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### Segregation in United States Healthcare: From Reconstruction to Deluxe Jim Crow

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Segregation in United States Healthcare: Reconstruction to

Deluxe Jim Crow

Kerri Hunkele

## ***Introduction***

The abolition of slavery was meant to bring about significant changes in American society. However, the newly freed slaves dealt with a fluctuation of liberty and oppression through the laws that were implemented to help and hinder them from the time of the Emancipation Proclamation of 1863 to the Civil Rights movement of the 1960s.<sup>1</sup> During the Reconstruction era (1865-1877) the federal government granted liberties to freed slaves in order to integrate them into American society. Federal laws, especially the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> amendments, made former slaves citizens and outlawed local and state Black Codes, passed by whites to limit the rights of freed blacks. After Reconstruction, “Jim Crow” laws were implemented to further restrict the rights and liberties of African Americans and to segregate them in the South. These Black Codes and Jim Crow Laws went against the general Rule of Law that the Anglo-American world considers its hallmark.<sup>2</sup> They also seriously hindered the ability of African Americans to prosper in the pursuit of life, liberty and happiness. The legal history of discrimination against African Americans from the Post-Emancipation era to the Civil Rights era can be placed into the study of transitional justice and the rule of law.

How did these laws affect the lives of African Americans? This thesis focuses on one specific area, healthcare. It examines both policies and how African Americans throughout history reacted to unjust healthcare policies. During the time period between Reconstruction and the Deluxe Jim Crow era, African Americans were legally oppressed, which hindered their ability to live fully and equally in society with whites. This was especially true in terms of healthcare. Segregation laws were implemented to separate blacks from the rest of society in everyday life; the worst of these laws affected the ability of African Americans to gain access to

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<sup>1</sup> For Chronology Table- Refer to page 44.

<sup>2</sup> Tom Bingham, The Rule of Law. (New York: Penguin Group, 2010)

medical care that was equal to whites. This inequality prevented blacks from being accepted into society and from living quality lives that stem from adequate healthcare. Although the federal and state governments repressed African Americans, Blacks and supporters of equality worked to promote healthcare, medical education, and eventually desegregation, through organizations and individual promotion.

My research on the Black Codes and Jim Crow Laws of the South shows that segregation laws of the South prevented African Americans from having equal health facilities and equality under the law. The worst effects that African Americans were faced with came from the laws that hindered blacks' abilities to gain access to medical facilities and necessary medical treatments. By looking at personal accounts of African Americans who were negatively affected by segregation laws, we see that justice was not achieved, and that the United States allowed the laws implemented at the state level to limit the liberties of their citizens and go against the generally accepted rule of law. In particular, laws regarding discretion, equality before the law, and human rights fell short of the true rule of law. Tom Bingham quotes A. V. Dicey on law's primary rather than discretionary means:

'We mean, in the first place,' he wrote, 'that no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.' Dicey's thinking was clear. If anyone-- you or I-- is to be penalized it must not be for breaking some rule dreamt up by an ingenious minister or official in order to convict us. It must be a proven breach of the established law of the land.<sup>3</sup>

This definition of the rule of law establishes that all are subject to the same laws administered by the courts. Therefore laws should not be designated for one race or another. As will be shown,

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<sup>3</sup> Bingham, Tom. Rule of Law pg. 121 of 3632

Black Codes and segregation laws did just that. They singled out African Americans in their wording and their implementation. This helps to distinguish rule of law from discretion.

Discretion is how the states responded to the federal laws, and how they created the segregation laws that ruled the South. The violation of the rule of law came in the form of how the segregation laws were worded. Many laws explicitly stated that Blacks alone were prohibited from accessing certain liberties. One of these was that African American families were prohibited from living in the same home as White families. States used their own discretion to implement laws of segregation, but the wording of these laws went against the rule of law and the definition that all people are meant to be subject to the same laws. Whites were not always subject to the laws that discriminated against African Americans.

Similarly to Bingham, Samuel J.M. Donnelly defines the rule of law as, “Governing those in authority as well as members of the public. Under the rule of law, citizens should be protected by law against their government as well as against private violence. The courts are the traditional instrument in the English-speaking countries for securing that protection.”<sup>4</sup>

On the topic of transitional justice, Hugo Van der Merwe et al. defines it this way: “Many analysts and advocates use the term ‘transitional justice’ to refer to societal responses to severe repression, societal violence, and systematic human rights violations that seek to establish the truth about the past, determine accountability, and offer some form of redress, at least of a symbolic nature.”<sup>5</sup> The end of slavery from 1863-1865 is an example of one of these moments of transition.

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<sup>4</sup> Samuel J. M Donnelly, “Reflecting on the Rule of Law: It’s Reciprocal Relation with Rights, Legitimacy, and Other Concepts and Institutions”. Annals of the American Academy of Political Social Science, Vol. 603 (Jan., 2006), pg. 42

<sup>5</sup> Hugo Van der Merve, Victoria Baxter, and Audrey R. Chapman. Assessing the Impact of Transitional Justice: Challenges for Empirical Research. (Washington, D.C.: United States Institute of Peace Press, 2009) Pg. 1-2

I consider the legally sanctioned denial of access for African-Americans to medical care to be the most serious violation of human rights and constitutional guarantees of equality for U.S citizens. The limitation of healthcare severely decreased both the quality of life and life expectancy. Therefore, by denying African Americans equal access to healthcare, Whites were denying Blacks an equal quality of life. These types of segregation laws deeply affected the African American community. Accounts of deaths because of such laws exist throughout the time period. Not only were these laws legally atrocious, but also they were deadly in some cases. These segregation laws were allowed, by the United States Supreme Court, to continue in the form of Jim Crow Laws until 1954, when the Court's 1954 decision in *Brown v. Board of Education* integrated schools and reversed the 1896 decision in *Plessy v. Ferguson*, which was the Supreme Court decision that allowed segregation to occur as long as facilities were equal for both races. *Brown v. Board of Education* came to the conclusion that separate was deemed to be inherently unequal. The decision in *Brown v. Board of Education* was an exceptionally important and as summarized by Lexis-Nexis,

By consolidated opinion, the Court reviewed four state cases in which African-American minors sought admission to the public schools of their community on a non-segregated basis. In each instance, they had been denied admission to schools attended by Caucasian children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the minors of the equal protection of the laws under the Fourteenth Amendment. In each case, except the Delaware case, the district court denied relief to the minors on the "separate but equal" doctrine announced by the Supreme Court in *Plessy v. Ferguson*, 163 U.S. 537. The minors contended that the public schools were not equal and could not be made equal, thereby denying them equal

protection of the law. The common legal question among the cases was whether Plessy should be held inapplicable to public education and whether segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors were equal, deprived the children of the minority group of equal educational opportunities. The Court held in the affirmative as to both.<sup>6</sup>

The Black Codes defined as, “A body of laws, statutes, and rules enacted by southern states immediately after the Civil War to regain control over the freed slaves, maintain White supremacy, and ensure the continued supply of cheap labor,”<sup>7</sup> and Jim Crow Laws that segregated whites and blacks, starting in the 1880s, were legal injustices committed against African Americans. Around the time of the Brown case and the Civil Rights Movement of the 1960s, many other court cases were decided, and laws were implemented, in order to make up for the injustices of the past decades, but the damage had already been done and the effects of discrimination were not completely irreversible.

Early laws against African Americans were in the form of slave codes, which were laws severely limiting slaves’ legal rights, as well as the rights of the few freed Black men of the time. The slaves could not own property and were, themselves, seen as property. Any person born to a slave woman became the property of that slave’s owner, and the owner had complete legal control to “sell him, dispose of his person, his industry and his labor.”<sup>8</sup> During the time of slavery, free blacks’ liberties were also severely restricted. Free blacks were forced to carry papers that proved their freedom, or they could be seized as fugitives and sold back into slavery.<sup>9</sup>

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<sup>6</sup> Supreme Court of the United States, Brown v. Board of Education of Topeka Et. Al., 1954, Lexis-Nexis Academic. <http://www.lexisnexis.com.libproxy.unh.edu/hottopics/Inacademic/>

<sup>7</sup> <http://legal-dictionary.thefreedictionary.com/Black+Codes>

<sup>8</sup> Donald G. Nieman, Promises to Keep: African-Americans and the constitutional order, 1776 to the Present. (New York: Oxford University Press, 1991) Pg. 24.

<sup>9</sup> Nieman, Promises to Keep, pg. 27.

After Emancipation, Mississippi and South Carolina were the first States to implement Black codes, in the year 1865. As described by historian Eric Foner,

Mississippi required all blacks to possess, each January, written evidence of employment for the coming year. Laborers leaving their jobs before the contract expired would forfeit wages already earned, and, as under slavery, be subject to arrest by any White citizen. A person offering work to a laborer already under contract risked imprisonment or a fine of \$500. To limit the freedmen's economic opportunities, they were forbidden to rent land in urban areas.<sup>10</sup>

This law is an example of attempts at preventing freedmen from being able to start their lives over. It was also typical of the southern states' attempts at preserving slavery as much as possible, by obstructing African Americans' abilities to find decent jobs. By requiring freed blacks to make labor contracts that lasted a year, blacks did not have the opportunities during the year to find better working conditions, or bargain for better wages. Slavery of African Americans may have been outlawed, yet slavery as a form of punishment, or payment, as indentured servitude, was still legal at the time. It was this kind of Black Code that repressed the liberties given to freed slaves and which contradicted the federal government's attempts at integrating former slaves into society. Vagrancy laws also repressed African Americans. Vagrancy is defined as, "The act of being a person who wanders about idly and has no permanent home or employment."<sup>11</sup> Both Mississippi and South Carolina had laws that punished vagrancy by fines or involuntary plantation labor. South Carolina's vagrancy law even extended to traveling circuses, fortunetellers, and thespians.<sup>12</sup> These kinds of laws were created purely on the state

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<sup>10</sup> Eric Foner, Reconstruction: America's Unfinished Revolution 1863-1877. (New York: Harper & Row publishers, 1988)Pg. 199

<sup>11</sup> Dictionary.com. Dictionary.com Unabridged. Random House, Inc. <http://dictionary.reference.com/browse/>

<sup>12</sup> Foner, Reconstruction, pg. 200



governments' own discretion and did not coincide with the laws established for the entire country.

