent or color, but contended the high school building was full, and that they provided for the instruction of colored children in all the high school studies by a competent teacher in another building. The Board also contended that the citizens opposed mixed schools and to admit colored pupils with the white would destroy the harmony of the high school.

The Circuit Court found as a fact that the plaintiff was refused admission to the high school on account of his being a boy of African descent, and that if he had been white he would have been permitted to attend.

The Iowa Supreme Court, in an unanimous opinion by Justice Chester Cole, held the trial court’s finding were “well sustained by the records and evidence.” The Court held the case was governed by Clark v. Muscatine Schools holding “that a pupil may not be excluded from school because of his color, or required to attend a separate school for colored children.”
In Dove v. Keokuk Schools (Iowa 1875), the school board also contended that its refusal to admit Charles Dove to his neighborhood elementary school was because of a lack of space, but that he could go to the colored school for third grade.

The Circuit Court issued a mandamus requiring Dove’s admissions to the neighborhood school, finding that there was room in the neighborhood school when Dove applied, and that the reason the Board refused Dove admission was his race.

The Iowa Supreme Court, in an unanimous opinion by Chief Justice Miller, upheld the Circuit Court, and found: “It is clear . . . That the real reason for the refusal to admit the plaintiff into the school in question was because of his color. That he was entitled to admission and would have been admitted if he had been a white pupil, we think is satisfactorily shown by the evidence.”

The Court held the case is substantially like the case of Smith v. Keokuk, which held the holding of Clark v. Muscatine Schools was controlling and barred schools from requiring a pupil to attend a separate school for colored children.

The Iowa Supreme Court holds in Smith and Dove that the Iowa Constitution’s Equality Principles apply not only to facial racial classifications (as in Clark), but also to covert racial classifications—where the plaintiff has proven that race discrimination was the real reason for its action and not the race neutral explanation claimed by the School Board for its action.
Coger v. North West Union Packet (1873)

- Emma Coger, a school teacher of mixed race (Quadroon) in Quincy, Illinois, was returning on a Mississippi River steamboat from a visit to Keokuk. Though she had a ticket to the 1st class dining table, she was forcibly removed by the captain based on her race.
- Coger filed suit in state court, alleging the tort of assault and battery, and won a jury verdict for $250 damages.
- Iowa Supreme Court unanimously affirmed (Chief Justice Beck), holding Defendant steamboat company’s action violated both her Iowa constitutional right of equality and federal law (the 14th Amendment and the 1866 Civil Rights Act).
- The Court emphasized the Natural Rights Clause of Art. I, §1 of the Iowa Constitution provided that all men are free and equal, and obviously construed the male noun to include the female plaintiff. “[T]he plaintiff was entitled to the same rights and privileges while upon defendant’s boat . . . which were possessed and exercised by white passengers. These rights and privileges rest upon the equality of all before the law, the very foundation principle of our government.”
The Court found defendant’s actions violated Coger’s rights of contract and property, and rejected argument that dining was a social right and not protected by the Constitution and laws.

The Court affirmed the jury verdict of damages, concluding the evidence supported their finding that the plaintiff was removed from the dining table solely because of her color. The Court spoke admiringly of Coger’s “spirited resistance and her defiant words, as well as her pertinacity in demanding the recognition of her rights and in vindicating them . . . .”

The case is significant because the Iowa Court construes the Iowa Constitution’s natural rights/equality commitment broadly to protect blacks from discrimination by a common carrier; it did not need a state civil rights statute to provide this protection.

In contrast, when Congress enacted in 1875 a federal statute that barred discrimination in public accommodations, the U.S. Supreme Court struck it down. The Civil Rights Cases (1883)
How do Clark and Coger decisions, neither of which speak in terms of Original Intent or a Living Constitution, inform the thinking of the current Iowa Supreme Court’s construction of the Equality Clauses of the Iowa Constitution?
Purpose of the Reconstruction Amendments (13th, 14th, and 15th Amendments)

- Slaughterhouse Cases (1873)
- “We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of those amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of the that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him.”
Powerful New Perspective on Reconstruction


- Background: Blacks were “a majority of the population in Mississippi, South Carolina, and Louisiana; more than 40% in Alabama, Florida, Georgia, and Virginia; and more than a quarter in Arkansas, North Carolina, Tennessee, and Texas. Under peaceful conditions, it was not uncommon for black voter turnout to reach 80% and even 90%.” P. 386. The KKK and other white supremacist groups “waged a bloody campaign to nullify the constitutional rights of black Americans and their allies.” Id.
The Colfax Massacre. Easter Sunday 1873, 150 Black freedmen who sought to protect the Colfax, Louisiana Court House from a Democratic takeover were attacked by well armed white paramilitary twice their number. The white force won the battle, and captured 28 to 50 Black prisoners. William Cruikshank and others then proceeded to murder between 37 and 47 of the prisoners, all the while taunting them with racial epithets as they killed them.

Cruikshank and others were prosecuted under a Federal criminal civil rights statute and a jury of 9 whites, 1 black, and 2 of uncertain racial identity convicted 2 persons of conspiracy to interfere with the constitutional rights of 2 black Republicans.

SCOTUS reversed the convictions based on the ground the indictments exceeded constitutional authority under the 14th Amendment, whose Equal Protection clause protected only against state action, and whose Privilege & Immunities clause excluded rights enumerated in the Bill of Rights. SCOTUS rejected prior authority, McCulloch v. Maryland, that held Congress enjoys broad discretion in choosing the means of implementing its constitutional powers.
Cruikshank unleashed white terrorism and the white supremacist “redemption” of the majority-black states. It effectively terminated federal enforcement of civil rights and brought about the end of Reconstruction.

Cruikshank “lays bare the true origin of those doctrines in judicial intervention immunizing overtly racist terrorism against effective law enforcement.” P. 390. The “mainstream story has long featured the conflict between national power and states’ rights.” P. 391. But Cruikshank was really “a case involving the exercise of national power in support of state governments struggling for survival against paramilitary insurrection. [T]he Court blocked the national government from assisting official state governments in the preservation of law and order.” Id.

“Had the Court upheld the conviction in Cruikshank, the system of Jim Crow that gave rise to Plessy and Brown might never have existed.” P. 392

Pope argues the failure of Con Law courses to examine Cruikshank has meant students see the post-Civil War as a conflict between national power and “state” autonomy, when it really reflected “the struggle of official legal authority—national and state—against paramilitary insurrection.” P. 447
Drake University

- In 1881 Drake University’s Original Charter provided that “all of the university’s departments shall be open to all without distinction of sex, religion or race.”
- John Lay Thompson, in 1898, was the first African American graduate of Drake Law School.
- Drake Law has graduated the 1st African American judge in Iowa, 1st African American female judge in Iowa, 1st African American U.S. Attorney in Iowa, the co-founder of the National Bar Association, the oldest and largest national network of predominantly African American lawyers and judges (incorporated in Des Moines in 1925)
Civil Rights Cases (SCOTUS 1883)

- 1875 Federal Civil Rights Act barred race discrimination in public accommodations (inns, restaurants, trains, etc. owned by private parties)
- US Supreme Court struck down the 1875 Act as unconstitutional, exceeding the power of Congress to legislate under:
  - (1) the 14th Amendment’s Equal Protection clause, as it does not apply to private action (and there were no state statutes that mandated discrimination);
  - (2) the 13th Amendment; while Congress has power to eradicate the badges and incidents of slavery, the Court found that, while this power could be directed at private action, during the slavery era, discrimination against free Blacks was common in public accommodations and therefore it could not be a badge or incident of slavery.
- Injured persons must seek state remedies in state courts.
- It is time where the Black should take the rank of mere citizen and cease being the “special favorite of the laws.”
Harlan Dissent contended that the freedom and equality purposes of the Civil War Amendments authorized Congress to protect against racial discrimination—as a badge or incident of slavery, at least as to those businesses with a public function or license.

