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### THEME

**THE US SUPREME COURT AND THE RIGHTS OF  
ENSLAVED AFRICAN AMERICANS: A STUDY IN LEGAL  
DENIAL OF RIGHTS**

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# DEDICATION

To my dear wife Sophie CODJIA,

To Ronald Folushade; NatachaRon'ke my son and daughter;

To my in-law Guilherm CRINOT:

To all my brothers and friends.

# ACKNOWLEDGMENTS

My sincere gratitude to my supervisor Professor Ambroise MEDEGAN who always shows me the way.

I also thank all the other professors of the English Department for their frequent help.

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# INTRODUCTION

The issue of slavery and the vindication of the rights of the former enslaved Africans caused great controversies in the United States of America. In September 1787, during the Philadelphia Convention, purported to writing the Constitution the founding fathers failed to resolve it; instead, they allowed “the importation” of slaves to continue until 1808 forbade assistance to the fugitive slaves and in the Constitution defined bonds people as “three fifths of a person for calculation of each State’ official population.”

Article V of the Constitution didn’t authorize any amendments or legislation changing the provisions concerning slave trade until 1808. The States then existing had twenty years to solve the slave trade questions. But in actual fact, that trade continued until 1861. Since no satisfactory agreement was found, that failure was one of the contributing factors to the Civil War. After the victory of the Union, it had to deal with the question of the abolition of slavery and of the rights of the former enslaved Africans by adopting three Amendments to the Constitution.

The Thirteenth Amendment (1865) abolished slavery. The Fourteenth Amendment (1868) granted Black males citizenship and civil rights. As for the Fifteenth Amendment (1870), it decreed that the right to vote could not “be denied because of race, color or previous condition of servitude.”

But with the end of the black code Reconstruction (1877), laws and new state Constitutions that totally contradicted the spirit and the words of the 13th, 14th and 15th Amendments to the US Constitution and the Civil Right Acts of 1866 were passed. The decision of the highest federal court qualified as historic “Zigzag” by some personalities such as Professor Augustin AINAMON led us back to the basic contradiction in the history of the United States. That contradiction qualified as “seeming inconstancy or hypocrisy” by Professor Augustin AINAMON was perceived in the 18<sup>th</sup> century in the behavior of the slave holders who "generously" devoted themselves to “freedom and equality” and still kept black Africans in servitude. The historic American ambiguity is deeper when we consider the famous and impressive Declaration of Independence.

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<sup>1</sup>.

American hypocrisy is all the more surprising that one can wonder how a magnificent so a Declaration could co-exist with the practice of slavery. If "the idea of freedom" couldn't be separated “from the process of living itself” as stated by the Founding Fathers of the “Land of free men”; how then couldn't they have ended slavery? More than that, the reader of the American Declaration of Independence is impressed by the strong conviction of its writers. What is not easy to account for is the

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<sup>1</sup> the US Declaration of Independence

fact that, one of the writers of the Declaration of Independence who admirably declared that it is “self evident” (that is we need neither demonstration nor proof) that all men are created equal; personally deprived about “200 men, women, and children of their liberty”. There is a paradox in the fact that important personalities like Thomas Jefferson and George Washington did nothing to free all their slaves before their death. What is strange is how they succeeded in living with a system they officially opposed.

By taking into account the American motto “E PLURIBUS UNUM” Jefferson and Washington could have understood that the black slaves too were needed to build America. The incoherent position of the two emblematic figures of the history may be stigmatized as the root of American hypocrisy which consists in destroying by the daily behaviors the great ideals that they profess with conviction and generosity.

The great capacity of the United States as a nation to feel well at ease in paradoxical situations explains the forward and the backward decisions of the Supreme Court of the United States concerning enslaved African’s rights. In reality, some historical facts or political determinants are the possible explanations of the reasons why the highest Federal Court which should have promoted the rights of the former slaves was the institution which most violated them. All the new dispositions created barriers to voter registrations and voting for African Americans. Reconstruction Civil Rights legislation was overturned by the United States Supreme Court. In addition, the Supreme Court held in the civil Rights cases of 1883 that the

14<sup>th</sup> Amendment couldn't deal with private discrimination. Moreover, in the Plessy vs. Ferguson case (1896) the Supreme Court ruled that State mandated segregation was legal. There stems the topic of my work: US SUPREME COURT AND THE ENSLAVED AFRICANS: A STUDY IN LEGAL DENIAL OF RIGHTS.

My work is divided in three parts. In part one the main point is the background of the topic. The historical background, the statement of the problem, the purpose of the work, the significance of the study and the literary review are the subdivisions of the first part. The second part deals with the US Supreme Court and the right of the enslaved Africans. Here the following aspects are stressed: the US Supreme Court, the legal post war achievement and the decision of the Supreme Court. The last but not the least part analyses the consequences of the decisions of the Supreme Court through structural racism and race and wealth disparities. The conclusion insists on the main ideas of the topic.

# PART ONE: BACKGROUND OF THE TOPIC

## A: Historical Background

The problem of the legal denial experienced by the enslaved Africans is deeply rooted in American history.

In his book: *The Burden of Race*, Gilbert Osofsky notices that the large variety of the settlers in the New World was not treated in the same way. He added that: “American national institutions traditionally permitted a measure of freedom and social mobility to all whites that it denied to Negroes<sup>2</sup> This early discrimination functions as the historic determinant that paved the way to the countless and lasting discriminations. It instituted the race relations in America. It defined the position of the African Americans who will always be inferior or second class citizens. The most elementary human attribute to get identity and dignity was not possible for the slaves. The first hundred years imposed on the slaves two destructive pains: slave trade and slavery itself. The Quakers of that time did not succeed in disowning slaveholders before the 1760’s. At that moment, while some religious groups preached the golden rule towards the slaves, other even “carried segregation” within their own churches.

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<sup>2</sup> Gilbert Osofsky, *The Burden of Race A Documentary History of Negro – White Relation in America*, New York and Evanston Harper and row, 1967 page IV.

Despite the anti-slavery principle adopted by the Quakers, the American society did not create a nationwide movement to strengthen Emancipation.

The African American's condition in the United States had been broadly exposed with the Dred Scott vs. Sandford case. In the minds of the justices of the Supreme Court, the case was presented in the following words:

Can a negro, whose ancestors were imported into this Country (the United States), and sold as slaves, become a member of the political community formed and brought into existence by the constitution of the United States, and as such become entitled to all the rights and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution?<sup>3</sup>

The situation presented as such hid several other questions like the following: Is it really possible for African Americans to change their image in the mind of the average Americans? Are Blacks and Whites equal before the law in the United States? Are the Blacks truly integrated in the social tissue of the United States? The direct implication of the questions is that when a descendant of a slave is emancipated or was born from a parent who became free before his birth, is it enough to become a full American citizen such as defined by the Constitution?

The steps taken by the Supreme Court to solve the question of the Dred Scott case is interesting. First, it defines the people of the United States as citizens and sovereign people and when it was asked if a descendant of a slaves 'described in a

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3 Gilbert Osofsky, *The Burden of Race a Documentary History of Negro White Relation in America*, New York and Evanston Harper and row, 1967 page 77.

plea, in abatement'' can be a member of sovereign people and be a member of this sovereignty''?

The answers of the Supreme Court reveal the popular opinion of that time:

We think they are not, and that they are not included and were not intended to be included under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that title considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whatever emancipated or not, yet remained 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<sup>4</sup>

So, in the opinion of the Supreme Court, nothing in the legislation, the practices of that time and the language used in the Declaration of Independence, shows that either the slaves or their descendants, either free or not, could be or intended to be included among the sovereign people.

In fact, the position of the Court confirms the situation of the slaves and their descendants who are considered inferior to the whites. The slaves and their descendants cannot associate with the white race "either in social or political relations". This doubtful truth was considered as an axiom in morals as well as in politics that should be questioned nor opened to dispute.

There is a great question: how could America profess to be an open society, a nation destined to carry the message of freedom to the world, when it permitted slavery, the essence of anti- democracy, to exist.

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4 Gilbert Osofsky, *The Burden of Race A Documentary History of Negro – White Relation in America*, New York and Evanston Harper and row, 1967 page 78

The Founding Fathers should have found a way to gain freedom from England without practicing slavery. They could have created a Union without injustice, blood guilt, licentiousness, and crime represented by slavery.

There was a problem of credibility when people pretended that the Constitution aimed at securing the whole population of the Union under its “sheltering wing” or that the parties were moved by “a sense of justice and the spirit of impartial Liberty” when nothing was undertaken to free the slaves.

The American Declaration of Independence could have avoided its absurdity if it had fully and without exception complied with the object aimed at by its adoption.

The signers of the Declaration of Independence would have been more convincing if the liberty they had secured for themselves, they had also secured it to their slaves. They would have been unanimously praised if they had not fought against oppression from the mother country and inflicted the same oppression to their “fellow-men” they bought and sold as “cattle in the market”;

To best explore the partiality of the Supreme Court let’s go back to arguments used to justify the decision taken in the Plessy vs. Ferguson’s case.

It was said that the fact that the Louisiana statute requires all railway companies to have separate but equal accommodation for both whites and colored persons was not discriminative. They pretended that that disposition was fair in so far as no colored person was permitted to occupy a seat in a coach assigned to a white person and vice versa. So, according to them, the managers of the railroad company

did not impose any segregation measure but they assign each passenger to a specific compartment secured for the exclusive use of his race. The impartiality here lies in the fact that the rule is applicable “alike to white and black.”

The falsity of the argument is perceptible at more than one level. First, the purpose of the separation was much more to exclude colored people from coaches occupied by white persons than the contrary. In addition there is no discrimination among whites as far as accommodation for travelers is concerned. In fact, by pretending equal accommodation for whites and blacks, they oblige the latter “to keep to themselves” while on the railroad.

The main objection to the statute is its interference “with the personal freedom of the citizen” which is everyone’s power to move, to change situation to adopt a place that our own instinct appreciates. The statute prevents everybody from travelling in the coach he has freely chosen.

There is a difference between the duty consisting in furnishing equal accommodations for those whom they are bound to carry and the fact of preventing the Blacks and the Whites from travelling together in the same public conveyance.

Enforcing civil conduct that whites and blacks “shall not travel as passengers in the same railroad”, is like forcing the white citizens to keep one side of the street, and black citizens to keep the other. If it is possible to impose separate railroad coaches for blacks and whites, is it then also possible to impose railroad coaches for native and naturalized citizens of the USA or for Protestants and Roman Catholics.

## B: Statement of the Problem

The problem of our topic has something to do with the Supreme Court decisions which were taken at a given period of the history of the United States of America. The problem lies in the fact that the Supreme Court, which should have normally protected the African-Americans and defended their rights, took some decisions which violated the rights of the former enslaved Africans. The question is to account for the fact that the highest supreme judiciary institution contributed to segregation, accepted racial injustice and did nothing to improve social economic and political conditions of the African- Americans. Since segregation against blacks is a crime, why did the Supreme Court of the United States legalize it?

