SECOND INSTALLMENT

A PRIMER: New Afrikan History of Struggle and Perspective

"America is the greatest progenitor and harbinger of violence in the world."
—Dr. Martin L. King, Jr.

INTRODUCTION

In the first installment, the Confiscation Act, Emancipation Proclamation, Field Order #15, the 13th, 14th and 15th Amendments of the U.S. Constitution and the Hayes/Tilden Compromise were discussed to set the foundation to understanding Black folks' socio-political and economic reality today. It showed how Black self-determination was ultimately squashed, and concerted efforts were made to remake conditions of slavery and servitude; also, to restore the archaic philosophy of superior/inferior dichotomy between black and white races. The Charlottesville racist confrontation of August 11-12, 2017, is not a one-off; rather it is part of what Dr. King informs as the character and nature of America in his speech made on March 14, 1968, "The Other America". Racism at its essence is violent. White supremacists are the protagonists of this racist violence.

In this second installment, we will examine further the legal harbinger of America's domestic violence against Afrikans in America. It is anticipated this installment will provide readers a dynamic comprehensive understanding that the law does not always work to benefit the oppressed. In fact, the law has been an instrument of violence, substantiating a system of institutional racism, as today's mass incarceration attests.

Second Installment
"What's law got to do with it, got to do with it?"

DRED SCOTT V. SANFORD

1857. Before the Confiscation Act, indeed five years before that seminal act by Lincoln, United States Supreme Court Chief Justice Taney made a ruling that in effect further edified the slave system of racist violence. The case of *Dred Scott v. Sanford* held that Afrikans in America who were slaves, no matter their place of residence, in free states or not, are forever slaves. Dred Scott had traveled with his slave master, an army surgeon, from Missouri, a slave state, to Illinois, a non-slave state; he then traveled to the upper levels of the Louisiana Purchase, where slavery since 1820 was forbidden as a result of the Missouri Compromise. He was then taken back to Missouri, where years later he filed a suit to win his freedom, contending he had become free through residence in free states. The suit was defeated in the lower courts and made its way to the U.S. Supreme Court.

Judge Taney decided the case and determined that Congress had no power to make Dred Scott a free man because he had for a time resided in free states. Having been returned to Missouri, the laws of the slave state trumped. However, Judge Taney further ruled that Dred Scott could not be a citizen of the United States within the meaning of the Constitution. Therefore, since he was not a citizen, he could not sue for his freedom in a federal court.

Judge Taney held: "On the contrary they [Afrikans] were at that time considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and

where emancipated or not, yet remain subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them." Needless to say, this language sounds a lot like what is held about prison slaves as written in *Ruffin v. Commonwealth*. Hence, Judge Taney wrote that the U.S. Constitution established that slaves or those who had been Afrikan slaves were not citizens of those States, and could not be made whole by the Constitution. In essence, Judge Taney was holding State rights trumped the Constitution and federal law. Judge Taney, in support of this racist thinking, informed: "They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit …". What is exceptionally important: beyond the mere inhumane beliefs of Judge Taney, his ruling sought to embody the U.S. Constitution as the sacred document to maintain Afrikan slavery as a property right of slave owners.

Judge Taney further states: "And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen; no tribunal acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against encroachments of the Government …".

The Court's argument concluded by holding that Congress had no Constitutional authority to exempt slaves as property from the owners simply because that property was brought to a free state, even if the intent were to become a permanent resident in the free state. In essence, once a slave always a slave, since Afrikans during that period were not considered human, a citizen, just mere property. Obviously, this is the mindset of white supremacists, Ku Klux Klan, neo-Nazis and the racist reactionary folks that CEO Trump claims were some good people in Charlottesville.