Harlan also noted Congress’s Commerce Clause legislative power had not been argued, and may provide Congressional authority for it to enact civil rights legislation barring discrimination in public accommodations.

The right to use public accommodations is not a social right, but a legal right.

Harlan expressed outrage at the Majority’s “special favorite of the laws” accusation. Congress sought only to protect Blacks so they could enjoy the benefits of citizenship.
Iowa Civil Rights Act of 1884

- Iowa Legislature responded to the U.S. Supreme Court decision by enacting, incredibly without a dissenting vote, the Iowa Civil Rights Act.
- The ICRA barred discrimination in public accommodations (“inns, public conveyances, barber shops, theaters and other places of amusement”), and then in 1892 to “restaurants, chop houses, eating houses, lunch counters, and all other places where refreshments were served, and bath houses.”
- ICRA made violation a misdemeanor punishable up to 1 year in jail and/or a fine not more than $500.
- Because punishment exceeded 30-days imprisonment, the Iowa Constitution required indictment by a grand jury and trial in the district court.
- As DSM NAACP President James B. Morris wrote in 1923, experience demonstrated that the penalty for violating the ICRA “was so great that it was not worth anything, in that it required the grand jury to indict the defendant before he could be tried.”
- The Professors Acton report that “[a] review of the case law in the decades after the enactment of the ICRA indicates that it was rarely used.”
The end of Reconstruction with the 1876 Hayes-Tilden Election Compromise, the terrorism unleashed by the Supreme Court’s Cruikshank decision, and economic hard times in the 1880’s brought about renewed backlash against racial minorities.

The 90-minute PBS documentary, Slavery By Another Name, captures the severity of the oppression of the convict leasing system in the South. [http://www.slaverybyanothername.com/pbs-film/](http://www.slaverybyanothername.com/pbs-film/).

Chinese Exclusion Act prohibited immigration of Chinese, initially for 10 years in 1882, then indefinitely in 1884. It was not repealed until World War II when China was an ally. Check out the General Stillwell WWII Museum in Chongqing.

Racial segregation became a vehicle to split poor whites from Blacks. Historian Vann Woodard observed: “It took a whole lot of Jim Crow to make a white man feel good about working for a black man’s wages.” State-imposed segregation gained momentum.
Yick Wo v. Hopkins (SCOTUS 1886)

- Individuals needed a permit to operate a laundry in a wooden building in San Francisco. The permit issuing board granted permits to none of 200 Chinese applicants and to 79 of 80 white applicants. The U.S. Supreme Court reversed on Equal Protection grounds the conviction of a Chinese laundry which operated without a government permit.

- SCOTUS held Equal Protection Clause prohibits covert race discrimination as well as facial classifications. San Francisco ordinance licensing laundries was neutral on its face, but was administered in racially discriminatory fashion: “Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, . . . the denial of equal justice is still within the prohibition of the Constitution. . . .”

- First case to rely upon statistical evidence to find a pattern and practice of racial discrimination in the administration of an otherwise race neutral law.

- Again, the Iowa Supreme Court in the 1875 Keokuk school desegregation cases was 11 years ahead of the U.S. Supreme Court, which held covert discrimination in the application of the law violated the Iowa Constitution’s Equality principles.
1896 to 1954: Plessy v. Ferguson Spawned American Apartheid, A Dark Age Dooming Civil Rights to Dormancy
Plessy v. Ferguson (SCOTUS 1896)

- Louisiana statute required segregation of railroad passenger cars, a Separate But Equal car must be provided colored passengers. The state argued segregation did not violate Equal Protection as the law was equally applied—whites who sat in the “colored car” would be prosecuted.
- US Supreme Court upheld the law, embracing the Equal Application argument. It distinguished a case where it had struck down a West Virginia statute that excluded Blacks from jury service, reasoning the West Virginia statute violated political equality, whereas Louisiana’s segregation of railroad cars was mere a social right not protected by the 14th Amendment.
- The Court cited Roberts v. City of Boston (1850), emphasizing Massachusetts was a northern state that had always taken a leadership role on equality rights for Blacks, and the segregation of the D.C. schools by Congress, as precedents.
The Court emphasized the breadth of the State Legislature’s power to legislate for health, safety and welfare (so-called “police power.”) Reasonableness was the test, and the legislature could look to established usages, customs, and traditions of the people.

The Court rejected the argument that state imposed segregation put a brand of inferiority of inferiority on blacks, and was a form of white supremacy. The Court held that if blacks felt inferior because of segregation, that was their own problem and not something courts can correct.

The Court stated that if the two races are to meet upon terms of social equality, it must be by voluntary consent, not enforced commingling.
Harlan’s Dissent emphasized the purpose of the Louisiana statute, which everyone knows was to denigrate and oppress blacks. It puts a brand of servitude and degradation on black citizens.

This racial purpose cannot be hidden by the equal application argument—we all know the purpose is to keep blacks from the white car, and not to keep whites from the colored car.

The Majority’s Decision will encourage states to create an apartheid caste system, striking at the heart of the equality protection of the equal protection clause. Segregation interferes with the personal liberty and freedom of citizens.

The arbitrary separation of races in the railway cars is a badge of slavery inconsistent with freedom and equality. The Roberts v. Boston case cited by the Majority preceded the 14th Amendment and was decided when blacks had few rights.
Harlan: “In the view of the constitution, in the eye of the law, there is no superior class. There is no caste system. The Constitution is color-blind. All citizens are equal before the law.”

Regretfully, Harlan overlooked Clark v. Muscatine School Board as precedent for his views and thus failed to credit the Iowa Supreme Court’s landmark courageous leadership in rejecting separate but equal segregation.

Harlan predicted Majority’s decision would foster race hate and be seen as pernicious as Dred Scott. It did, and with a vengeance.
Harlan was right. Segregation became pervasive. With *Plessy* the dam broke, with the national government no longer providing protection to Blacks. The Court gave the green light to more than private segregation. Southern Legislatures proceeded to mandate it in every aspect of daily life.

The Southern states also proceeded to disenfranchise blacks completely through a series of constitutional conventions around 1900.

