

## *Plessy v. Ferguson* (1896)

"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."

—Justice Henry Billings Brown,  
speaking for the majority



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## About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

## Teaching Recommendations Based on Your Time

If you have one day . . .

- Begin with the activity titled "[Does Treating People Equally Mean Treating Them the Same?](#)" Discuss situations where equal treatment requires the same treatment and where equal treatment requires different treatment.
- Read the background summary as a class. Have students identify the relevant facts in the case, using the questions as a guide.
- For homework, have students read the excerpt from the majority opinion and answer the accompanying questions.

If you have two days . . .

- Complete all activities for the first day.
- On the second day, complete the activity titled "[Fourteenth Amendment v. Tenth Amendment: Federalism.](#)"
- In class or for homework, have students read the excerpt from the majority opinion and answer the accompanying questions.

If you have three days . . .

- Complete all activities for the first and second days.
- On the third day, clarify students' understanding of the majority opinion. Read the dissenting opinion as a class and identify differences in reasoning between them.
- Complete the activity titled "[How a Dissent Can Presage a Ruling.](#)"
- For homework, if students have access to computers and the Internet, have them investigate the "[Case Study on Integration - Little Rock.](#)"

If you have four days . . .

- Complete all the activities for the first, second, and third days.
- On the fourth day, depending on your students' level, complete the activity "[Interpreting the Constitution.](#)"
- If the activity "Interpreting the Constitution" is not grade-level appropriate, have students complete the online activity "Case Study on Integration - Little Rock."

## Background Summary and Questions . . .

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

## ***Plessy v. Ferguson***

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.

## Background Summary and Questions . . .

### Questions to Consider:

1. What law did Homer Plessy violate? How did Plessy violate this law?
2. What rights do the Thirteenth and Fourteenth Amendments to the Constitution provide?
3. If you were Plessy's lawyer, how would you justify your claim that the "Separate Car Act" violates the Thirteenth and Fourteenth amendments?
4. In *State of Louisiana v. Plessy*, Judge Ferguson decided that the state could choose to regulate railroad companies that operated within the state even though he had previously declared the "Separate Car Act" unconstitutional on trains that traveled through several states. If an act is declared unconstitutional in one case, shouldn't it be held unconstitutional in all cases? How do you think Judge Ferguson could legally justify making this distinction?
5. Is it possible for two races to remain separated while striving for equality? Are separation and equality compatible? Why or why not?
6. Can you think of an example or situation where separation does not mean inequality?

## Background Summary and Questions ••

In 1890, Louisiana passed a statute called the "Separate Car Act". This law declared that all rail companies carrying passengers in Louisiana had to provide separate but equal accommodations for white and non-white passengers. The penalty for sitting in the wrong compartment was a fine of \$25 or 20 days in jail.



Two parties wanted to challenge the constitutionality of the Separate Car Act. A group of black citizens who raised money to overturn the law worked together with 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 for "White" passengers. The railroad officials knew Plessy was coming and arrested him for violating the Separate Car Act. Well known advocate for black rights Albion Tourgee, a white lawyer, agreed to argue the case for free.

Plessy argued in court that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution. The Thirteenth Amendment banned slavery and the Fourteenth Amendment requires that the government treat people equally. John Howard Ferguson, the judge hearing the case, had stated in a previous court decision that the Separate Car Act was unconstitutional if applied to trains running outside of Louisiana. In this case, however, he declared that the law was constitutional for trains running within the state and found Plessy guilty.

Plessy appealed the case to the Louisiana State Supreme Court, which affirmed the decision that the Louisiana law was constitutional. Plessy then took his case, *Plessy v. Ferguson*, to the Supreme Court of the United States, the highest court in the country. Judge John Howard Ferguson was named in the case because he had been named in the petition to the Louisiana State Supreme Court, not because he was a party to the initial lawsuit.

