

WHAT SO ★ PROUDLY ★ WE HAIL

The American Soul in Story, Speech, and Song

The Civil Rights Cases

FREDERICK DOUGLASS

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In a major setback for racial equality, the US Supreme Court in the Civil Rights Cases (1883) declared unconstitutional the Civil Rights Act of 1875, which had guaranteed—to all people under the jurisdiction of the United States, regardless of their race, color, or previous condition of servitude—equal access to and enjoyment of all public accommodations, facilities, and services. Declaring that Congress had no authority under the Fourteenth Amendment to outlaw discrimination by private individuals or groups (rather than by state and local governments), the Court legitimated the subsequent institution of Jim Crow legislation and segregation of public facilities in the South that lasted until the Civil Rights Act of 1964 declared such discrimination unlawful.

On October 22, 1863, at a mass rally at Lincoln Hall in Washington DC protesting the court's decision, the great orator and abolitionist leader Frederick Douglass (1818–95) made an eloquent speech (excerpted here) against the decision. What is the crux of Douglass' argument? Appealing to the egalitarian intention and spirit of the Fourteenth Amendment, Douglass seems to imply that America is in contradiction with itself when it outlaws racial discrimination by state governments but sanctions it by their private citizens. Is he correct? What is the difference between civil equality and social equality? Does the first make sense without the second? Which sort of equality is required by the American Creed, "All men are created equal"? Are there any limits on what government may do to compel nondiscrimination by private individuals?

"You take my house when you do take the prop
That doth sustain my house; you take my life,
When you do take the means whereby I live."¹

Friends and Fellow-Citizens . . .

We have been, as a class, grievously wounded, wounded in the house of our friends, and this wound is too deep and too painful for ordinary measured speech.

¹ From William Shakespeare's play *The Merchant of Venice*, Act 4, Scene 1. Douglass quotes Shylock's response when Antonio recommends that the state confiscate his property.

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“When a deed is done for Freedom,
Through the broad earth’s aching breast
Runs a thrill of joy prophetic,
Trembling on from east to west.”²

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But when a deed is done from slavery, caste and oppression, and a blow is struck at human progress, whether so intended or not, the heart of humanity sickens in sorrow and writhes in pain. It makes us feel as if some one were stamping upon the graves of our mothers, or desecrating our sacred temples. Only base men and oppressors can rejoice in a triumph of injustice over the weak and defenceless, for weakness ought itself to protect from assaults of pride, prejudice and power.

The cause which has brought us here to-night is neither common nor trivial. Few events in our national history have surpassed it in magnitude, importance and significance. It has swept over the land like a moral cyclone, leaving moral desolation in its track. . . .

The Supreme Court of the United States, in the exercise of its high and vast constitutional power, has suddenly and unexpectedly decided that the law intended to secure to colored people the civil rights guaranteed to them by the following provision of the Constitution of the United States, is unconstitutional and void. Here it is: —

“No State,” says the Fourteenth Amendment, “shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; or deny any person within its jurisdiction the equal protection of the laws.”

Now, when a bill has been discussed for weeks and months, and even years, in the press and on the platform, in Congress and out of Congress; when it has been calmly debated by the clearest heads, and the most skillful and learned lawyers in the land; when every argument against it has been over and over again carefully considered and fairly answered; when its constitutionality has been especially discussed, pro and con; when it has passed the United States House of Representatives and has been solemnly enacted by

² From “The Present Crisis” (1844) by the American “Fireside” poet James Russell Lowell (1819–91). Lowell’s poem addresses the national crisis over slavery leading up to the Civil War and later provided inspiration to civil rights leaders. The paper of the NAACP, *The Crisis*, is named for the poem. To read it in full, visit www.bartleby.com/42/805.html.

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the United States Senate (perhaps the most imposing legislative body in the world); when such a bill has been submitted to the Cabinet of the Nation, composed of the ablest men in the land; when it has passed under the scrutinizing eye of the Attorney-General of the United States; when the Executive of the Nation has given to it his name and formal approval; when it has taken its place upon the statute-book, and has remained there for nearly a decade, and the country has largely assented to it, you will agree with me that the reasons for declaring such a law unconstitutional and void should be strong, irresistible and absolutely conclusive.

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Inasmuch as the law in question is a law in favor of liberty and justice, it ought to have had the benefit of any doubt which could arise as to its strict constitutionality. This, I believe, will be the view taken of it, not only by laymen like myself, but by eminent lawyers as well.

All men who have given any thought to the machinery, the structure, and practical operation of our Government must have recognized the importance of absolute harmony between its various departments and their respective powers and duties. They must have seen clearly the mischievous tendency and danger to the body politic of any antagonisms between its various branches. To feel the force of this thought, we have only to remember the administration of President Johnson, and the conflict which then took place between the National Executive and the National Congress, when the will of the people was again and again met by the Executive veto, and when the country seemed upon the verge of another revolution. No patriot, however bold, can wish for his country a repetition of those gloomy days.