PLESSY V. FERGUSON

1896. As offered in the first installment, after the civil war white supremacists sought to restore the social embodiment of the character of slavery with the enactment of the Black Codes. Consequently, after the civil war there had been a great migration of Afrikans out of the South. The Black Codes continued to deny full citizenship to Afrikans, despite the 14th Amendment and 15th Amendment. In *Plessy v. Ferguson*, the U.S. Supreme Court ruled that an Act of legislation in Louisiana required all railroads to provide "equal but separate" accommodations for members of the Black and White races, forbidding intermingling. Plessy challenged the Act, arguing he was by virtue of the 14th Amendment a citizen of the U.S., and a resident of Louisiana. In his ruling, Judge Brown sought to make the distinction between races, as Judge Taney made a distinction between property rights of owners, holding that the Act did not violate either the 13th or 14th Amendment. Rather, he asserted, the Act is "…A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude …".

In this regard, it should be understood Plessy's arguments before the Court was he is of "… mixed descent in the proportion of seven-eighths Caucasian and one-eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every recognition, right privilege, and immunity secured to the citizens of the United States of the white race by its constitution and laws." Now we know where the one-eighth negro blood in anyone means they are Black come from in respects to the law. Such a law serves to enhance the position of the white supremacist ideology of superiority.

Plessy, on June 7, 1892, paid for a first class passage on the East Louisiana Railway, from New Orleans to Covington, in the same state. He took a seat in the white section of the train, and since Louisiana was a free state, it was not authorized to make a distinction between colored and white passengers. However, the train company was not adherent to the law, and the conductor told Plessy to give up his seat, be ejected from the train or arrested. [Where have we heard that before; remember the situation with Rosa Parks in 1955 that sparked the civil rights movement?]. Plessy refused, and with the aid of a police officer, was forcibly ejected from the train and jailed in a parish of New Orleans. He was charged with criminally violating an Act of the general assembly of July 10, 1890. This Act held that colored peoples and whites have to be provided with "separate but equal" accommodations. Although Plessy tried to pass as white, apparently his features, not his color, gave him away; he was removed from the train, jailed and subsequently filed a petition in the Court challenging the Act.

The Act of 1890, No. 111, p. 152, passed by the Louisiana General Assembly, served to maintain that on the basis of race distinction, the "… officers of such passenger trains shall have power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof, to imprisonment for a period of not more than twenty days in the parish prison …". The Act further held that, if the officer of the train assigned a passenger of a different race to a compartment not of their race, that officer would suffer the same penalties. The Court twisted itself in knots trying to reason the principle of "separate but equal" accommodations, without amending the understanding of the 13th and 14th Amendments' purposes, ending slavery/involuntary servitude and granting citizenship to all peoples of America [Indigenous Peoples excluded] respectfully.

However, the racist philosophy of the U.S. prevailed, inasmuch as the Court forwarded the thinking that: "While we think the enforced separation of the races, as applied to the internal commerce of the state, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him equal protection of the laws within the meaning of the fourteenth amendment … The power to assign to a particular coach obviously implies the power to determine to which race the passenger belongs, as well as the power to determine who, under the laws of a particular state, is to be deemed a white, and who a colored, person." The Court generally affirmed state rights in discrimination, a convoluted reasoning of property rights based on race.

It is further stated: "It is claimed by the plaintiff [Plessy] in error that, in any mixed community, the reputation of belonging to the dominant race, in this instance the white race, is 'property' in the same sense that a right of action or of inheritance is property. Conceding this to be so, for the purpose of this case, we are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man, and assigned to a colored

coach, he may have his action for damages against the company [Railroad] for being deprived of his so-called 'property'. Upon the other hand, if he be a colored man, and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man." Here, the Court virtually returns to the racist philosophy that a Black man or colored is less than a white man, absent a reputation because of his not being a white man, and in essence has no property right or status comparable to a white man in the Court.