## Background Summary and Questions ••

### Questions to Consider:

1. What law did Homer Plessy violate? How did Plessy violate this law?
2. What rights do the Thirteenth and Fourteenth Amendments provide? Why did Plessy believe that the Separate Car Act violated these rights?
3. Judge Ferguson decided that the state could make laws for railroad companies that traveled within the state but not for those that traveled between states. On what basis can Judge Ferguson treat these two situations differently?
4. What claim did Plessy make to the Louisiana State Supreme Court? How did his claim reflect on his argument that his Fourteenth Amendment rights were violated?
5. Do you think it is possible for blacks and whites to be separate and equal? Why or why not? If so, describe a situation where people can be separate, but equal.



**Background Summary and Questions ·**  
**Vocabulary**

**segregation (to segregate)**

Define:

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Use in a sentence:

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**arrested (to arrest)**

Define:

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Use in a sentence:

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**unconstitutional (constitutional)**

Define:

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Use in a sentence:

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**guilty**

Define:

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Use in a sentence:

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## *Plessy v. Ferguson*

### petition (to petition)

Define:

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Use in a sentence:

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In 1890, Louisiana passed a law called the "Separate Car Act." This law said that railroad companies must provide separate but equal train cars for whites and blacks. Blacks had to sit with blacks and whites had to sit with whites. This is called *segregation*. Anyone who broke this law would have to pay \$25 or go to jail for 20 days.



Homer Plessy was a 30-year-old shoemaker who lived in Louisiana. On June 7, 1892, Plessy purchased a train ticket from New Orleans to Covington, Louisiana. Plessy was one-eighth black (seven of his great grandparents were white and one was black), but under Louisiana law he was considered black. Therefore, he was required to sit in the "Colored" car. However, Plessy sat in the "White" car and was *arrested*.

Plessy argued to the district court that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution. The Thirteenth Amendment says that slavery is illegal anywhere in the United States, and the Fourteenth Amendment says that the government must treat all people equally.

John Howard Ferguson, the district court judge, said that in a previous court case that the Separate Car Act was unconstitutional for trains running outside of Louisiana. However, he decided that the law was constitutional for trains running inside the state and found Plessy *guilty*.

The Louisiana State Supreme Court agreed with Judge Ferguson that the Separate Car Act was constitutional. Plessy then took his case, *Plessy v. Ferguson*, to the Supreme Court of the United States (the highest court in the country).

## Background Summary and Questions •

### Questions to Consider:

1. What law did Homer Plessy break? How did Plessy break this law?
2. What rights do the Thirteenth and Fourteenth Amendments to the Constitution provide?
3. Why did Plessy believe that the Separate Car Act violated his Thirteenth and Fourteenth Amendment rights?
4. Judge Ferguson decided that the state could make laws for railroad companies that traveled within the state but not for those that traveled between states. How can Judge Ferguson treat these two situations differently?
5. Do you think it is possible for blacks and whites to be separate and equal? Why or why not? If so, describe an example or situation where people can be separate and equal.

## Diagram of How the Case Moved Through the Court System

### Supreme Court of the United States

The Court upheld the Louisiana State Supreme Court's decision and declared that the "Separate Car Act" was constitutional as long as there were separate but equal accommodations for both whites and blacks. It further stated that the legal distinction made by the Act did not in any way destroy the legal equality of the two races.

*(As to the question Plessy raised in his petition to the Louisiana State Supreme Court about his not being black, the Supreme Court of the United States recognized that it may be an important question, but the question was not properly put in issue in this case.)*

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Plessy filed a petition for *writs of error and certiorari* to the Supreme Court of the United States, arguing that the "Separate Car Act" violated the Thirteenth and Fourteenth Amendments.



### Louisiana State Supreme Court

Rejected Plessy's argument that Judge Ferguson's ruling should be overturned; the Court affirmed the constitutionality of the Separate Car Act and further stated Plessy refused to admit he was black.

