

# The Civil Rights Cases 1883

United States Supreme Court

## In Sixty Seconds

**Before.** The Civil Rights Act of 1875, signed by President Ulysses S. Grant on March 1, 1875, prohibited racial discrimination in public accommodations. Hotels, theaters, railroads, restaurants, and places of public amusement were required to serve Black and white citizens on equal terms. It was the most comprehensive civil rights legislation in American history until 1964. Black citizens began suing to enforce it almost immediately.

**What happened.** Five enforcement cases, arising in Kansas, California, Missouri, New York, and Tennessee, reached the Supreme Court together. On October 15, 1883, the Court ruled 8-1 that the Fourteenth Amendment restrained only state action, not private discrimination. Congress, the majority held, therefore lacked the power to ban private discrimination under the Fourteenth Amendment. The Act was struck down. Every enforcement suit in the federal pipeline collapsed on the same day.

**Who did it.** Justice Joseph P. Bradley wrote the majority opinion. It was the Court's second major retreat from Reconstruction-era civil rights, after the Slaughterhouse Cases (1873) and alongside *United States v. Cruikshank* (1876). The ruling was cheered in the Southern press as the end of federal interference. Justice John Marshall Harlan filed a lone dissent.

**After.** The decision opened the legal road to Jim Crow. *Plessy v. Ferguson* followed thirteen years later, adopting the separate-but-equal doctrine the 1883 ruling had made possible. The Act was never formally overturned. It was eventually circumvented. The Civil Rights Act of 1964 grounded its public-accommodations provisions in the Commerce Clause, not the Fourteenth Amendment, precisely to bypass the 1883 precedent.

## The Named

### Justice Joseph P. Bradley

Author of the 8-1 majority opinion. A New Jersey Republican appointed to the Court by President Grant in 1870. Bradley had also cast the deciding vote for Rutherford B. Hayes on the Electoral Commission of 1877 that ended Reconstruction. His Civil Rights Cases opinion became the controlling precedent on the Fourteenth Amendment's reach into private conduct for the next eighty years.

### Robert Fox

Black plaintiff denied a seat at the Grand Opera House. His suit was one of the five consolidated cases. He lost on October 15, 1883, when the Act he had sued under was struck down.

### Justice John Marshall Harlan

age 50. Lone dissenter. Born in 1833 to a slaveholding Kentucky family and a former slaveholder himself. His thirty-six-page dissent predicted the ruling would come to be recognized as equivalent in harm to *Dred Scott*. His prediction was correct.

### Sallie Robinson

Black plaintiff denied first-class passage on the Memphis and Charleston Railroad with her husband Richard. *Robinson and Wife v. The Memphis and Charleston Railroad Company* was the Tennessee case in the consolidated group. Her name is the one that still appears in the caption of the ruling.

## For Discussion

1. The 1875 Civil Rights Act lasted eight years before the Supreme Court struck it down. Eighty-one years passed before Congress tried again. What makes a major civil-rights statute successful or vulnerable at its moment of passage, and what did the drafters of the 1964 Act appear to learn from the 1875 failure?
2. Justice Harlan was a former Kentucky slaveholder who had reversed his position on Reconstruction. His dissent became canon. What explains the trajectory of someone who changes a position as dramatically as Harlan did, and what limits the value of a later conversion given earlier commitments?
3. The 1964 Civil Rights Act grounded Title II in the Commerce Clause, not in the Fourteenth Amendment, specifically to bypass the 1883 precedent. When Congress legislates around a Supreme Court ruling instead of challenging it head-on, what is gained and what is conceded?
4. The majority opinion ran twenty-five pages; Harlan's dissent ran thirty-six. What is the significance of a dissenting opinion being longer than the majority opinion it opposes, and when does that ratio matter historically?
5. The private-discrimination doctrine that the Civil Rights Cases protected still shapes what Congress can and cannot reach in American housing, employment, and finance. Where in contemporary civil-rights law does the 1883 state-action doctrine continue to set the boundary of federal power?

## Primary Sources

1. The Civil Rights Cases, 109 U.S. 3 (1883). Full opinion and Harlan dissent.
2. Civil Rights Act of 1875, 18 Stat. 335 (March 1, 1875). Statutes at Large, vol. 18, p. 335.
3. Klarman, Michael J. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. Oxford University Press, 2004.
4. Foner, Eric. *Reconstruction: America's Unfinished Revolution, 1863-1877*. Harper & Row, 1988.



5. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964).