Blacks had been effectively stripped of the vote in the South by 1900 and eliminated from the political process. This was the result of KKK intimidation and violence and the implementation of a variety of voting requirements which were discriminatorily applied—new literacy tests (with grandfather clauses for whites), poll taxes, majority vote requirements, at large districts, etc. were passed.
• *Giles v. Harris* (SCOTUS 1903)--In a case challenging Alabama's new Constitution’s electoral provisions as discriminatory, the Court held it could not enforce political rights; if it was true that the great mass of whites intended to keep blacks from voting, it would do little good for the Court to issue an order that would be ignored on the local level.

• Plessy set the national tone for more than 60 years. Racial segregation became a national reality for more than 60 years—a dark chapter in U.S. history. Although formalized by law in the Southern and Border states, it reared its ugly head in the North as well, including Iowa.

Blacks were routinely and summarily convicted of trumped up crimes such as vagrancy (essentially a crime of being unemployed in a society that excluded Black men from jobs). Once convicted Blacks were hired out to private corporations for unlimited labor to “pay off” their fine and court costs.

Convict Leasing was worse than slavery because the hirer had no investment in the convict laborer—no stake in his long term health. Once abuses came to public light and labor was needed on highway repairs, convicts were employed on prisoner chain gangs.

The federal law barring peonage after Civil War was never enforced, and the Southern practice of forcing debtors to work for their obligor to pay off their debt had many of the same abuses.
The U.S. Supreme Court used the Equal Protection and Due Process Clauses to “protect” corporations from progressive social legislation. *Lochner v. New York* (1905) struck down New York legislation that sought to regulate working conditions.

The National Association for the Advancement of Colored Persons (NAACP) was founded on Abraham Lincoln’s birthday, Feb. 12, 1909. The Des Moines chapter was founded in 1914. It was founded as, and continues today, as an interracial civil rights organization.

NAACP, under Charles Hamilton Houston’s leadership, in the 1930’s began the Equal, If Separate Litigation campaign that eventually led to the overruling of *Plessy* and the end of *de jure* segregation.
In 1917, at outset of America’s entry into WWI, DSM was 1 of only 3 applicants for the first officers’ candidates school for African Americans. HBCU Universities Howard and Hampton were the other applicants, but DSM’s Ft. Des Moines was chosen.

1,000 black college graduates and faculty, and 250 non-commissioned officers from the 9th and 10th Cavalry "Buffalo Soldiers" and 24th and 25th Infantry, comprised the 17th Provisional Training Regiment at Ft. DSM.


639 graduated as captains or lieutenants on 15 October 1917. They fought valiantly in France in 1918 during World War I.

Many of these officers returned from the War and took on leadership roles in the pursuit of equality and racial justice: Charles Hamilton Houston; Charles Howard; James B. Morris
Ft. Des Moines Museum
America’s First Black Officers

Ft. Des Moines
Charles Hamilton Houston

- Commissioned at Ft. DSM in summer of 1917
- Served in combat in France during WWI.
- Graduated from Harvard Law School, served as editor on Harvard Law Review.
- Houston became Dean of the Howard University Law School
- Houston became the architect of the NAACP “Equal, If Separate” litigation campaign from 1930 – 1954 that led to Brown v. Board’s rejection of segregation. He was widely known as the “man who killed Jim Crow.”
- His key assistant at the NAACP was Thurgood Marshall, who later became the first African American Justice on the U.S. Supreme Court
Charles Hamilton Houston

The problem before the (African-American) today is not the depths from which he has come but the heights to which he aspires…"

— Charles H. Houston, 1934

A Legacy of Leadership

A Meaningful Mentor

Lawyer's son Charles H. Houston graduated from Amherst College at age 19, and after serving as an army officer in World War I, graduated cum laude from Harvard Law School. He became a vice dean at Howard University's Law School, where he helped train a generation of black lawyers.

In 1935, Houston established and took the helm of the legal department of the NAACP, drafting future U.S. Supreme Court Justice Thurgood Marshall as his assistant. Together, they used court action to fight discrimination, transportation, housing, and education laws.

By 1945, Houston had won seven of the eight cases he argued before the U.S. Supreme Court. Those efforts led to the landmark Brown v. Board of Education Court case in 1954, which legally ended segregation - killing the Jim Crow system.

Even though Houston died four years before that important decision, five Supreme Court justices paid their respects at his funeral.
Charles Howard

- 1 of 10 Most Influential Black Iowans of 20\textsuperscript{th} Century
- Commissioned as Lieutenant at Ft. DSM; served in combat in France. “If you fight bravely today, tomorrow your wives and sisters can walk down the streets of Georgia with dignity.”
- Graduate of Drake Law School in 1922. 1st African American varsity athlete at Drake (lettered in football, track, baseball and tennis)
- 1 of the 5 founders of the National Bar Association
- Outstanding trial lawyer in both criminal and civil rights cases; defended 78 men charged with capital offenses; none were executed
- Publisher-editor Iowa Observer, his criticism of segregation of WAC’s at Ft. DSM in WWII caused J. Edgar Hoover and FBI to monitor his every action
- Keynote speaker Progressive Party nomination of Iowan Henry Wallace for President, 1948; participated in Wallace’s racially integrated campaign
- Syndicated columnist on United Nations until his death in 1969
- Sons (Lawrence, 1\textsuperscript{st} African American Dean at U of Pittsburgh; Joe, one of the 1\textsuperscript{st} African American Federal Judges; Charles, Jr., lawyer in Baltimore)
Charles Howard & J.B. Morris
A bright spot during this era was extension of the right to vote to women with the adoption of the 19th Amendment. Carrie Chapman Catt, who grew up in Iowa and was a graduate of Iowa State University, was twice President of the National American Woman Suffrage Association (NAWSA). Her second term was from 1915 to 1920.

Catt played a lead role, as coordinator and political strategist, during the critical time for the women's suffrage movement in the U.S. leading up to the adoption of the 19th Amendment in 1920.

Catt founded the League of Women Voters in 1920 as the successor to the NAWSA.
The Iowa State Flag: Designed by Dixie Gebhardt in 1917 and adopted by Legislature in 1921
NBA was founded in Des Moines in 1925 in response to the exclusion of Black lawyers by the American Bar Association.

Charles Howard was 1 of 5 Des Moines Black lawyers who founded the NBA (S. Joe Brown, Gertrude Rush, J.B. Morris, George Woodson).

The NBA is the nation's oldest and largest national association of predominately African-American lawyers and judges. It has 84 affiliate chapters throughout the United States and affiliations in Canada, the United Kingdom, Africa and the Caribbean. The NBA represents a professional network of over 20,000 lawyers, judges, educators and law students.