Coming back on the different decisions taken by the Supreme Court to threaten the lives of the former enslaved Africans, there are some questions to ask:

Why did the Court take such decisions? Were there any facts, any historical situations that obliged the Court? Were there any interests, any motivations that could only be preserved by the violation of the right of the blacks?

Is there any logical link between the decisions taken by the Supreme Court and the spirit and the letters the Declaration of Independence, which states that “we are all created equal in the eyes of God?”

Are the American “E pluribus Unum” and the practice of slavery in accordance?

Do the ideals of American equality allow its citizens to segregate the African Americans?

Almost all the progress that the African Americans had made has been annihilated by the US Supreme Court which should normally protect and secure them.

In fact, the decisions of the Supreme Court brought back the slaves to their previous condition of servitude. A series of reasons explain this situation. First, the seeming hypocrisy of the American society as a whole on the one hand, and the different decisions of the Supreme Court on the other clearly reveal that the right of the African Americans was much more a matter of circumstantial interest than a permanent preoccupation. When the emancipation of the former slaves served a part of the United States, black slaves were freed and their rights promoted. But as soon as their conditions diverge with their interests, they forgot about them.

Before the civil war, the southern part of the United States mainly derived its power from agriculture carried out by black slaves. So, the economic power of the southern States depended essentially on slavery. At a certain moment, it was necessary for the northern States to destroy the power of the southern State. The only one way to reach this goal was the abolition of slavery. The abolition of slavery could weaken the south at least on the economic level. Once the southern states were weakened, the northern states could assure their supremacy and extend its domination over the whole union. The northern states could export their industry and become richer. The sudden generosity of the northern States concerning the slave issue was motivated by

economic and political interests. As it was shown latter, the free slaves were not warmly welcomed in the northern states. Moreover, they were also victims of violence and racial segregation over there. At a given moment, some organized groups maltreated them and prevented them from enjoying their rights.

The other reason lies in the American Capitalism property right is sacred. “Profit is a key point in the American capitalism. Profit is what is received by virtue of control of the tools of production by the capitalists; those who provide the capital<sup>5</sup>”. In the normal system, wages are received by those who sell their labor with those tools i. e. the workers. In that context, the word capital has very rich meanings. Capital comes from the Latin word based on proto-indo-European Caput that is “head” chattel and cattle in the sense of movable property. In the 12<sup>th</sup> and 13<sup>th</sup> centuries, capital took the sense of funds, stock of merchandise; sum of money carrying interests. From 1283, the word capital was frequently interchanged with: wealth, money, funds, goods, assets, property...

In the capitalist world of the south of the USA, the slaves represented both the tools of production and the capital goods i.e tools used to produce consumer goods.

To guarantee a maximum profit, the planters of the south knew that it was not good to leave the slaves free. They then decided to deprive them of their elementary right to sell their labor to the person they liked. Moreover, it appeared necessary for

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5 Bacher, Christian, Capitalism, Ethics and the paradox of Self Exploitation, Grin, Verlag 2007

them to reduce the slaves into mere “head’s of chattel and cattle in the sense of movable property” that is why they have no right to receive any wages after furnishing not selling his labor. In additions blacks were also reduced to the mere conditions of “merchandise”, “assets” of slave masters or property because they used to be sold on market.

Considering the role of black slaves in the development of the American capitalism, their freedom is illusive. Since the private ownership of the means of production, as well as the capital, are sacred in the capitalist system it was out of the question to give them freedom without putting the economic system of the south at risk.

The problem of the black slaves had something to do with their presence when and where a capitalist system was built. This

Capitalism entails the private ownership of the latter two-natural resources and capital goods-by the class of owners called capitalists, either individually collectively or through a state apparatus that operates for a profit or serves the interests of capital owners.<sup>6</sup>

We must also notice that the daily working of American capitalism does not favor the former slaves. Because the southern plantation owners needed to produce goods that consumers could buy, that is cheaper goods whose production cost is low. So, the greatest interest of the southern planters was to adopt a productive system in which raw materials, labor or and capital are less expensive. That was possible with

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<sup>6</sup> Bacher, Christian, Capitalism, Ethics and the paradox of Self Exploitation, Grin, Verlag 2007

the slaves. In addition the competition faced by southern States obliged them to keep the slaves as long as possible.

As a capitalist country, the private property is fully practiced in the country; No one can prevent the use of the working force as it pleased. As it is pointed out by Hernando de Soto; a contemporary economist, “an important characteristic of capitalism is the functioning state protection of property rights in a formal property system where ownership and transactions are clearly recorded”<sup>7</sup>. All these realities combined, made it rather impossible to black slaves to be de facto emancipated.

Whatever the good will of some white American minorities, whatever the nature of American laws, the African Americans could but face misery in the USA considered as the “Canaan of Capitalism, its promised land”. America where “the tendencies of Western Capitalism could find fullest and most uncontrolled expression” can be but a jungle for the slaves’ freedom. Either from the north, or from the south, “American Capitalists had a free hand in gaining control of a country unimaginably rich and natural resources”<sup>8</sup>.

In the United States, the slaves’ problems could not find appropriate and long lasting solutions because of the “State violence”, “Judge-made law” and “Compliant legislature”. The inconstancies of the Supreme Court find the explanations in that typical American reality. Here, the governments used to have two arms of varying

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<sup>7</sup> Bacher, Christian, *Capitalism, Ethics and the paradox of Self Exploitation*, Grin, Verlag 2007

<sup>8</sup> Weinberg, Meyer; *A Short History of American Capitalism*, University of Massachusetts, Professor Emeritus W.E.B. Du Bois Department of African American Studies, New History Press 2003.

length: The long arm is used for taking, dispossessing citizens, robbing them from their wealth. Since this first arm is long it reaches everywhere, the second arm the shorter one is used for giving. It only gives to those who are nearest. The longer American arm stole the Indian lands and the labor of the slaves to build the country's power.

In the USA, the existential philosophy seems to be coded as following, "I own therefore I am". If possession and possessing are the condition of existence, it can also make people free in America. In that situation, the American slave could never be free since he is neither the owner of himself nor the owner of his labor. It was made possible because

... In the tobacco south, unfree form of labor predominated. Ownership (was) extended not merely to the labor power or its products but to the laborer himself<sup>9</sup>.

In fact, this situation was accepted because of the law of conquest which was generally accepted in civilized countries. This law constituted the legal basis of human slavery. As it was explained by the British Privy Council in 1722; even if the Privy Council did not directly mention slavery, «its assertion of a right to own persons had the same effect». In *A Short History of American Capitalism*, Meyer Weinberg succeeded in explaining the relationship between the development of private property and slavery in American According to him;

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<sup>9</sup>Weinberg, Meyer; *A Short History of American Capitalism*, University of Massachusetts, Professor Emeritus W.E.B. Du Bois Department of African American Studies, New History Press 2003.

American history is the apotheosis of private property. It should not be surprising – nor were the historic Americans surprised – that the principle of property extended to the ownership of human beings. In a thoroughly bourgeois society, based on property rights the pecuniary logic knows no self limitation. One sells his labor another buys it why not, then, permit private appropriation of the laborer himself<sup>10</sup>.

Adoption of slavery was mainly facilitated by the philosophy of individualism.

That right carried no social or moral-obligation other than the expectation of buying cheap and selling dear. Enslavement was thus regarded as another expression of an individual's unceasing drive to accumulate property<sup>11</sup>.

It is also good to remember that the issue of slavery does not have the same meaning for both blacks and white. For the whites, it is a matter of practicality. The general rule states that

“Economic power often establishes itself in practice and only later in law. That is why it is readily presented as “practical” As illustration, let’s say that in “the United States, slavery was first used in agriculture and only late incorporated in law. Power creates practicality”<sup>12</sup>.

A true and permanent emancipation of the African Americans wouldn't serve the interest of the southern States. So, any change that thwarted that sacred right could not be welcomed by the whites of the south. “The farmers (of the south) were now competing economically with recent free blacks and wanted to keep them inferior”.

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<sup>10</sup> Weinberg, Meyer; *A Short History of American Capitalism*, University of Massachusetts, Professor Emeritus W.E.B. Du Bois Department of African American Studies, New History Press 2003.

<sup>11</sup> idem

<sup>12</sup> Weinberg, Meyer; *A Short History of American Capitalism*, University of Massachusetts, Professor Emeritus W.E.B. Du Bois Department of African American Studies, New History Press 2003.

For the social class of white planters of the South, it is very important to stop black suffrage because any laboring class, no matter what race, given universal suffrage could lead to an attack on the property that the planter class loved so much. The slaves' illiteracy partly explained the planters' fear. These conservatives of the south felt insecure because their interests were now in danger. Without knowing it, those illiterate slaves might vote to raise taxes considerably. Therefore if one had assured the planters about their properties, they would not have been against the black suffrage.

The second reason of the African- Americans' problem is the series of political events that went against their interests. In 1873, there was a situation which weakened the Republican Party. The southern economy was hit by the panic of 1873. Many Republicans who had gambled that railroads would pull the south out of its poverty, were disillusioned to notice" that nothing had really changed.

At the same moment, in the north, the abolitionists were either aged or had lost interest in slaves' condition.

As for the carpetbaggers, many of them returned to the North or joined the Redeemers after 1877 at the end of the Radical Reconstruction.

Though the African-Americans became more and more important in the Republican Party, their internal contradictions divided them and they rapidly lost their cohesion.

There were some black leaders who could have undertaken something to better the plight of the former slaves but they preferred emphasizing their personal economic

progress in “cooperation with white elites rather than racial political progress” in opposition to them.

At that time, the national situation was particularly against the African Americans. President Grant who was blamed for the depression was not running for re-election and seemed not to be interested in southern states anymore. Apart from four states, the smaller south states fell to the Redeemers in 1873.

Then some paramilitary organization like White League and the Red Shirts operated openly. They had two political goals: the violent overthrow of Republican rule and suppression of African Americans voting. Nothing could be done to avoid violence against the blacks because it was accepted by some Democrats and many northern Republicans that Confederate nationalism and slavery no more existed. So, the goals of the war were achieved and no “further federal military interference” was needed. That seemed to be the reason why Grant objected to sending federal troops to Governor Adelbert Ames to fight back the explosion of violence that followed the campaign for Mississippi’s 1875’s election. The Red Shirt and the Democratic rifle clubs were free to operate without disguise because people seemed to be “tired out” of the frequent troubles in the south.

With the victory of Rutherford Hayes in the Ohio election of 1875 his “let alone” policy toward the south became the Republican policy.

After the victory of the Republican candidate Rutherford B. Hayes in the presidential elections in 1876, against the Democrat candidate Tilman; the white

Democrats of the south accepted to recognize Hayes victory only if he accepted to withdraw the last federal troops. White Democrats controlled the largest part of the southern legislatures and armed militias controlled small towns and rural areas. White Democrats then passed disfranchising Constitutions and statues that prevented African Americans' from exercising their legal rights for more than seventy five years. So, by withdrawing federal troops from the south, the United States of American withdrew the African Americans rights as citizens.

