22

PLESSY V. FERGUSON

163 U.S. 537 (1896)

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.

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 [Equal Protection Clause which prohibits state action depriving any person within its jurisdiction the equal protection of the laws].

That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except a punishment for crime, is too clear for argument. Slavery implies involuntary servitude,—a state of bondage; the ownership of mankind as a chattel, or, at least, the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. . . .

[The claim of deprivation of equal protection of the laws under the Fourteenth Amendment is unfounded.] 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 have 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. . . .

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, theaters, and railway carriages has been frequently drawn by this court. . . .

In the Civil Rights Cases [1883], it was held that an act of congress entitling all persons within the jurisdiction of the United States to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theaters, and other places of public amusement, and made applicable to citizens of every race and color, regardless of any previous condition of servitude, was unconstitutional and void, upon the ground that the Fourteenth Amendment was prohibitory upon the states only, and the legislation authorized to be adopted by congress for enforcing it was not direct legislation on matters respecting which the states were prohibited from making or enforcing certain laws, or doing certain acts, but was corrective legislation. . . .

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. . . .

Mr. Justice Harlan dissenting.

. . . [I]n 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*. . . .

The sure guaranty of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, national and state, of every right that inheres in civil freedom, and of the equality before the law of all

citizens of the United States, without regard to race. State enactments regulating the enjoyment of civil rights upon the basis of race, and cunningly devised to defeat legitimate results of the war, under the pretense of recognizing equality of rights, can have no other result than to render permanent peace impossible, and to keep alive a conflict of races, the continuance of which must do harm to all concerned. . . .

The Supreme Court overruled *Plessy v. Ferguson* in *Brown v. Board of Education*, 347 U.S. 483 (1954). The case is an outstanding example of how litigation becomes politics by other means. The NAACP's lawyers, led by Thurgood Marshall, who would himself later be appointed to the Supreme Court, knew they had no chance to persuade what at the time was a Southern controlled Congress to overturn school segregation laws. But the NAACP strategists observed a string of Supreme Court decisions overturning segregated state law schools as a violation of the Fourteenth Amendment's Equal Protection Clause.* The Court found that state law school segregation was inherently unequal. Segregated law schools put African American law graduates at a professional disadvantage, because it cut them off from a large portion of future lawyers at a critical time when they should be making social contacts.

The NAACP strategists thought they might have a chance to overturn segregated public education in the seventeen Southern and border states if they could bring one successful case that would set a precedent for challenging all segregation laws. As a general precedent *Plessy v. Ferguson* was a major barrier to success. The Court's decisions regarding law schools did not overrule the "separate but equal" *Plessy* precedent. In fact the opinions accepted the rule by holding that separate law schools for African Americans were intrinsically *unequal*. The segregation of the schools was not a problem per se, but became one only because of the intrinsic inequality of the schools. There was no way a state could make a segregated law school equal for the minority segregated class because of the *social* consequences of segregation.

Somehow Thurgood Marshall and his team would have to persuade the court, first, to accept the case because an injured party had made a legitimate constitutional claim under the Fourteenth Amendment Equal Protection Clause. Far more difficult would be the need to persuade a majority of the Supreme Court that segregated public education at the elementary and high school levels is intrinsically unequal, not because of unequal physical facilities but due to the inevitable social or psychological injury to minority segregated students. The NAACP lawyers would have to put aside what they learned at their respective law schools and marshal *empirical* evidence of social and psychological harm to segregated children.

*Compiler's note: See, for example, *McLaurin v. Oklahoma State Regents* (1950), and *Sweatt v. Painter* (1950).