After the end of Reconstruction, in 1877, Jim Crow laws began to be passed in the South. These were laws implemented by southern states that revolved predominantly on segregation. The first segregation laws were passed in 1881. They denied Blacks the freedoms, liberties and rights of Whites and segregated African Americans from Whites in most public venues. The Jim Crow Laws were an extension of the Black Codes, because they further promoted segregation and hindered equality in every aspect of African Americans' lives, not just labor and living conditions. They also furthered the legal division between the races in the South. The United States Bill of Rights was established with the pursuit of equality in mind, and yet failed to include slaves or African Americans. On the subject of the Bill of Rights, which applied to only the federal government, Tom Bingham stated, "The Bill of Rights adopted by the United States, while progressive and ground-breaking in many ways, did not disturb the peculiar institution of slavery cherished in the South."<sup>13</sup> Even so, Bingham considers the Bill of Rights a major step in the development of the rule of law. Even after the abolition of slavery, the federal and state governments did nothing to ensure that the Bill of Rights extended to all citizens of the United States. They even overlooked the additional amendments that were added to the Constitution after the Bill of Rights. The 14<sup>th</sup> amendment ratified in 1868, and later the 15<sup>th</sup> amendment, ratified in 1870, were implemented to supposedly guarantee equal rights for all under the law. The 14<sup>th</sup> and 15<sup>th</sup> amendments were meant to establish citizenship and equal rights to all, voting rights to all adult men, and establish equality in office-holding.

The last wave of segregation laws and changes, before integration, was in the so called "deluxe Jim Crow" era. Deluxe Jim Crow was a time when the South tried to implement truly

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<sup>13</sup> Bingham, Rule of Law, pg. 1006 of 3632

equal public facilities, while keeping them segregated. The term was first used in 1927, when it was published in the *Baltimore Afro-American*, an African American newspaper.<sup>14</sup> It was later used by the first African American Supreme Court Justice, Thurgood Marshall, to describe the southern states' attempt to maintain segregation by improving African American school facilities.<sup>15</sup> In 1938, the idea of deluxe Jim Crow was perpetuated by the Supreme Court case, *Missouri ex rel. Gaines v. Canada*. Deluxe Jim Crow continued the American legacy of segregation until the 1954 Supreme Court case, *Brown v. Board of Education*.

### ***Discrimination Under the Law***

Before the discriminatory laws, which went against the federal government's positive steps in transitional justice, can be discussed, it is important to understand some of the things that the federal government did in order to integrate newly freed African Americans into society. Along with the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments, the federal government also set up the Freedman's Bureau in order to supply freed slaves with land, food, school systems, medical aid, legal assistance and many more necessary services. The Freedman's Bureau was meant to enforce the new federal laws and constitutional amendments that freed the slaves, and the bureau moved toward making them an equal part of United States society. This attempt is what first caused southern states to create Black Codes. Today they have come to hold a negative connotation, but the original intention of the Black Codes was to give slaves some new rights rather than hurt them. Tennessee, for instance, first enacted many laws to support the freed African American's rights and liberties, before they took these liberties away with the Jim Crow Laws. Part of the first Tennessee Black Codes stated,

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<sup>14</sup> Karen Kruse Thomas, *Deluxe Jim Crow: Civil Rights and American Health Policy, 1935-1954*. (Athens: University of Georgia Press, 2011), pg. 1.

<sup>15</sup> Thomas, *Deluxe Jim Crow*, pg. 1.

Be it further enacted, That persons of color have the right to make and enforce contracts, to sue and be sued, to be parties and give evidence, to inherit, and to have full and equal benefits of all laws and proceedings for the security of person and estate, and shall not be subject to any other or different punishment, pains or penalty, for the commissions of any act or offence, that such as are prescribed for White persons committing like acts or offenses.<sup>16</sup>

These helpful Black Codes were the first to appear in Southern States. However, they did not last long because of the sentiment many White people in the South still felt towards freed slaves and the federal government. The White South was angry and did not wish to have African Americans join society as equals; therefore these southern states passed laws that limited the liberties of former slaves. Some laws, if broken, would put African Americans into indentured servitude as punishment.

As a response to the southern states' implementation of Black Codes, the United States Congress passed the Civil Rights Bill of 1866. The Civil Rights Act declared, "that blacks were citizens and guaranteed them legal equality throughout the nation."<sup>17</sup> The Act read,

Citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every state and territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of

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<sup>16</sup> *Tennessee Black Codes*, 1865-1866, <http://evresourcesite.wikispaces.com/Tennessee+Black+Codes>

<sup>17</sup> Nieman, *Promises to Keep*, pg. 63

all laws and proceedings for the security of person and property, as is enjoyed by White citizens...<sup>18</sup>

Since this Act was trying to give citizenship to newly freed slaves, it faced opposition by both southern representatives and the President. President Johnson vetoed both the Civil Rights Act of 1866 as well as a bill to renew the Freedmen's Bureau, which was being presented to the Congress at the same time. President Johnson believed that they "gave preferential treatment to blacks and usurped powers that the constitution reserved to the States."<sup>19</sup> Even with Johnson's veto, the Republicans had the support necessary to pass the bill in April of 1866 and later were able to gather the support to pass the Freedmen's Bureau bill in July of 1866.<sup>20</sup> One of the sections of the law that answered President Johnson's objections stated,

And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the state or locality where they may be any of the rights secured to them by the first section of this act.<sup>21</sup>

This section of the Civil Rights Act allows for the Federal Government to not only force the state governments to uphold the federal law, but to step in and take control of the court systems if the state fails to protect the rights of its people. This is specifically geared towards the rights of African Americans residing in southern states. By passing this Act, the Federal Government was

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<sup>18</sup> Civil Rights Act of 1866, 14 USC 27 (1)

<sup>19</sup> Nieman, Promises to Keep, pg. 66

<sup>20</sup> Nieman, Promises to Keep, pg. 66

<sup>21</sup> Civil Rights Act of 1866, 14 USC 27 (3)

trying to force southern states to remove their Black Codes and grant equality to all races. Because of the Civil Rights Act, most southern states made laws that made it a crime to “murder assault, or rob any person, regardless of race, and permitted all persons to recover damages for breach of contract, trespass, personal injury, and the like,”<sup>22</sup> as well as to permit Black testimony in court trials that involved an African American party. Although laws were passed to promote equality in the southern states, the enforcement of these laws became difficult. Eric Foner, in *Reconstruction: America’s Unfinished Revolution 1863-1877* stated, “By the end of 1866, most southern states had repealed those laws applying only to blacks, yet southern courts continued to enforce vagrancy, breach of contract and apprenticeship statutes, that made no direct reference to race...”<sup>23</sup> This shows that even with the Federal Government implementing its power over the states, southern state legislatures found loopholes to deny rights to African Americans.

In theory the Civil Rights Act was meant to grant civic equality to African Americans for the first time in the history of the United States. However, states found ways around granting equality to African Americans. Also, the Act was supposed to be based on the Thirteenth Amendment. The Thirteenth Amendment of the United States Constitution stated, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.”<sup>24</sup> The creators of the Civil Rights Act of 1866 meant for the act to interpret the Thirteenth Amendment as granting citizenship to the freed slaves. According to Donald G. Nieman, in *Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present*, there were Republicans who believed that the Thirteenth Amendment did not authorize the Civil Rights Act, and who

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<sup>22</sup> Nieman, *Promises to Keep*, pg. 69.

<sup>23</sup> Foner, *Reconstruction*, pg. 209.

<sup>24</sup> “The Constitution of the United States,” Amendment 13, 1.

demanded a new amendment be passed to clarify and provide Constitutional support for the Act. This is how the creation of the Fourteenth Amendment first came about. The Fourteenth Amendment was ratified in 1868, and constitutionalized most of the provisions in the Civil Rights Act of 1866. Specifically, section one of the 14<sup>th</sup> Amendment, grants citizenship to all people born in the United States,

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>25</sup>

This amendment was meant to promote equality, however it was not certain whether it only extended to the federal government, or if states could be prevented from passing unjust laws. State governments in the South believed that they could implement segregation laws. The first segregation law passed happened in the State of Tennessee in 1881. Tennessee's first segregation law required railroad cars to be separated by race.<sup>26</sup> Most southern states followed Tennessee's lead with their own segregation laws. Examples of these laws can be found all over the South. A 1927 Georgia law stated, "No colored barber shall serve as a barber to White women or girls."<sup>27</sup> An 1890 Mississippi law established school segregation and said, "Separate schools shall be maintained for the children of the White and Colored race."<sup>28</sup> According to an Alabama law on railroad segregation, "The conductor of each passenger train is authorized and

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<sup>25</sup> "The Constitution of the United States," Amendment 5.

<sup>26</sup> Stanley J. Folmsbee, "The Origin of the First 'Jim Crow' Law", The Journal of Southern History, Vol. 15, No. 2 (1949) pg. 235.

<sup>27</sup> Georgia Statute, 1927, <http://www.learnnc.org/lp/editions/nchist-newcentury/5103>

<sup>28</sup> Mississippi Statute: "Code of Mississippi", 1890, <http://www.learnnc.org/lp/editions/nchist-newcentury/5103>

required to assign each passenger to the car or the division of the car, when it is divided by a partition, designated for the race to which such passenger belongs.”<sup>29</sup> These were only a few of the Jim Crow laws that established segregation throughout the South and segregated every aspect of African Americans’ lives in public venues. In the 20<sup>th</sup> century, these laws came to be called, popularly, “Jim Crow” laws.