The sudden change in the black statute was also intimately linked to the Reconstruction process itself. In fact, the whole emancipation process, as it had been carried out appeared as if the Republican leaders “took freedoms and right from qualified whites and gave them to unqualified blacks” who were being duped by corrupt carpetbaggers and scalawags. In reality, the problem came from the tension between two extremes: The Democratic Party made of the large “majority of the whites standing for decent government and white supremacy versus the Republicans, the Negroes, aliens, carpetbaggers and renegade scalawags standing for dishonest government and alien Ideals.” So, the blacks' situation may have been different if people at that time had stressed economic means and self determination rather than political means and civil rights. The deeper reason here has something to share with American patriotism.

The misfortune of the African Americans had something to do with the American patriotism. “In America and in Europe, the nationalism main concern is the

salvation of the nation"<sup>13</sup>. When the life of the nation is threatened they were ready to overcome their internal contradictions in order to save the nation. One can then understand why the Americans did not hesitate to sacrifice the freedom of the former slaves to the welfare of the American Nation at the end of the Reconstruction Era.

The American people, either from the north or the south, have the same history: their ancestors were immigrants from the old Europe. They share the same belief and lived in the same territory temporarily divided by a civil war. All those elements built a bond that neither the war nor the emancipation of the former slaves could put in danger. The daily life of America always gives the proof that in the mind of common people, the black man is that individual with whom there are no historical or ancestral connections.

Despite the great achievement of some black individuals in the United States, the emancipation and the integration of the blacks as racial group had not been easy. The main reason was that it was difficult to share the same heritage when they did not have the same history.

In fact, the issue of the former slaves' freedom gave the Americans the opportunity to follow Benjamin Franklin's "Join or Die" principle. Since the southern States took it as a sine qua non condition to come back to the Union, there were no

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<sup>13</sup>Weinberg, Meyer; *A Short History of American Capitalism*, University of Massachusetts, Professor Emeritus W.E.B. Du Bois Department of African American Studies, New History Press 2003.

more solutions than bringing back the African Americans into their previous conditions of servitude.

It is important to notice that the situation gave Benjamin Franklin's cartoon its full meaning. The United States could survive only if it joined. To join implied to accept the conditions imposed by the southern States. Once joined, the antic serpent is formed. It can but threaten the former slave lives.

The social system prevailing in the south of the United States had a serious impact on the situation of the black slaves.

According to *Thèses sur la question nègre* published during the fourth Congress of the "International Communist",

[W]hen the slavery competed with the wage earning and became an obstacle to American capitalism, it had to disappear. It thought that the civil war was waged not to emancipate the Negroes but to keep the industrial supremacy of the northern capitalists. So, the slaves had the possibility to choose between the slavery of the south and the wage earning system of the north. In this context, we can say that American capitalism was built by the muscles, the blood, and the tears of the emancipated Negroes.<sup>14</sup>

After the USA had become a world power, it was obliged to take part in the world war the African Americans were declared to be equal to the whites to kill and be killed for democracy. At the end of the war, when they came back, «they were persecuted, lynched, assassinated, and deprived of their freedom.... They were more ill-treated than before the war. They were inflicted that treatment to teach how to keep their place.

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<sup>14</sup> Thèse sur la question nègre : 3<sup>ème</sup> international socialisme

We can say that the different and brief changes that occurred in the lives of the former slaves aimed to serve the interest of America not the interest of the African Americans. What must be stressed here is American opportunism which consists in using all the situations to solve their problems. The American hypocrisy often consists in creating some difficulties to others and using apparent solutions to these difficulties to nurse their public.

Concerning the civil war for example, one of the superficial reasons was to end slavery. About war, the generosity of the American society was put forward, but under this alibi their true motivation was hidden: the triumph of the northern capitalism. The situation was the same when it was pretended that the whites and blacks were equal. At that moment, people appreciated American humanism. But beyond that apparent humanism the American society secured some warriors to fight and defend its image.

In fact, the more beautiful the American image is, the healthier its capitalistic system grows. This system is pitiless to the African Americans.

## C: Purpose of the Work

This work gives us the opportunity to say few a words on the highest federal court. In conformity to the general view that the USA is a “Land of Free men”, one could expect that its highest institution promotes and guarantees freedom and equality for both blacks and whites. Moreover, taking into account the determination of the American people, their great commitment for the defense of “life, liberty, and pursuit of happiness” we will hope the Supreme Court to always promote those values.

After the great achievements of the thirteenth, fourteenth and fifteenth Amendments to the American Constitution the Supreme Court should have perpetuated its practice or its enjoyment by the African Americans throughout the ages. But by questioning those rights the Supreme Court had hardened at a given time the situation of the African- Americans. The Supreme Court considered as the institution that gives “the final interpretation to the state and federal laws” is the most authorized institution to guarantee the rights of the oppressed African Americans. When it rejected them it gave racial segregation certain legal strength. The position of the Supreme Court concerning black segregation officialised and legalized discrimination that was condemned and abolished some years before. The Supreme Court that should normally strengthen the legal achievement gained by the African-Americans went against it. The complexity of the issue and the unwillingness of the former slave masters to grant freedom to the former slaves and to recognize the legal improvement of their status made it necessary to have a legal force to persuade them.

So, the right action of the court should have been to give shape and a concrete reality to the contents of the 13<sup>th</sup>, 14<sup>th</sup> and the 15<sup>th</sup> Amendments to the American Constitution. Clearly put, these Amendments were expected to give “life, liberty” and to allow the slaves to pursue “happiness” in their new, free life. The three Amendments together give a certain new legal rebirth to the former slaves. The new rebirth changed the former slaves into “new negroes” whose lives were full of dreams of bright future. The former slaves were convinced of the fact that the new legal change was a guarantee that their “deferred dream” will surely come to true. It was sure that “one day in few years, the black and white children will attend the same school, travel in the same bus, eat in the same restaurant, work in the same office, receive equal salary”. They hope that the day will come when the color of the skin will no more be “the basic criterion of social classification and judgments”. But by deciding to act in favor of the racists, the Supreme Court stopped the dreams of the African Americans. The impact of the Supreme Court decisions on the life of the former slaves and their offspring is very great. Our purpose throughout this research is to show that the lack of the consistency of the former slaves rights lies in the paradox of the Supreme Court decisions.

The breach observed in the promotion of the legal situation of the former slaves made it impossible for white Americans in the street to accept the equality that laws gave them. Or the reluctance of the population dictates to the highest institution its position.

In this specific case of the USA, the Constitution proclaims, consecrates and promotes liberty and equality of all to be in conformity to the Constitution. Normally, each decision should have gone in that direction. By taking some decisions that deprived African Americans of their fundamental rights, the Supreme Court failed on two points. As the highest judiciary institution, it should have been the institution or the judiciary organ whose objectivity and impartiality would overcome or go above the human instinct of domination owing to which the stronger smashes the weaker. It should have also been the institution that uses the various provisions of laws to protect the weaker against the stronger. By choosing the wrong position, the Supreme Court became the accomplice of the enemies of the African Americans. Instead of being the protector of African- Americans the Supreme Court had been their hangman.

In dealing with this topic; our aim is to show that the United States America had emancipated the former slaves at a given moment, that this freedom had been achieved through the thirteen fourteenth and the fifteen Amendments to the Constitution and through the civil rights Acts, but instead of implanting its principles in the daily lives of the white Americans, it had ruined them. By acting in that way the US Supreme Court had been the promoter and the executioner of the former slave's rights. That is partly the reason why the process of the promotion of the African Americans rights seems to be unfinished.

In this work, by highlighting the liability of the US Supreme Court in the legal denial of the African Americans rights, we are pointing out that the conspiracy against

the African Americans had taken place in the highest bodies of the American society. We are also trying to equate the decisions of the Supreme Court with the violent actions of the racist groups which threatened African Americans. To establish this similarity prompts us to say that the US Supreme Court had been accessory after the denial of African American rights.

The decisions had been taken to prevent the African Americans from fully enjoying the advantages of their new status. So, the US Supreme Court acted as the intellectual or legal branch of the racist groups. So, there is a direct relationship between the general opinion of the Americans and the decisions of the Supreme Court. The origin of the President of the Supreme Court also played a great role in the type of the decision that he took. For instance, the decision of Chief Justice Taney in the Dred Scott's case may be explained by his origin. Born in Maryland in 1777, he was a slave owner. Therefore he defended the interest of the Southern slave holders

Justice John M. Harlan, a northerner did not share the general opinion of the Court concerning the Civil right cases.

The Civil right cases concern the series of five similar cases. In each of them a black American had been refused the same accommodations or facilities enjoyed by the whites. The decision of the Court was that the Civil Rights Acts of 1875 was unconstitutional because it regulates the management of a private property. According to the Court, the 14<sup>th</sup> Amendment banned the violation of individual rights only by the States Government. The Court then, ruled that the Civil Rights Act of 1875 was

unconstitutional since it regulated the private conduct of people concerning racial discrimination. This aspect is not taken into account by the XIV th Amendment.

The argument used by Justice John H. Harlan was that ‘It is not the words of the law but the intern sense of it that make the law, the letter of the law is the body; the sense and the reason of the law is the soul’<sup>15</sup>.

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<sup>15</sup> Albert P. BLAUSTEIN and Robert L. ZANGRADO in *The United States Supreme Courts Through The Years : Political Determinants* Page 65

## D: Significance of the Study

The main significance of this work is that the objectivity of the institution is hardly possible. Normally speaking, the main role of the institution in charge of interpreting the constitutionality of the facts is to base itself on the constitution and “to tell constitution”. Impartiality, objectivity, neutrality, impersonality should guide the justices of the Supreme Court while rendering its decisions. But it wasn’t the case.

It is true that the members of the Supreme Court belong to the American society and they share its feelings. Nevertheless, these justices should embody the supreme moral value of the American nation so that whatever the situation may be, they show the right way.

This work should also be seen as a description of the darker side of the American history. The most powerful country in the world, exemplified its own version of the principle: “the greater the perfection is, the greatest the corruption”. American perfection consisted in framing a good Constitution and passing three fundamental Amendments.

Its corruption lies in the fact that its Supreme Courts legally excluded the African Americans from the protection of the law. Denying the former slaves of their basic rights is another form of slavery worse than the first one they had endured because here the segregation is legal and official. This breach in the African Americans rights cannot but worsen their situation and that of their offspring. This

institutionalized segregation is very cruel and destructive because it inspired structural wealth and health disparities

Our present work is also our effort to decode the common perception of skin color prevailing in the American society. As a matter of fact, if African Americans were considered as living beings, we can't take it for granted that they were assimilated to human beings, neither were they taken as equal to white Americans. The truth is that the issue of liberty, human rights that should have been easily and automatically recognized for the African Americans was a matter of negotiation or compromise.

Despite the abolition of slavery and the different legal instrument, common sense in America did not perceive people from African descent more than slaves. The learned Africans of that period were not fully trusted. Either intellectual or illiterate, the African- Americans were all victims of de jure or de facto segregation. Several decades after the abolition of slavery, the separate but equal principles can still be perceived. Needless to say that all the public facilities built in black communities are of poor or doubtful quality.

