

From Street Law Inc. and Supreme Court Historical Society on Plessy v. Ferguson

Background

In 1890, Louisiana passed a statute called the Separate Car Act, which stated "that all railway companies carrying passengers in their coaches in this state, shall 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. . . ." The penalty for sitting in the wrong compartment was a fine of \$25 or 20 days in jail.

The Plessy case was carefully orchestrated by both the Citizens' Committee to Test the Constitutionality of the Separate Car Act, a group of blacks who raised \$3000 to challenge the Act, and the East Louisiana Railroad Company, which sought to terminate the Act largely for monetary reasons. They chose a 30-year-old shoemaker named Homer Plessy, a citizen of the United States who was one-eighth black and a resident of the state of Louisiana. On June 7, 1892, Plessy purchased a first-class passage from New Orleans to Covington, Louisiana and sat in the railroad car designated for whites only. The railroad officials, following through on the arrangement, arrested Plessy and charged him with violating the Separate Car Act. Well known advocate for black rights Albion Tourgee, a white lawyer, agreed to argue the case without compensation.

In the criminal district court for the parish of Orleans, Plessy argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution.

Thirteenth Amendment

Section 1. 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.

Fourteenth Amendment

Section 1. 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.

John Howard Ferguson was the judge presiding over Plessy's criminal case in the district court. He had previously declared the Separate Car Act "unconstitutional on trains that traveled through several states." However, in Plessy's case he decided that the state could choose to regulate railroad companies that operated solely within the state of Louisiana. Therefore, Ferguson found Plessy guilty and declared the Separate Car Act constitutional.

Plessy appealed the case to the Louisiana State Supreme Court, which affirmed the decision that the Louisiana law as constitutional. Plessy petitioned for a writ of error from the Supreme Court of the United States. Judge John Howard Ferguson was named in the case brought before the United States Supreme Court (*Plessy v. Ferguson*) because he had been named in the petition to the Louisiana Supreme Court and not because he was a party to the initial lawsuit.

Summary:

In a 7-1 decision, the Supreme Court ruled in favor of Ferguson. The majority rejected Plessy's Thirteenth and Fourteenth Amendment arguments, instead putting its stamp of approval on the doctrine of "separate but equal." The dissent, written by Justice John Marshall Harlan, disagreed, arguing that segregationist laws indoctrinate society with the belief that the two races are not equal.

Justice Henry Brown wrote the majority opinion, which rejected Plessy's argument that the Louisiana law conflicted with the Thirteenth Amendment, deeming the point "too clear for argument." The justices then considered whether the law conflicted with the Fourteenth Amendment. They identified the purpose of the Fourteenth Amendment as "enforce[ing] the absolute equality of the two races before the law," but then asserted that "it could not have been intended to abolish distinctions based upon color, or to enforce social...equality." According to the Court, the Fourteenth Amendment was only concerned with legal, not social, equality.

In addition, the justices denied the argument that separation of the races by law "stamps the colored race with a badge of inferiority." They argued instead that racial prejudice could not be overcome by "an enforced commingling of the two races." According to this argument, outlawing segregation would not eliminate racial prejudice, because such societal beliefs could not be changed simply by changing the law. The Court concluded that "if one race be inferior to the other socially, the Constitution ... cannot put them upon the same plane."

The justices explained that because the Louisiana law did not conflict with the purpose of the Fourteenth Amendment, the only remaining question was whether it was "reasonable, and ... enacted in good faith for the promotion for the public good." Giving much deference to the state legislature of Louisiana, they determined that the law met this requirement because it furthered "the preservation of the public peace and good order." Thus, so long as separate facilities were actually qualitatively equal, the Constitution did not prohibit segregation in the view of the majority of the Court.

Justice John Marshall Harlan dissented from the majority opinion. In an opinion that later became pivotal in the *Brown v. Board of Education* cases (1954), he argued that segregationist legislation, like the Louisiana law in this case, was based on the assumption that "colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens." These laws promoted and perpetuated the belief that African Americans were inferior to whites, according to Justice Harlan. They must be struck down, he argued, because the government could not "permit the seeds of race hate to be planted under the sanction of law." Justice Harlan believed that the constitution must be "color-blind," and that it could allow "no superior, dominant ruling class of citizens." Because segregation had the effect of creating such classes, he judged, it was unconstitutional.

Key Excerpts from Majority Opinion:

The decision was not unanimous.

Speaking for a seven-person majority, Justice Henry Brown delivered the opinion of the court.

This case turns upon the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. . . .

The constitutionality of this act is attacked upon the ground that it conflicts both with the thirteenth amendment of the Constitution, abolishing slavery, and the fourteenth amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the thirteenth amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. . . .

Indeed, we do not understand that the thirteenth amendment is strenuously relied upon by the plaintiff. . . .

2. . . .The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in

places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. . . .

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 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.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

Key Excerpts from Minority Opinion:

Justice John Marshall Harlan wrote the dissent.

While there may be in Louisiana persons of different races who are not citizens of the United States, the words in the act 'white and colored races' necessarily include all citizens of the United States of both races residing in that state. So that we have before us a state enactment that compels, under penalties, the separation of the two races in railroad passenger coaches, and makes it a crime for a citizen of either race to enter a coach that has been assigned to citizens of the other race. Thus, the state regulates the use of a public highway by citizens of the United States solely upon the basis of race.

However apparent the injustice of such legislation may be, we have only to consider whether it is consistent with the constitution of the United States.

The thirteenth amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. . . . But, that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the fourteenth amendment . . . declaring that '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,' and that '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.' These two amendments [Thirteenth and Fourteenth], if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship...

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law...

. . . The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the constitution, by one of which the blacks of this country were made citizens of the United States and of the states in which they respectively reside, and whose privileges and immunities, as citizens, the states are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.