Jim Crow laws went mostly unchallenged until 1896, when the Supreme Court case *Plessy v. Ferguson* challenged the segregation laws under the equal protection clause of the 13<sup>th</sup> Amendment and of the 14<sup>th</sup> Amendment. The case was brought up by Homer Plessy, a mixed-race, light skinned African American man, who was arrested for civil disobedience, for occupying a seat on a “White only” train car of a Louisiana train. The arrest was actually planned for the specific purpose of challenging Louisiana’s segregation law. However, the challenge proved ineffective, and the court ruled that segregation of train cars was not unconstitutional as long as the facilities provided were equal.<sup>30</sup> The Supreme Court’s decision in *Plessy V. Ferguson* in 1896, specifically indicated:

So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order.

Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to

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<sup>29</sup> Alabama Statute: “Code of Alabama”, 1891, <http://www.learnnc.org/lp/editions/nchist-newcentury/5103>

<sup>30</sup> 163 U.S. 537; 16 S. Ct. 1138; 41 L. Ed. 256; 1896 U.S. LEXIS 3390: Supreme Court of the United States, *Plessy V. Ferguson*, April 13, 1896. Lexis-Nexis Academic. <http://www.lexisnexis.com/hottopics/lnacademic/>

the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.<sup>31</sup>

This authorized southern states, as a practical matter, to repress the African American population and go against the rule of law, which involves equality under the law. The decision by the Supreme Court in the *Plessy V. Ferguson* case actually legalized segregation at the federal level.

The specific decision of the Court read as follows,

Requiring railway companies carrying passengers in their coaches in that state, to provide equal, but separate, accommodations for the White and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account of the race they belong to; and requiring the officer of the passenger train to assign each passenger to the coach or compartment assigned for the race to which he or she belong; and imposing fines or imprisonment upon passengers insisting on going into a coach or compartment other than the one set aside for the race to which he or she belongs; and conferring upon officers of the train power to refuse to carry on the train passengers refusing to occupy the coach or compartment assigned to them, and exempting the railway company from liability for such refusal, are not in conflict with the provisions either of the Thirteenth Amendment or of the Fourteenth Amendment to the Constitution of the United States.<sup>32</sup>

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<sup>31</sup> Justice Brown, Supreme Court of the United States, *Plessy V. Ferguson*, April 13 1896. Lexis-Nexis Academic. <http://www.lexisnexus.com/hottopics/Inacademic/>

<sup>32</sup> **PLESSY v. FERGUSON**. The Oyez Project at IIT Chicago-Kent College of Law. 21 March 2013. <[http://www.oyez.org/cases/1851-1900/1895/1895\\_210](http://www.oyez.org/cases/1851-1900/1895/1895_210)>.



This decision by the court returned the United States into a land of federally sanctioned physical segregation, as well as social separation. This Supreme Court decision sparked a slew of segregation laws until the 1960s. These laws crippled African Americans' abilities to live prosperously in equal conditions, because equality under the law was not upheld in practice. States acted on their own discretion rather than the law, and the federal government supported this discretion. Bingham elaborates on these aspects of the rule of law in his work. When it comes to the idea of law over discretion Bingham argues, "The rule of law does not require that official or judicial decision-makers should be deprived of all discretion, but it does require that no discretion should be unconstrained so as to be potentially arbitrary."<sup>33</sup> The state legislators used their discretion to go against the Bill of Rights and implement laws that were counter to the the laws of the federal government. The Supreme Court abused the use of discretion by implementing a decision that was based on their decision and not on equality under the law. The judges of the United States Supreme Court divided the country on racial lines and promoted discrimination instead of looking at the laws of the country to come to an informed decision. Therefore, the Supreme Court allowed for state and federal legislatures to disregard the previous laws of integration in favor of unjust discrimination laws. They did not follow the correct use of discretion under the rule of law.

In his argument on equality under the law, Bingham writes about instances where equality is not upheld, such as when it comes to children, the mentally ill, prisoners and immigrants into the country. In these special circumstances he goes on to say, "None of these examples (which could of course be multiplied) is problematical, so long as the law treats people differently because their positions are, genuinely different. But any departure from the general rule of equal treatment should be scrutinized to ensure that the differential treatment is based on

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<sup>33</sup> Bingham, Rule of Law, pg. 958 of 3632

real differences.”<sup>34</sup> The segregation laws imposed on blacks between the Emancipation Proclamation and the Civil Rights movement were not based on real differences that warranted differential treatment. The laws were implemented based solely on the race of the people that they affected. African Americans and whites in the United States shared a common humanity and deserved equal rights in legal standing and access. The United States in no way upheld the rule of law in respect to the legislation which deterred the rights and liberties of African Americans. Bingham himself believed that, “A state which savagely represses or persecutes sections of its people cannot in my view be regarded as observing the rule of law.”<sup>35</sup> The United States’ failure to follow the rule of law contributed to their failure in transitional justice that would have integrated freed slaves into our society, without issue, starting from the time of the abolition.

### ***Segregation in Healthcare***

While public segregation of African Americans in schools, barbershops, on public transportation and in places such as prisons was atrocious in itself, the medical laws that hindered the access to medical care for blacks was by far the most damaging to African Americans. An Alabama law from 1915 stated, “No person or corporation shall require any White female nurse to nurse in wards or rooms in hospitals, either public or private, in which negro men are placed.”<sup>36</sup> This de facto denied African Americans guaranteed access to the proper medical attention that was necessary if someone were to be injured or get sick. By not requiring any White nurses to treat an African American male patient, the law allowed for racial discrimination in medical care. Not only was the medical staff segregated, but also the facilities

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<sup>34</sup> Bingham, *Rule of Law*, pg. 981 of 3632

<sup>35</sup> Bingham, *Rule of Law*, pg. 1160 of 3632

<sup>36</sup> 1915 Alabama Law, PBS. “The Rise and Fall of Jim Crow.” PBS. Educational Broadcasting Corporation (2002), <http://www.pbs.org/wnet/jimcrow/themap/index.html>.

themselves of all hospitals were segregated. A Georgia law established, “The Board of Control shall see that proper and distinct apartments are arranged for said patients, so that in no case shall Negroes and White persons be together.”<sup>37</sup> This law shows the strong language in cases of hospital segregation. The term “in no case”, implies that, no matter the condition or seriousness of the health issue a patient is dealing with, they will not be roomed with a person of the other race. Southern states adopted many laws like these that segregated many aspects of hospitals. Further, by 1949, the ratio of African American physicians to the Black population still remained at 1:3,681.<sup>38</sup> This hurt African American males, who could be refused by White doctors or would not be able to see certain doctors because of the all-White nursing staffs. There were not enough African American doctors to ensure that the Black population received medical attention at rates equal to Whites’. Entrances and waiting rooms for all hospitals were segregated, as this law from Mississippi in 1917 showed; “There shall be maintained by the governing authorities of every hospital maintained by the state for treatment of White and colored patients separate entrances for White and colored patients and visitors, and such entrances shall be used by the race only for which they are prepared.”<sup>39</sup> This established an inequality between the conditions of not only White and Black hospitals, but also White and Black entrances and waiting rooms as well. One African American nurse, in a 1999 interview, told of her experience working in a hospital where Black patients were treated in the basement of the hospital. She recalled, “It was a hospital where Black people were in the basement, admitted to the basement of the hospital. And White people were on the upper level. I learned a lot there. I learned a lot about this society there because I

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<sup>37</sup> 1935, Georgia Law, <http://www.learnnc.org/lp/editions/nchist-newcentury/5103>

<sup>38</sup> Thomas, *Deluxe Jim Crow*, pg. 210.

<sup>39</sup> 1917 Mississippi Law, PBS. “The Rise and Fall of Jim Crow.” PBS. Educational Broadcasting Corporation(2002), <http://www.pbs.org/wnet/jimcrow/themap/index.html>

worked there in different capacities.”<sup>40</sup> The Mississippi law also established that medical treatment would be available to African Americans only after the White patients were all treated. Many African Americans recounted experiencing these types of laws first hand. One man recalled, “A White doctor would see all of his White patients first and then he would see his Black patients afterwards. In the meantime some patients did sit up and die; Black patients. White doctors would not give the same type of service to Black patients as they did to the White patients.”<sup>41</sup> This could lead to deaths, because of mistreatment or treatment that was not received in time. Arguably the most famous case of medical mistreatment was that of the Tuskegee Syphilis Study, initiated by the U.S Public Health Service, and which began in 1932 in Alabama. The study was an experiment to see what would happen if the disease syphilis went untreated in African American males. In the study 400 men with the disease were monitored and studied, and in 1950, when penicillin became available, these men were denied treatment for their disease. This injustice of the medical institute, to allow men to suffer from a terrible disease, was one of the worst medical issues that dealt with race. Around 100 men eventually died due to advanced syphilitic symptoms such as lesions.<sup>42</sup>

Another problem that African Americans faced when trying to get medical attention was that the proper facilities designated for African Americans were not always available. A lack of African American hospitals was the reason for Black patients to go untreated. For example, In Karen Kruse Thomas’ study, *Deluxe Jim Crow: Civil Rights and American Health Policy 1935-1954*, she discusses how most African Americans in the South were poor and lived in rural areas.

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<sup>40</sup> Mabel Williams, interview by David Cecelski, August 20, 1999, transcript, Southern Oral History Program Collection. [http://docsouth.unc.edu/sohp/K-0266/excerpts/excerpt\\_8777.html](http://docsouth.unc.edu/sohp/K-0266/excerpts/excerpt_8777.html)

<sup>41</sup> "Health Care." *The Jim Crow Encyclopedia*, Westport, CT: Greenwood Press, 2008. *The African American Experience*. Greenwood Publishing Group.