It is true that in some cases, the African- Americans lived in the same areas with the whites but there is an unseen color line which limits the relationship between the two communities.

The negative perception of the whites of blacks has several impacts on the latter. Generally speaking, the perceptions of white society debase the blacks who lack

confidence in themselves. This situation generated many other consequences on the black community. The effect of that white man burden is still perceived in the life of the slaves' descendents. Some prominent researchers like Tony Halfinger came to the conclusion that today there is a noticeable difference between the descendent of former slaves and the African immigrants of today. Other writers like Tony Morrison have dealt with the influence of white society on the daily life of the black community.

## E- Literature Review

The issue of slavery and the right of enslaved Africans has interested lots of authors. In fact, each, of them has dealt with a particular aspect of the question.

In his article “Negro slavery, Freedom and the American Declaration of Independence: Principles and Practices”, published in *Annale de l’Université Marien N’Gouabi* Vol 5 n°1 Année 2004 serie Ap 160-170, Professeur Augustin AINAMON mainly deals with the “The seeming inconstancy or hypocrisy of slave holders devoting themselves to freedom and equality”<sup>16</sup>. The seeming inconstancy or hypocrisy is multifaceted and omnipresent in America from the beginning of the American Nation. It was commonly accepted by the founding fathers that “freedom was coexistent with the quality of being human but both Thomas Jefferson and George Washington owned slaves”<sup>17</sup>.

The key question here is how to account for the fact that those who struggled for the independence of the United States and the freedom and equality of the nation held slaves or supported and encouraged the Americans who did.

The article give Professor Aïnamon the opportunity to insist on the difficulty of the historian to “explain how people could have developed the dedication to human

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<sup>16</sup> Aïnamon, Augustin. “Negro Slavery, Freedom and the American Declaration of Independence: Principles and Practices.” *Annal de l’Université Marien N’Gouabi*, Vol n°5 n°1, \_année 2004 Serie A p160-170.

<sup>17</sup> *idem*

liberty and dignity, and at the same time have developed and maintained a system of labor that denied human liberty and dignity every hour of a day”<sup>18</sup>.

In addition to this first level of contradiction, Professor AÏNAMON also points out the contradiction and incoherence of the mighty spirit that can be perceived in the Declaration of Independence. The project of this spirit and whose project is to walk “abroad upon the earth” and that it shall in its onward march overturn principalities and powers and tramp thrones and scepters in the dust.

The other interesting point in Professor Aïnamon’s work is the large debate one can read on the inconstancies about the idea of equality and the practice of slavery.

In fact, the American position on slavery can be well analyzed when one considered the arguments of John C. Calhoun who thought that the idea of human equality was but a “hypothetical truism” because in a state of nature” men can neither “survive” nor develop “their God-given talents”. Only the political state” in which some ‘have authorities” and “the others were obliged to obey” is the normal man’s social environment.

On the other hand, John Petit thought that saying that” men are created” equal was a “self evident lie with no truth in it”. He thinks that the Negro in Africa and the free born Americans are not created equal. He gave the example of “the Serf of Russia under the Aristocrat who was not the equal of his master”. For Petit, it is better to say

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19 American Declaration of Independence: Principles and Practices.” Annal de l’Université Marien N’Gouabi, Vol n°5 n°1, année 2004\_Série A P160-170.

that men “ought to have been created equal”. Petit’s argument was in fact shared by a great number of Americans. Later, the Kansas-Nebraska Act showed that there is no connection between the Declaration of Independence and slavery.

Senator Stephen Douglas clearly showed that “the men of European descent” were the only ones among whom “the equality of men” is possible. In fact, when we remember the context of the Declaration of Independence, it is clear that the aim of its authors was to show that the American Colonists and the British subject “had equal right” and neither of them “could be justly subjected to other” The proof of this assertion was that if they had had any idea of Negroes in their mind, as soon as the signers went back home “they would have been honor-bound” to free all their slaves. And we know that even Thomas Jefferson did not do that.

Apart from Professor Aïnamon’s article, we have found it necessary to read the Black Code. We find it useful because we discover later that it is the source of racial segregation in the United States.

From article II for example, we can notice the status of the slaves coming from Africa. It was an obligation to baptize them and to register them. The master of a new comer had a short time to declare his arrival so as to make him baptized as soon as possible. That disposition clearly shows that the Negro coming from Africa was considered impure and savage. So it was urgent to purify him by converting him into Catholicism. It was also urgent to admit him in the large family of the sons of Good. Later in America, we notice that the Blacks were not authorized to participate in the

mass celebrations because they were assimilated to the Devil's children. Article 4 of the same code stipulates that even if the Blacks were converted into Catholicism, they were not accepted to hold responsibility. When we come back to the situation of the African Americans, we realize that after their freedom, the white Americans did not welcome them in their new responsibility and they tried their best to frighten them.

The eighth article states that the children of a slave woman are slave even if their father is a free man. That disposition remained unchanged in the U.S. When the Supreme Court ruled that the fact of living in a Free State cannot make someone free, the chief justice unconsciously referred to that disposition of the Black Code.

In article eighteen, and the ones that follow, it is clear that the Negro slave was denied the right of property. It was impossible for him to sell any personal belonging since he had none. In addition it was strictly forbidden to the masters to donate anything to their slaves. This article that aims at preventing the slaves from owning properties perpetuates their condition of servitude. In the same way, the American society developed a certain racial wealth disparity to keep the African- Americans in the permanent condition of "have nots". When one knows the importance of wealth possession in the US, we then understand that the African Americans can hardly be integrated in the life of the American nation.

The treatment of a runaway slaves and the fact that no one should help them has been fully inspired by the articles thirty-eight and thirty nine of the black code.

It is also good to notice that the notion of liberty either natural or acquired and the idea of happiness connected to it have been inherited from the Black Code by the founding fathers of America.

The Black Code has codified and determined the relationship of the masters with their slaves. It can be considered as the basic source of all the bad treatments inflicted upon the slaves.

In the framework of our research, it was also useful to read the American Declaration of independence. This document gives us the required precision about the concepts of “separate and equal”, the assertion that “all men are created equal”, and the trilogy of “life, liberty and pursuit of happiness”.

In the Declaration of Independence it appears that the concepts of “Separate and equal has nothing to do with the separate but equal facilities that had to be granted to Native Americans and the African Americans. The context of its use shows us that it cannot justify segregation towards African Americans.

Coming to the part of the preamble stating that “we hold these truths to be self evident..... the pursuit of happiness”, we realize that there are at least two possible readings.

The first and most admitted understanding leads us to think it was a sincere declaration of American conviction concerning equality among human beings. We are also tempted to think that the “unalienable rights” should be extended to every race including the African Americans. But when we remember the frustration and the

painful realities of slavery, the fact that some of the authors of this Declaration of independence had and had inherited slaves, and did nothing to free them, we understand that we'd better read it in another way.

Instead of taking the paragraph alone, it will have more sense if we link it to the first paragraph which gives us its global context. In addition the daily realities experienced by the African Americans show that the generous philosophy in the Declaration of Independence concerns people of European descent.

Apart from the preamble to the US constitution, we are obliged to read the US constitution so as to have accurate information on the provisions that deal with slavery and the Supreme Court. Article three; section 1 gives us precise information on the Supreme Court of the US as the institution that has the judicial power of the Union. The third point of article 4 section 2 of same code confirms the link between the Constitution and the Black Code. It states that

“No person held to service or labor in one state under law thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim on the party to whom such service or labor may be due”<sup>20</sup>.

But to be fully informed on the highest institution of the United States, it is not sufficient to read only the specific articles of the Constitution of the USA on the Supreme Court. The Columbia Encyclopedia, the Education Encyclopedia and the Law Encyclopedia provide us with the different details on the federal court. The Columbia Encyclopedia informs us about the scope and Jurisdiction, the procedure and the membership of the United States Supreme Court.

As for the Education Encyclopedia, it deals with the Supreme Court of the United States and Education. It informs about religion, race, and individual rights of students. There was a kind of zigzag in the decision of the court while dealing with the individual rights of students.

Law Encyclopedia we provides some information about the composition, the Court term, the administration of the Court, its jurisdiction, its decision, the rule making process and the politics of supreme court.

The different information gathered here helps us to understand that in fact, it was possible for the court to guarantee the rights of the African Americans. The different articles also help us to grasp the role played by the Supreme Court in the denial of the African American rights.

The legal denial of rights in America is not ex nihilo. To better understand it, we investigated US history to see what made it unavoidable.

The state violence, judge-made law and compliant legislature are its main features. Those characteristics show that the law can be used in favor of the economic system to emancipate African American or to keep them in their condition of inequality. In the capitalistic American environment “possession and possessing” are capital. The process of possessing is moral free so that it became easy to steal the Indian rich lands and the labor power of the slaves and finally the slave himself. The necessity of possession is strong in America because it determines the existence: “I own, therefore I am”. It also makes people free.

As a capitalist nation, private property found its most perfect apotheosis where the private appropriation of the laborer himself is possible. Enslavement became therefore another way to accumulate property.

Right at its inception, the United States of America was the very opposite of equalitarianism. The importance of forced labor at the beginning and the flexible legislature are the source of the legal denial of African Americans' rights. What facilitated the legal denial is the fact that in the United States, the Black is much more a tool used for a precise need than an autonomous actor. In "Thèses sur la question nègre", the role of the Negroes in building the American power has been summarized.

First they were used as private means of production so as to make as much profit as possible. In addition, they were declared equal to the white American so as to be enrolled in «Jim Crow» regiments and to take part in the First World War. But at the end of the war, the Negro soldiers came back to America to experience their previous conditions of frustration, oppression and violence. They then understood that their place was not near the whites but under them.

After the two fundamental roles played by the Blacks in the building of the American empire, the white reduced them into a precious tool that must permanently be kept inferior. In order to achieve that project the legal denial was a step followed by the wealth and health disparities that make residential segregation unavoidable.

In fact, the direct consequence of the legal denial of the African Americans right is the wealth disparity. In an article published in *Fordham Urban law Journal* by

Goliath Business News, the authors assume that the laws in the United States play a role in «the creation and maintenance of wealth disparities based upon race. Their main concern has something to do with “how legal institutions sometimes do create and maintain racialized wealth disparities”. As a proof of this racialized wealth disparity, they take into account some sequences of federal judicial decisions, the federal taxing statutes the role of legal education and access to legal services. The article confirms that “race and wealth are both involved in legal outcomes and ignored by legal actors and institutions in a systematic way”.

The article stigmatizes American hypocrisy by pointing out that:

American foundational aspirations towards equality and neutrality allow legal actors to ignore the effect that race and wealth disparities have upon law and the legal system, even when those actors acknowledge how often laws fail to achieve these ideals<sup>21</sup>

The article echoes Hale’s point of view that maintains that the allegedly neutral system of American property rights and inheritance laws does more than merely protect private property and freedom of contract these laws also give property owners power over workers to the detriment of most American. In fact, America is presented here as a nation that began as a slave nation and where the end of slavery did not break the tie between race and wealth. The authors of the article came back on the failures of the post - Civil War Reconstruction and the emergence of the Jim Crow system of Segregation and the New Deal that pulled many Americans from poverty but which also excluded agricultural and domestic workers from the economic and

social coverage. Nowadays, the Federal Housing Administration made home ownership available to working class whites, while excluding black buyers through redlining and other exclusionary practices.

