VITRINE SEVEN (CONTINUED):

That the practice of separate but equal public schools did not end there was clearly demonstrated in the decision in *Westminster v. Mendez*, (9th Cir. 1947) 161 F.2d 774. The *Mendez* decision has been called the case that ended school segregation in California. It precedes by seven years the U.S. Supreme Court's landmark decision in *Brown v. Board of Educatio*n, 347 U.S. 483 (1954).

- *Ward v. Flood* (1874) 48 Cal. 36
- Photograph of the Hon. William T. Wallace, 1828 – 1909
- *Tape v. Hurley* (1885) 66 Cal. 473
- Photograph of Class of 1889, San Jose High School
- *Wysinger v. Crookshank* (1890) 82 Cal. 588

There are many more stories than can be told in a single exhibit. The injustices of the nineteenth century are not limited to those discussed here, and not all the brave and caring persons of those days can be represented here. The progress made in the State and the Nation in the twentieth and twenty-first centuries cause many of these nineteenth century cases and statutes to appear utterly lacking in common civility.

In California significant progress was made by the enactment of the Unruh Civil Rights Act (Civil Code §§ 51), the fundamental civil rights statute that provides protection from discrimination by all business establishments in California, including housing and public accommodations, on the basis of age, ancestry, color, disability, national origin, race, religion, sex or sexual orientation. In 2009 California's Fair Employment and Housing Act celebrates a half-century of protecting Californians in both employment and housing discrimination (Government Code 12900 et seq.). The law is regarded as the single most comprehensive civil rights law in our nation. Many California court decisions illuminate these statutes.

Nationwide the twentieth century saw the enactment of the Civil Rights Acts of 1957, 1960, 1964 and 1968, serving to guarantee equality and fairness in public accommodation, facilities and schools and to assure compliance by the establishment of commissions and the introduction of criminal penalties for obstructing federal court orders. The Voting Rights Act of 1965 was a major expansion of the elective franchise. Federal court interpretations of these statutes explain and clarify the broad scope of these federal statutes.

Eternal vigilance, it has been said, is the price of liberty. Just as the guarantees of liberty, equality and happiness in California's Constitution of 1849 required continuous refinement in the early days of statehood, so they do today. But the changes of the past two centuries evidence the enduring nature of these constitutional guarantees, made by and for all Californians.

HON. RONALD M. GEORGE
Chief Justice of California

HON. WILLIAM R. MCGUINESS
Administrative Presiding Justice, Court of Appeal, First Appellate District

MR. WILLIAM C. VICKREY
Administrative Director of the Courts

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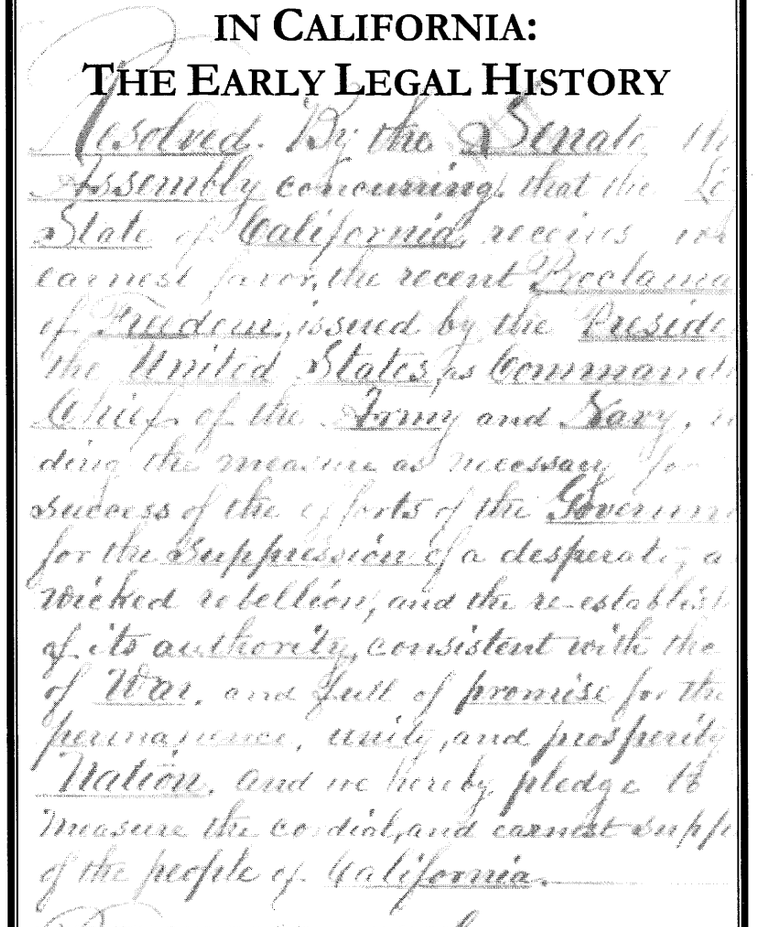
CIVIL AND UNCIVIL