<http://testaae.greenwood.com/doc.aspx?fileID=GR4181&chapterID=GR41813616&path=encyclopedias/greenwood>

<sup>42</sup> Susan M. Reverby, *Examining Tuskegee: The Infamous Syphilis Study and Its Legacy*, (Chapel Hill: University of North Carolina Press, 2009)

These rural areas lacked sufficient hospitals and transportation to get to hospitals, which were located primarily in urban areas.<sup>43</sup> Thomas wrote, “Black hospitals shared many of the problems and characteristics of rural hospitals, and both were underutilized through the end of World War II. Yet existing scholarship on hospital segregation emphasizes the severe health consequences suffered by individuals who could not gain admittance to White-only facilities or overcrowded Jim Crow wards in biracial hospitals.”<sup>44</sup> All of these problems arose because of the Jim Crow Laws, which hindered blacks’ abilities to access proper medical treatment.

African American women responded to the health disparities by becoming midwives and taking on the role of medically caring for African Americans who did not have access to hospitals or proper medical services. Midwives mainly took on the role of caring for maternity patients and infants, but were the first to respond to the healthcare disparities in the South. Laurie A. Wilkie wrote about midwives through the context of the discovery of archaeological evidence discovered in Mobile, Alabama, from one midwife’s house from the 1880s-1890s. This midwife was Lucretia Perryman, who herself gave birth to 11 children. Wilkie explains the premise of a midwife at this time,

As a midwife, Lucretia would have been teaching pregnant women how to care for themselves during pregnancy, what to expect during the ordeal of childbirth, and, afterward, how to care for their newborns. After experiencing 11 pregnancies, raising numerous children, and enduring the deaths of six of her children and at least one grandchild, Lucretia was also especially able to respond empathetically to women who experienced the loss of pregnancies or babies.<sup>45</sup>

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<sup>43</sup> Thomas, *Deluxe Jim Crow*, Pg. 34.

<sup>44</sup> Thomas, *Deluxe Jim Crow*, pg. 35.

<sup>45</sup> Laurie A. Wilkie, *The Archaeology of Mothering: An African American Midwife’s Tale*. (New York: Routledge, 2003), pg. 141.

Perryman herself had experienced the terrible loss of a child, more than once. It was a common occurrence during that time for African Americans children to not survive during or after birth. Perryman was able to help deter some of these losses through her use of medicinal means, using natural herbs, which she herself was believed to have made.<sup>46</sup>

Wilkie established what was found at the archaeological site of the Perryman household and inferred the information about Perryman through these finds. Wilkie also summarized the African-American traditional beliefs that went alongside the practices and remedies used in midwifery. One of the examples is of the use of mineral water bottles,

You might remember that a number of mineral water bottles were also recovered from the site. The prevalence of mineral water bottles in the well may reflect in part Lucretia Perryman's midwifery activities. Paul Mullins has recently argued that African-American consumption of mineral waters reflects in part a syncretism with traditional African-American beliefs regarding the curative powers of may water.<sup>47</sup>

This established that there was more to midwifery than just the losses that occurred during childbirth and pregnancy. Midwives took care of mothers as well as children before and after birth. According to one woman interviewed by African American sociologist Charles S. Johnson, in the 1930s, her husband would get her medicine and take care of her when she was sick because doctors were widely unavailable to African Americans. The woman said, "When I got sick, my husband don't take me to no doctor. He'll buy medicine and bring it to me... Last time I was sick I had stomach trouble and he kept getting me medicine and I got worse, so he got me a

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<sup>46</sup> Wilkie, The Archaeology of Mothering, pg. 132

<sup>47</sup> Wilkie, The Archaeology of Mothering, pg. 133

midwife and she said my womb had fallen. She fixed it up and I got all right.”<sup>48</sup> Midwives were one of the most prominent medical services that were available to women during the time of segregation when professional medical help was widely unavailable.

Midwives were subjected to much discrimination during the early 20<sup>th</sup> century. Both Laurie A. Wilkie and Gertrude Jacinta Fraser wrote about the issues medical professionals had with midwives. Wilkie wrote, “Though midwives were important individuals within the African American community, little unbiased historical information is available about them and their practices. The American Medical Association targeted midwifery for extermination during the early twentieth century, spreading misinformation about the supposed inabilities and malpractices of traditional midwives.”<sup>49</sup> African American midwives thus were discriminated against, not only because of their race, but also because of their skill. Similarly Fraser wrote, “For many physicians, therefore, the midwife problem would be solved only with the rapid abolition of these practitioners and the ascendancy of obstetrical science. Yet despite these apparently opposed approaches to the problem, both public health personnel and private physicians in the South eventually envisioned that midwifery would be eliminated.”<sup>50</sup> African American midwives were viewed in the medical community as African Americans in general were viewed in the laws. Even educated Black physicians did not support or approve of unlicensed midwives. White nurses were the most discriminatory against midwives. One nurse as described by Karen Kruse Thomas, as having a particularly negative view of midwives stated, “We do not attempt to teach midwives the art of obstetrics as taught to the medical student or

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<sup>48</sup> "Health Care." In *The Jim Crow Encyclopedia*, Westport, CT: Greenwood Press, 2008. *The African American Experience*. Greenwood Publishing Group.  
<http://testaae.greenwood.com/doc.aspx?fileID=GR4181&chapterID=GR41813616&path=encyclopedias/greenwood>.

<sup>49</sup> Wilkie, *The Archaeology of Mothering*, pg. 123

<sup>50</sup> Gertrude Jacinta Fraser, *African American Midwifery in the South: Dialogues of Birth, Race, and Memory*. (Cambridge: Harvard University Press, 1998) pg. 59-60

nurse—they have neither the mental ability nor the money for such.”<sup>51</sup> This view shows how little respect White nurses had for African American midwives. African American physicians and White nurses shared their distaste for Black midwives. However, educated midwives were viewed in a slightly more favorable fashion. Amanda Bunch was an African American midwife, educated in the practice and in general medical training, and was the only midwife during the 1940s to be honored in the Health Bulletin by having her eulogy printed.<sup>52</sup> It was believed that they had no right to equality under the practice of medicine. Midwives were very useful in poor African American communities and shared similar emotional experiences of early African American physicians.

African American families lost loved ones due to these state laws. W. E. B. Du Bois, the African American scholar, lost his son to diphtheria. Du Bois lived from 1868 until 1963 and had lived through the fluctuation of rights and liberties granted, and then taken away, from blacks. He lived through the trauma of not having the proper medical facilities available to his family. The result was his toddler son’s death. Had the right medical facilities and the medical treatment been available, then Du Bois’ son might have lived. Du Bois deeply affected, wrote about the death in *The Souls of Black Folk*, in an essay titled, “Of the Passing of the First Born.” Du Bois wrote,

He died at eventide, when the sun lay like a brooding sorrow above the western hills, veiling its face; when the winds spoke not, and the trees, the great green trees he loved, stood motionless. I saw his breath beat quicker and quicker, pause, and then his little soul leapt like a star that travels in the night and left a world of darkness in its train. The day changed not; the same tall trees peeped in at the windows, the same green grass glinted in

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<sup>51</sup> Thomas, pg.85

<sup>52</sup> Thomas, Deluxe Jim Crow, pg. 92.



the setting sun. Only in the chamber of death writhed the world's most piteous thing—a childless mother.<sup>53</sup>

The biographer of Du Bois, David Levering Lewis, explains the lack of medical care; “As Burghardt’s illness worsened, Du Bois sought out one of the few African American doctors in the city to care for his son but was unsuccessful, and with no White physicians willing to treat a Black child his son went without medical treatment.”<sup>54</sup> It shows how deeply affected Du Bois was by the death and how it affected his whole family. Du Bois describes in his essay how his wife nursed his son until the end, and although he called for the “gray physician”, his son did not receive the proper medical attention to save his life.

As we see in Du Bois’ account of the death of his child, children were greatly impacted by the segregation and discrimination in the healthcare system. In the 1920’s Franklin Roosevelt founded the Georgia Warm Springs polio rehabilitation center, which maintained a whites-only policy, under the pretense that blacks were not inclined to contract the disease.<sup>55</sup> It was not until over a decade later, in 1941, that the National Foundation for Infantile Paralysis was established for the treatment of Black infants. Naomi Rogers stated that, not only was the Alabama-based foundation intended to be an Infantile Paralysis Center, but also that, “Designing the center as a site for both health care and professional training was intended to compensate for the many hospitals in Alabama and across the region that refused to treat Black patients or accept Black providers on their staff.”<sup>56</sup> Although created decades after White institutions, the institute did help to promote greater medical access for African Americans. However, the institute became controversial because of the widespread belief that African Americans still were not susceptible

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<sup>53</sup> W.E.B Du Bois, *Souls of Black Folk*, “Of the Passing of the First Born”. (1903) Chapter, XI

<sup>54</sup> David Levering Lewis, *W.E.B. Du Bois: Biography of a Race*. (New York: Henry Holt and Company, 1993)

<sup>55</sup> Naomi Rogers, “Race and the Politics of Polio” *Am. J Public Health*. Vol. 97 No. 5 pg.784-795  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1854857/>

<sup>56</sup> Rogers, *Race and Politics*, pg.784-795

to the disease. Rogers article argued that, “Today we would argue that poverty, poor hygiene and nutrition, and unequal access to health care could explain most race disparities in health and disease in American history.”<sup>57</sup> It was not until 1954 that Black children were made part of national vaccination programs for polio along with White children and without discrimination.

