# Legal and Historical Analysis of the Dissent, in the Gay Marriage Supreme Court case. Obergefell dissent.10dp	 **Judge Thomas, with wife, being sworn in.**
1. **Tradition.** To prevent five unelected Justices from imposing their personal vision of liberty upon the American people, the Court has held that "liberty" under the Due Process Clause should be understood to protect only those rights that are "`deeply rooted in this Nation's history and tradition.'" Justice Samuel Alito dissenting, *Obergefell Et Al. v. Hodges, Director, Ohio Department Of Health*, (Supreme Court Of The United States, Nos. 14-556, 14-562, 14-571, 14-574. June 26, 2015).	Main Ideas: Analysis:
But this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be. The people who ratified the Constitution authorized courts to exercise "neither force nor will but merely judgment." *The Federalist No. 78*, p. 465 (C. Rossiter ed. 1961) (A. Hamilton). Chief Justice John Roberts dissenting, *Obergefell id.*	

2. *Brown v. Board of Education*. In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when ***Plessy*** v. ***Ferguson*** was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws. *Brown v. Board Of Education,* 347 U.S. 483, 492-3 (Supreme Court of United States, May 17, 1954).	Main Ideas: Analysis:
An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.[4] In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. *Brown, id.* At 489-90.	
In *McLaurin* v. *Oklahoma State Regents, supra,* the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible	

considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. *Brown, supra.* At 493-4.	
Whatever may have been the extent of psychological knowledge at the time of ***Plessy*** v. ***Ferguson***, this finding is amply supported by modern authority.[11] Any language in ***Plessy*** v. ***Ferguson*** contrary to this finding is rejected. *Brown, id.* At 494-5. [11] K. B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, *Personality in the Making* (1952), c. VI; Deutscher and Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 *Int. J. Opinion and Attitude Res.* 229 (1949); Brameld, *Educational Costs, in Discrimination and National Welfare* (MacIver, ed., (1949), 44-48; Frazier, *The Negro in the United States* (1949), 674-681. And see generally Myrdal, *An American Dilemma* (1944).	

3. **Living Constitution.** A living Constitution is one that evolves, changes over time, and adapts to new circumstances, without being formally amended . . . So it seems inevitable that the Constitution will change, too. It is also a good thing, because an unchanging Constitution would fit our society very badly. Either it would be ignored or, worse, it would be a hindrance, a relic that keeps us from making progress and prevents our society from working in the way it should. David Strauss, *The Living Constitution* (Oxford University Press 2010).	Main Ideas: Analysis:
So it seems we want to have a Constitution that is both living, adapting, and changing and, simultaneously, invincibly stable and impervious to human manipulation. How can we escape this predicament? The good news is that we have mostly escaped it, albeit unselfconsciously. Our constitutional system, without our fully realizing it, has tapped into an ancient source of law, one that antedates the Constitution itself . . . A common law Constitution is a "living" Constitution, but it is also one that can protect fundamental principles against transient public opinion, and it is not one that judges (or anyone else) can simply manipulate to fit their own ideas. David Strauss, *Living Constitution, supra.*	
At first blush it seems certain that a living Constitution is better than	

what must be its counterpart, a dead Constitution. It would seem that only a necrophile could disagree. If we could get one of the major public opinion research firms in the country to sample public opinion concerning whether the United States Constitution should be living or dead, the overwhelming majority of the responses doubtless would favor a living Constitution. William H. Rehnquist, "The Notion Of A Living Constitution," *Harvard Journal of Law & Public Policy* (Spring 2006, Vol. 29 Issue 2), 401.	
Once we have abandoned the idea that the authority of the courts to declare laws unconstitutional is somehow tied to the language of the Constitution that the people adopted, a judiciary exercising the power of judicial review appears in a quite different light. Judges then are no longer the keepers of the covenant; instead they are a small group of fortunately situated people with a roving commission to second-guess Congress, state legislatures, and state and federal administrative officers concerning what is best for the country. Surely there is no justification for a third legislative branch in the federal government, and there is even less justification for a federal legislative branch's reviewing on a policy basis the laws enacted by the legislatures of the fifty states. Supreme Court Chief Judge William H. Rehnquist, "The Notion Of A Living Constitution," *id.* At 406.	