Now let me say here, before I go on a step further in this discussion, if any man has come here to-night with his breast heaving with passion, his heart flooded with acrimony, wishing and expecting to hear violent denunciation of the Supreme Court, on account of this decision, he has mistaken the object of this meeting, and the character of the men by whom it is called.

We neither come to bury Caesar nor to praise him. The Supreme Court is the autocratic point in our government. No monarch in Europe has a power more absolute over the laws, lives, and liberties of his people, than that Court has over our laws, lives, and liberties. Its Judges live, and ought to live, an eagle's flight beyond the reach of fear or favor, praise or blame, profit or loss. No vulgar prejudice should touch the members of that Court, anywhere. Their decisions should come down to us like the calm, clear light

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of infinite justice. We should be able to think of them and to speak of them with profoundest respect for their wisdom and deepest reverence for their virtue; for what His Holiness the Pope is to the Roman Catholic Church, the Supreme Court is to the American State. Its members are men, to be sure, and may not claim infallibility, like the Pope, but they are the Supreme law-giving power of the Nation, and their decisions are law until changed by that court.

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What will be said here to-night will be spoken, I trust, more in sorrow than in anger; more in a tone of regret than of bitterness and reproach, and more to promote sound views than to find mad motives for unsound views.

We cannot, however, overlook the fact that though not so intended, this decision has inflicted a heavy calamity upon seven millions of the people of this country, and left them naked and defenceless against the action of a malignant, vulgar, and pitiless prejudice from which the Constitution plainly intended to shield them.

It presents the United States before the world as a Nation utterly destitute of power to protect the rights of its own citizens upon its own soil.

It can claim service and allegiance, loyalty and life from them, but it cannot protect them against the most palpable violation of the rights of human nature; rights to secure which governments are established. It can tax their bread and tax their blood, but it has no protecting power for their persons. Its National power extends only to the District of Columbia and the Territories—where the people have no votes, and to where the land has no people. All else is subject to the States. In the name of common sense, I ask, what right have we to call ourselves a Nation, in view of this decision and this utter destitution of power?

In humiliating the colored people of this country, this decision has humbled the Nation. It gives to the railroad conductor in South Carolina or Mississippi more power than it gives to the National Government. He may order the wife of the Chief Justice of the United States into a smoking-car full of hirsute men, and compel her to go and to listen to the coarse jests of a vulgar crowd. It gives to hotel-keepers who may, from a prejudice born of the Rebellion, wish to turn her out at midnight into the storm and darkness, power to compel her to go. In such a case, according to this decision of the Supreme Court, the National Government has no right to interfere. She must take her claim for protection and redress, not to the Nation, but to the State; and when the State, as

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I understand it, declares there is upon its statute-book no law for her protection, and that the State has made no law against her, the function and power of the National Government is exhausted and she is utterly without redress.

Bad, therefore, as our case is under this decision, the evil principle affirmed by the court is not wholly confined to or spent upon persons of color. The wife of Chief Justice Waite—I speak it respectfully—is protected to-day, not by the law, but solely by the accident of her color. So far as the law of the land is concerned, she is in the same condition as that of the humblest colored woman in the Republic. The difference between colored and white here is that the one, by reason of color, does not need protection. It is nevertheless true that manhood is insulted in both cases. “No man can put a chain about the ankle of his fellow-man, without at last finding the other end of it fastened about his own neck.”

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The lesson of all the ages on this point is, that a wrong done to one man is a wrong done to all men. It may not be felt at the moment, and the evil day may be long delayed, but so sure as there is a moral government of the universe, so sure as there is a God of this universe, so sure will the harvest of evil come. . . .

O for a Supreme Court of the United States which shall be as true to the claims of humanity as the Supreme Court formerly was to the demands of slavery! When that day comes, as come it will, a Civil Rights Bill will not be declared unconstitutional and void, in utter and flagrant disregard of the objects and intentions of the National legislature by which it was enacted and of the rights plainly secured by the Constitution.

This decision of the Supreme Court admits that the Fourteenth Amendment is a prohibition on the States. It admits that a State shall not abridge the privileges or immunities of citizens of the United States, but commits the seeming absurdity of allowing the people of a State to do what it prohibits the State itself from doing.

It used to be thought that the whole was more than a part; that the greater included the less, and that what was unconstitutional for a State to do was equally unconstitutional for an individual member of a State to do. What is a State, in the absence of the people who compose it? Land, air and water. That is all. As individuals, the people of the State of South Carolina may stamp out the rights of the Negro wherever they please, so long as they do not do so as a State, and this absurd conclusion is to be called a law. All the parts can violate the Constitution, but the whole cannot. It is not the act itself, according to this

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decision, that is unconstitutional. The unconstitutionality of the case depends wholly upon the party committing the act. If the State commits it, the act is wrong; if the citizen of the State commits it, the act is right.