Medical societies were also widely known for their discrimination. The American Medical Association(AMA) was known for its discrimination against African Americans, a policy that went mostly unchallenged until 1947. It was not until 1968 that the AMA adopted a policy that banned racial discrimination in membership of national and state medical societies; and not until 2008 that the AMA publicly apologized for its discrimination. The AMA’s discrimination against Black physicians included excluding them from membership, listing them as “colored” doctors in the national directory of physicians, and failing to discourage federal funding of segregated hospitals.<sup>58</sup> Although the apology cannot make up for the past discrimination, it was a step towards recognizing the faults of the American past. Karen Thomas discusses the discrimination against African Americans in medical associations. State and local associations, such as Louisiana’s Medical Society, which was the last to admit Black members, were known for their discrimination, and as Thomas wrote, “Membership in a local affiliate was a prerequisite for national membership in the American Medical Association (AMA). African American physicians outside the South could meet this requirement, but other than Arkansas, none of the AMA’s southern state affiliates, including the District of Columbia chapter, admitted Black candidates.”<sup>59</sup> Dr. Charles R. Drew, an African American surgeon who is credited with

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<sup>57</sup> Rogers, Race and Politics, pg.784-795

<sup>58</sup> American Medical Association Website: History, Ethics Timeline: 1981 to 2009, <http://www.ama-assn.org/ama/pub/about-ama/our-history/history-ama-ethics/ethics-timeline-1981-1999.page>

<sup>59</sup> Thomas, Deluxe Jim Crow, pg. 52.

organizing the first large-scale blood bank in the United States<sup>60</sup> was the first to challenge the AMA's discrimination policy when he was denied admission to the organization,<sup>61</sup> because being a member of a state or local society was a prerequisite to the AMA and the District of Columbia Medical Society did not accept Black members.

Medical facilities and medical societies were not the only aspects of the healthcare system that were segregated. In 1942 the American Red Cross, which had previously turned away African American blood donors, established a new policy that would segregate blood donations of Blacks and Whites.<sup>62</sup> The irony of this policy came from the fact that it was Drew, an African American doctor, who organized the first large-scale blood bank. When World War II broke out, Dr. Drew worked to develop a blood bank for the American Red Cross, an effort that led to a blood bank being created for the United States military. However, Dr. Drew became increasingly dissatisfied with the American Red Cross due to their policy of not, first, accepting African American blood donors, and, then, their policy of segregating Blacks' and Whites' blood. Due to these discriminatory policies Dr. Drew resigned from his job at the American Red Cross.<sup>63</sup> Dr. Drew spoke out against the matter of segregating blood donations in his 1944 Spingarn Medal acceptance speech: "It is fundamentally wrong for any great nation to willfully discriminate against such a large group of its people...One can say quite truthfully that on the battlefields nobody is very interested in where the plasma comes from when they are hurt...It is unfortunate that such a worthwhile scientific bit of work should have been hampered by such

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<sup>60</sup> U.S. National Library of Medicine, *The Charles R. Drew Papers: Becoming "the Father of the Blood Banks," 1938-1941*, <http://profiles.nlm.nih.gov/ps/retrieve/Narrative/BG/p-nid/338>

<sup>61</sup> Thomas, *Deluxe Jim Crow*, pg. 52.

<sup>62</sup> Dwight Jon Zimmerman, "The American Red Cross African-American Blood Ban Scandal," *Defense Media Network*, January 21, 2012. <http://www.defensemедia-network.com/stories/the-american-red-cross-african-american-blood-ban-scandal/>

<sup>63</sup> U.S. National Library of Medicine, *Becoming "the Father of the Blood Bank"*, <http://profiles.nlm.nih.gov/ps/retrieve/Narrative/BG/p-nid/338>

stupidity.”<sup>64</sup> Dr. Drew’s statement reflected the thoughts of many civil rights advocates of the time. The policy was also widely publicized by the media. *The New York Times* reported, in an article, in 1942 titled, “Red Cross to Use Blood of Negroes”: “The blood of Negro and White donors alike will be accepted hereafter by the American Red Cross, but will be processed separately, ‘so that those receiving transfusions may be given plasma from blood of their own race.’”<sup>65</sup> Military personnel could receive blood that was not from someone of the same race only in emergency situations and, even then, White blood could be given to African American patients, but under no circumstances was African American blood given to White patients.<sup>66</sup> These policies sparked a controversy because of the scientific research that had been done to disprove the need to segregate blood of different races. *The Journal of the American Medical Association*, which had been widely known for its discrimination, published an article saying, “The segregation of the blood of White persons from the blood of Negroes in the blood ban is not only unscientific but is a grievous affront to the largest minority in our country.”<sup>67</sup> But, Jim Crow overruled the scientific community and its evidence knowledge on blood donations.

Medical schools also discriminated against African Americans. African American medical schools had existed since around the time of Reconstruction. Two of these schools were Meharry Medical College, in Nashville Tennessee and Howard College of Medicine located in Washington D.C. Meharry Medical College, in 1876, was the first school in the South to offer four-year training in medicine for African Americans. At its beginning, the school was exclusive to African Americans, but today is open to all races and educates a variety of people with

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<sup>64</sup> U.S. National Library of Medicine, Becoming “the Father of the Blood Banks,”, <http://profiles.nlm.nih.gov/ps/retrieve/Narrative/BG/p-nid/338>

<sup>65</sup> New York Times Editor, “Red Cross To Use Blood Of Negroes”, *New York Times*, January 29, 1942, pg.13.

<sup>66</sup> Louise Cavagnaro and Anne Bennett Swingle, “A History of Segregation and Desegregation”, *The Johns Hopkins Medical Institutions*, DOME Archives, (2004).

<sup>67</sup> Alvarez, Walter C., “Constitutional Inadequacy”, *Journal of the American Medical Association*, Vol.119, No.10.,

different ethnicities. After its establishment, the college added programs for nursing and dentistry. This helped relieve the shortage of physicians willing to care for people of color at that time. The repercussions of the Alabama law that prevented White nurses from treating African American male patients, for example was less important when African American nurses and physicians could treat the patients.<sup>68</sup> Howard University opened in 1867, but while accepting predominantly African American students, White students were accepted as well. The first classes consisted of eight students, seven Black and one White student.<sup>69</sup> Howard and Meharry were considered the best medical schools that offered training to African Americans. In 1914, the American Medical Association's Council on Medical Education demoted Meharry and Howard medical schools to Class B status. One medical educator, Abraham Flexner, when hearing of this demotion said, "Meharry is as good an A school for the Negro race as half a dozen institutions or more rated A for whites."<sup>70</sup> More than just being discriminated against in their ratings, African American medical schools were also severely underfunded. Historically, African American schools of all kinds were underfunded by the state governments, and this underfunding went unchallenged by the federal government. As far back as 1899, evidence of disparities in school funding existed. The case *Cumming v. Richmond County Board of Education* was brought to the United States Supreme Court when taxpayers filed a lawsuit because they believed that the tax supporting high schools in Augusta, Georgia was illegal because it was used exclusively to fund White schools. And yet, the Supreme Court ruled, "The board's decision to suspend temporarily and for economic reasons the high school for Black children was not made to discriminate against the Black students because of their race. The taxpayers were not denied equal protection

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<sup>68</sup> "Early History." Meharry Medical College. N.P., n.d. Web. (May 2013).  
<<http://www.mmc.edu/education/som/aboutus/somhistory.html>>

<sup>69</sup> Sterling M. Lloyd Jr., "A Short History." Howard University College of Medicine. (May 2006.)  
<http://healthsciences.howard.edu/education/schools-and-academics/medicine/about/mission/short-history>

<sup>70</sup> Thomas, Deluxe Jim Crow, pg.23.

of the laws.”<sup>71</sup> Such state funding disparities extended all the way up to higher education, including medical schools. As Karen Kruse Thomas wrote, “In 1940, six of thirteen [southern] states had no state-funded medical schools... The rapid postwar expansion of medical education depended on a new willingness among policy makers in Congress and the southern states to fund medical education in general and Black medical education in particular.”<sup>72</sup> Because of this underfunding, it was suggested that a regional medical school for educating all Negroes of the South should be established. Meharry Medical College was the suggested venue for this idea. This idea went so far as to be made into a bill that was passed by the House of Representatives in 1948, but it was voted down by the Senate. Had the Senate not voted down the bill, the South could have been at risk for becoming even more entrenched in segregation than it had previously been.

Segregation did not just persist because of laws that denied equal access to medical facilities. The sentiments of southerners also influenced the South and segregation, because the benefits White southerners gained from the current situation stopped many from trying to change the conditions. As Nieman wrote, “Injustice persisted not only because of the reluctance of most whites to risk taking a stand against it, but also because Whites derived substantial benefits from the status quo. By degrading blacks, the legal system assured that even whites of the lowest social economic position were superior to blacks.”<sup>73</sup> Because all Whites, no matter what their social standing, benefited from segregation and the discrimination against African Americans, Blacks were further challenged in trying gain equality in all aspects of life, because White support fro their cause was minimal.

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<sup>71</sup> Supreme Court of the United States, Cumming V. Richmond County Board of Education, 1899, Lexis-Nexis Academic, <http://www.lexisnexus.com.libproxy.unh.edu/hottopics/lnacademic/>

<sup>72</sup> Thomas, Deluxe Jim Crow, pg. 211.