4. Elastic Clause. The Congress shall have power . . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. US Constitution, Article I, Section 8 (1788).	Main Ideas: Analysis:
If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper all those particular cases and circumstances in which legislation by the general legislature would be necessary, and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers, which are found necessary to be given are therefore delegated generally, and particular and minute specification is left to the legislature. James Madison, Political theorist and American Founding Father, Virginia Convention to Ratify the US Constitution, June 16, 1788, 438-9.	
The *sixth* and last class [the "necessary and proper clause] consists of the several powers and provisions by which efficacy is given to all the rest . . . Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair	

investigation of it, no part can appear more completely invulnerable. Without the *substance* of this power, the whole Constitution would be a dead letter. James Madison, "Restrictions on the Authority of the Several States: New York Packet," *Federalist No 44,* January 25, 1788.	
As the powers delegated under the new system are more extensive [compared with the Articles of Confederation's enumeration of express powers], the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not *expressly* granted. James Madison, 1788.	
No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included. James Madison, 1788.	
The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every government. This is not opinion, but fact. James Madison, Virginia Convention to Ratify the US Constitution, June 16, 1788, 414.	

5. Alexander Hamilton. This is one of those truths, which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the MEANS ought to be proportioned to the END; the persons, from whose agency the attainment of any END is expected, ought to possess the MEANS by which it is to be attained. Alexander Hamilton, Author of several *Federalist Papers* and American Founding Father, "The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union, *New York Packet,"* Federalist No. 23, *December 18, 1787.*	Main Ideas: Analysis:
A government, the constitution of which renders it unfit to be trusted with all the powers which a free people OUGHT TO DELEGATE TO ANY GOVERNMENT, would be an unsafe and improper depositary of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. Alexander Hamilton, *1787.*	
This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire. If we embrace	

the tenets of those who oppose the adoption of the proposed Constitution, as the standard of our political creed, we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading entire limits of the present Confederacy. Alexander Hamilton, *1787.*	
When the government is drawn from the people, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves for its existence, I will rest my safety, notwithstanding the danger depicted by the honorable gentleman. John Marshall, Leader of Federalist Party and First Supreme Court Justice, Virginia Convention to Ratify the US Constitution, June 16, 1788, 420.	

6. Patrick Henry. Compare this power, says he, with the next clause, which gives them power to make all laws which shall be necessary to carry their laws into execution. By this they have a right to pass any law that may facilitate the execution of their acts. They have a right, by this clause, to make a law that such a district shall be set apart for any purpose they please, and that any man who shall act contrary to their commands, within certain ten miles square, or any place they may select, and strongholds, shall be hanged without benefit of clergy . . . They will not be superior to the frailties of human nature. However cautious you may be in the selection of your representatives, it will be dangerous to trust them with such unbounded powers. Patrick Henry, Attorney and American Patriot leader, Virginia Convention to Ratify the US Constitution, June 16, 1788, 436-7.	Main Ideas: Analysis:
But gentlemen say that the power will not he abused. They ought to show that it is necessary. All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. The sweeping clause will fully enable them to do what they please. Patrick Henry, Virginia Convention to Ratify the US Constitution, June 16, 1788, 437.	
George Mason thought that there were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square. Implication, he observed, was capable of any extension, and would probably be extended to augment the congressional powers. But here there was no need of implication. This clause gave them an unlimited authority, in every possible case, within that district. George Mason, delegate to Constitutional Convention Virginia Convention to Ratify the US Constitution, June 16, 1788, 431.	