Drake Law School’s Opperman Library’s National Bar Association Room (ground level) holds the archives of the National Bar Association and was dedicated February 1, 2007.
National Bar Association Archives Room

Made possible thanks to a generous lead gift from the

Des Moines Branch of the National Association for the Advancement of Colored People (NAACP)

Linda Carter Lewis, President

and contributions from

Romonda D. Belcher Ford & Wayne Ford
Susan C. & Henry Hamilton, III
Linda & Russell E. Lovell, II
Don Carlos Nickerson
David S. & Sara K. Walker
Berniece & Robert A. Wright, Sr.

and donated art, artifacts and materials from

Judge Odell McGhee & Jacqueline Easley
Robert V. Morris
Dr. Cleota Proctor Wilbekin

February 1, 2007
ICRA Proved Ineffectual

- ICRA amended in 1923, reducing the penalty to a fine of not more than $100 or imprisonment not more than 30 days
- “Less is more” was the rationale, as the reduced penalty avoided the need for indictment by a grand jury
- The Professors Acton report that in the 12-year period, 1939-1950, there were 22 civil rights prosecutions with only 4 convictions and fines; 10 of the 22 prosecutions, and 9 of the 14 civil actions, involved the Katz Drug Store
- Prosecutions against Katz Drug in 1943, 1944, and 1947 had resulted in acquittal or dismissal
Strange Fruit by Billie Holiday

Strange Fruit
lyrics by Abel Meeropol, 1939

Southern trees bear a strange fruit,
Blood on the leaves and blood in the root,
Black body swinging in the Southern breeze,
Strange Fruit hanging from the poplar trees.

The hanging tree of the gentle South,
The hanged man on the crossbar above,
And the sudden smell of burning.
Here is a fruit for the crows to pluck,
For the rain to gather, for the wind to suck.
For the sun to dry, for a tear to drop.
Here is a strange and bitter crop.
First WACs Trained at Ft. DSM

- Fort Des Moines hosted the formation of the first Women's Army Auxiliary Corps (WAAC), later renamed the Women's Army Corps (WAC), training 72,000 troops and commissioning the first female officers for non-combat duty between 1942-1945.
- Charles Howard’s newspaper’s criticism of the racial segregation of the women candidates trained at Ft. Des Moines caused J. Edgar Hoover and the FBI to put him under surveillance as a “subversive”
- DSM Register obtained more than 1,000 pages from the FBI in a Freedom of Information Act request about its surveillance of Charles Howard in the early 1990’s, much of which was “blacked out” and unreadable
Jackie Robinson: Integration of Major League Baseball

- Major League Baseball (MLB) was the National Pastime.
- Baseball is very popular today, but it was at its peak popularity following WWII. Ken Burns' PBS documentary entitled "Baseball" has a great piece on Jackie Robinson.
- Judge Kenesaw Landis, as Commissioner of MLB, had kept MLB rigidly segregated through WWII. "The answer is 'No!'"
- U.S. Senator Happy Chandler from Kentucky succeeded Landis and indicated an openness to integration: "If a Black boy can stop bullets on Okinawa, he can stop baseballs at second base."
- Robinson's athletic accomplishments as he integrated MLB were nothing short of extraordinary given the racism he had to overcome and his success opened the eyes of many to the need for societal change.
- George Will suggested that, among African Americans, Jackie Robinson was second in significance only to Dr. Martin Luther King
Next to religion, baseball has had a greater impact on our American way of life than any other American institution.
Robinson’s story provides support for Bell's convergence of interest theory: That major racial justice gains in USA have almost always occurred when the morally correct result also was consistent with white self-interest.

That Brooklyn Dodgers owner Branch Rickey found segregation morally reprehensible is unquestioned, but opening the door for Robinson and the many black players that followed him to Brooklyn immediately propelled the Dodgers from also-rans to the World Series and filled the seats of Ebbetts Field in a previously untapped market of fans.

Robinson became a hero to a young boy growing up in Scottsbluff, Nebraska. I can still name the starting lineup of the Brooklyn Dodgers from that era.
Edna Griffin, an African American woman, was a graduate of Fisk University and became a member of the Women’s Army Corps during WWII. She married Dr. Stanley Griffin, and moved to DSM in 1947.

Along with Drake students John Bibbs and Leonard Hudson, Griffin led a protest of the exclusion of African Americans from lunch counter service at Katz Drug in downtown Des Moines in July 1948. General Manager Maurice Katz refused service to Black customers, stating “the store didn’t have the proper equipment to serve them.”

Katz was convicted of violating the ICRA by a jury, and the judge fined him $50. Katz appealed.

Griffin then filed a civil action seeking $10,000 damages from Katz for violation of her civil rights. Charles Howard was her lawyer. In October 1949, an all-white jury awarded her damages of $1.

In the fall of 1949 a Committee to End Jim Crow at Katz was formed and protest activities began anew. Griffin and others passed out leaflets and staged sit downs at the Katz lunch counter. In November 1949, Griffin and four others filed new civil suits against Katz.
Prior to the Iowa Supreme Court’s decision on the criminal appeal, on December 2, 1949, Katz abandoned its segregation policy in a settlement negotiated by Charles Howard and the pending civil and criminal suits were dismissed and Katz paid $1,000.

Edna Griffin was a civil rights and peace activist the rest of her life. The civil disobedience sit down and protest tactics she pioneered were used prominently by Rosa Parks and Dr. Martin Luther King, Jr., in the Montgomery Bus Boycott six year later and by countless civil rights activists ever since.

In 1998, on the 50th anniversary of the case, Drake Law alumna and nationally prominent civil rights trial lawyer Roxanne Conlin and husband Jim Conlin renamed the Flynn Building (which housed Katz Drug) the Edna Griffin Building, honoring her civil rights and peace activism.

In 2004 a pedestrian bridge across the McVicar Freeway near the State Capital was also named for Edna Griffin.
Edna Griffin Building, 7th & Locust
Edna Griffin Building
On December 13, 1949, 11 days after settlement of the civil cases, the Iowa Supreme Court decided the criminal appeal. The Iowa Supreme Court, Chief Justice Hayes, unanimously held there was sufficient evidence to uphold the conviction. The Court was not troubled by the fact that the three complainants sought service at Katz with the intent of making Katz a test case for the ICRA. It held that evidence showing it was the policy of the drug store to deny service to blacks was properly admitted as it was relevant to the question of whether the denial was discriminatory. Defendant Katz had claimed his refusal of service was based on a disturbance caused by the complainants.

The case is important for its Symbolism, more than any reasoning or doctrine that it fashioned. The capitulation of Katz to serving Black patrons led to the integration of lunch counters and restaurants in downtown Des Moines.
Charles Howard
Johnny Bright

- Drake’s greatest athlete (lettered in football, basketball, track)
- Nation’s total offense leader in football in 1949 and 1950 as tailback in single wing offense, and leading again in 1951
- Oklahoma A & M player’s deliberate attack on Bright during 1951 game caught on film by Des Moines Register photographer Don Ultang, won the Pulitzer Prize!
- Drake University protest to Missouri Valley Conference was ignored; Drake withdrew from MVC for 4 years in protest
- Drafted No. 1 by NFL Philadelphia; chose to play in Canada
- In 2006 Drake dedicated its football field for Johnny Bright
- NAACP plaque recognizes Drake’s commitment to welcoming environment for students of color and its civil rights courage
Drake Plaza Entrance to Drake Stadium

To Drake University
In Recognition of
Courage & Leadership

Drake University's naming of Johnny Bright Field recognizes the extraordinary athletic achievements of Drake's greatest athlete; this also exemplifies the courage and leadership Drake University displayed in 1951 on racial justice issues at a time when the nation's conscience was only beginning to respond to years of racial inequality and injustice.