The impact of law and the legal system on wealth disparity based on race is similar to the impact of the discrimination on health among African Americans. In their scientific steps Vickie M. Mays, Suzan D. Cochram, and Namdi W. Barnes, members of the Department of Health Service and Epidemiology, of University of California, Los Angeles, School of Public Health, established the link between the racial discrimination and health troubles experienced by the African- American Community.

In an article entitled: Race, Raced based Discrimination, and Health Outcomes among Africans- Americans they

Hypothesized that African Americans continuing experiences with racism and discrimination may lay at the root of the many well documented raced based physical health disparities that affect this population<sup>22</sup>.

The legal denial of the basic African Americans rights makes it impossible for them to enjoy the social security guaranteed by the law. Without this social security program, the African Americans' lives in social environments that are conflictual, violent or abusive. In their dwelling places, the parenting styles are "highly dominating or controlling. Family warmth, social cohesiveness, and emotional support do not exist in such places"<sup>23</sup>. Moreover, the children who grow in such poor places

22 Vickie, M. Mays, Suzan D. Cochram and Namdi W. Barnes. *Race, Raced-Based Discrimination, and Health Outcomes Among African Americans*, Los Angeles, Annu Rev Psychol. 58, 24.1 – 24.25 by University of California, Los Angeles 11-06-06.

23 Idem

are at higher risk than their counterpart in more affluent neighborhoods for a number of health challenges, including teen pregnancy, substance abuse, obesity, smoking, limited exercise, and poor dietary habits, as well as early departure from formal education activities, all of which are risk factors for premature mortality, morbidity, or disability<sup>24</sup>.

The other document that has a connection with our work is the dissertation entitled: “The United Supreme Court Through the Years: Political Determinants” This work presented by KITOYI G.M. Ephrem and ZAMENOU Valentin C.A has been supervised by Doctor René AHOUANSOU.

The work stresses the important role of law in the whole life of the American nation. The importance of law is capital since it codifies the main institutions and determines their relationships. In fact, among the institutions that govern the daily life of Americans, the Supreme Court has played the overwhelming roles for decades. The American Supreme Court is presented as a flexible constitutional tool which serves the national economic interest. It mirrors people’s behavior and is “influenced” and “motivated” by some political determinants”.

In order to describe the history of the Supreme Court, the dissertation divides its life into two periods: the first one which is called the pre- Marshall Court mainly focused its interest on the national law. As for the second period, it is called the Marshall Court and is marked by the Judicial Review and the expansion of the power of the Federal Government. Under the leadership of chief Justice Marshall, we recorded the supremacy of the Federal Government over the States Legislatures.

24 Vickie, M. Mays, Suzan D. Cochram and Namdi W. Barnes. *Race, Raced-Based Discrimination, and Health Outcomes Among African Americans*, Los Angeles, Annu Rev Psychol. 58, 24.1 – 24.25 by University of California, Los Angeles 11-06-06.

The presentation of the realities of the American Supreme Court led Ephrem KITOYI and Valentin ZANMENO to deal with the issue of slavery, chief justice Robert Taney, the anti-slavery controversy, the civil Rights and the rights of minorities.

Slavery is presented here as the apple of discord in the American civil life. The light cast on chief Justice Robert B. Taney makes us discover him as a ‘champion of state’s rights’. He was the one who devoted himself to the protection of the vested property interests and the extent of national power. Robert B. Taney is best remembered in the Dred Scott vs. Sandford case of 1857. The decision of the Court gave popularity or shame to Taney. The controversial decision contributed to legalize discrimination for many long years.

As a matter of fact, Taney’s decision can partly explain the failure of the Supreme Court to guarantee and promote the civil rights and the rights of the minorities.

## PART TWO: THE US SUPREME COURT AND THE RIGHTS OF ENSLAVED AFRICANS.

### A: the US Supreme Court

The Supreme Court of the United States often colloquially called under the acronym SCOTUS is the highest judicial body in the United States. It is the only Court established by the US Constitution that reads as follows:

The Judicial power of the United States shall be vested in one Supreme Court and in such inferior Court as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior Courts shall hold their offices during good behavior, and shall at started time receive for Services a Compensation which shall not be diminished during their continuance in office<sup>25</sup>

All the other courts are created by Congress. Its judges hold office all their lives' long provided their show good behavior. To deal with a matter like the right of the former slaves requires that stability in order to assure durability to its decisions. To keep office for long time gives at the same time the opportunity to take a decision and defend it for long time, it can also become bad if the decisions are against the slaves' interest. As the highest federal court, the Supreme Court has a nation-wide competence, so all the African Americans, wherever they lived in the United States could be protected by the federal institution.

The main action of the highest Court consists in acting as a final interpreter of the States and federal laws and establishing procedural rules for the Federal Courts.

The decision of the Supreme Court, whether by a denial of certiorari or an opinion issued, are final and can't be appealed. The writ of certiorari gives the court discretionary review allowing it to address some issues and ignore others. But if certiorari is denied the matter ends. These internal instruments of the Supreme Court give it certain autonomy in its decisions. They allow it a full independence to freely carry out its constitutional duty. The nine justices of the highest federal institution are empowered by the US Constitution to act pressure free. This is also a positive point for the Blacks whatever they will decide to promote the rights of the African Americans; no one could question or appeal it. The fact that the Court rarely overrules itself is an additional insurance that a decision taken can't be undone.

The US Supreme Court with its paramount power and its highest importance as a judiciary instrument of the Union could have helped the African Americans. Its attribution and its organization could have made it a precious tool to protect the African- Americans and make them enjoy their new rights.

In fact, it has two main functions. On the one hand it has the power to interpret and expound the congressional enactments brought before it in proper cases. In this respect, its role parallels that of the States Courts of final resort in making the decisive interpretation of the state laws. So, the justices of the Supreme Court can read these laws and give the official interpretation or how they should be understood. In that

framework, only the Supreme Court can impose a given interpretation that will be in force through the Union. At this point, a decision can be taken to read or to understand the State Laws in the favor of African Americans.

On the other hand, the Supreme Court has the power superseding that of all the courts to examine federal and state statutes and executive actions to determine whether they conform to US Constitution. This précised function gives the possibility to the Court to determine if a certain State law is in conformity to the US Constitution or not. The Court can at least select the laws in favor of the African Americans. When the Court rules against the constitutionality of a statute or an executive action; its decision can be overcome only if the constitution is amended. This aspect can also serve as a guarantee to African Americans' rights because if a new text of law is taken, it won't be easy to change it. To amend the US Constitution requires a complex procedure that won't be easy to carry out every now and then. Therefore, a positive change that the Supreme Court obtains for the African Americans will be enjoyed by them for a long time. We must also add that the actions of the Supreme Court guide not only legislatures but executive authorities as well.

Being able to influence both the legislative and the executive authorities, the court can act to emancipate the African- Americans to change them into full American citizens. In addition, it is possible to the Constitutional Court to perpetuate these rights through ages. When we put the two functions together, we can say that in the US government system, the Supreme Court potentially wields the highest power.

The Court's attitude used to fluctuate according to people opinion. In early 20<sup>th</sup> century, we notice the rigid adherence to stare decisis. The principle of stare decisis implies that the rules that precedents are to be followed. By applying this principle, it tried to restrain the states from restricting civil liberties as in the Plessy vs. Ferguson case which upheld the right of the states to enforce segregationist Jim Crow legislation in many Southern States.

Starting in 1954, the Court activities were centered on the question, of race and American education. It took some measures to dismantle the practice "of official and intentional" segregate actions in the US as a whole. Before the decision of 1954 in Brown Vs Board of Education, the Court approved the scheme of "separate but Equal" as in the Plessy vs. Ferguson that happened in 1896. During the two decades that preceded Brown, the Court took some decisions in Missouri ex Red Gaines vs. Canada and Sweat vs. Plainter cases. Those Decisions invalidated the "evasive schemes" that apparently treated white and Blacks equally, but really did not. But in Brown I, the Court based itself on the "equal protection" clause of the fourteenth Amendment to state that "separate" obviously unequal". In Brown II which happened one year later, the Supreme Court ordered the desegregation of public schools. They ordered it to be carried "with all deliberate speed required".

## B: The Post Civil War Legal Achievements and their Meanings

Before speaking of the decisions of the Supreme Court, it is important to detail the great legal achievements that occurred in the lives of the former slaves.

The post civil war amendments and Civil Right Acts taken from 1865 to 1875 had greatly improved (at least on paper) the situation of the former slaves.

The thirteenth Amendment to the American Constitution was the first improvement in the life of the former African Americans. It abolished slavery. In the context of the post civil war, the abolition of slavery means the end of the 18<sup>th</sup> century court ruling, establishing the racial basis of American slavery, chiefly applied to black Africans and people of African descent. Slavery for life was no longer legal in the boundaries of the United States. In fact, 95% of the Blacks living in the south became free. The “power” to “punish” conferred to the master became illegal, since they could not be addressed as “legal non-person”. The thirteenth Amendment banned both the internal American slave trade and their involvement in the international slave trade. The thirteenth Amendment to the American Constitution brought an end to the previous laws like the one passed by Virginia in 1662 by which “children of an enslaved mother would follow her status and automatically become slave no matter if the father was a freeman. Together with this law, the southern, Baptist Convention allowing Christians to own slaves became illegal.

The abolition of slavery has some great economic impacts on the Southern States.

First of all it deprives the southern states agriculture from the largest part of their manual manpower. The lack of slave's man power implies the decline of the post bellum southern agriculture and its economy. This situation complicated the situation of the southern states which have to face significant competition from foreign cotton producers like India and Egypt. The decline of agriculture also means the loss of power of the South planters. On the other hand, the industrialists from the northern states dominated all aspects of the nation's life: social as well as political affairs.

Three years after the ratification of the thirteenth Amendment, the 14<sup>th</sup> Constitutional Amendment was ratified conferring citizenship on the Negroes and their descents. The fourteenth Amendment bestowed on them equal protection under law in United States of America.

The fourteenth Amendment was followed by the 15<sup>th</sup> constitutional Amendment ratified in 1870. This amendment states clearly that the right to vote can not be abridged on the account of race. Apart from the Constitutional Amendment, two civil Rights Acts passed on 1866 and 1875 enlarged the legal protection of the newly liberated Blacks.

The first Civil Rights Acts of 1866 stipulated that all persons are entitled to equal legal rights and it also authorized Federal Courts to enforce their provisions when State official refuse to comply.

As for the one of 1875, its aim was to secure rights and privileges for African-Americans. In reality, it condemned racial discrimination on public transportation, public accommodations, restaurants, hotels, theatres and on grand juries.

Theoretically, the Constitutional Amendments and Civil Rights Acts should have brought the African- Americans' miseries to an end.