<sup>73</sup> Nieman, Promises to Keep, pg. 120

Discrimination existed not only medical schools, but also in many other higher education institutions, which discriminated against African Americans and segregated educational facilities. School segregation had existed widely in the South ever since the decision in the *Plessy v. Ferguson* case. The Supreme Court case that was considered a victory for African Americans, but also ironically promoted the continuation of segregation in practice, was the *Missouri Ex Rel. Gaines v. Canada, Registrar of the University of Missouri*, more widely known simply as *Gaines v. Missouri*. While the case did not involve a prospective medical student, but instead a prospective law student, it did have an impact as it promoted both more segregation and the beginning of desegregation in the South. These contradictory results came about because of the ruling of the Supreme Court in the Gaines case. The case arose when Lloyd Gaines was denied admission into the University of Missouri Law School because he was an African American. Gaines took the case to the courts, arguing that the equal protection clause of the 14<sup>th</sup> Amendment was being violated.<sup>74</sup> The Supreme Court's decision was in favor of Gaines, and is summarized: "The court determined that the student was entitled to the equal protection of the laws and that the state was bound to furnish it for him within the borders of the state. The court concluded that petitioner was entitled to be admitted to the school of law at the state university in the absence of other proper provisions for his legal training."<sup>75</sup> While this was technically a victory for African American Civil Rights, because it established that universities had to accept Black students, when no equal segregated school existed, it actually prompted southern states to create new segregated institutions to avoid integration. This was the case for hospitals as well. While hospitals had always been segregated, it was only after the Gaines case that steps towards making Black and White hospitals equal became a priority in the South. One step taken to ensure

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<sup>74</sup> Thomas, *Deluxe Jim Crow*, pg. 103

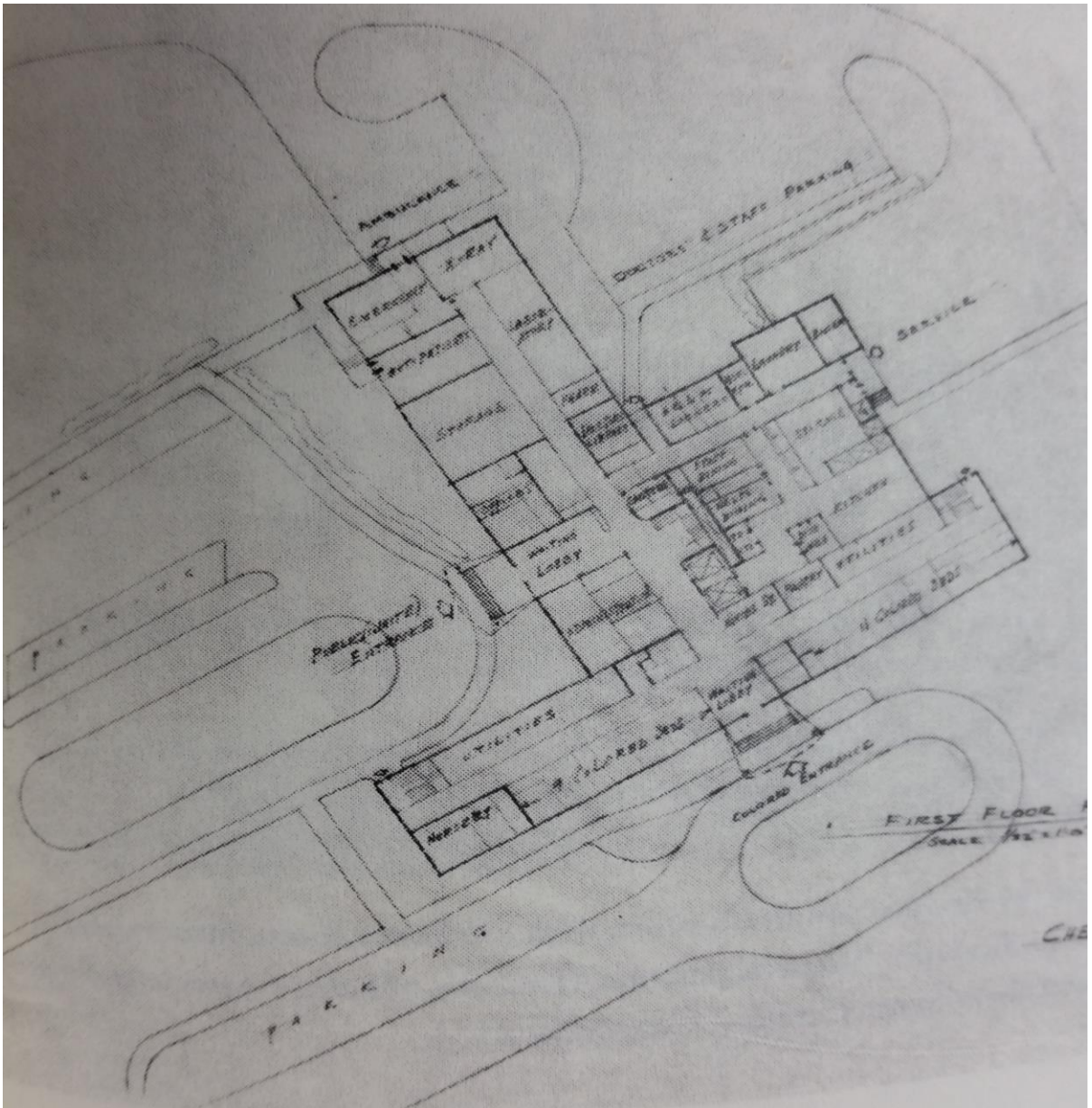
<sup>75</sup> Supreme Court of the United States, *Missouri Ex Rel. Gaines v. Canada, Registrar of the University of Missouri, Et Al*, 1938, Lexis-Nexis Academic. Lexis-Nexhttp://www.lexisnexis.com.libproxy.unh.edu/hottopics/lnacademic/

equality was that Black and White hospitals were moved from separate buildings to being placed in a single, though segregated, hospital. One such hospital is described by Thomas; the “H-shaped biracial blueprint placed blacks in wards on the east side and whites on the west, with private rooms for either severely ill or paying patients in the center of each floor.”<sup>76</sup> These hospitals allowed whites and blacks to receive medical attention equalized to an extent that had never been seen before. Segregation however, was still deeply rooted. The hospitals were designed with separate entrances, admissions desks, restrooms, dining areas, and wards. Even the equipment was labeled “White” or “colored” and some areas of the hospital excluded Black patients entirely. Although there was greater equality in the way that African American patients were being treated, the environment undermined what the creators, originally thought would be a positive experience for Black patients. African Americans took action to force the hands of policy makers to change the South and promote the greater welfare of Blacks in the South.

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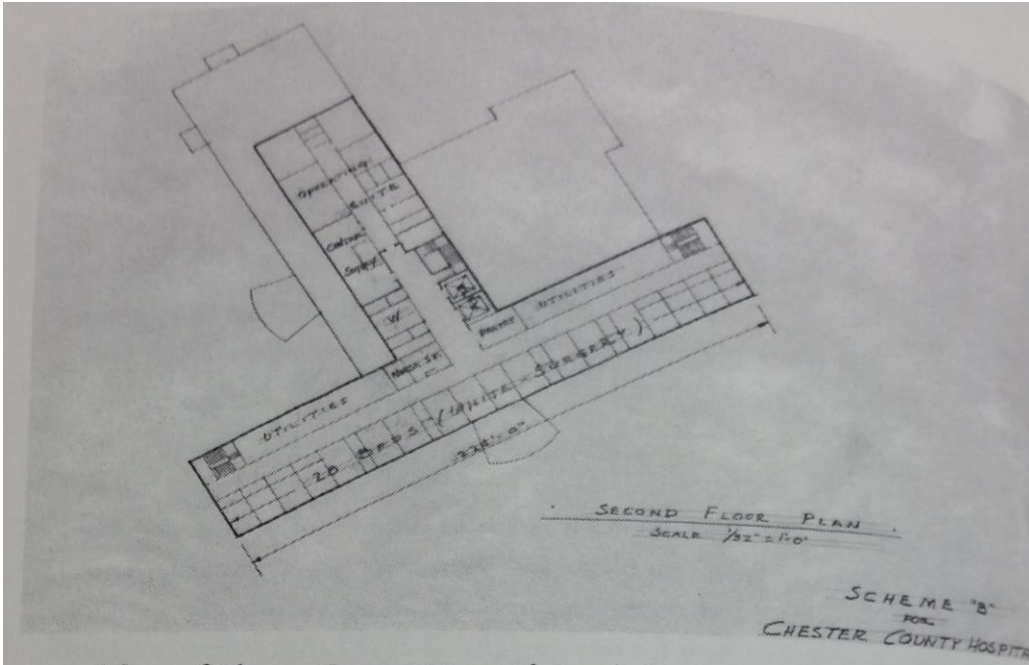
<sup>76</sup> Thomas, Deluxe Jim Crow, pg. 71.



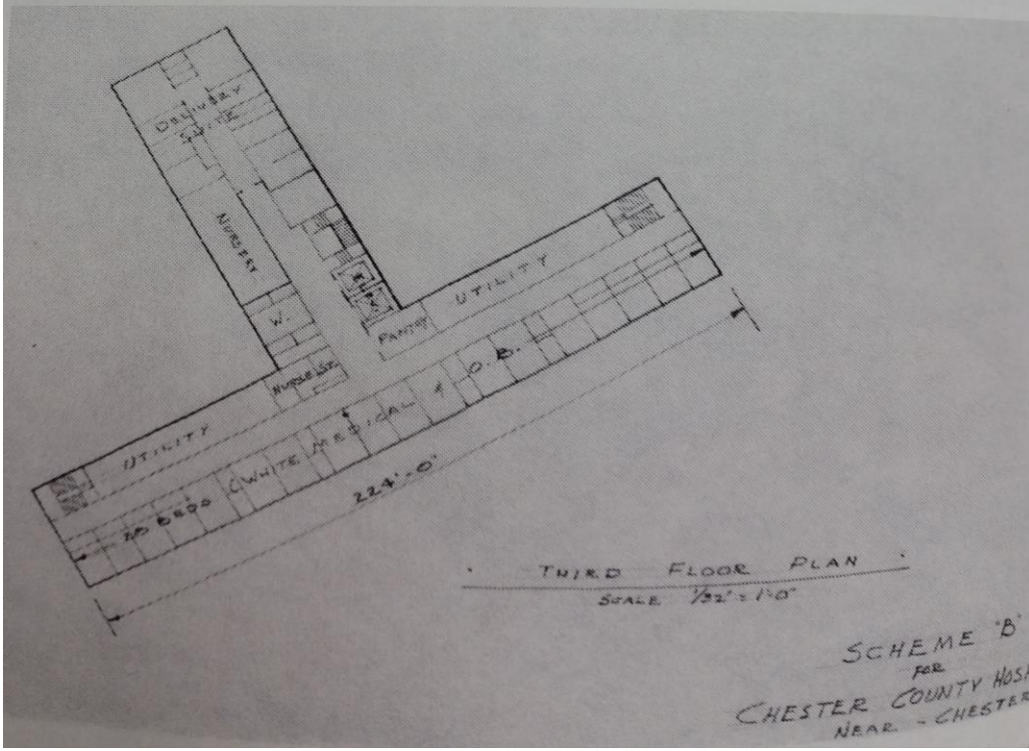


<sup>77</sup> FIGURE 1. Add a title with the name and location of the hospital and the date of the plan

<sup>77</sup> FIG 1. Thomas, Deluxe Jim Crow



Second floor of Chester County Hospital, South Carolina, with operating room and twenty eight white surgical beds. (Records of Lafaye Associates, South Carolina Library, University of South Carolina, Columbia, S.C.)