Drake has done much more than bestow a great honor on a prominent graduate and outstanding student-athlete. It has made a powerful symbolic statement that is consistent with its long tradition and commitment to an inclusive and welcoming environment for persons of color on campus.

Presented by the
Des Moines Branch NAACP
And the
Iowa/Nebraska State
Conference NAACP

September 30, 2006
NAACP Award to Drake

To Drake University
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Des Moines Branch of the NAACP
Iowa-Nebraska Conference of the NAACP
September 30, 2006
Gaines v. Missouri (1938). Lincoln University was HBC by law. An “enlightened” Missouri statute provided that when Lincoln University didn’t offer a course of study, the state would pay the tuition for a Black student’s attendance at a public university in a neighboring state. Gaines was refused admission to the UM Law School because of his race. The State offered the out-of-state tuition alternative. Gaines sued.

Missouri Courts rejected Gaines’ claim, concluding the out-of-state tuition offer met Separate but Equal requirements. It found the course of study and casebooks were substantially identical in the other states’ law schools and the travel distance differential was not a substantial basis for complaint.

SCOTUS held, 7-2, payment of out-of-state tuition does not remove the racial discrimination. That there may be limited demand by Blacks to attend law school likewise is no justification. If a state offers a law school, it must afford all its residents this opportunity; it cannot shift its burden to another state.

Leveling Up, Immediate Remedy. State must provide facilities substantially equal to those provided by the UM for white students, or admit Gaines to UM. http://www.nytimes.com/2009/07/12/us/12gaines.html?_r=0.
McLaurin v. Oklahoma (1950)

- The University of Oklahoma, in response to Court Order, admitted McLaurin to its graduate school but, because of his race, required him to sit outside class rooms in the hallway, eat at a segregated cafeteria table at a different time; while pending before SCOTUS, OU allowed him inside classroom but in separate row, eat in cafeteria at same time as other but at a segregated table.
- State argued segregation was nominal, and McLaurin would be no better off if the restrictions were removed as students would self-segregate.
- SCOTUS, 9-0, held racial segregation set him apart, handicapping his ability to engage in discussion and exchange views with others and learn the profession. There is “a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit intellectual commingling of students, and the refusal of individuals to commingle” by their own choice.
Sweatt v. Painter (1950)

- Sweatt was rejected by U of Texas Law School because he was Black. When the State opened a basement law school for Blacks with no full-time faculty, the State courts ruled against Sweatt. While pending before SCOTUS, State opened a Black law school with full-time faculty of 5 with a library.
- SCOTUS held “it was not even a close question” that the Black law school was not substantially equal to UT in terms of “tangible qualities.” The Court observed that segregation denied Blacks “intangible qualities”—the interplay of ideas and exchange of views with which law is concerned. Exclusion of Blacks from contact with whites when most lawyers, judges, and jurors in Texas are white denied them Equal Protection.
announced the unanimous ruling of the United States Supreme Court.
Chief Justice Earl Warren, in unanimous opinions in Brown and Bolling, held that even though the physical facilities and other tangible factors relevant to equality had been found to be substantially equal, that “[s]eparate educational facilities are inherently unequal.”

In holding segregation unconstitutional, it overruled Plessy v. Ferguson in the field of education. The ruling was applicable the District of Columbia.

Original Intent? The Court concluded that the history of the 14th Amendment was ambiguous as to the Framers’ intent, noting that there was very little public education in 1868, particularly in the South and there was little discussion of its application to schools.

Living Constitution. The Court found that the intangible factors identified as critical to education in the graduate and law school cases of McLaurin and Sweatt were equally critical in the grade and high school context. Today, education may well be the most important function of state and local government. It is critical to good citizenship, and few can succeed in life today without education.
Brown Compromise on Remedy?

- Segregation by law “solely because of their race generates a feeling of inferiority that may affect their hearts and minds in a way unlikely ever to be undone.” A sense of inferiority affects the motivation of a child to learn, and has a tendency to retard the education and mental development of black children.

- Judicial intervention was crucial because of the reality that the political process could not correct itself, as Blacks had long been disenfranchised and, without the vote, could not influence state or federal elections.

- However, unlike its earlier college desegregation cases of Gaines, McLaurin and Sweatt, the Court did not order immediate integration but instead, after a year’s delay, ordered implementation “with all deliberate speed.”
changing all of that, like that! He'd won.
Brown Breathed New Life Into Civil Rights

- The Court appeared to also compromise on tone. In contrast to Harlan’s Dissent in Plessy, Brown is non-accusatorial. There is no mention that segregation was intended to denigrate and oppress Blacks, that it enforces white supremacy.
- Brown’s is widely recognized as the most important U.S. Supreme Court case of the 20th century, and very likely of all time. Its symbolic value, in ending segregation, was huge.
- It breathed new life into all the Civil War Amendments, and ultimately has proven of greater value in raising blacks and other minorities to a reasonable semblance of equality.
- Chief Justice Warren’s great accomplishment was achieving an unanimous opinion. It is likely that he had to compromise on remedy, allowing the “all deliberate speed” approach that delayed desegregation for a generation—until the Executive and Congress finally embraced Brown in the 1964 Civil Rights Act.
- Unfortunately, Chief Justice Warren does not mention the Iowa Supreme Court’s path-breaking Clark v. Muscatine School Board—86 years earlier!
National Park Service Historic Site, Topeka, Kansas
Derrick Bell contends that the end of formal state-mandated segregation furthered 3 important interest of white policy makers

First, it furthered important national foreign policy interests during the Cold War with the Soviet Union. U.S. Department of Justice (DOJ) Amicus Briefs made these policy arguments in detail; DOJ supporting NAACP and private plaintiffs was a first, and had approval of President Eisenhower

Second, it was delayed but needed response to Black expectations that Apartheid would end after WWII

Third, it enabled the Sun Belt’s industrialization by improving education for all and eliminating inefficient segregation of the work place.

