

*Beat the  
Drum for  
Justice*



A HISTORICAL NOVEL BY  
CHRISTOPHER C. CROSS

*How the history of  
racial injustice and 19<sup>th</sup>  
Century Supreme Court  
cases shaped racial  
issues in the 21<sup>st</sup>  
Century*

1600			1619																
			First African Slave to America																
1700														1776					
														Dec Of Ind					
1800				1820					1857	61/65	65/67	70/75	1876					1897	
				Begin Abolition Mvmt					Dred Scott	Civil War	13th 14th 15th Amend/ Reconst		End Recon					Plessy v. Ferguson	
1900								1954	60/65	64/65	70/75	1978							
								Brown v. Bd		Civil Rts Act/ Voting Rts Act		Bakke							
2000	2007	2013		2021/23															
	Seattle & Lou'ville Sch.	Shelby/BLM		Dobbs/Students for Fair Admissions															

Timeline:



## Pre-Reconstruction:

- Over two hundred and fifty years of slavery, Black Codes, and few, if any, civil rights for people of African descent
- *Dred Scott*—People of African descent not citizens and “have no rights the white man must respect”
- Confiscation Acts
- Emancipation Proclamation

## Reconstruction (1865-1876):

- Four million enslaved people freed, most without education, money, tools, or a place to live
- Freedmen's Bureau (*Ex parte Milligan*, 71 U.S. 2 (1866))
- Sharecropping and paid labor
- Thirteenth Amendment—ratified December 1865 (failed on first vote; passed by two votes after Lincoln's re-election)
- Fourteenth Amendment—ratified July 1866
- Fifteenth Amendment—ratified February 1870
- Black voting/elected persons
- Army attempts to keep Ku Klux Klan and other white supremacy groups formed after Civil War in check

## Post-Reconstruction:

- Army pulled out of South
- Northern apathy
- Rise of Ku Klux Klan/Voter intimidation
- Sharecropping
- Convict leasing
- Reframing Civil War as “The Lost Cause” and first wave of Confederate statues and monuments
- Supreme Court cases



## Supreme Court Cases Undercutting Fourteenth Amendment:

*Slaughter-House Cases*, 83 U.S. 36 (1873)

*Bradwell v. Illinois*, 83 U.S. 130 (1873)

*Minor v. Happersett*, 88 U.S. 162 (1875)

*United States v. Cruikshank*, 92 U.S. 542 (1876)

*United States v. Harris*, 106 U.S. 629 (1883)

*Civil Rights Cases*, 109 U.S. 3 (1883)

Supreme Court Cases re: Voting; Fourteenth and Fifteenth Amendments:

*United States v. Reese*, 92 U.S. 214 (1876)

*Strauder v. West Virginia*, 100 U.S. 303 (1880)

*Ex parte Virginia*, 100 U.S. 339 (1880)

*Virginia v. Rives*, 100 U.S. 313 (1880)

*Bush v. Kentucky*, 107 U.S. 110 (1883)

*Gibson v. Mississippi*, 162 U.S. 565 (1896)

*Murray v. Louisiana*, 163 U.S. 101 (1896)

*Williams v. Mississippi*, 170 U.S. 213 (1898)

*Giles v. Harris*, 189 U.S. 475 (1903)