7. State Law. But today the Court puts a stop to all that. By	Main Ideas:

deciding this question under the Constitution, the Court removes it from the realm of democratic decision. There will be consequences to shutting down the political process on an issue of such profound public significance. Closing debate tends to close minds. People denied a voice are less likely to accept the ruling of a court on an issue that does not seem to be the sort of thing courts usually decide. Chief Justice John Roberts dissenting, *Obergefell, supra.*	Analysis:
Until the courts put a stop to it, public debate over same-sex marriage displayed American democracy at its best. Individuals on both sides of the issue passionately, but respectfully, attempted to persuade their fellow citizens to accept their views. Americans considered the arguments and put the question to a vote. The electorates of 11 States, either directly or through their representatives, chose to expand the traditional definition of marriage. Many more decided not to.[1] Win or lose, advocates for both sides continued pressing their cases, secure in the knowledge that an electoral loss can be negated by a later electoral win. That is exactly how our system of government is supposed to work.[2] Justice Antonin Scalia dissenting, *Obergefell, id.*	

8. **Other State Laws.** Virginia is now one of 16 States, which prohibit and punish marriages, on the basis of racial classifications.[5] Penalties for miscegenation arose as an incident to slavery and have been common in Virginia since the colonial period.[6] The present statutory scheme dates from the adoption of the Racial Integrity Act of 1924, passed during the period of extreme nativism which followed the end of the First World War. *Loving v. Virginia,* 388 U.S. 1, 6-7 (Supreme Court of United States, June 12, 1967). The Trial Judge ruled, "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix." *Loving v. Virginia,* 388 U.S. 1, 6-7 (Supreme Court of United States, June 12, 1967).	Main Ideas: Analysis:
[T]hat unfortunate race . . . had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and	

traffic, whenever a profit could be made by it. *Dred Scott v. Sandford,* 60 U.S. 393, 407, 19 How. 393, (Supreme Court of United States, 1857).	
[T]he 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 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. *Plessy v. Ferguson,* 163 U.S. 537, 550-1 (Supreme Court of United States, No. 210. May 18, 1896). Justice Brown held, "[I]f he be a colored man and be so assigned [to the colored railroad car], he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man." *Plessy v. Ferguson,* 163 U.S. 537, 549 (Supreme Court of United States, No. 210. May 18, 1896).	
"[S]odomy was a criminal offense at common law and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights," Justice Antonin Scalia dissenting, *Lawrence v. Texas,* 539 U.S. 558 (Supreme Court of United States, No. 02-102. June 26, 2003). "The [sodomy] 'law before the Court today is . . . uncommonly silly.' If I were a member of the **Texas** Legislature, I would vote to repeal it." Justice Thomas, dissenting, *Lawrence v. Texas,* 539 U.S. 558 (Supreme Court of United States, No. 02-102. June 26, 2003). The dissent refused to strike down Texas' sodomy law, which thus remained a State question.	

9. **Other Traditions.** Despite the Civil Rights Act of 1957, which guaranteed women a place on federal juries, into the 1960s slightly more than twenty states continued to refuse to seat female jurors. Sandra F. VanBurkleo, *Belonging to the World: Women's Rights and American Constitutional Culture* (New York: Oxford University Press, 2001), 205.	Main Ideas: Analysis:
Between 1867 and 1917, suffragists conducted 480 state campaigns to secure constitutional amendments, 55 popular	

referendums, 19 congressional lobbying efforts in pursuit of declaratory acts or a federal amendment, and almost 300 campaigns to persuade party leaders to include woman suffrage in election platforms. Sandra F. VanBurkleo, *Belonging to the World,* 183.	
Mississippi and South Carolina enacted the first and most severe Black Codes toward the end of l865. 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. Vagrancy—a crime whose definition included the idle, disorderly, and those misspend what they earn--could be punished by fines or involuntary plantation labor; other criminal offenses included "insulting" gestures or language, "malicious mischief," and preaching the Gospel without a license. Eric Foner, New Left Professor of American History at Columbia University, *Reconstruction: America's Unfinished Resolution* (New York: Harper & Row, 1988), 199-200.	

