Wrestling With Race: Part I

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Slavery

- A slave is a person who is the property of another and is bound to absolute obedience, a worker completely without freedom and rights.

- Slavery has existed since before written history, and in such highly developed civilizations as Greece and Rome.

- All thirteen colonies gave legal recognition to the institution of slavery.

- Today, every country in the world explicitly outlaws slavery, but it continues to exist in various forms and locations.
Contradictions Between the Declaration of Independence and the Constitution

Declaration: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”

Constitution: never uses the words “slave” or “slavery” but clearly refers to these concepts in several places: Article I, Section 2 (the “3/5 compromise”); Article I, Section 9 (protecting the slave trade from Federal abolition until at least 1808); and Article IV, Section 2 (requiring return of fugitive slaves to owners).
Inflammatory language in the *Dred Scott Case* (1857).

Major post-Civil War constitutional amendments: XIII abolished slavery (1865); XV prohibited states from denying voting rights on the basis of race (1870).

Amendment XIV: “No state shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws” (1868).

*Civil Rights Cases* (1883); *Plessy v. Ferguson* (1896).

Historic dissents by Justices John Marshall Harlan and Benjamin Curtis.
John Marshall Harlan (1833-1911) (1877-1911)
Justice Harlan—Civil Rights Cases (1883)

- Criticizes “narrow and artificial” ruling that misreads “the substance and spirit” of post-Civil War amendments.

- Says “civil freedom” for ex-slaves is the objective and that Congress has power to eradicate “badges and incidents” of slavery, even if law impacts individuals (as opposed to States) in their private operations.

- “It is, I submit, scarcely just to say that the colored race has been the special favorite of the laws.”

- Not until a 1964 decision of the Court, based on power of the Congress under the Commerce Clause, was a national public accommodations law approved.
“The Thirteenth Amendment . . . prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude.”

The objective of the Louisiana law was, “under the guise of giving equal accommodation to whites and blacks, to compel the latter to keep to themselves . . .”

“The white race deems itself to be the dominant race in this country . . . But in view of the Constitution, in the eye of the law, there is . . . no superior dominant ruling class of citizens . . . no caste. . . Our Constitution is color-blind . . . The humblest is the peer of the most powerful.”
Dissenting Insights of Justice Curtis

- Demonstrates, contrary to majority opinion, that some Negroes were voting citizens of 5 of the 13 original states; thus, not true that “the Constitution was made exclusively by and for the white race.”

- Makes an interesting argument from principles of international law that Dred Scott had actually attained free status.

- “When a strict interpretation of the Constitution. . .is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we no longer have a Constitution; we are under the government of. . .the individual political opinions of the members of this court.”