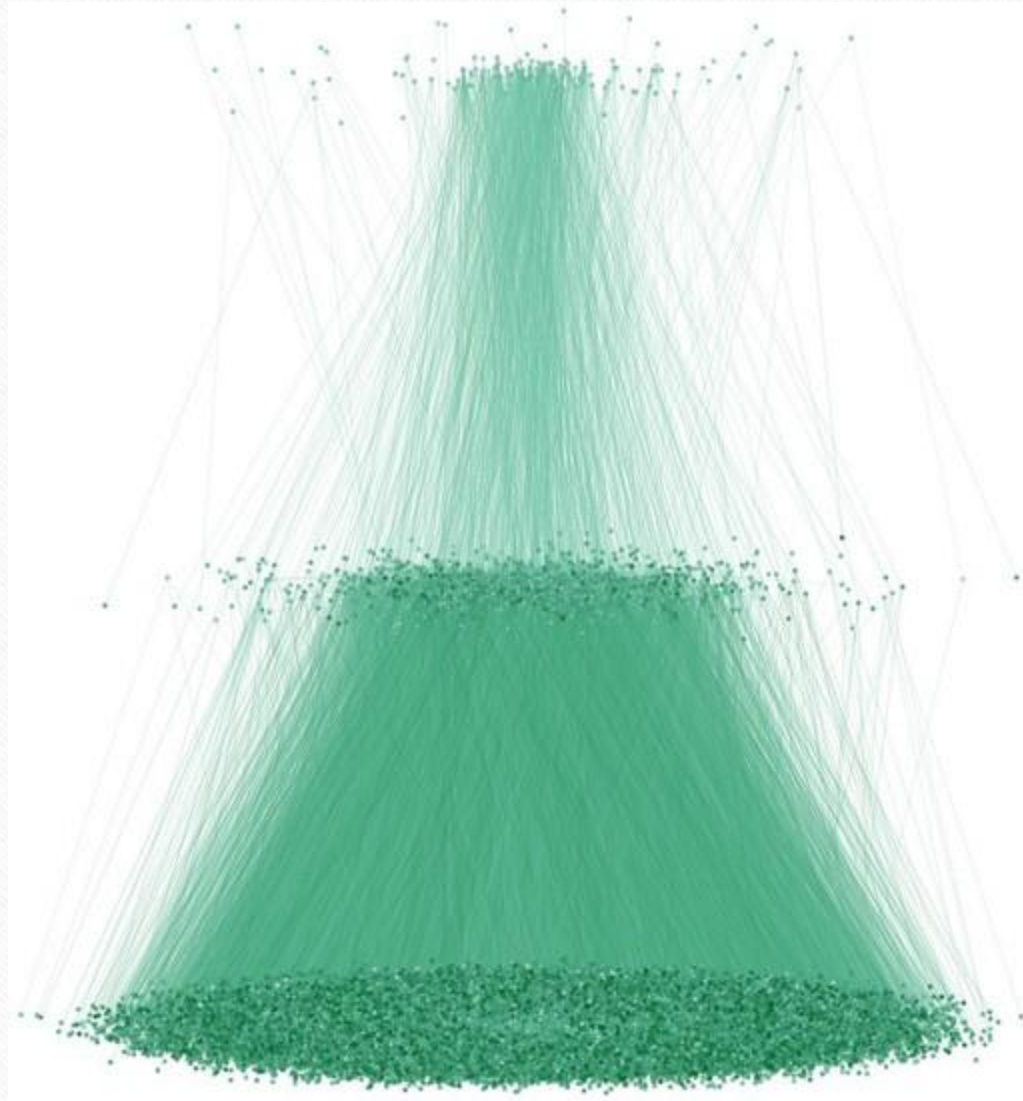
*Plessy v. Ferguson*, 163 U.S. 537 (1896):

The Court gave its imprimatur on segregation and Jim Crow laws which lasted almost sixty years until *Brown v. Board of Education*, 347 U.S. 483 (1954)



Why does this history matter?

How did that history shape where we are today?



Slide by Justin Simard



# Slave Law Embedded in American Law

<b>Subject Matter</b>		<b>Legal Category</b>
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Sale of enslaved person



Law of principal and agent

Seizure of enslaved people



Law of debt Conversion Law

Borrowed enslaved people



Law of property



Slide by Justin Simard



## Recent Supreme Court Cases:

- *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978)
- *Parents Involved in Community Schools v. Seattle School District No.1*, 551 U.S. 701 (2007)
- *Shelby County v. Holder*, 570 U.S. 529 (2013)
- *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022)
- *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College / University of North Carolina*, 600 U.S. 181 (2023)

*Alexander v. South Carolina State Conference of the NAACP*,  
May 23, 2024:

[A] party challenging a [gerrymandered] map's constitutionality must disentangle race and politics to show that race was the legislature's 'predominant' motivating factor [, not partisanship]...[T]he Court starts with a presumption that the legislature acted in good faith...[The Challenger] must show that the State 'enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities.'"

Justice Samuel Alito



Kansas recently held that the right to vote is not a fundamental or unenumerated natural right and restrictions on voting were valid.

*League of Women Voters of Kansas v. Schwab*, No. 124,378,  
May 31, 2024

Should we be concerned?

Do these cases sound like the 19<sup>th</sup> Century cases discussed earlier?



## *Plessy* and *Brown*: What would happen today?

- *Plessy* is arguably a correct originalist interpretation of the Fourteenth Amendment
- *Brown* is an activist opinion
- Original *Brown* Court deeply divided—“head counts” were 5-4, either way
- William Rehnquist, then Justice Robert Jackson’s law clerk, wrote an opinion memo that stated "I realize that this is an unpopular and unhumanitarian position for which I have been excoriated by 'liberal' colleagues, but I think *Plessy v. Ferguson* was right and should be re-affirmed."
- Chief Judge Vinson died, and Earl Warren was appointed as Chief Judge resulting in a re-hearing and 9-0 vote reversing *Plessy*. The study that was cited and upon which the opinion centered probably doesn't meet *Daubert* standards.

➤ Justice Thomas criticized the *Brown* opinion in *Alexander v. South Carolina State Conference of the NAACP*, May 23, 2024

“[T]he Court took a boundless view of equitable remedies... [s]uch extravagant uses of judicial power are at odds with the history and tradition of the equity power and the Framers’ design... Federal courts have the power to grant only the equitable relief ‘traditionally accorded by courts of equity,’ not the flexible power to invent whatever new remedies may seem useful at the time.”



The Role of a Judge or Lawyer: A Higher Calling?

Education: You must understand the past to interpret the present

Leadership: Who else if not lawyers?

What role are you going to play in protecting everyone's civil rights?

What is your calling?

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