RL: And don’t forget Jackie Robinson, his exceptional success
1964 Federal Civil Rights Act

- Civil disobedience and civil rights protests. The March on Washington, August 1963. Martin Luther King's "I Have A Dream" Speech from the steps of the Lincoln Memorial.
- Congress Gets on Board. President LBJ, too. Finally!
- The 1964 Civil Rights Act. This landmark piece of legislation was a major accomplishment of the Civil Rights Movement.
- First, it represented Congressional and Presidential approval of the Brown decision. Titles IV and IX provided school desegregation assistance to school districts and authorized the DOJ to institute school desegregation suits; Title VI barred federal funds to any recipient that discriminated.
- Second, it barred discrimination in public accommodations. Title II was based primarily on Congress' Commerce Clause power, which had been construed very broadly by the Court since 1938.
- Third, it barred discrimination in private employment. Title VII recognized that it did little to provide a black with the right to attend any theater if he couldn’t afford the price of admission. It barred race and sex discrimination.
Heart of Atlanta Motel v. U.S. (SCOTUS 1964)

- Title II forbade motels from discriminating on the basis of race. *Heart of Atlanta Motel* involved a constitutional challenge to Title II, the public accommodations section.
- Congress had relied primarily on its Commerce Power, rather than the 14th Amendment (due to the 1883 Civil Rights Cases precedent that such privately owned businesses were not "state action" for purposes of the 14th Amendment).
- The Court did not overrule the Civil Rights Cases. It chose to uphold the statute based on the expanded Commerce power rather than to expand Congress' power per §5 of the 14th Amendment.
- The Court reviewed the Congressional hearings and found substantial evidence that race discrimination had a qualitative and quantitative impact on interstate travel by Blacks. The uncertainty of obtaining lodging and meals created safety issues and discouraged travel. That Congress was legislating against moral wrongs did not render the statute less valid. Even if a motel was of a local nature, Congress has power to regulate even local activities when cumulatively they may have a substantial effect on commerce.

COMPARE with Coger v. North West Union Packet (1873)—91 years earlier—in which the Iowa Supreme Court upheld a damages verdict against the steamboat company that segregated its passengers on the basis of race.
This 2d piece of landmark Civil Rights legislation became law only after the nation’s attention was focused as a result of television coverage of the hatred and brutality that occurred on the Edmund Pettis Bridge in Selma, Alabama.

2015 movie Selma is excellent in telling this story

VRA not only barred literacy tests and voting laws that resulted in discrimination, it addressed the Hydra effect. Prior Voting Rights that provided for judicial remedies of voting rights violations had proved woefully ineffective.

VRA’s §5 Pre-clearance requirement “freezing principle” forbade any electoral changes without prior approval of US Attorney General or 3-Judge District Court in D.C. that the change does not discriminate against minorities in purpose or effect.

SCOTUS upheld in 1965, but in 2013 struck down its coverage formula as no longer reflecting current conditions (despite overwhelming support in Congress). Shelby County v. Holder.
Iowa Civil Rights Act of 1965: A New Civil Remedies Approach

- Iowa Civil Rights Act of 1965, barred discrimination in public accommodations and employment because of race, creed, color, national origin, or religion.
- It created a 7-member Iowa Civil Rights Commission appointed by the Governor.
- ICRA made a major change in civil rights enforcement and remedies, by creating a state agency empowered to investigate and conciliate complaints, to hold hearings, and to order remedies that included hiring or reinstatement and back pay. An ICRC order could be appealed to the district court. The ICRA’s criminal penalties were repealed.
- Iron Workers Local 67 v. Hart (1971). Iowa Supreme Court, Justice Ward Reynoldson, held the ICRA should be broadly construed: “The Iowa legislation is another manifestation of a massive national drive to right wrongs prevailing in our social and economic structures for more than a century.”
- The Court unanimously upheld the constitutionality of the Act and sustained the ICRC’s order finding discrimination by the labor union against Black workers. The ICRC was represented by a young lawyer named Roxanne Barton Conlin, who has gone on to national fame for her civil rights litigation efforts.
The ICRA has been amended many times to extend its protections: sex (1970), physical and mental disabilities (1972), age (1972), and more recently has banned discrimination based on sexual orientation and gender identity. It now is one of the most comprehensive civil rights statutes in the US.

The ICRC enforcement mechanism, and the option of civil litigation in state (or federal) court with remedies that have real teeth (injunctions, back pay, damages, and attorney’s fees) have proved to be a dramatic improvement over the prior criminal enforcement regime.

The civil litigation option, however, has proved only to be available to those claimants who are successful in retaining a private attorney to represent them in court.

Prior to 2012 the ICRC had not heard a non-housing case at public hearing in over 8 years. As a result of advocacy by the NAACP, ICRC Director Beth Townsend has implemented reforms that have reinvigorated the agency’s enforcement efforts.
Brown and the Civil Rights Act of 1964 ushered in an era in which the Federal Courts—for the first time—grabbed the equality baton and really ran with it. Both the Warren and Burger Courts were progressive on civil rights for racial minorities and women.

Civil rights litigators came to have a decided preference for litigating civil rights claims in Federal Court, with the result that relatively few civil rights claims reached the state Supreme Courts and those Courts seldom had occasion to consider claims based on their State Constitutions. When such claims were presented to State Supreme Courts, they often adopted the U.S. Supreme Court’s interpretation of the comparable Federal Constitution safeguard (so-called lockstep approach).
School Desegregation Remedies: Complicated by Pervasive Discrimination in Housing

- Swann v. Charlotte –Mecklenburg Co. (1971) held, 9-0, that district courts had broad remedial authority to root out discrimination root and branch, including ordering the busing of students to achieve racial balance that roughly reflected that of the community.

- Neighborhood school zones were the norm—for lots of valid reasons, but, because of housing discrimination, often resulted in de facto school segregation. This greatly complicated the Courts’ fashioning of remedies, and eventually eroded political support for school desegregation.

- Milliken v. Bradley (1974) held, 5-4, that suburban school districts could not be included in desegregation plan for the Detroit central city district unless the suburban districts were implicated in the segregation of the core district.

- Milliken II (1977) held that district courts’ remedial power was not limited to racial balance of students and faculty, but could include educational programs that sought to compensate for the educational deficits experienced by minority children as a result of segregation and discrimination. This remedy was preferred by Detroit’s African American leadership as metropolitan-wide desegregation plan was no longer possible.
SCOTUS Declares Victory and Leaves

- Oklahoma City Schools v Dowell (1991). SCOTUS abandons the remedial goal of eliminating the vestiges of segregation, root and branch, in favor of achieving desegregation “to the extent practicable.” It permitted unintentional segregation when due to private actions beyond a school board’s control, even when that results in one-race schools.

- Jenkins v. Missouri (1995). Finding segregation caused by Kansas City School District and State but not by suburban districts, District court declined to use busing, instead implemented an “Equal If Separate” desegregation plan that required State to fund physical reconstruction of KCMSD physical plant and Milliken II educational programming such as magnet schools at a cost of $2 billion. 1,800 suburban white students voluntarily chose to attend KCMSD schools.

- SCOTUS struck down the remedy, 5-4, reasoning that court could not do indirectly what it could not do directly. That is, not only could the court could not order a metropolitan wide busing order, it could not order anything that affected the suburban schools.

- Court ignored that the remedy did NOT require busing and did NOT require the suburban districts to participate or do anything, but only provided both KCMSD and suburban students with “freedom of choice” option to elect to attend (and help integrate) KCMSD schools.
The Inexorable Zero: There were no Black firefighters for the first 86 years of the DMFD, through 1968. On the 100th anniversary of the DSM Fire Department in 1982, there was 1 Black out of 311 firefighters.

Only 4 Blacks had ever served as DSM firefighters; 2 of the 4 left during probationary year due to severe racial harassment.

NAACP brought class action suit in Federal Court in 1982 alleging a pattern and practice of racial discrimination.