Yet, the Court, in its convulsion, continues with stating: "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the Act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and it not unlikely to be so again, the colored race should become dominant power in state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption." Judge Brown continues to distinguish the differences between the white race and the colored race, purporting that if the government has made all peoples equal, providing all peoples equal opportunities, then the government has fulfilled its obligations, and cannot be expected to legislate morality or ethics. Judge Brown maintained that: "Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races are equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane." The Court concluded that the issue of the proportion of admixture of colored blood has to be decided by each state, in terms of determining how the law will be applied for separate but equal accommodations.

Hence, this long examination of the Court's reasoning in this case exposes the continued racial divide of this country subject to the actual application of the laws of this country. The Jim Crow laws that were vigorously fought against in the civil rights movement were an outgrowth of the Black Codes, and U.S. Supreme Court rulings as in *Dred Scott v. Sanford* and *Plessy v. Ferguson*, all of which lead to *Brown v. Board of Education*, proving "separate but equal" was an ultimate detriment to socio-political and economic posture of the country. It can safely be said today, the history of laws that impede Black progress is an outgrowth of these Court's philosophy and rulings. This includes such nefarious government policies as the War on Poverty, the War on Crime, the War on Drugs … all tantamount to a War on Black people.

Given the decision by Judge Brown in *Plessy*, it is important to review an aspect of Judge Harlan's dissenting opinion, where he held: "The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows or tolerates classes among citizens. In respect to civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards a man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the

fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race **…** In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case."

So, I posed the question, "What's law got to do with it?"—With CEO Trump appointing "Conservative" white men to the U.S. Supreme Court, we find the composition of the Court determines the profound reality; we must eke out an existence. We will find that *Brown v. Board of Education* set a precedent that disrupted the over-arching philosophy of white supremacy of the United States. Yet the U.S. Supreme Court decision in the *Bakke* case served to whittle away affirmative action. As another example, we note efforts of gerrymandering, voter identity cards, etc., legislative, judicial racism pervades to deny any means to forge an equal playing field. With the resurgence of white nationalist virulent violence, it is incumbent on all progressives to prepare to engage in conflicts that expose the underbelly of U.S. democracy. As Al-Hajj Malik Shabazz (Malcolm X) once stated, U.S. democracy is no more than hypocrisy.

The Second Great Migration

1909-1910. The country having affirmed by the U. S. Supreme Court rulings that for the most part solidified that Black men have no rights the white man was bound to respect; the Ku Klux Klan and other white supremacist entities continued to intimidate, brutalize and murder Black people, especially men and boys, with impunity. The migration that first began after the 14th Amendment was enacted, was again instigated by the 100's of KKK lynchings in the South; by 1914 there had been over 1,100 lynchings [in a six-decade period approximately six million Black folks migrated out of the Black Belt South]. As a result, in 1909 a group of former abolitionists, socialists, and progressives, what W.E.B. Du Bois described as "fifty-nine colored men from 17 states" in response to the roll-back of Black rights, formed what was to be known as the Niagara Movement. Initially the Niagara Movement was to become a militant alternative to Booker T. Washington's "bootstrap capitalism" philosophy to enhance Black life in America. The name derived from a meeting held in Niagara, New York, discussing the state of Blacks in America.

To develop a strategy of resistance, they assessed the loss of Blacks' right to vote in Southern states, the laws establishing literacy tests, poll taxes and other prohibitions limiting the Black vote, as well as the increase in lynching, manifesting Jim Crow legislation crowned by the U.S. Supreme Court ruling in *Plessy v. Ferguson.* The Niagara Movement sought to redress these racial societal ills by means of protests and demonstrations, opposing Washington's ideal of "assimilation and accommodation." Du Bois and William Trotter, as co-founders of the Niagara Movement, sought to organize on the principles of civil rights, political power and higher education, the ideal of the "Talented Tenth" to move the race forward. Ultimately, by 1910, the Niagara Movement under the influence of W.E.B. Du Bois evolved into the National Association for the Advancement of Color People (NAACP). The now longest existing civil rights organization, the NAACP functioned as the bulwark institution for Black rights both in Northern and Southern regions. In the South, their foremost concern was ending lynching and working to restore voting rights. In the North, it lobbied the federal government for anti-lynching laws, ending Jim Crow segregation laws down South, organized a national protest against the racist Birth of a Nation movie, developed literacy programs, established

legal defenses for Black workers, including defense for the "Scottsboro Boys", who were facing death for the alleged rape of two white girls.