10. Tyranny of the Majority. Tyranny of the majority, as expressed through a popularly elected legislature, was another evil our Founding Fathers wished to avoid. "James Winthrop of Massachusetts said . . . a bill of rights . . . serves to secure the minority against the usurpations and tyranny of the majority." Leonard W. Levy, Professor of History at the Claremont Graduate School, *Origins of the Bill of Rights* (London, England: Yale University Press, 2001), 30.	Main Ideas: Analysis:
The fundamental article of my political creed is that despotism, or unlimited sovereignty, or absolute power, is the same in a majority of a popular assembly, an aristocratical council, an oligarchical *junto*, and a single emperor. John Adams, Letter *to Thomas Jefferson,* November 13, 1815.	
The delegates in Philadelphia made a distinction between democracy and republicanism new to American political vocabulary. Pure democracy was now taken to be a dangerous thing. As a Massachusetts delegate put it, "the evils we experience flow from the excess of democracy." The delegates still favored republican institutions but they created a government that gave direct voice to the people only in the House and that granted a check on that voice to the Senate, a body of men elected not by direct popular vote	

but by the state legislatures. Senators served for six years, with no limit on reelection; they were protected from the whims of democratic majorities and their long terms fostered experience and maturity in office. Professor of History at Emory University, Michael P Johnson, Johns Hopkins University, Patricia Cline Cohen, University of California, Santa Barbara, Sarah Stage, Arizona State University, Alan Lawson, Boston College, and Susan M. Hartmann, Ohio State University, *The American Promise: A Compact History Third Edition Volume I: To 1877 (*Boston, Massachusetts: St. Martin's, 2007) 203.	
In one of the most compelling essays, Federalist Number 10, James Madison challenged the Antifederalists' heartfelt conviction that republican government had to be small-scale. Madison argued that a large and diverse population was itself a guarantee of liberty. In a national government, no single faction could ever be large enough to subvert the freedom of other group. "Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens," Madison asserted. He called it "a republican remedy for the diseases most incident to republican government." James L. Roark, 206.	
Similarly, the presidency evolved into a powerful office out of the reach of direct democracy. The delegates devised an electoral college whose only function was to elect the president and vice president. Each state's legislature would choose the electors, whose number was the sum of representatives and senators for the state, an interesting melding of the two principles of representation. The president thus would owe his office not to the Congress, the states, or the people, but to a temporary assemblage of distinguished citizens who could vote their own judgment on the candidates. James L. Roark, 203.	
English philosopher John Stuart Mill wrote "On Liberty," an essay in which he stated that the tyranny of the majority was "more formidable than many kinds of political oppression, since . . . it leaves fewer means of escape, penetrating much more deeply into the details of life . . . There needs [to be] protection against the tyranny of the prevailing opinion and feeling, against the tendency of society to impose … its own ideas and practices . . . or those who dissent from them." Reggie Rivers, African American Bronco football player and journalist, Denver Post, February 27, 2004, 7B.	

11. Negative Rights. The Court's decision today is at odds not only with the Constitution, but with the principles upon which our Nation was built. Since well before 1787, liberty has been understood as freedom from government action, not entitlement to government benefits. Justice Clarence Thomas dissenting, *Obergefell, id.*	Main Ideas: Analysis:
As a philosophical matter, liberty is only freedom from governmental action, not an entitlement to governmental benefits. And as a constitutional matter, it is likely even narrower than that, encompassing only freedom from physical restraint and imprisonment. The majority's "better informed understanding of how constitutional imperatives define . . . liberty," better informed, we must assume, than that of the people who ratified the Fourteenth Amendment, runs headlong into the reality that our Constitution is a "collection of `Thou shalt nots,'" not "Thou shalt provides." Justice Clarence Thomas dissenting, *Obergefell, supra.*	

12. **Natural Rights.** The Fourth Amendment emerged not only from the American Revolution; it was a constitutional embodiment of the extraordinary coupling of Magna Carta to the appealing fiction that "a man's home is his castle." That . . . amendment . . . was rhetorically compelling, though historically without foundation. Leonard W. Levy, *Origins of the Bill of Rights* (London, England: Yale University Press, 2001), 151.	Main Ideas: Analysis:
We hold these truths to be self-evident, that all men are created equal. They are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. Thomas Jefferson, *Declaration of Independence,* 7/4/1776.	
Man being born, as has been proved, with a title to perfect freedom, and an uncontrouled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate [property] . . . John Locke, *Two Treatises Of Government*, 1690, Section 87, 24.	