<sup>78</sup> FIGURE 2. Same here – repeat the title

<sup>78</sup> FIG. 2 Thomas, Deluxe Jim Crow

## *Changing Segregation*

African Americans responded to segregation in a variety of ways. Most of these reactions came during the time described by Karen Kruse Thomas, called “Deluxe Jim Crow.” Thomas defined this term; “For the purposes of this book, deluxe Jim Crow conveys the ethical complexity and ambiguity of segregation in health policy during the Franklin D. Roosevelt and Harry S. Truman administrations.”<sup>79</sup> In short, deluxe Jim Crow was a time when segregation was being upheld by southern states by improving the segregated facilities, because they were opposed to integration. New health policies, improvements in medical training, and individual actions combined to improve African American healthcare in the South. Different kinds of establishments run and promoted by African Americans had a big part in improving the healthcare conditions of the South. Philanthropies, grassroots organizations and the Public Health Service concentrated on improving the health and educational status of blacks and rural southerners, when standards were significantly lower than their White counterparts. The reason for this concentration was because hospital beds in rural areas and in Black hospitals were scarce and the facilities were in bad shape, understaffed and unprepared to provide adequate medical attention. Another contributor to promoting better healthcare in rural areas among African Americans was federal aid and government funding. Specifically benefiting African Americans were policies created during President Franklin D. Roosevelt’s New Deal, programs that strove to promote healthcare policies that benefitted the country as a whole.

The New Deal was the beginning of federal efforts to close the racial and regional health gap. It did so by trying to improve and extend public health and medical care services offered to the wider population, including African Americans and rural communities. The first New Deal programs to impact southern blacks were the public works projects that focused on improving

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<sup>79</sup> Thomas, *Deluxe Jim Crow*, pg.1

sanitation and providing clean water to urban and rural areas of the south. The first New Deal medical care program offered was part of the Federal Emergency Relief Agency. However, this agency failed to bridge the racial and rural health disparities. President Roosevelt later stated, “The Federal Government must and shall quit this business of relief”<sup>80</sup> which changed the federal government’s policy of direct relief to work relief. The Social Security Act and the Farm Security Administration programs ended up being more influential in healthcare programs, favored the South more, and treated blacks more fairly than the Federal Emergency Relief Agency had.<sup>81</sup> Through work relief programs the federal government was able to help give relief to working men and women, and promote healthcare through these programs.

After the New Deal the federal government funded healthcare with new federal laws. One was the Hill-Burton Survey and Construction Act, passed by Congress in 1946. The act gave financial assistance to public and nonprofit medical facilities, such as general hospitals, nursing homes, public health centers, acute care hospitals, and rehabilitation facilities.<sup>82</sup> The recipients of Hill-Burton funds were required, under the Public Health Service Act, to provide facilities available to all residents of the area in which the hospital was located, and they were not allowed to discriminate because of race, color, national origin, or any other grounds outside of the person’s need for medical services.<sup>83</sup> Through higher funding and a non-discriminatory policy, the Hill-Burton Act was not only able to financially help southern hospitals, but was also able to improve the facilities and increase the number of beds offered to African Americans. Before the full affect of the Hill-Burton Act occurred, there was an obvious disparity in the number of White children admitted to hospitals, versus the number of Black children. As of 1947, Alabama

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<sup>80</sup> Thomas, Deluxe Jim Crow, pg. 50.

<sup>81</sup> Thomas, Deluxe Jim Crow, pg. 50.

<sup>82</sup> Thomas, Deluxe Jim Crow, pg. 72.

<sup>83</sup> 78<sup>th</sup> United States Congress, Public Health Service Act, July 1, 1944. 42 U.S.C.: Public Health and Social Welfare

admitted 35.2 White children per thousand children versus 10.8 per thousand Black children to hospitals. Louisiana's difference in admission rates was of 23 per thousand, Maryland 20.2, Mississippi 40.1, South Carolina 42, and Virginia 21.2. The six states together had a difference of hospital admittance, between White and Black children, of 28.6 per thousand children.<sup>84</sup> With the Hill-Burton Act these differences were reduced and the services provided to all races slowly began to become more equal, due to the fact that "Generally, a hospital's bed capacity was inversely proportional to the average daily cost per patient."<sup>85</sup>

The Social Security Act was influential in many different ways as well. One of these was helping to fund programs that supported African American medical training. In the 1930s, "The PHS began to cooperate with the Rosenwald Fund's Davis to recruit Black public health personnel. Social Security dollars expanded these efforts by providing scholarships to train public health doctors, nurses and sanitary engineers... Federal funding was particularly crucial to the dramatic expansion of public health nursing among Black women."<sup>86</sup> The Rosenwald fund was part of the Rosenwald Foundation, which provided philanthropic funds to public schools, colleges, museums and black institutions, until 1948 when the funds were completely depleted. Not only did this expand African American medical training generally, it also allowed for more African American nurses, expanding the number of nurses who could help treat African American male patients. African American nurses had always been in high demand, especially due to laws such as the 1915 Alabama law that allowed White nurses to refuse to treat African American male patients. African American nurses not only helped to right the wrongs of the past, but they became a force that helped lead to integration. As one African American nurse

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<sup>84</sup> Marcus S. Goldstein, "Longevity and Health Status of Whites and Nonwhites in the United States." Journal of the National Medical Association 46.2 (1954) pg. 94-95.

<sup>85</sup> Thomas, Deluxe Jim Crow, pg. 160.

<sup>86</sup> Thomas, Deluxe Jim Crow, pg. 59.

said, “The reason why hospitals got integrated so quickly and quietly and efficiently was that all hospitals had Black nurses and Black aides, and in many cases, members of the local chapters of the NAACP and other Civil Rights groups were also involved.”<sup>87</sup> This shows that it took team efforts between individuals in the work field, and those involved in Civil Rights and anti-segregation organizations, to create a reaction to segregation that eventually led to integration.

The National Association for the Advancement of Colored People (NAACP) was one important African American organization that took action in ending segregation and promoting Civil Rights. One of the most important roles for the NAACP was involved with was a campaign to force southern states into providing equal funding for both Black and White public education, at the graduate and professional level. The first court victory, at the Supreme Court level, in the campaign was the decision in the *Gaines* case. Charles Houston and Thurgood Marshall, two leaders of the NAACP and of Legal Defense Fund under the NAACP, led the campaign for equal funding of all public institutions of higher education.<sup>88</sup> The NAACP legal actions were publicized in African American newspapers as well as newspapers that were predominately staffed by whites. In the *New York Times* in 1949, “Leaders of branches of the National Association for the Advancement of Colored People, in session here, made known today a series of legal actions to end discrimination and segregation in southern states. Cases filed were described as steps to correct abuses against Negroes in schools, transportation and in public services.”<sup>89</sup> Earlier in the 1930s, the NAACP also lobbied for federal funds in order to ensure that African American students and teachers were receiving the same salaries as their White counterparts. Alongside the NAACP was the National Medical Association (NMA), a Black

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<sup>87</sup> Michele Bitoun Blecher, “Minority Nurse,” *Minority Nurse Magazine*, (Fall 2002).  
<http://www.minoritynurse.com/article/making-history>

<sup>88</sup> Thomas, *Deluxe Jim Crow*, pg. 105.

<sup>89</sup> George Streater, “Racial Suits Fight Bias in the South”, *New York Times*, July 14, 1949.  
<http://query.nytimes.com/mem/archive/pdf?res=F40B1FFB395B167B93C7A8178CD85F4D8485F9>

medical organization that worked towards promoting the admission of Black doctors into the work force and medical societies, as well as supporting national health insurance and integration.<sup>90</sup> These organizations strove to desegregate the South, fully integrate the southern facilities, and require equal treatment under health policies. The dilemma that these groups faced was described in a certified revenue management executive (CRME) and NAACP joint report that stated: “How far is it wise to agree to the postponement of the ultimate goal of complete equality and integration of the Negro into the general public health program, in order to assure at least some improved provisions for Negro Health Now?”<sup>91</sup> This question was raised by African Americans across the south, with organizations fighting against discrimination and trying to implement equality in public health policies. In the 1940’s when federal health bills were being created, organizations such as the NAACP, the National Medical Association, National Hospital Association, National Negro Congress, Urban League, and other Black civil rights advocacy groups, called for inclusion of African Americans in all federally sponsored health programs.<sup>92</sup> Although these organizations were in favor of integration, it was not until the 1950s that they really pushed for desegregation. Before that time, they were more concerned with equal treatment, and equal funding, even if the funding was for segregated hospitals. Karen Kruse Thomas cites David McBride as observing, “Black medical leaders did not place highest priority on integration of hospitals and health centers, (but instead emphasized) national health insurance, essentially an economic reform measure.”<sup>93</sup> The African American organizations involved in promoting equality in public health reform took the necessary actions and steps that would over time lead to desegregation, even if it was not an immediate occurrence.

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<sup>90</sup> Thomas, Deluxe Jim Crow, pg. 284.

<sup>91</sup> Thomas, Deluxe Jim Crow, pg. 113; “La Guardia Elected to NAACP Board,” Kansas City Call, January 18<sup>th</sup>, 1946.

<sup>92</sup> Thomas, Deluxe Jim Crow, pg. 113.

<sup>93</sup> Thomas, Deluxe Jim Crow, pg. 114.