Although the Confederate States were resigned to accept the abolition of slavery, they were not eager to accept the political domination by former slaves that the "immediate granting of Civil Rights to the freedmen would have meant". Their fear can be explained by the fact that from 1870 to 1876, six hundred and sixty three African-Americans were elected as state legislators, two were U. S. Senators and fifteen were US Congressmen.

So there was an increasing importance in the status of the African Americans in general. That true emancipation observable in the daily lives of the blacks threatened the white power. So they started stopping the black's action to affirm their equality. The white found the most successful way to reach their aim by using the Supreme Court of the United States. Through some cases brought before it, it questioned the rights of the blacks.

## C: The Decisions of the Supreme Court

The first decision that greatly influenced the lives of the former slaves was taken in 1857. It had something to do with the Dred Scott Case.

Dred Scott was a slave of a military surgeon. He lived as a slave in "free State" territories for about eight years. On the basis of this fact, he and his wife sued for freedom, because having lived in Free States and territories should have given them the right to freedom.

But the United States' Supreme Court presided by Chief Justice Roger Taney ruled that the people of African ancestry should not be and can't be included under the word "Citizen" mentioned in the Constitution. So they can't claim any of the rights and privileges provided and guaranteed to the citizens of the United States.

In *William vs. Mississippi* (1898) the US Supreme Court ruled that the Congress does not have the authority to restrict segregation in public accommodations and public conveyances. That decision curtailed the Civil Rights Act of 1875.

The third decision was taken in 1896 in the *Plessy vs. Ferguson* case. In 1892, Plessy who bought a first class ticket was travelling from New Orleans to Oklahoma in Louisiana. On the train, he introduced himself as a white man and then was given a room in the white-only car. But soon after he was told to leave his seat and take another one in the colored only car. Plessy objected and was arrested on the spot. The case was brought to the Supreme Court of the US by the citizen committee of New Orleans. They lost on the ground that "Separate but equal facilities were constitutional.

That decision contributed to 58 long years of legalized discrimination against blacks and colored people in the United States.

The Supreme Court of the United States held in the Civil Rights cases 109 US (1883) that the fourteenth Amendment did not give the Federal Government the right to outlaw private discriminations and held in Plessy vs. Ferguson 163 US 537 (1896) that Jim Crow law were constitutional as long as they allowed for “Separate but equal” facilities.

In 1938, the US Supreme Court ruled that States must provide equal even separate educational facilities for African Americans.

In 2001 in early US Cromaty case, the US Separate Court ruled that race can be considered in redistricting plan as long as it is not the “dominant and controlling” consideration.

After the Supreme Court’s decisions in Plessy vs. Ferguson, white dominated legislature felt free to enact Jim Crow laws segregating Blacks in public places and accommodation and passed other restrictive piece for legislation.

Legislature sought to prevent interracial relationship to keep the white race “pure”.

To disfranchise black men in the south, the white men tried not to violate the contexts of it the fifteenth Amendment but they took some new measures like poll taxes and property qualifications which were aimed at discouraging the black voters but did not technically deny them the right to vote based on color. In is the same light ,

in the Plessy vs. Ferguson case it was stated that's "Jim Crow laws did conform to the Constitution as long as they provided separate but equal services.

Racial Segregation in the United States has been perpetuated at a given moment by the Supreme Court. Its decisions in Dred Scott's case, Plessy vs. Ferguson's and other cases reinforced segregation in American life.

In the Dred Scot's case, by ruling that the word "Citizen" can't be applied to the people of the African descent, the Supreme Court systematically implied that they cannot claim any of the rights and privileges provided and guaranteed to the citizens of the United States. This decision, together with the one of the Plessy vs. Ferguson in which it is stated that the "Separate but equal facilities were constitutional", authorized and legalized racial segregation.

The first decision was highly paradoxical for several reasons. First of all, it contradicted the philosophy of the declaration of independence. It sharply denied the truths and the self evidence that "all men are created equal". Saying that blacks are not "citizen" means that they don't deserve the rights and attributes of citizens. The decision of the Supreme Court means that the African Americans can't claim for "life, liberty and the pursuit of happiness". African Americans viewed as non citizens clearly means that the whites only are citizens and superior to the African Americans. Once the Court itself established the basis of the segregation, it won't be possible to stop it on the basis of law because the federal Supreme Court has the final word on interpretation of all laws and of the Constitution itself. By referring ourselves to the

Declaration of Independence, the basic document in American legal life, one can understand that some of the sources of racial segregation in the United States can be found in the history of the country.

The decision of the court illustrated and strengthened the compatibility of the American Declaration of Independence and racial segregation. The other decisions of the court should be viewed as a direct consequence of the one of the Dred scots.

The Supreme Court also ruled that Congress could not stop Slavery in the newly emerging territories and declared the Missouri Compromise of 1820 to be unconstitutional. The Missouri Compromise prohibited slavery north of parallel 36°30 in Louisiana Purchase. The Court declared that it violated the fifteenth Amendment of the Constitution which prohibits Congress from depriving person of their property without a due process of law.

When the Supreme Court declared that the Separate but equal laws are constitutional it enforced all the laws and provisions that encouraged and established segregation. The expression “Separate but equal” coheres with “Separate and equal” we can read in the Declaration of Independence where it is associated with laws of Nature, Nature’s God. The only fact of declaring that “Separate but equal facilities were constitutional brought listless miseries to the life of the African Americans. “Separate but equal», facilities means that African-Americans would receive the same services (school, hospitals, prisons, water fountains, bathroom etc), but they would be distinct for each race. In reality the services and facilities reserved for African

Americans were almost always of lower quality than those reserved for whites. The African American schools for example didn't receive as much important public funding per student as nearby white schools.

It often happened that among civil servants white and black people are required to eat separately and use separate schools, public toilets, park benches, trains, and restaurant seating. In addition to segregated seating, it could be forbidden for stores and restaurants to serve different races under the same roof.

It inspired countless discriminative actions for very long years. From that decision, the white southern racists were very free to inflict bad actions upon the blacks. Taking support from the Supreme Court's decision the southern States enacted the Jim Crow laws which aimed to segregate the blacks in public place and accommodation and passed other restrictive legislation.

Legislatures sought to prevent interracial relationship and to keep white race "pure".

During the same period, the one drop's rule was passed in many southern states. It was a tactic that codified and organized segregation and disfranchisement of most blacks and many poor whites from 1890 to 1910. The One drop rule stated that a drop of black blood in one's body makes it black. One drop rule shows the extension of racism. Things were done to get rid of the African- Americans and to be sure that they were definitely excluded and rejected from the white community. That principle was not far from the racial purification process.

The Supreme Court Decisions in the Dred Scot's case and in Plessy VS Ferguson's case were the two fundamental bases of legalization of racial segregation in the south.

Apart from those capital decisions, some other decisions stated that "Congress could not stop slavery in the newly emerging territories, and declared that the Missouri Compromise of 1820 we unconstitutional".

It also held in the Civil Right cases 109 US 3 (1883) that the fourteenth Amendment did not give the Federal Government to outlaw private discrimination. In the same decision, it ruled that Congress does not have the authority to restrict segregation in public accommodation and public conveyances. In Williams VS Mississippi (1998) the US Supreme Court ruled that poll taxes and literary tests do not violate the constitution. In 2001 in Early vs. Cromatie case, the US Supreme Court ruled that race can be considered in redistricting plan as long as it is not the "dominant and controlling consideration". The problem with this second series of decisions is. That the US. Supreme Court of the United States which potentially wields the highest power superseding that of all other courts was the one that institution that initiated, practiced and justified racial segregation. Since segregation was encouraged prescribed by the highest judicial body it wouldn't be easy at all to undo it.

After the end of the civil war, Plessy became de facto standard throughout the United States and represented the institutionalization of the segregation period.

African Americans would receive the same services but there would be distinct facilities for each race. In practice, the services and facilities reserved for African Americans were always almost of lower quality than those of the whites.

The rules for loans did not say that black families cannot get loans rather it said that People from “Areas in decline” could not get loans” needless to say that blacks live in decline areas.

In 1913 President Woodrow Wilson ordered the segregation in the federal services. Blacks and whites people would sometimes be required to eat separately and use separate toilets, parks, benches, restaurant seating.

In addition, to segregate seating, it could be forbidden for stores and restaurants to serve different races under the same roof.

The decisions of the Supreme Court had more than one implication.

First of all it implies that only the white men are the citizen in the United States. The whites are therefore superior to the blacks. The decision of the Supreme Court also means that all the men are not equal since some of them are citizens but others are not. In fact, that very decision of the Supreme Court was in sharp contradiction with the Declaration of Independence. It also enlightens the spirit of the Declaration of Independence. So what is said in this Declaration of Independence lacks of sincerity. We can then understand why despite the wonderful ideal of equality, justice of the United States, Slavery had been practiced there

## PART THREE: THE CONSEQUENCES OF THE DECISIONS OF THE SUPREME COURT

### A: Structural Racism

Racism is difficult to stop in the US because it is structural. In fact structural racism is older than the building of the national identity and the establishment of the US since 1790. It became then necessary for the new comer to the US to determine whether he belonged to the “racialized other groups or not”. Once the immigrants from old Europe stepped in the United States; they automatically learned that to be a member of the “whiteness” and isolated from the American Indians and Blacks, was the sine qua non condition to “upward mobility”. In the United States, it was clearly established that the social and economic progress was linked to the basic classification of society. How did it function? As soon as the new settlers entered the USA, the blacks and the whites were subjected to different conditions. Whereas the whites could own lands in the term of a well established process, the Blacks could never be land owners. Moreover, the blacks and the whites did not have the same statute. The whites entered the US as free men. But from a certain moment, the blacks who came to America became automatically slaves. The direct consequence was that the whites could sell their labor force or hire it while the blacks were not even owners of theirs. In addition they were not free to decide where and for whom they would work. From this early classification, the black slaves were subjected to the black Codes mainly in

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its article 9, 13, 18, 19, 21, 28, 29, 30. The black Code defines the blacks as inferior to and private property of the whites.

That definition of March 1685 represented the tacit reference of the American institutions to deal with the black issues. For example, in the Dred Scot Case of 1857, the US Supreme Court defined the blacks as “being an inferior order and altogether unfit to associate with the white race and Idols, and so far inferior that they have no rights which the white man was bound to respect. In the same line, Article 9 of the Black Code fined the free men who got some children with black slaves because the black slave was unfit to associate with the white race”.

The real place selected by the whites to the blacks was in sugar or cotton plantation. In that context, the black slaves were equivalent of means of production or mere instruments. Considered as such, they became useless out of the farm. Some of the white Americans assimilated them to the white men’s burden. In a speech delivered in the US senate on Feb 7, 1899 Benjamin R Tillman declared that. It was not because we are democrats, but because we understand and realized what it is to have two races side by side that cannot mix or mingle without deterioration and injury to both and the ultimate destruction of the civilization of the higher. We of the South have borne this white man’s burden of a colored race in our midst since their emancipation and before. Tillman words calls at least two remarks. First of all he based indirectly himself on the black Code that defines black slaves as inferior to the white man. In addition the latter unfit to live in the white neighborhood. The two

remarks lead to the following conclusions. The black man in the United States couldn't be more than a slave and his place was not near the white men but in the plantations under the rule of his masters. From Tillman's thought it is clear that in the mind of the majority of white Americans, the slaves would never be totally emancipated.