13. Reserved and Retained Rights. Article IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. Article X. The powers not delegated to the United States by the	Main Ideas: Analysis:

Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.	
[T]here is no new power given by this clause. Is there any thing in this Constitution, which secures to the states the powers, which are said to be retained? Will powers remain to the states, which are not expressly guarded and reserved? . . . That Congress should have power to provide for the general welfare of the Union, I grant. But I wish a clause in the Constitution, with respect to all powers, which are not granted, that they are retained by the states. Otherwise, the power of providing for the general welfare may be perverted to its destruction. George Mason, Virginia Convention to Ratify the US Constitution, June 16, 1788, 441-2.	

14. Human Dignity. The corollary of that principle is that human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them. And those denied governmental benefits certainly do not lose their dignity because the government denies them those benefits. The government cannot bestow dignity, and it cannot take it away. Justice Clarence Thomas dissenting, *Obergefell, id.*	Main Ideas: Analysis:
Human dignity has long been understood in this country to be innate. When the Framers proclaimed in the Declaration of Independence that "all men are created equal" and "endowed by their Creator with certain unalienable Rights," they referred to a vision of mankind in which all humans are created in the image of God and therefore of inherent worth. That vision is the foundation upon which this Nation was built. Justice Clarence Thomas dissenting, *Obergefell, supra.*	

15. **Judge's Heritage.** Thomas entered Yale Law School, from which he received a Juris Doctor (J.D.) degree in 1974, graduating towards the middle of his class. Thomas has recollected that his Yale law degree was not taken seriously by law firms to which he applied after graduating. He said that potential employers assumed he obtained it because of affirmative action policies. According to Thomas, he was "asked pointed questions, unsubtly suggesting that they doubted I was as smart as my grades indicated." I peeled a fifteen-cent sticker off a package of cigars and stuck it on the frame of my law degree to remind myself of the mistake I'd made by going to Yale. I never did change my mind about its value. Wikipedia, "Clarence Thomas."	Main Ideas: Analysis:

He is even ambivalent toward his grandfather whom he watched being humiliated by whites and who was so discombobulated by his interactions with whites that he had to have a drink before he was able to go to downtown Savannah to secure the yearly license necessary to operate his business. Alvin Wyman Walker, Ph.D., P.D., Clinical Psychologist/Psychotherapist, "The Conundrum of Clarence Thomas: An Attempt at a Psychodynamic Understanding," RaceandHistory.com, 2009.	
After completing high school at the minor seminary, he attended the Immaculate Conception Seminary in Missouri from 1967 to 1968. It was during his stay at Immaculate Conception that he went through an extremely intense "self-hate stage" where you "hate yourself for being part of a group that's gotten the hell kicked out of them." He attempted to blend in by consciously trying to eradicate and bleach out his black ethnicity, by attempting to not act black and by studiously avoiding the use of black slang. Alvin Wyman Walker.	
Clarence Thomas was born in 1948 in Pin Point, Georgia, a small, predominantly black community near Savannah founded by freedmen after the American Civil War. He was the second of three children born to M.C. Thomas, a farm worker, and Leola Williams, a domestic worker.[5][6] They were descendants of American slaves, and the family spoke Gullah as a first language.[7] Thomas' earliest-known ancestors were slaves named Sandy and Peggy who were born around the end of the 18th century and owned by wealthy Liberty County, Georgia planter Josiah Wilson.[8] M.C. left his family when Thomas was two years old. Thomas' mother worked hard but was sometimes paid only pennies per day. Wikipedia, "Clarence Thomas."	