Consent Decree entered by Federal Court in 1984 required major changes in recruitment, testing, and hiring and a wide range of affirmative action efforts.
NAACP v. DSM (cont.)

- NAACP lawyers monitored compliance with the Consent Decree for 11 years, until 36 Black firefighters had achieved non-probationary status (out of the 288), greater than 12% of the uniformed force.
- There were no women firefighters for 102 years, until one was hired in 1984 as a result of changes brought about by the NAACP Consent Decree. The Consent Decree reduced the adverse impact the physical agility test had on women candidates and today there are 10 women DMFD firefighters.
- Virtually every public service agency all across US excluded Blacks and women. In 2014 New York City and its Fire Department entered into a consent decree changing its testing and providing for the hiring, with millions in back pay, of Black and Latino applicants who experienced testing discrimination. A second suit alleging the NYFD discrimination was intentional—a pattern and practice—is still to be tried.
HISTORY TO YOU
TRADITION TO US

DRAKE LAW PROF LOVELL
DESEGREGATED THE DSM FIRE DEPT.
Civil Rights Critics of Rehnquist & Roberts Courts

- The U.S. Supreme Court became increasingly conservative throughout the Rehnquist and the current Roberts Court eras.
- The U.S. Supreme Court has continually raised the bar on proof of civil rights claims, diluted protections afforded citizens against unreasonable search and seizures, expanded immunity afforded police for constitutional torts, virtually ended affirmative action, expanded right of corporations to contribute to candidates, etc.
- SCOTUS has struck down a wide array of progressive Federal statutes such as the Violence against Women Act and the pre-clearance formula of the Voting Rights Act. Sometimes Congress has been able to repair the damage, e.g., Civil Rights Act of 1991, Lilly Ledbetter Act, Americans with Disabilities Amendments Act.
- Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Color-Blindness, points to SCOTUS rulings approving pretext stops by police as a lead cause of racial profiling and racial disparities in the nation’s criminal justice system.
State Constitutions’ Individual Rights Protections Often Were Dormant During this Era

- Progressive Justice William Brennan, who served as a Justice on the New Jersey Supreme Court before his appointment to the U.S. Supreme Court, reminded state courts of their independence and encouraged them to independently examine the protections provided in their own state constitutions and not accept lockstep the federal constitutional rulings of an increasingly conservative U.S. Supreme Court as governing their state constitutional law development.

Notable Iowa Supreme Court Civil Rights Decisions: 1954 - 1989

- Acuff v. Schmit (1956) ruled that “a husband and wife have in the marriage relation, equal rights which should receive equal protection of the law,” and therefore women, like men, could bring a claim for loss of consortium due to injury to their spouse.

- Mease v. Fox (1972) held there was an implied warranty of habitability in residential leases. Although not a civil rights or constitutional ruling, Mease demonstrated the Court’s openness to provide protection for individual rights during this era. Mease triggered legislative reform of Iowa landlord-tenant law. Iowa Uniform Residential Landlord-Tenant Act.

- In re Marriage of Kramer (1980) reversed trial judge for improperly considering the race of a mother’s current partner in determining child custody. Fear of community prejudice against a bi-racial relationship cannot control court’s determinations as to the makeup of families.

- Funderman v. Mickelson (1981) abolished the common law tort of alienation of affections, finding its origin lay in the discriminatory era in which wives were viewed as property.
1989 – present: Iowa Supreme Court Revitalizes Independent Analysis under Iowa Constitution
In State v. Cline (2000), the Iowa Supreme Court unanimously held the so-called Good Faith exception to the exclusionary rule created by the U.S. Supreme Court in its 4th Amendment case law diminishes important protections against unreasonable search and seizures guaranteed by Art. I, §8 of the Iowa Constitution. Justice Marsha Ternus reasoned:

“[T]here is no principle of law that requires this court to interpret the Iowa Constitution in line with the United States Constitution, as long as our interpretation does not violate any provision of the federal constitution. **In other words, although this court cannot interpret the Iowa Constitution to provide less protection than that provided by the United States Constitution, the court is free to interpret our constitution as providing greater protection for our citizens’ constitutional rights.** **[O]ur court would abdicate its constitutional role in state government were it to blindly follow federal precedent on an issue of state constitutional law.”

617 N.W.2d at 284-285 (italics in original).
Steady March of Independent Constitutional Interpretation of Search & Seizure Protections

- State v. Fleming (2010), Iowa Supreme Court reversed a conviction, holding that the protection afforded against unreasonable search and seizures by Art. I, §8 of the Iowa Constitution protected a roomer’s interest in his bedroom though the officers had obtained a warrant to search the house.
- State v. Ochoa (2010), Iowa Supreme Court held that a warrantless, suspicionless search by police of a motel room in which a parolee resided violated the search and seizure provision of Art. I, §8 of the Iowa Constitution and the parolee did not orally consent to the search. The Court expressly disagreed with U.S. Supreme Court 4th Amendment precedent.
- Perspective: The Independent Interpretation Model has the advantage of experience and hindsight. The Iowa Court can assess other courts’ and law enforcement experience with a holding of the U.S. Supreme Court in deciding whether to adopt the same rule of law.
State v. Pals (2011), the Iowa Supreme Court held that, while the officer had probable cause to stop the car, the defendant’s consent to the officer’s search of the auto was involuntary under the Iowa Constitution. Justice Appel stated:

“Our approach to independently construing provisions of the Iowa Constitution that are nearly identical to the federal counterpart is well supported in our case law and the law of other jurisdictions. * * * Even where a party has not advanced a different standard for interpreting a state constitutional provision, we may apply the standard more stringently than federal case law.” 805 N.W.2d at 771-772.

Justice Appel noted that “use of minor traffic infractions as a springboard to consent searches has generated charges of abuse and racial profiling.”
Racing Association of Central Iowa v. Fitzgerald (2004). Horse racetrack casinos challenged Iowa statute, which taxed gambling revenues generated on river boat casinos at a 20% rate while the tax rate on gambling revenues at horse track casinos was 36%, as a violation of Equal Protection. The Iowa Supreme Court initially held the nearly double differential tax rate was unconstitutional under the rational basis standard of review of the 14th Amendment Equal Protection Clause.

The U.S. Supreme Court reversed, holding that courts must give very deferential review of economic legislation, including tax statutes.

SCOTUS held there was a sufficiently plausible explanation for the Iowa tax differentiation that it was not arbitrary, and therefore upheld it as constitutional under the Federal Constitution.
On remand, Iowa Supreme Court Justice Ternus wrote: “While the Supreme Court’s judgment on the constitutionality of Iowa’s disparate tax rate under the federal Equal Protection Clause is persuasive, it is not binding on this court as we evaluate this law under the Iowa Constitution.”

Citing Justice Brennan’s articles, the Court recognized its obligation to evaluate independently the validity of the tax under the Iowa Constitution and identified two methodologies for doing so: “Under the first, the state court adopts the federal frame of analysis but applies those constructs independently. Under the second, courts reject the federal constructs and apply their own analytical frameworks.”
The Court utilized the first approach (rational basis review) and concluded, 5 – 2 (with Justices Carter and Cady dissenting), that the classifications made by the tax statute lacked a rational basis in the Iowa constitutional sense. The item taxed, gambling revenues, was identical, and no legitimate purpose justified treating one gambling enterprise differently than another based on where the gambling takes place, other than an arbitrary decision to favor excursion boats.

