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Plessy v. Ferguson

163 U.S. 537 (1896)
http://caselaw.findlaw.com/us-supreme-court/163/537.html
Vote: 7 (Brown, Field, Fuller, Gray, Peckham, Shiras, White)
1 (Harlan)
OPINION OF THE COURT: *Brown*
DISSENTING OPINION: *Harlan*
NOT PARTICIPATING: *Brewer*

FACTS:

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Following the lead of Florida, Mississippi, and Texas, Louisiana passed a statute in 1890 ordering the separation of the races on all railroads. In response, a group of New Orleans residents of black and mixed-race heritage formed the Citizens Committee to Test the Constitutionality of

the Separate Car Law.[1] The railroads, which found compliance with the segregation law costly, supported the group's efforts. Attempts to have the judiciary invalidate the statute were partially successful when the Louisiana Supreme Court struck down the law as it applied to passengers crossing state lines because it placed an unconstitutional burden on interstate commerce. This decision, however, left unanswered the question of segregated travel wholly within the state's borders.

The committee hired Albion Tourgée, a former Union army officer, to lead the legal attack on the railroad segregation statute. Tourgée, who had served as a journalist, lawyer, and judge in North Carolina and New York, was one of the nation's most prominent civil rights advocates. Part of his strategy was to select an individual of mixed-race background to violate the segregation statute as it applied to intrastate travel. Homer Adolph Plessy, who had been active in civil rights efforts in New Orleans for some time, was selected. Plessy described himself as being "of seven-eighths Caucasian and one-eighth African blood."

On June 7, 1892, Plessy bought a first-class rail ticket from New Orleans to Covington, Louisiana. He took a seat in a car reserved for white passengers. Tourgée and the committee had enlisted the cooperation of the railroad to have Plessy arrested for violating the statute. He was taken off the train and held in a New Orleans jail to await trial.

Tourgée moved to block the trial on the ground that the segregation law was in violation of the U.S. Constitution's Thirteenth and Fourteenth Amendments. Judge John Ferguson denied the motion, and appeal was taken to the Louisiana Supreme Court. The state high court, under the leadership of Chief Justice Francis Tillou Nicholls, who, as governor two years earlier, had signed the segregation statute into law, denied Plessy's petition, and the case moved to the U.S. Supreme Court.

For the plaintiff-in-error, Homer Adolph Plessy:

- The statute is manifestly directed at the black race. It imposes a badge of servitude.
- The statute does not define the races. The law inappropriately gives railroad conductors the discretion to determine what constitutes "white" and "colored" people and to assign individuals to a racial group.

[1]For a more complete description of the facts in this case, see Ellen Holmes Pearson, "Homer Plessy: Validation of Jim Crow," in *100 Americans Making Constitutional History*, ed. Melvin I. Urofsky (Washington, DC: CQ Press, 2004), 159–161.

Picture History

Attorney and equal rights activist Albion Tourgée, who argued Homer Plessy's case and lost in the Supreme Court. Justice Harlan's lone dissent said that the Constitution must be color-blind, a phrase suggested by Tourgée's brief.

- The law violates the privileges or immunities of U.S. citizenship because it restricts the right of free travel, and it deprives an ejected paying passenger liberty and property without due process of law.
- The law violates basic human rights by separating husband from wife and mother from child in the case of interracial families.

For the defendant-in-error, J. H. Ferguson:

- The regulation of intrastate commerce lies exclusively within the state's police powers.
- A separation of passengers solely on the basis of race is a reasonable regulation, provided that accommodations are equal in quality and convenience and the same price is charged.
- There is no discrimination based on race. Individuals of both races equally are required to ride in cars assigned them. The cars were equal in quality of accommodations.
- The law imposes no form of servitude or badge of slavery.

MR. JUSTICE 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. . . .

By the Fourteenth Amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the State wherein they reside; and the States are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws. . . .

The object of the 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. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.

One of the earliest of these cases is that of *Roberts v. City of Boston* [1849], in which the Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. . . .

Laws forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the State.

The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theatres and railway carriages has been frequently drawn by this court. Thus in *Strauder v. West Virginia* [1880] it was held that a law of West Virginia limiting to white male persons, 21 years of age and citizens of the State, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step toward reducing them to a condition of servility. Indeed, the right of a colored man that, in the selection of jurors to pass upon his life, liberty, and property, there shall be no exclusion of his race, and no discrimination against them because of color, has been asserted in a number of cases. . . .

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 necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. 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. . . .

The judgment of the court below is, therefore,

Affirmed.

MR. JUSTICE HARLAN, dissenting.

In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one within 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. It decreed universal civil freedom in this country. This court has so adjudged. 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, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty. . . . These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. Finally, and to the end that no citizen should be denied, on account of his race, the privilege of participating in the political control of his country, it was declared by the Fifteenth Amendment that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

These notable additions to the fundamental law were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems. They had, as this court has said, a common purpose, namely, to secure "to a race recently emancipated, a race that through many generations have been held in slavery, all the civil rights that the superior race enjoy." . . .

If a State can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in street cars or in open vehicles on a public road or street? Why may it not require sheriffs to assign whites to one side of a courtroom and blacks to the other? And why may it not also prohibit the commingling of the two races in the galleries of legislative halls or in public assemblages convened for the consideration of the political questions of the day? Further, if this statute of Louisiana is consistent with the personal liberty of citizens, why may not the State require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics? . . .

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 humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*. . . .

I am of opinion that the statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character

should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law, would, it is true, have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community called the People of the United States, for whom, and by whom through representatives, our government is administered. Such a system is inconsistent with the guarantee given by the Constitution to each State of a republican form of government, and may be stricken down by Congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

For the reason stated, I am constrained to withhold my assent from the opinion and judgment of the majority.