16. Slave's Dignity. This breakup of families was the largest chink in the armor of slavery's defenders. Abolitionists thrust their swords through the chink. On of the most powerful moral attacks on the institution was Theodore Weld's *American Slavery As It Is* first published in 1839 and reprinted several times. It was made up principally of excerpts from advertisements and articles in southern newspapers. This book condemned slavery out of the slave owners' own mouths. Among hundreds of similar items in the book were reward notices for runaway slaves containing such statements as "it is probable she will aim for Savannah, as he said she had children in that vicinity." The following advertisement was from a New Orleans newspaper: "Negroes For Sale-A Negro woman 24 years of age, and two children, one eight and the other three years. Said Negroes will be sold separately or together as desired." James M. McPherson, *Marching Toward Freedom, The Negro In The Civil War 1861-*	Main Ideas: Analysis:

1865 (New York: Alfred A. Knopf, 1965), 38.	
"Slave sales often involved additional humiliation. Sometimes slaves had to undress. Sometimes prospective buyers poked into openings in the bodies of slaves . . . When one buyer put his hand in Martha Dickson's mouth "she bit his finger to the bone." But the bleeding man did not honor her for her spirited defense. He kicked her and killed her unborn child." Kenneth S. Greenberg, Professor of History at Suffolk University, *Honor & Slavery* (Princeton, New Jersey: Princeton University Press, 1996), 39.	
Many personal and emotional factors probably affected the ability of these Negro children to select the brown doll. In an effort to determine their racial preferences, we asked the children the following four questions: 1. "Give me the doll that you like to play with" or "the doll you like best." 2. "Give me the doll that is the nice doll." 3. "Give me the doll that looks bad." 4. "Give me the doll that is a nice color." The majority of these Negro children at each age indicated an unmistakable preference for the white doll and a rejection of the brown do11.[3] Kenneth Clark, psychologist, *Effect of Prejudice and Discrimination on Personality Develop,* prepared for the 1950 *Midcentury White House Conference on Children and Youth,* Clayborne Carson, 80. 3. Even at three years the majority preferred the white doll and rejected the brown doll. The children of six or seven showed some indication of an increased preference for the brown doll; even at this age, however, the majority of the Negro children still preferred the doll with the white skin color.	

17. **Sexual Relations.** "God forgive us, but ours is a monstrous system, a wrong and iniquity. Like the patriarchs of old, our men live all in one house with their wives and their concubines; and the mulattoes one sees in every family partly resemble the white children. Any lady is ready to tell you who is the father of all the mulatto children in everybody's household but her own. Those, she seems to think, drop from the clouds . . . A magnate who runs a hideous black harem with its consequences under the same roof with his lovely white wife, and his beautiful and accomplished daughters. He holds his head as high and poses as a model of all human virtues to these poor women whom God and laws have given him . . . you see, Mrs. Stowe did not hit the	Main Ideas: Analysis:

sorest spot. She makes Legree a bachelor." Mary Boykin Chesnut, a Southern planter's wife, quoted by Catherine Clinton, Professor of History at Queen's University Belfast, *The Plantation Mistress: Woman's World in the Old South* (New York: Pantheon Books, 1982), 199.	
Among the most shocking stories he [Abraham Lincoln] heard was the sale of a beautiful girl named Eliza. One sixty-fourth black, with creamy skin, straight black hair and large luminous eyes, she was nevertheless a slave. Two men among the buyers were bidding for her. One was a thick-necked Frenchman from New Orleans. The other an Abolitionist minister named Calvin Fairbank, who had been authorized by a pair of antislavery Cincinnati bankers to bid as high as $2,500 to buy and free the girl. After the bidding rose to $1,200, the Frenchman asked Fairbank: "How high are you going?" and was told: "Higher than you, monsieur." The Frenchman hesitated and the anxious auctioneer opened Eliza's dress to bare her breast and shoulders, crying, "Who is going to lose a chance like this?" A gasp came from the crowd and the Frenchman bid $1,465 only to be topped by ten dollars. Again a lull, the auctioneer seized the hem of Eliza's skirts, lifting them to bare her body from toe to navel. "Who is going to be the winner of this prize?" At once the Frenchman raised his bid to $1,580. Raising his gavel the auctioneer began to chant, "One, two, three," Eliza turned her piteous face on Fairbank, who yelled, "One thousand five hundred and eighty-five!" Turning to the Frenchman, the auctioneer asked: "Are you going to bid?" He shook his head and Eliza sank to the block in a faint. "You've got her damn cheap, sir," the auctioneer snarled at Fairbank, "What are you going to do with her?" Fairbank shouted, "Free her!" and the crowd whooped and yelled in glee. Robert Leckie, US Marine, *None Died In Vain: The Saga of the American Civil War* (New York: HarperCollins Publishers, 1990), 52-3.	
"The whole commerce between master and slave," said Thomas Jefferson, "is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submission on the other." Jefferson, of course, had a black mistress of his own [Sally Hemmings]. Robert Leckie, US Marine, *None Died In Vain: The Saga of the American Civil War* (New York: HarperCollins Publishers, 1990), 21.	