## B: Race and Wealth Disparities

It is practically difficult for African Americans to enjoy total equality because legal institutions sometimes create and maintain wealth disparities. Most of the times, the African Americans are the largest racial community that is victim of this situation. Racialized wealth disparity is very difficult to fight because it is insidious. Racialized wealth disparities can be observed through a sequence of federal judicial decisions, federal taxing statutes, and access to legal services. The two issues of race and wealth are important in so far as the wealth disparities are a result of racial segregation. Society is organized in a particular way not all the different racial groups have equal opportunity to have wealth. Moreover, people need to be more critical and more attentive to the American legal landscape to perceive the relationship of wealth and race.

The first level that generates the disparities is the federal judicial decisions. The illustrative example is given by the contradictory views of human relationship articulated by the American legal system. When we read the American Declaration of Independence, we can perceive two values; equality among people and the neutral application of laws. Yet, the provision of Article 1 section 2 of the US constitution stated that the census will count the population on the following basis. “the whole number of the free persons excluding those bound to service for a term of years and including Indians not taxed, three fifth of all other person. This constitutional provision shared role by race for the institution of the political right. “Indians outside

American society, black slaves and white male full citizens whether free or bound for the term of a year.

In the United States, a new concept of legal neutrality was created. That legal neutrality pretended that law has no effect in the wealth distribution. Had that ideal been true, it would have been fantastic for the African Americans. They would have become rich or at least, they would have had more opportunity to actively participate to the country's life.

As we have said before, wealth is capital in the American life. The fact of being poor excludes de facto some people from the nation's life. We have also said that in America, liberty is conditioned by the possession of wealth. So, when someone has no wealth it is impossible for him to be free. Then if the legal neutrality works normally, the African- Americans would have been really free. With true legal neutrality, the rights of the African Americans would have been respected. Unfortunately things didn't happen as they were designed or how they sounded on papers. The reality is that laws protect property rights and freedom of contract. Therefore, the legal rules lead to a particular wealth distribution pattern. This distribution makes the "haves" always very powerful. It gives property owners power over workers. Property owners derive their power from their wealth. In the post slavery America, those who possessed wealth used it to control their own life and leisure as well as other people's life. That could explain the control of the wealthy masters over the working class. Most of the African Americans as members of the

working class are once more under the power of those who own property. The consequence of legal neutrality on African American is its impact on their rights. The legal denial of rights partly took place because of some systems like legal neutrality which reinforced and perpetuated the power of the capital over the labor. This legal neutrality; in fact, reduces or even neutralized the bargaining power of the African Americans. With a weak bargaining power of the African Americans, we have unequal bargaining power which means an equal distribution of wealth; a symbol of segregation.

This segregation dictated by the power of wealth is worsened by Jim Crow system and the New Deal. The failure of post civil war reconstruction together with the system of Jim Crow segregation system and the liberal New Deal “tied race and wealth”. The New Deal introduced some economic improvement. As such, it took several Americans from poverty. But that policy excluded Agricultural and domestic works from economic safety it offered. By not taking into account those two sectors, the African- Americans were automatically excluded. At the end of the Second World War that systematic exclusion could still be observed through the housing policy. That policy enriched the whites through the Federal Housing Administration. It made home ownership available to the white working class but excluded black buyers through redlines and other exclusionary systems. The government policy excluded the blacks in two ways. First it happens explicitly through the Federal Home mortgage and implicitly through the social security. Those restrictions benefited the whites and

deepened the income and wealth gaps between the whites and the African Americans. The gap had been widened through the access to education which is limited through the system of funding it. The local school districts are financed through property taxes. That system made it easy for rich school districts to raise more capital through taxation than poor districts. In fact, rich districts have lands and building with higher property values. So they can collect greater funding and they just need to put less tax burden on each tax payer in the district.

As conclusion in the rich districts it was very easy to collect a lot of low taxes to obtain important revenues for education. But the poor districts were obliged to impose higher taxes to gather low revenue.

It is needless to say that the amount collected determines the type of school of the districts and the level of education of the students. This way of raising taxes limits the opportunities of the African Americans to have good education. In reality, it establishes unequal education opportunities between African- Americans and whites. Here again the facial neutrality in education policy feeds “the legal denial of slaves’ rights” of good education. In this specific field, to establish equal access to education, the unequal funding scheme must be replaced by a system in which state wealth rather than school districts wealth assure the funding per student.

The same problem of discrimination takes place with admission to the University of Texas. The fifth circuit wondered if “in order to increase the enrollment of certain favored class of minority students, the University of Texas school of law

discriminates in favor of those applicants by giving substantial racial preferences in its admission program. The court rejected the University of Texas law school admission policy as unconstitutional. For the Court, that admission did not meet a supposedly neutral and objective standard of merit.

A close analysis shows that the principle of merit is not as neutral as it appears even if it is based on test scores. Test scores are in fact race and class bias. For it is established that the different educational opportunities in primary and secondary level will determine the test score. The test may be an objective selection mode but the result is segregative because the ethnic groups who had followed a non performing education will have a lower chance to succeed. At the end, the test will be more profitable to the whites than to the African- Americans, and a greater number of white students will attend Texas University School of law.

So, the decision of the Supreme Court by claiming to reduce segregation reinforced it.

To guarantee equality here, the law should allow all the parents (blacks and whites) to spend whatever money they want on their children's education. The neutral law should have created the appropriate conditions to give all the parents the same access to wealth. In addition, the law remains neutral when the same tests give a result made of the same number of students from underfunded and well funded school

The consequences of the legal discrimination we have been dealing with are mainly social. The result of this discrimination is that the African Americans lives will

be more painful because it will be rather impossible to them to enjoy all the different facilities provided by the country. A feeling of revolt will always fill their minds. It is frustrating to know that whatever you try some realities prevent you from reaching or gaining what you deserve.

As if the legal discrimination were not enough to keep the African Americans in a perpetual inferior position, American society imagined some economic tools to definitely reduce the former slaves. The measure invented has something to do with the federal tax code.

Its basic principle works as follows: gift and estate tax laws implicitly tax large estates as they pass from generation to generation. Tax laws in America have some impacts on both races and wealth and income tax uses a progressive rate as income increases. First, it has some implications on both income and wealth distribution. The second reason is the great income gap between African Americans and whites. The American tax system as it is written is neutral but it is structured as race and wealth sensitive. In the US tax system there are series of rules “ that result in black and whites at the same income level , education level , marital status , number of children and region of residence ; paying very different amount of federal income tax with blacks paying more”.

This difference can't be easily accounted for. The reality of race as linked to skin color can largely explain the lack of equity about the amount of the tax-one is supposed to pay. This is the mechanism that makes it technically possible. First there

are established rules and how these rules interact with how people live. Then, we have the silence that “allows the rule to play out differently by race without any movement toward reform”. More than that, we have the shaping of public opinion in the way that the rules are accepted as neutral; though they favor the wealthy. “ Technically, the distribution of tax benefits to whites through a series of credits , exclusions and deductions that all work so that the greater benefits go to people who fit a white profile and the lowest benefits go to people who fit other profiles. The illustration is the home ownership.

There is a vast gap in home ownership between whites and blacks the gap results in a white range of government policies

“Blacks people are now and have been constantly shut out of the home ownership marked by a series of laws, rules and private policies

The internal revenue code gives tremendous benefits to home ownership. The cost of financing a home is completely deductible for most Americans. Property taxes that support local school are also deductible. If the houses goes up in value , the owner can draw money out of the house through barrowing not pay any tax on the receipt of the barrowed fund and deduct the payment of mortgage interest ; when the owner sells the homes , the gain realized from any increase value or equity is received complete tax-free”<sup>26</sup>.

The tremendous tax benefits for home benefit together with the private practices and policies that kept blacks from the ownership shows how “the intersection of neutral law with a race change the situation compound race effect. The intersection of law and the reality of how people live allow the race neutral law to change wealth outcomes by race.

Racism at the beginning had a religious basis. But when Virginia decreed in 1667 that converted slaves could be kept in bondage, not because they were actual

heaven but because they had heaven ancestry, the justification for black servitude was thus changed from religious status to something approaching race.

Racism exists when one ethnic group or historical collectivity dominates, excludes, or seeks to eliminate another on the basis of differences that it believes are hereditary and unalterable<sup>27</sup>.

In the United States, racial segregation also has something to do with racial segregation of facilities, services and opportunities such as housing, medical care, education, employment and transportation along racial lines.

Segregation takes two forms de jure and de facto segregation.

De jure segregation sanctioned or enforced by law was stopped by federal enforcement of a series of Supreme Court decisions after *Brown vs. Board of education* in 1954

As for de facto segregation, it is segregation in fact and it still persists to varying degrees without sanction of laws to the present days

The temporary racial segregation can be observed in residential neighborhood. It has been instituted by public policies mortgage discrimination and redlining.

In the 20th century, most of the white people believe that the presence of the blacks in the white neighborhood will decrease the property values. It was created in the United States, a policy which aimed to segregate the county through many low interest mortgages. The federal housing Administration was in charge of white civilian families. The white military families were taken care of by the veteran Administration

27 Friedrichson George. 'Race, The Power of Illusion' the historical origin and the Development of Racism, California, California Newsreel, 2003.

The blacks were simply denied the loans because the authorities qualified their areas as in decline. The conditions of the rules did not say that black families cannot get loans but to reject the blacks it was said that those who live in areas in decline couldn't obtain loans; In addition, to encouraging white families to move to suburbs by providing them loans to do so, the government uprooted many established African American communities by building elevated highways through their neighborhood. In order to build them, a great number of single-family homes were destroyed the official reason was that their properties were in decline.

The victims of that measure were just given pittances for their properties. They were forced into a federal project which needed the destruction of a lot of single family homes to be carried out.

Segregation is still present in the US. Many years after the Civil Rights era, the US is a highly residentially segregated nation where blacks and whites live in different places of vastly different quality.

Redlining consists in denying or increasing the cost of services like banking, insurance access to job and to health care, supermarket to residents of certain racially targeted places. Redlining is very cruel in mortgage discrimination. Blacks are simply excluded from white neighborhood by white communities. In some cases highways are built to divide and isolate black communities' neighborhood from good services.

Residential segregation is one of the several aspects of racial segregation. African Americans are obliged to live in place characterized by a great concentration

of poverty and social problems. So, the residents whatever their backgrounds are daily exposed to stressful environment and lack of appropriate resources to cope with these exposures.

The residential segregation destroys African Americans lives for three reasons. First they lack adequate and social services. This lack reduces their health, decreases their possibility to have a minimal living standards. The place also perpetuates poverty and lack of great ambition in the minds of children educated there. In addition, it daily exposes its inhabitants to health hazards like air pollution, lead, dust, dirt and smog. All these problems determine the quality of life of African Americans. Furthermore, the people are shaped by the concentration of poverty and its specific features like drugs, crime, gangs, violence, unemployment, stress and anxiety, lack of green space or fresh fruits and vegetables.