CONSTITUTIONAL RIGHTS IN CALIFORNIA: THE EARLY LEGAL HISTORY


Resolved, By the Senate, the Assembly concurring, that the Legislature of State of California receives with earnest favor, the recent Proclamation of President, issued by the President of the United States, as Commander-in-Chief of the Army and Navy, announcing the measure as necessary for the success of the efforts of the Government for the Suppression of a desperate and wicked rebellion, and the re-establishment of its authority, consistent with the usages of War, and full of promise for the permanence, unity and prosperity of the Nation, and we hereby pledge to the measure the cordial and earnest support of the people of California.

Resolved, That the Governor is requested to forward a copy of these resolutions to the President of the United States

THE ARCHIVE ROOM
EARL WARREN BUILDING
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350 MCALLISTER STREET
SAN FRANCISCO

From the perspective of twenty-first century Californians, constitutional rights during the first fifty years of statehood may well appear to be uncertain and undefined. Viewed in the context of the developing law, however, some noteworthy progress was being made. Although grievously insufficient by contemporary standards, California's constitutional advances in the nineteenth century moved in parallel with - and at times exceeded - those of other states.

California's entry into the Union as a free State was particularly remarkable in light of the fact that fifteen of the forty-eight delegates to the 1849 Constitutional Convention had come from slave states. That proposition that "Neither slavery nor involuntary servitude, unless for punishment of crimes, shall ever be tolerated in this State," won unanimous adoption as Article I, §18 of the new Constitution at the Convention.

The 1849 Constitution's Declaration of Rights assured the inalienable rights of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety and happiness to all men. It remained then, and remains today, to the legislature and the courts, to clarify, enhance and continue the work begun in 1849, in the service of all people. ☙

On Exhibit

Vitrine Two:

Although California's constitutional Declaration of Rights assured inalienable constitutional and civil rights to all men, the status of those in slavery prompted ongoing deliberations. In 1852, California's Fugitive Slave Act secured the return of slaves to those owners who had come to California before admission into the Union. The Supreme Court's decision in *In re Perkins* (1852) is notable for its repeated use of language demeaning to the petitioners, three men whose arguments for their freedom received scant attention in the opinion. The case of Bridget "Biddy" Mason, however, ended far more happily, its grant of freedom to her and her family providing her with a foundation for her future considerable success as a citizen and entrepreneur.

- Constitution of the State of California, 1849
- California's Fugitive Slave Act, Stats. 1852, ch. 33, p. 67
- *In re Perkins* (1852) 2 Cal. 424
- Photograph of Bridget "Biddy" Mason, 1818–1891
- *Mason v. Smith* (First Jud. Dist., Los Angeles County, 1856)

Vitrine Three:

Archy Lee came to California from Mississippi in the company of Charles Stovall, who asserted that he was Mr. Lee's master. Evidence

Vitrine Three (continued):

presented in later judicial proceedings cast some doubt upon this alleged relationship, but did not prevent Mr. Lee's arrest and capture as a fugitive slave, on January 6, 1858 in Sacramento. Following five judicial proceedings, including one in the California Supreme Court, Mr. Lee was declared to be a free man.

