

Plessy v. Furgeson

Plessy v. Furgeson (1896)

Opinion: Brown

Dissent: Harlan

Basic Info:

- Louisiana sets up separate but equal regulations for the train.
- Plessy was 1/8th black, and should have been treated as black under southern law, but "could pass" for white
- Plessy claims property of being white- court strikes down
- does 14th Amd Equal Protection Clause prohibit laws requiring separation of races? No.

Brown:*

- law can't make blacks and whites get along
- kind of a deference to the legislature
- law just protects civil and political rights, not social rights
- there is "formal equality" so it's ok
- law can't bring about social equality; therefore the 14th Amendment is not about social equality. 14th is about civil equality.

Harlan:

- we all know this isn't about equal mutually desired separation. It is really about stigmatizing black people; therefore it is contrary to the 14th Amendment.
- what will happen over the long run?
- flagrant repudiation of the idea of social inequality- effect is to reward and encourage back-sliding on civil and political rights

Harlan Quotes:

"But in the 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 to 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."

"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 US 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 US and of the States in which they respectively reside, and whose **privileges and immunities**, as citizens, the States are forbidden to abridge."

***Check out Brown's reasoning.** Doesn't he sound an awful lot like Bork? I see similarities in their deference to the legislature, and also their view that the law cannot bring about social change. Does this make Bork's arguments less palatable? Would Bork have concurred in *Plessy*?