RACI II underscored the Court’s renewed interest in independent constitutional interpretation in Ochoa in 2000. Commentators would likely characterize RACI II as “rational basis with teeth” review. The Ochoa and RACI II decisions both occurred during the Chief Justice Louis Lavorato era and both were written by Justice Ternus.
Iowa Judicial Branch Building
Iowa Supreme Court, in unanimous opinion written by Justice Mark Cady, held the Iowa marriage statute that restricted marriage to a man and a woman violated the equal protection clause of the Iowa Constitution. The Court held that gay and lesbian people must be allowed full access to the institution of civil marriage.

At the outset of its equality analysis Justice Cady discussed the Iowa Court’s historic leadership in construing equality expansively, beginning with In re Ralph, Clark v. Muscatine Bd., Coger v. North West Union Packet, and Arabella Mansfield.

In most cases the Court will apply a deferential “rational basis” standard of review that “defers to the legislature’s prerogative to make policy decisions by requiring only a plausible policy justification, mere rationality of the facts underlying the decision and again, a merely rational relationship between the classification and the policy justification.”
However, a heightened level of scrutiny is used when reasons exist to suspect ‘prejudice against discrete and insular minorities . . . which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities.” SCOTUS, in U.S. v Carolene Products, fn. 4.

Race, alienage, or national origin, and those affecting fundamental rights are evaluated by strict scrutiny. Intermediate scrutiny is applied to statutes classifying on the basis of gender or illegitimacy, requiring the classification to be “substantially related to the achievement of an important governmental objective.”
The Court concluded the ban on civil marriages between two people of the same sex effectively classified on the basis of sexual orientation, as a gay or lesbian person can only gain the same rights under the statute as a heterosexual person by negating the very trait that defines gay and lesbian people as a class—their sexual orientation.

In determining what scrutiny should be given to classification based on sexual orientation, the Court considered 4 factors: (1) the history of invidious discrimination against the class; (2) whether the characteristics that distinguish the class indicate a typical class member’s ability to contribute to society; (3) whether the distinguishing characteristic is immutable or beyond the class members’ control; and (4) the political power of the subject class.
After weighing these factors the Court concluded that statutes classifying based on sexual orientation must be examined under a heightened level of scrutiny under the Iowa Constitution. The Court concluded the same-sex marriage statute could not withstand even intermediate scrutiny, and therefore the Court need not decide whether a higher level of scrutiny was more appropriate. It reaching its conclusion it considered: (1) whether the statute’s objectives were important, and (2) whether the statute’s classification is “substantially related to the achievement of those objectives.”

The key question was “whether excluding gay and lesbian people from civil marriage is substantially related to any important governmental objective.”
If a showing that marriage between a man and a woman is traditional satisfied equal protection, past successful challenges of invidious racial and gender classification would have failed. Considerable evidence supports finding that the interests of children are served equally by same-sex and opposite-sex parents.

Even assuming the statute advanced a legitimate government interest, the classification fails to show a substantial relationship to the purpose. It is both underinclusive and overinclusive.

The Court assured that religious denominations can still define marriage as a union between a man and a woman.

- Pippen v. State of Iowa. Black plaintiffs class action alleging systemic racial discrimination in State Government hiring and promotion practices, on theory that the State failed to monitor its hiring/promotion decisions for implicit bias despite evidence there was a significant disparate impact at the “getting to the interview” stage that favored qualified white candidates over qualified Black candidates.

- The Iowa Supreme Court upheld the trial court’s dismissal of the suit on the ground plaintiffs’ proof failed to identify the specific component of the hiring process that caused the adverse impact, as required by Federal civil rights statute Title VII. The Court Majority expressly noted that the plaintiffs had assumed the ICRA and the Federal Title VII would be construed identically, and failed to “explicitly” contend the ICRA did not impose the “identify the specific component” requirement on plaintiffs or that the disparate impact theory under the ICRA should be construed more progressively than SCOTUS has construed Federal Title VII.

- The Court quoted the ICRA provision that expressly stated the statute should be construed liberally to fulfill its purposes. Although dictum, it would appear the Court is inclined to apply independent civil rights statute analysis in a similar fashion to its independent constitutional analysis.
Serious Racial Disparities Continue in Criminal Justice,

- African Americans constitute 2% of Iowa’s population but nearly 26% of prison inmates; this incarceration rate is second only to Wisconsin and 50% higher than national average; Latinos make up 2.8% of the population but 4.2% of inmates
- State Dept. of Human Rights Criminal Justice Planning Division has provided helpful statistics identifying disparities at each stage of the juvenile justice system
- Chief Justice Cady’s State of the Judiciary address, Jan. 20, 2015, acknowledged the serious racial disparities in the Iowa criminal justice system. He observed that while the problems may be complex, we must find solutions. He noted a pilot project reform in the juvenile justice system looked promising and that the Court was working with and open to suggestions from the NAACP that could improve the justice system and reduce or eliminate racial disparities.
Voting Rights:
Disenfranchisement of Ex-Offenders

• Iowa has one of the 5 most restrictive disenfranchisement laws for felons and ex-felons. The Sentencing Project.

• On July 4, 2005, Governor Tom Vilsack issued an executive order restoring the right to vote and hold public office to offenders who have completed their sentences. Governor Chet Culver continued this automatic restoration policy. In January 2011 Governor Terry Branstad rescinded these executive orders and requires full payment of court costs, fees, and restitution before an ex-offender can be considered for restoration of voting rights.

• Bisignano case (2014). Iowa Supreme Court held that the “infamous crime” disenfranchisement provision was not synonymous with all felonies, and that a conviction for OWI did not disqualify a candidate from running for public office.
• Concerns that an agency can be “captured” by the industry it regulates surfaced with the ICRC.

• Iowa-Nebraska and Des Moines NAACP met with the ICRC in February 2012 to present its research of public documents over the past 15 years. The NAACP expressed concerns about the ICRC’s very low 1.5% probable cause rate in non-housing cases (primarily employment) when compared to the neighboring states of Nebraska (6.4%), Minnesota (8.2%), and Illinois (15.7%). No explanation for Iowa’s miniscule probable cause rate.


• Significant reforms and revitalized staffing at the ICRC has resulted in a credible probable cause rate and the elimination of the longstanding back log in cases to be investigated.
Whether in China or the UK or elsewhere, I am very proud to proclaim the tremendous progress the U.S. has made in achieving equality and justice.

Yet I wonder, or as John Lennon sings: IMAGINE:

What a different country we would have been, what a different country would be today, had the U.S. Supreme Court in 1896 followed the Iowa Supreme Court’s embrace of racial equality in Clark v. Muscatine Schools!

O, if only the U.S. Supreme Court had had the vision and courage to follow the Bright Radical Star of Equality!