- *Ex parte Archy* (1858) 9 Cal. 147
- Photograph of the Hon. Peter H. Burnett, 1807–1895
- "Archy" *California Daily Chronicle* (1858)
- R. M. Lapp, *Archy Lee: A California Fugitive Slave Case* (1969, Berkeley: Heyday Books, 2008)

Vitrine Four:

Persons precluded from testifying in court face an almost insurmountable difficulty in prosecuting crimes committed against them or bringing civil actions for damages or other relief. African-American, Chinese and Indian peoples were among those whose testimony was rendered inadmissible by statute during the nineteenth century. Statutes enacted in 1850 and 1851 prohibited testimony by any "black or mulatto person, or Indian." In 1863 the statutes were amended to prohibit testimony by "any Indian, or person having one half or more of Indian blood, or Mongolian, or Chinese" in a criminal case; and "all Mongolians, Chinese, or Indians, or persons having one-half or more of Indian blood, in an action or proceeding wherein a white person is a party." Supreme Court cases decided in accord with these statutes had favorable results for defendants, one a white man and the other described as "a mulatto," because witnesses against them were Chinese. It is worth noting that one majority opinion questions (but is not called upon to decide) whether the statute is valid under the State Constitution.

- *People v. Hall* (1854) 4 Cal. 399
- Photograph of the Hon. Hugh C. Murray, 1825–1857
- Prohibition against testimony in criminal cases, Stats. 1850, ch. 99, § 14, p. 230
- Prohibitions against testimony, Stats. 1851, ch. 5, §394, p. 114
- The Perkins Bill, Stats. 1863, ch. 70, § 1, p. 69
- The Perkins Bill, Stats. 1863, ch. 68, § 1, p. 60
- "California Legislature—7th Session," *San Francisco Chronicle* (March 14, 1856) p. 2
- *People v. Washington* (1869) 36 Cal. 658

Vitrine Five:

On January 1, 1863 President Abraham Lincoln issued the Emancipation Proclamation, declaring that "all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then,

Vitrine Five (continued):

thenceforward, and forever free." California's legislature responded, in Concurrent Resolution Number I, dated January 26, 1853 that it received "with earnest favor the recent Declaration of Freedom." The Thirteenth Amendment to the U.S. Constitution followed in 1865. Congress submitted it to the legislatures of the States on February 1 of that year and ratification was completed on December 6. California ratified the amendment on December 19, 1865.

- Strobridge & Co. lithograph, text of Emancipation Proclamation
- California Senate, January 26, 1863 Resolution approving Emancipation Proclamation
- House Joint Resolution proposing the 13th amendment to the United States Constitution, January 31, 1865
- "Terrible News, President Lincoln Assassinated," *Daily Alta California*, (April 16, 1865) p. 1

Vitrine Six:

Two brave women, one in company with her husband, brought suit to challenge discrimination in transportation and in voting rights. In *Pleasants v. North Beach and Mission Railway*, Mrs. Mary Ellen Pleasant brought suit to challenge a streetcar company whose driver had refused to permit her to board, saying: "We don't take colored people in the cars." The district court awarded her punitive damages, but the Supreme Court reversed. Later court decisions, however, make clear that punitive damages are an appropriate remedy in cases of racial discrimination. Ellen R. Van Valkenburg was unsuccessful in her challenge to a county clerk who refused to permit her to register to vote. Not until 1911 were California women given the elective franchise.

- *Pleasants v. North Beach and Mission Railway* (1868) 34 Cal. 586
- L. M. Hudson, *The Making of "Mammy Pleasant:" A Black Entrepreneur in Nineteenth-Century San Francisco* (Urbana: University of Illinois Press, 2003)
- Photograph of Mary Ellen Pleasant memorial plaque
- Photograph of the Hon. Joseph B. Crockett, 1808–1884
- *The Elevator* (February 25, 1870) p. 1
- *Van Valkenburg v. Brown* (1872) 43 Cal. 43

Vitrine Seven:

Although California statutes demonstrated a laudable interest in public education for all citizens, separate schools for white children were permitted until 1880, when §1662 of the Political Code was amended to read: "Every school, unless otherwise provided by law, must be open for the admission of all children between six and twenty-one years of age residing in the district." (Amendments 1880, 38.) The *Wysinger* case determined that the school board had no power to refuse enrollment to a child of African descent because the statute prohibited such action. ▸