Plessy v. Ferguson / Excerpts from the Dissenting Opinion

The following are excerpts from Justice Harlan's dissenting opinion:

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[1] 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 13th 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 14th 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 [13th and 14th], 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

[1] The Supreme Court's opinion in this case uses dated race-related terminology that has been left intact in quoted material only.

belief that it is possible, by means of state enactments, to defeat the beneficient 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.

Questions to Consider

1. According to Justice Harlan, what is the basic question before the court?

2. In arguing that the 13th and 14th Amendments in fact do apply to the Louisiana act, Justice Harlan particularly refers to the amendments' "true intent and meaning." What do you think he believed were the amendments' true intent and meaning?

3. According to Justice Harlan, what effects will this type of legislation have on the United States and its citizens?

4. What does Justice Harlan believe is the real meaning behind the legislation enacted in Louisiana? Do you agree? Why or why not?