18. **Ethic Stain.** Recently Lt. General John L. DeWitt publicly took a stand against the return of the evacuees to the West Coast, declaring, "a Jap's a Jap" whether he is a citizen or not . . . Less than a week after his public statement, he was made to look a fool by signing a proclamation, in accordance with	Main Ideas: Analysis:

the War department policy, allowing freedom of movement in the Western Defense Command to *Nisei* soldiers on furlough. His actions and statements are of a man desperately trying to justify a mistake he made--and which the nation is beginning to recognize as a mistake--that of mass evacuation.[1] Khan Komai, "To be Pitied," *Granada Pioneer, Vol*. I, No. 59, April 24, 1943, 3.	
Papa never said more than three or four sentences about his nine months at Fort Lincoln. Few men who spent time there will talk about it more than that. Not because of the physical hardships . . . It was the charge of disloyalty. For a man raised in Japan, there was no greater disgrace. And it was the humiliation. It brought him face to face with his own vulnerability, his own powerlessness. He had no rights, no home no control over his own life. This kind of emasculation was suffered, in one form or another, by all the men interned at Manzanar. Jeanne Wakatsuki Houston & James D. Houston, *Farewell to Manzanar* (Boston, Massachusetts: Houghton Mifflin Co., 1973), 62.	
In all, the commission heard from more than 750 witnesses including former government officials, historians and, of course, Japanese Americans. For the one-time evacuees, the invitation to speak out before officials who cared, who wanted to hear their stories, was a cathartic experience. Many of their stories, long suppressed because of a feeling of shame, frustration or anger, came tumbling out in an emotional torrent that brought tears to the eyes of witnesses and listeners alike. Bill Hosokawa, *Nisei, The Quiet Americans* (Boulder, Colorado: University of Colorado Press, 2002, 514-5.	

19. **Daily Humiliations.** My father said, "You'd have to take these people into this dingy excuse for a room, twenty by twenty five feet at best. These were people who'd left everything behind, sometimes fine houses. I learned after the first day not to enter with the family, but to stand outside. It was too terrible to witness the pain in people's faces, too shameful for them to be seen in this degrading situation." Marnie Mueller, Erica Harth, ed., *Last Witnesses: Reflections on the Wartime Internment of Japanese Americans* (New York: Palgrave, 2001), 103. My mother was Jewish, my father was a conscientious objector. He set up cooperative stores at Tule Lake. He was	Main Ideas: Analysis:

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"making an intolerable situation tolerable for people," as he told me throughout my childhood. Marnie Mueller, *Last Witnesses,* 101.	
The lack of privacy in the latrines and showers was an embarrassing hardship especially for the older women, and many would take newspapers to hold over their faces or squares of cloth to tack up for their own private curtains [in the Tanforan Assembly Center]. Yoshiko Uchida, *Desert Exile: The Uprooting of a Japanese American Family* (Seattle, Washington: University of Washington Press, 1982), 76.	
The mess halls have been the center of dissatisfaction from the beginning. The idea of bringing a tray or a plate to be filled in the mess hall hurts the pride of the Japanese more than any other thing . . . In Japan there are beggars who go from door to door with plates in their hands, perhaps with an infant on their backs. This type of beggar is looked upon as the lowest of the beggars. WRA, *Community Analysis Notes No. 4,* "Social and Political Organization of the Block at Manzanar," March 7, 1944, 3-4, Colorado Historical Society archives, RG #1269, FF 50.	