

Essay on the theory of nullification

[Law](#), [Criminal Justice](#)



Introduction:

In principle the theory of nullification is the deeming of a federal law by a state as unconstitutional. This situation occurred when the Southern states regarded the banning of slavery which was a federal statute as something which went against their culture and way of life, thus being unconstitutional. There were several exponents who spoke avidly and vividly against the banning of slavery and these included John C Calhoun, the senator from South Carolina as well as Jefferson Davis of Mississippi and George Pendleton from Ohio who repeatedly threatened secession from the Union during the period immediately preceding the Civil War which was the apotheosis of the nullification theory taken at an extreme level (Irons, 1999).

Nullification theory as a weapon against federal law imposition

When framing the Constitution, the founding fathers declared that it was important that no state was deemed to be above the law and this meant that a certain balance had to be achieved between the needs of the states and those of the country as a whole. Thus James Madison deemed the theory of nullification as not provable in a court of law since the Constitution is deemed to be the supreme document by which everyone should abide.

Plessey versus Feguson – important case law regarding the theory of nullification

Plessey versus Ferguson was an important case in Louisiana in 1896 where the Supreme Court ruled that races should be separated on railroads in facilities that were ‘separate but equal’. This was just the sort of decision

that the Southern states needed to implement a programme of institutionalized segregation which came with the blessing of the Supreme Court (Darden, 2009).

The case occurred on 7th June 1892 when Homer Plessey, a black man boarded the Louisiana State Railroad coach and was asked to sit at the back on account of his skin colour. After refusing to do so, he was arrested and the state brought a case against him where he defended himself stating that his rights were denied according to the 13th and 14th Amendments to the Constitution. After losing the case in the state of Louisiana he appealed to the Supreme Court where he eventually lost the case on a vote of 7 to 1, an unsurprising verdict as most of the judges came from Southern states who were zealous in implementing legalized segregation.

Naturally enough, this ruling proved to be a boon for states to force blacks to use separate facilities for practically everything including toilets, eating in restaurants, schools and obviously travelling on trains. More often than not, the facilities provided were separate but far from equal as states could not care less about their negroe minority (Darden, 2009).

Constitutional implications

The first real issue in this case was that the Constitution declares that ‘ all man is created equal’ but this ruling definitely confirmed that he is not, at least according to the colour of his skin. The excuse used and justified by the Supreme Court was that races had different traits and practices and thus were not really comfortable doing things together. This makes a mockery of the 14th Amendment as it is clear that such practices can never be justified or condoned as they open the door to racial discrimination on a wide scale.

Naturally states only needed to observe this ruling partially to ensure that they were in line with the law and several Southern states introduced the infamous Black Codes to put the negro on the complete margins of society. It was only in 1954 that a more liberal Supreme Court finally ruled that Plessey versus Ferguson was unconstitutional. The Court based its ruling that the doctrine of 'separate but equal' violated the 14th Amendment and could never be accepted as a just law as it intrinsically discriminated between races and obviously on evidence presented by the NAACP's lawyer Thurgood Marshall, it was observed that the facilities provided for blacks were far from equal to those for whites. Plessey versus Ferguson remains a landmark case in every respect as it demonstrates the institutionalized racism prevalent in the Deep South and how this was vigorously upheld by a Supreme Court which was no less racist than its Southern counterparts (Medley, 2003). Plessey versus Ferguson also shows the courage of a lone man against the whole force of the racist Southern community who chose bravely to defy a whole institution in what were very early years for the civil rights resistance movement. Although he lost the initial battle, the end result was that he started a whole movement for equality which eventually culminated in the landmark Civil Rights Act of 1964.

Racial segregation – nullification in all but name

The United States, especially the Southern states were devastated by the Civil War and there needed to be a sense of reckoning to address all the issues which erupted after the War between the States. The issue which perhaps affected the Southern states more than others was how to deal with the millions of free slaves who were now roaming the country. The answer in

many states was the system of sharecropping where black workers would be allowed to farm a patch of land as labourers and their payment would be to keep some of the food themselves for their own subsistence and the rest would go to paying the rent for the land. This system was little better than slavery in that sense as it bound the labourer to the land and if he could not afford to pay his rent due to a bad crop he would be kicked out (Bowles, 2011).

Racial segregation also increased substantially as the beginning of the 20th century approached with the infamous Black Codes enacted in the Southern States which made blacks pariahs in their own towns and villages. Additional restrictions were imposed after the infamous Plessey vs Ferguson case of 1896 and blacks continue to suffer daily humiliations apart from copious lynchings and murders which increased rapidly after these restrictions were imposed.

Eventually the Civil Rights Movement managed to break down the barriers of racial segregation although these still remain up to this day albeit in different forms and notions.

Conclusion – nullification in a subtle manner

Nullification is something of the past perhaps although Southern states still continue to invoke their right to defy federal law when the issue of racial segregation crops up. This was seen in evidence when the Southern states refused to accept federal laws regarding the segregation of schools and other public institutions. This type of attitude continued to prevail until recently and although the extreme case of secession was never invoked, nullification is not something which will go away.

Works Cited:

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