African American medical schools, as well as African Americans being trained in the medical profession, also began to respond to segregation and promote equality in medical education and training. In 1945, Meharry Medical College applied for its first Public Health Service grant to build a health unit in a Black Nashville neighborhood. At that time, the Somerset Health Center, in Baltimore Maryland, was the only Black public health unit that was associated with a university teaching program.<sup>94</sup> Meharry faced difficulties in getting the grant, but received public support for it because it was reasoned that the Meharry graduates served more than half of the African American population in the South. Thomas observes, “Although the Meharry project had the approval of the PHS and the Social Security Agency, the Bureau of the Budget denied the request in the initial PHS budget. Meharry president M. Don Clawson protested to President Truman that while Howard was ‘generously supported by federal funds,’ the only federal funding Meharry had received was to train medical military personnel during World War II.”<sup>95</sup> Even with this plea to the president, it wasn’t until the Hill-Burton Act that Meharry and other under-funded Medical schools were given federal funds. Thus, even though funding wasn’t immediately given to Meharry Medical College, its fight led to the eventual funding, that promoted equality in African American medical schools. Scholarships for African American students also began to become more widely available between 1947 and 1955, due to the federal GI Bill, as well as southern state governments and private foundations. These scholarships gradually increased the number of African American students in medical schools. Through funding for African American schools and scholarships for Black students, as well as the gradual increase of African Americans applying to, and being accepted into, predominantly White

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<sup>94</sup> Thomas, Deluxe Jim Crow, pg. 168.

<sup>95</sup> Thomas, Deluxe Jim Crow, pg. 168.



medical schools, education and training of African Americans began to change and become comparable to that of White medical students.

African American physicians usually worked in poor conditions, but they promoted the welfare of African American patients by not turning anyone away. James Slade, a Black physician in Edenton, North Carolina explained, “A lot of patients we took care of free. I started practicing the days before Medicaid and Medicare. We never turned anyone away because of inability to pay. In fact, we didn’t even ask them to pay until we had already treated them.”<sup>96</sup> Even when they could not be paid and would benefit in no way from treating a patient, many African American physicians would still care for patients. This act of selflessness shows how African Americans were willing to sacrifice individual success for the greater success of all blacks. Through these responses by African Americans to segregation laws, integration of the South was eventually achieved.

### ***Conclusion***

Desegregation finally occurred in healthcare in the mid 1960s. Integration occurred because of the federal bench decision in *Simkins v. Moses H. Cone Memorial Hospital* in 1963, and the Civil Rights Act of 1964.<sup>97</sup> The Simkins case was brought to the court by African American physicians and dentists, with Dr George Simkins as leading plaintiff. They sued on behalf of themselves and patients who were denied access of using and being treated in Moses H. Cone Memorial Hospital and Wesley Long Community Hospital, in North Carolina. The grounds for the case came from the fact that both hospitals had been given federal funding in 1946, under

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<sup>96</sup> Thomas, *Deluxe Jim Crow*, pg. 55.

<sup>97</sup> "Health Care.", *The Jim Crow Encyclopedia*, Westport, CT: Greenwood Press, 2008. *The African American Experience*. Greenwood Publishing Group.  
<http://testaae.greenwood.com/doc.aspx?fileID=GR4181&chapterID=GR41813616&path=encyclopedias/greenwood>.

the Hill-Burton Hospital Survey and Construction Act.<sup>98</sup> Since the hospitals were federally funded, they were deemed public hospitals and were not at liberty to deny treatment to African American patients. They argued that this was a violation of the Fifth and Fourteenth Amendments of the United States Constitution. It was the federal circuit court that finally determined in favor of the plaintiffs and banned racial discrimination in medical facilities.<sup>99</sup> In its ruling the court summarized,

Appellants were denied access to the hospitals because of their race. The appellants sought declaratory and injunctive relief under the Constitution and the Hill-Burton Act (Hospital Survey and Construction Act), 42 U.S.C.S. § 291e(f), which prohibited racial discrimination. The hospitals filed a motion to dismiss and asserted that there was no state action present. The district court agreed. On review, the court reversed and remanded. The court noted that the hospitals operated as integral parts of comprehensive joint or intermeshing state and federal programs designed to effect a proper allocation of available medical and hospital resources for the best possible promotion of public health. Having found the requisite state action, the court remanded the case to the district court with directions to grant the requested injunctive relief. The court found that appellants and the United States had standing.<sup>100</sup>

This case is also cited with influencing the Civil Rights Act of 1964, was signed into law by President Lyndon Johnson. It was a major step needed for African Americans to overcome segregation and move towards a completely integrated society. The act prohibited discrimination in all public places, provided the integration of all public facilities, and made employment

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<sup>98</sup> “Simkins V. Cone”, North Carolina History Project. <http://www.northcarolinahistory.org/encyclopedia/811/entry/>

<sup>99</sup> United States Court of Appeals Fourth Circuit, Simkins V. Moses H. Cone Memorial Hospital, Leagle. [http://www.leagle.com/xmlResult.aspx?xmlDoc=19631282323F2d959\\_11029.xml&docbase=CSLWAR1-1950-1985](http://www.leagle.com/xmlResult.aspx?xmlDoc=19631282323F2d959_11029.xml&docbase=CSLWAR1-1950-1985).

<sup>100</sup> United State Court of Appeals for the Fourth Circuit, Simkins v. Moses H. Cone Memorial Hospital, (1963).

discrimination illegal.<sup>101</sup> The implementation of the court decision and the Civil Rights Act finally ended discrimination in medical facilities.

Even though in 1954 the segregation laws of the South were found to be unconstitutional and *Plessy v. Ferguson*, which established segregation in railroad cars, was overturned by the Supreme Court Case *Brown v. Board of Education*, which desegregated schools, it still wasn't until the Simkins case and the Civil Rights Act of 1964, that integration of medical facilities and all other facilities occurred. The decision in the Brown case shattered the pretense that the United States South had been living under for over 60 years, during which the government allowed for inequality to exist and for blacks to suffer, because the rule of law was not upheld and the state and federal governments were not concerned with the rights and liberties of a large part of the American population. With desegregation, from the 1950's until the 1970's, the federal government was finally reversing decades of discrimination and unlawful acts.

Tom Bingham's idea of the rule of law applies well to the history of segregation in healthcare. Healthcare policies were worded in ways that subjected African Americans to laws, which Whites were not subjected to. The rule of law also applies in the way that federal courts ruled in favor of segregation, going against constitutional amendments, such as the 14<sup>th</sup> Amendment. Bingham states, "What matters is that decisions should be based on stated criteria and that they should be amenable to legal challenge, although a challenge is unlikely to succeed if the decision was one legally and reasonably open to the decision-maker." This statement helps to put in perspective how hard it was for African Americans to overcome the segregation laws that worked against them. Segregation was legally mandated, and even though the courts may have used discretion, discretion is not a strong arguable legal defense. The rule of law establishes

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<sup>101</sup> 88<sup>th</sup> Congress of the United States of America, Civil Rights Act, 1964. Title VI, 42 U.S.C. § 2000d et seq.

the language and what the role of laws should be. However, the rule of law does not cover the practice of laws. This is another issue that influenced Blacks' ability to change the laws that discriminated against them. Even when the federal government implemented laws that were meant to protect African Americans' rights and promote their equality, the way in which different institutions and people practiced those laws varied. Hospitals found ways of equalizing facilities, without integrating them. Physicians and nurses also found ways around obeying the laws that limited their discretion. The rule of law was clearly missing in the century that segregation and discrimination were prominent in the United States.

It took decades for the government to right the wrongs of the unlawful legislation that controlled the lives of African Americans after the Emancipation Proclamation. The initial goal of the government was to implement legislation that would integrate former slaves into society and help to reform the government and move forward from its atrocious past of slavery. However, much like slavery, during the time period from the Emancipation Proclamation to the Civil Rights Movement, the United States was not an equal society. After finally getting away from the barbarism of slavery, the United States moved itself into a pattern of legal injustice, which hindered the rights and liberties of African Americans. Even today, we are still faced with the fact that we let such laws rule the country and allowed such oppression of an entire section of the population of the country. Throughout the country, the racial stigma felt during this time period can still be found today.

The laws implemented to segregate the South caused damage to the country as a whole and not only to African Americans. We allowed ourselves to be divided based on the color of our skin and allowed the government to dictate this sentiment. Liberties and rights were denied to African Americans, while the vast majority of the population stood idly by. The Black Codes

hindered freed slaves, then the Jim Crow Laws oppressed all African Americans. Jim Crow laws segregated the South and made inequality a norm in the country for decades. They greatly delayed African Americans' ability to live their lives prosperously and to the fullest. Segregation laws regarding medical attention and facilities most deeply threatened families. These state and federal laws denied the Black population's right to the pursuit of life, liberty, and the happiness. During the "Deluxe Jim Crow" period, policies were implemented to promote equality of African Americans within the system of segregation. African American civil rights groups and organizations influenced most of these policies in one way or another, but desegregation was a slow process that took decades. It wasn't until a century after the first Black Codes, and decades after the first ruling in favor of segregation, that damages done to the country began to be reversed. In the late 1960's, changes were finally implemented that desegregated the South and brought our country closer to a situation of equality. Today we are even closer to countrywide equality however; we still struggle with inequality and with the racial stigma that the United States history has bequeathed us.

**Appendix: Chronology of Major Developments:**

Emancipation Proclamation	1863
Reconstruction Era	1865-1877
Black Codes	1865
13 <sup>th</sup> Amendment	1865
Civil Rights Bill	1866
Howard University Opened	1867
14 <sup>th</sup> Amendment	1868
15 <sup>th</sup> Amendment	1870
Meharry Medical College Established	1876
Jim Crow laws	1881-1960s
Plessy v. Ferguson	1896
Cumming v. Richmond County Board of Education	1899
New Deal Programs	1933-1936
Ex Rel. Gaines v. Canada, Registrar of the University of Missouri Et Al.	1938
Hill-Burton Survey and Construction Act	1946
Brown v. Board of Education	1954
Simkins v. Moses H. Cone Memorial Hospital	1963
Civil Rights Act	1964

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88<sup>th</sup> Congress of the United States of America, Civil Rights Act, 1964. Title VI, 42 U.S.C. § 2000d et seq.

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