1916. During this period 2 million Black folks migrated out of the South to Northern cities, creating racial tension in Northern cities. The displacement for so many Black folks meant already meager livelihood and survival resources would have to stretch thinner, as the races competed for jobs, housing, and basic welfare commodities. The winding down of WWI, returning approximately 4,500,000 soldiers, and also ending the influx of European immigrants of unskilled laborers and domestic servants, exacerbated competition for these resources. For those Blacks who migrated North, they found themselves being the "last hired and the first fired" in all areas of work.

1919-1920. These conflicts reached a nodal point in which whites rioted against Blacks in major Northern cities. This was called the "Red Summer of Hate"; there were 20 incidents of white mob violent terrorism against Blacks in the North and South. In Chicago and East St. Louis, 33 Blacks were killed by whites, 19 were killed in NYC; the racist violence reflected the expansion of the Ku Klux Klan, as whites also migrated North during this period. Because the Reconstruction era turned the Black Belt South into a violent killing field with the implementation of Jim Crow, Southern racial conflicts devolved into a national divide as the competition for jobs and housing became more desperate.

It was also during this period, in 1919, the African Blood Brotherhood formed to defend the Black community against Klan violence. Founded by Cyril V. Briggs, a Caribbean immigrant to New York City, many of these men identified themselves as Communist, applying Pan-African philosophy in their world view. In January 1921, The African Blood Brotherhood, in its newspaper, The Crusader, issued a "Declaration of War on the Ku Klux Klan." There was no question about armed self-defense; in fact, it was believed to be a necessity of survival by the Brotherhood.

Epilogue

As we read and share this rendition of historical facts, what becomes abundantly clear is the "unspoken" philosophy of the U.S. government, despite who sits in the White House. The issue of citizenship is not resolved, although such was imposed by the 14th Amendment. New Afrikans continue to be treated as second-class, or an inherent American caste. Furthermore, today's mass incarceration informs to what degree New Afrikans are disposable workers, who are deliberately shuffled into a state of penal servitude. Also, it is manifestly clear that racism in all of its virulent forms is violent. The U.S. Supreme Court has always been an instrument of white supremacy. We must be vigilant in our collective opposition to U.S. Manifest Destiny and American Exceptionalism, whether these ideals are espoused in a court of law, a pulpit, or from a podium by a person in a white hood, a black robe, clerical collar, or a three piece suit. The reality is for as long as capitalism-imperialism exists, New Afrikans and peoples of color will continue to confront racism. We will continue to be used primarily as surplus labor or disposable fodder in U.S. military machinations for imperialist power. This will be so until poor and oppressed peoples decide, as recently stated on August 18, 2017, in reaction to Charlottesville, by the United Nation's Committee to Eliminate Racial Discrimination (CERD) Chairperson Anastasia Crinkley, that: "… there should be no place in this world for racist white supremacist ideas or any similar ideologies that reject the core human rights principles of human dignity and equality. We are alarmed by the racist demonstrations, with overtly racist

slogans, chants and salutes by white nationalists, neo-Nazis, and the Ku Klux Klan, promoting white supremacy and inciting racial discrimination and hatred. We call on the U.S. Government to investigate thoroughly the phenomenon of racial discrimination targeting, in particular, people of African descent, ethnic or ethno-religious minorities, and migrants." However, and unfortunately, this call for an investigation is likely to paraphrase Al-Hajj Malik Shabazz (Malcolm X) who once observed, in a similar matter: this is like asking the "fox to guard the hen house."

Remember: We Are Our Own Liberators!

Rev. Love & Unity

Jalil Abdul Muntaqim
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