

WHITE CARTELS, THE CIVIL RIGHTS ACT OF 1866,
AND THE HISTORY OF *JONES V. ALFRED H. MAYER CO.*

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Abstract

In 2008, *Jones v. Alfred H. Mayer Co.* turns forty. In *Jones*, the Supreme Court held for the first time that Congress may use the Thirteenth Amendment, which abolished slavery, to prohibit private racial discrimination in the sale of property.

Jones temporarily awoke the Thirteenth Amendment and its enforcement legislation – the Civil Rights Act of 1866 – from a century-long slumber. Moreover, it recognized an economic reality: racial discrimination by private actors can be as debilitating as racial discrimination by public actors. In doing so, *Jones* veered away from three decades of civil rights doctrine: a doctrine had focused primarily on the Fourteenth, rather than the Thirteenth Amendment, and on public actors, rather than private actors. Further, by applying the Civil Rights Act of 1866 to private discrimination, *Jones* acknowledged the nineteenth-century roots of economic arguments that scholars use today to critique the relationship between private and public power.

Yet, despite its importance, *Jones* largely has been relegated to a squib in textbooks. Few scholars have attempted to analyze *Jones* in light of other, analogous types of discriminatory behavior by private groups – especially cartel behavior. And, unlike more famous civil rights cases, like *Brown v. Board of Education*, almost nothing is written about the people of *Jones* – the litigants, the lawyers, and the judges behind the caption.

This piece addresses that neglect. First, it ties together economic theories about racial discrimination with the history of the Civil Rights Act of 1866 and its subsequent interpretation in *Jones*. It explains how Congress' exercise of Thirteenth Amendment power to govern private economic relationships during Reconstruction gave important, but unacknowledged intellectual credence to the antitrust movements of the late nineteenth and early twentieth centuries. Second, it explores the human story behind *Jones*, tracking the narrative of the Joneses, their counsel, the judges, and their lives after the decision. Finally, it explains how *Jones*' recognition of the interrelationship between public and private coercion can help scholars, lawmakers, and jurists define the contours of Thirteenth Amendment power.

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