O consistency, thou art indeed a jewel! What does it matter to a colored citizen that a State may not insult and outrage him, if a citizen of a State may? The effect upon him is the same, and it was just this effect that the framers of the Fourteenth Amendment plainly intended by that article to prevent.

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It was the act, not the instrument; it was the murder, not the pistol or dagger, which was prohibited. It meant to protect the newly enfranchised citizen from injustice and wrong, not merely from a State, but from the individual members of a State. It meant to give him the protection to which his citizenship, his loyalty, his allegiance, and his services entitled him; and this meaning and this purpose and this intention are now declared by the Supreme Court of the United States to be unconstitutional and void.

I say again, fellow-citizens, O for a Supreme Court which shall be as true, as vigilant, as active and exacting in maintaining laws enacted for the protection of human rights, as in other days was that Court for the destruction of human rights!

It is said that this decision will make no difference in the treatment of colored people; that the Civil Rights Bill was a dead letter and could not be enforced. There is some truth in all this, but it is not the whole truth. That bill, like all advance legislation, was a banner on the outer wall of American liberty; a noble moral standard uplifted for the education of the American people. There are tongues in trees, sermons in stones, and books in the running brooks. This law, though dead, did speak. It expressed the sentiment of justice and fair play common to every honest heart. Its voice was against popular prejudice and meanness. It appealed to all the noble and patriotic instincts of the American people. It told the American people that they were all equal before the law; that they belonged to a common country and were equal citizens. The Supreme Court has hauled down this broad and glorious flag of liberty in open day and before all the people, and has thereby given joy to the heart of every man in the land who wishes to deny to others the rights he claims for himself. It is a concession to race pride, selfishness and meanness, and will be received with joy by every upholder of caste in the land, and for this I deplore and denounce that decision.

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It is a frequent and favorite device of an indefensible cause to misstate and pervert the views of those who advocate a good cause, and I have never seen this device more generally resorted to than in the case of the late decision on the Civil Rights Bill. When we dissent from the opinion of the Supreme Court and give the reasons why we think that opinion unsound, we are straightway charged in the papers with denouncing the Court itself, and thus put in the attitude of bad citizens. Now, I utterly deny that there has ever been any denunciation of the Supreme Court on this platform, and I defy any man to point out one sentence or one syllable of any speech of mine in denunciation of that Court.

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Another illustration of this tendency to put opponents in a false position, is seen in the persistent effort to stigmatize the Civil Rights Bill as a Social Rights Bill. Now, where under the whole heavens, outside of the United States, could any such perversion of truth have any chance of success? No man in Europe would ever dream that because he has a right to ride on a railway, or stop at a hotel, he therefore has the right to enter into social relations with anybody. No one has a right to speak to another without that other's permission. Social equality and civil equality rest upon an entirely different basis, and well enough the American people know it; yet in order to inflame a popular prejudice, respectable papers like the *New York Times* and the *Chicago Tribune* persist in describing the Civil Rights Bill as a Social Rights Bill.

When a colored man is in the same room or in the same carriage with white people, as a servant, there is no talk of social equality, but if he is there as a man and a gentleman, he is an offence. What makes the difference? It is not color, for his color is unchanged. The whole essence of the thing is a studied purpose to degrade and stamp out the liberties of a race. It is the old spirit of slavery and nothing else. To say that because a man rides in the same car with another, he is therefore socially equal, is one of the wildest absurdities.

When I was in England, some years ago, I rode upon highways, byways, steamboats, stage-coaches, omnibuses. I was in the House of Commons, in the House of Lords, in the British Museum, in the Coliseum, in the National Gallery, everywhere; sleeping in rooms where lords and dukes had slept; sitting at tables where lords and dukes were sitting; but I never thought that those circumstances made me socially the equal of lords and dukes. I hardly think that some of our Democratic friends would be regarded among those lords as their equals. If riding in the same car makes one equal, I think that the little poodle I saw sitting in the lap of a lady was made equal by riding in the same car with her. Equality,

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social equality, is a matter between individuals. It is a reciprocal understanding. I do not think that when I ride with an educated, polished rascal he is thereby made my equal, or that when I ride with a numbskull that it makes him my equal. Social equality does not necessarily follow from civil equality, and yet for the purpose of a hell-black and damning prejudice, our papers still insist that the Civil Rights Bill is a bill to establish social equality.

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If it is a bill for social equality, so is the Declaration of Independence, which declares that all men have equal rights; so is the Sermon on the Mount, so is the Golden Rule that commands us to do to others as we would that others should do to us; so is the teaching of the Apostle that of one blood God has made all nations to dwell on the face of the earth; so is the Constitution of the United States, and so are the laws and customs of every civilized country in the world; for nowhere, outside of the United States, is any man denied civil rights on account of his color.