These environments provide fewer social benefits for residents. There are correlated factors between residential segregation and social economic inequality.

These factors work to concentrate social stressors, which in turn set into motion high allostatic loads that are associated with increased risk for coronary heart disease, chronic inflammation and cognitive impairment.<sup>28</sup>

The living conditions in a “racially segregated, poor neighborhood” call for a biological challenge of “flight/fight “response. According to Massey,

An African American living in this unhealthy environment responds at a biological level with a persistently elevated level of cortisol and other glucocorticoid hormones. The effect of the chronic stress response is a premature wearing down of the body and a greater tendency to develop a specific disease processes<sup>29</sup>.

It is admitted among the psychologists and other social scientists that “many – well documented raced-based psycho-logical health disparities”

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28 Vickie, M. Mays, Suzan D. Cochram and Namdi W. Barnes. *Race, Raced-Based Discrimination, and Health Outcomes Among African Americans*, Los Angeles, Annu Rev Psychol. 58, 24.1 – 24.25 by University of California, Los Angeles 11-06-06.

29 Massey S Douglas, *Segregation and stratification: A Biosocial Perspective*. Du Bois Review Social Science Research on Race, Princetown University, office of Population Research, Princetown University, 2004.

That affect the African Americans are rooted in racial segregation. In 1985, Heckler reported that “the health status of African Americans was significantly worse than that of white counterparts<sup>30</sup>

In 1990, Melord and Freeman revealed that:

A black male in Harlem had less chance of reaching the age of sixty-five than did the average male resident of Bangladesh; one of the poorest countries in the world<sup>31</sup>.

This reality clearly shows that although the discriminative dispositions of Jim Crow laws have been repealed, African- Americans did not receive the equal protection of laws. Moreover, although they live in America one of the richest countries of the world they are poorer than the citizens of the poorest country of the world. Things happen as if African -Americans were forbidden to enjoy all the facilities, all the wealth available in their country. Segregation parts the US into two, and African Americans live in the poorer part of the country. Because of the color of their skin, and their origin, the African -Americans don't deserve the living standards of the Whites. The situation of African Americans makes it clear that American authorities were not eager to stop de jure segregation. It also makes it obvious that the country is reluctant to create equal basis as far as health care is concerned. The other aspect to be stressed here is that racial segregation towards African- Americans is a general rule that characterizes the country. It functions as the basic rule followed by Americans.

The great difficulty to have adequate health care exposes the African Americans to disease, death, and disability. Another report published in 1995 stated

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30 Vickie, M. Mays, Suzan D. Cochram and Namdi W. Barnes. *Race, Raced-Based Discrimination, and Health Outcomes Among African Americans*, Los Angeles, Annu Rev Psychol. 58, 24.1 – 24.25 by University of California, Los Angeles 11-06-06.

31 Idem

that “Today, African Americans still bear a disproportionate burden in disease morbidity, mortality and injury<sup>32</sup>. In addition, it is established that; “The overall death rate of African Americans in the United States today is equivalent to that of Whites in America thirty years ago<sup>33</sup>”. This thirty year gap denotes the artificial superiority created by the white community. It also represents the length of time during which racial segregation will continue after its total and real abolition. The thirty years symbolically represents approximately the years of misery, frustration of any kinds and sacrifice that each African American has to support in order to live in the U.S. In a country where life expectancy of African Americans does not exceed sixty five years, it is the damaged life time of each of them. It won't be easy at all to overcome the impacts of the thirty years of the denial of their basic and vital rights.

In their attempt to fight back the different injustice, the African Americans live; they develop new experiences that ruin their health.

From the perspective of discrimination models, the casual mechanism linking racial/ethnic minority status and health disadvantage is thought to lie in the harmful effect of chronic experiences with race based discrimination both actual and perceived. These experiences are thought to set into motion a process of physiological responses (e.g.: elevated blood pressure and heart rate, production of biochemical reactions, hyper vigilance) that eventually result in disease or mortality<sup>34</sup>

Kruger and Sidney confirmed the same fact in 1996. According to them; the “experience of perceived race-based discrimination, was positively associated with raised blood pressure and poorer self-rated health”.<sup>35</sup> It is also known that bad behavior like smoking among African Americans is caused by race-based

32 Vickie, M. Mays, Suzan D. Cochram and Namdi W. Barnes. *Race, Raced-Based Discrimination, and Health Outcomes Among African Americans*, Los Angeles, Annu Rev Psychol. 58, 24.1 – 24.25 by University of California, Los Angeles 11-06-06.

33 Idem

34 Idem

35 Idem

discrimination. The smokers themselves found that discrimination is stressful and represents the best predictor of smoking in their community. Another group of scientists added that “black White differential exists not only in smoking prevalence, but also in smoking related morbidity and mortality<sup>34</sup>”. Life in the United States of America makes it possible to extend segregation in front of life to segregation in front of death. We can also explain this fact by saying that if we don’t have the same living standards, and health care opportunities we can’t face the dangers of smoking with the same chances.

The reality is practically the same as far as alcohol is concerned. According to the conclusion drawn by Taylor and William in 2003, the “internalized racism (i.e. belief that African Americans are inferior” is positively associated with alcohol use as well as psychological distress”. Tobacco as well as alcohol addiction can but worsen their situation and deepen their delay where and when the Whites don’t want them to take off.

## Conclusion

The United States of America was founded at the antipodes of oppression. The immigrants came to the New World to avoid religious persecution. Their dear ambition was to create a new society that would become «a paradigm for all mankind». In that framework no one could think that « the oppressed would become oppressors» Freedom and equality are the two basic pillars of that new community.

These too values have as guiding principles “freedom of personal expression”. Though all these values did not seek to establish a homogenous populace, their plan was to build a unified nation. In that nation differences are not sources of division and oneness is multifaceted. In fact, the objective was not to throw all the immigrants into a melting pot but to manage so that each of them can use their unique original tradition and join together to melt into unified community. This community will be strong because it is the result of “E Pluribus Unum”: “out of the Many, One”. But among these “Many”, there was no mention of the former enslaved African Americans. Despite the end of slavery, they were still rejected. Fortunately at the end of the civil war, the thirteenth, the fourteenth and the fifteenth Amendments to the Constitution integrated them into the American life. They could then think that they too were equal to the whites and that they had the right to pursue happiness.

To protect the right of the African- Americans there was the Supreme Court of the United State. The highest legal instrument should have been very precious push for

the emancipation of the former enslaved African Americans and their descendents. But the Court failed to help them. On the contrary its decisions contributed to legalize segregation towards the African Americans. Rather than protecting them it reinforced their exclusion by the whites. Instead of giving an objective interpretation of the Constitution, the US Supreme Court in 1896 became the partner of the racists.

In fact, at a given moment of American history, the Supreme Court became a means of compromise. To have the good will of the Southern States it was very important to adopt their new Constitutions. That compromise put the Court into a contradiction. The Court that should have promoted positive values of equality, justice and tolerance rooted segregation in the mind and the life of American people instead. That option of the highest American institution had been possible for two reasons. First of all the unity of the states was of paramount importance. Let's remember that after the civil war, it was urgent to have a single united nation. To achieve that, one may forget for a moment the ideals of the American founding father. The great flexibility that makes it possible in America to destroy what they defend is a key characteristic and weakness of American political system. This behavior ruins the credibility that America should deserve through its actions in the world. This seeming hypocrisy of the United States highly stresses the role of interest in the American decisions. We think that the only thing that matters in America is not the values but the circumstantial interest. So, when it is necessary, the Americans can collaborate

with the devil provided that their interest is safe. This behavior depicts the lack of moral value in a country where people apparently devote their heart and soul to God.

America whose democracy is wrongly considered as a perfect one should best be seen as the most interested one.

The different decisions of the US Supreme Court make us question the fact that America is often labeled as “the land of free men”. The Declaration of Independence may have a sense in its context. When one thinks of the relationship that American people wanted to establish with Great Britain, it is clear that “we are all born equal” But when one remembers the atrocities experienced by the enslaved African Americans the disillusion is great. When we also consider the different legal strategies invented to perpetually keep the African Americans into a lower position, the hypocrisy of the American system unbearable. It then becomes necessary to avoid a hasty admiration of American ideals. To better assess the American values it is quite necessary to go beyond the words and the generous intentions often published. To believe American declarations let’s only take into account the practice of liberty, equality, as it is experienced by the lower classes of the society.

For African States, what can we say about the different decisions of the US Supreme Court? First of all no democracy is perfect. It is then useless to refer ourselves to other political systems. No need to receive lessons of democracy from other countries, even if they have the older and apparently more perfect written

Constitution. It is more necessary to determine our real needs and to build a system that will give indigenous answers to our daily preoccupations.

The legal denial of African American rights gives us an opportunity to understand that racial segregation is tough for several reasons. First, in America there is a structural racism that «predated the construction of nation identity and the establishment of the state». That structural racism divided the United into two groups the “whiteness” and the American Indians and Blacks. To succeed, one must not belong to the “racialized other” groups made of the blacks and the Indians. Later on, from 1619 to 1865 we had had slavery which was followed by nearly one century of the “US version of apartheid” when racial segregation was founded on legal roots. One of the principles of this legal racial segregation was that Blacks are «beings of an inferior order and altogether unfit to associate with the white race and so far as inferior that they have no rights which the whites are bound to respect». That definition of the US Supreme Court presented the blacks as the private properties of the whites. So, because of that legal definition of the blacks, they were subordinated through political means after and despite the abolition of slavery. This subordination generated de jure and de facto segregation. It created «powerful social, cultural and psychological barriers between racial groups». To escape the atrocities of racial segregation and the terror inflicted on them in the south, the blacks escaped to the northern States, where there was a certain milder type of racial segregation. But despite that apparent form of racial segregation, «a strict pattern of residential segregation, and the racial exclusion

of blacks from many unions and from better paying jobs, perpetuated their marginalized status- Ghettos-Harlem, Chicago's South Side, North Philadelphia, became highly concentrated urban areas of blacks, defined by widespread poverty, joblessness inferior schools and poor housing».

Today, racial segregation in the United States is still so pitiless too powerful and devastating that nothing can stop it for long years because it becomes an insidious and well oiled system. This cruel system surely develops through the apparent homogenous populace, freedom of personal expression, a unified nation where difference does not lead to division. The United States by giving the impression of being a real melting pot where all the components retain their unique salad bowl; where all the components retain their unique national traditions and join together to forge unified society gives the illusion of the true integration of African American community. The main reason why this integration is impossible lies in the American capitalism in which « ownership is the core of self, the person is not himself but what he owns». Here in the US the key rule is « I own therefore I am» Since the legal denial excludes African Americans from the power of «possession and possessing», they will always play the second role despite the circumstantial political progress they experience. More than an election of a black president is needed to achieve the dream of Martin Luther King. Since this black will be the only one actor surrounded by whites, he can't implement radical measures to eradicate racial segregation he can but take some measures to perpetuate the legal denial of rights

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