*Ex parte Plessy (1892)*

Plessy petitioned the Louisiana Supreme Court not as an appeal of the district court decision but in a separate case on his behalf, for a *writ of prohibition* to stop Judge Ferguson from continuing the legal proceedings against him. Plessy argued that he was only one-eighth black, that the mixture of colored blood was not discernible in him, and thus that he should be afforded all the rights and privileges of a white man.



**Criminal District Court for the Parish of Orleans**

Judge Ferguson of state district court found Plessy guilty of not leaving the car for whites when asked to; denied claim that Separate Car Act was unconstitutional because Louisiana could regulate its railroad companies however it saw fit as long as equal accommodations were provided.

*State of Louisiana v. Plessy* (1892)

## Key Excerpts from the 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 the Majority Opinion

### Questions to Consider:

1. What do the justices state is the object of the Fourteenth Amendment?
2. The *Plessy* decision distinguishes between political and social equality. Discuss this distinction. Can one exist without the other?
3. What racial and cultural assumptions are inherent in the statement that "legislation is powerless to eradicate racial instincts or abolish distinctions based upon physical differences?"
4. The decision states that legislation cannot overcome social prejudice. Can it reinforce social prejudice? How?

***Plessy v. Ferguson***

5. How do you respond to the court's contention that if any inferiority is evident, it is only because colored people "choose" to interpret the act in that manner. Do you believe colored people had a choice whether or not to feel or not to feel inferior in light of such legislation?
  
  
  
  
  
  
  
  
  
  
6. According to Justice Brown's opinion, social equality must be the result of what three factors?
  
  
  
  
  
  
  
  
  
  
7. After the court dismissed the Thirteenth Amendment violation argument, it reduced the question before the court to whether or not Louisiana's legislation is reasonable. What is the "reasonable" standard and how did the court apply it in this case?



## Excerpts from the Dissenting 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.

## Excerpts from the Dissenting Opinion

### Questions to Consider:

1. According to Justice Harlan, what is the basic question before the court?
2. In arguing that the Thirteenth and Fourteenth 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. In your opinion, does Justice Harlan's constitutional interpretation of the Thirteenth and Fourteenth Amendments effectively challenge the majority's interpretation of the same amendments in this case?
4. According to Justice Harlan, what effects will this type of legislation have on the United States and its citizens?
5. What does Justice Harlan believe is the real meaning behind the legislation enacted in Louisiana? Do you agree? Why or why not?

## Does Treating People Equally Mean Treating Them the Same?

Think about the following question and discuss or write an answer:

### ***Does treating people equally mean treating them the same?***

What would it mean to treat people equally in the following situations?



A man and a woman apply for a job as a shoe sales person. What would the employer have to do to treat these two applicants equally?



Two patients come to a doctor with a headache. The doctor determines that one patient has a brain tumor and the other patient has a run-of-the mill headache. What would the doctor have to do to treat these two patients equally?



Two students try to enter a school that has stairs leading to the entrance. One student is handicapped and the other is not. What would the school have to do to treat these two students equally?



Two students live in the same school district. The students are the same age, but they are different races. What does the school district have to do to treat these two students equally.

## More on the Equal = Same Dilemma

*"No State shall ... deny to any person within its jurisdiction the equal protection of the laws."*

—Equal Protection Clause of the Fourteenth Amendment

When you first read this excerpt from the Fourteenth Amendment, its meaning seems clear. The states (as well as the federal government by implication) must treat people equally. It is easy to assume that we all know what the term "equal" means, but sometimes what it means to be equal is not so clear. People have different, and legitimate, understandings of what it means to be equal. This helps us understand why the Supreme Court of the United States has had so much trouble interpreting the Fourteenth Amendment.

For example, we all expect our doctors to treat everyone equally. Imagine that you went to the doctor complaining of a headache. After the doctor examined you, she determined that you had a brain tumor, and she advises that you take two aspirin and get some bed rest. You are shocked. Shouldn't you have an operation or some other treatment to get rid of the tumor? "No," the doctor replies, because she prescribes aspirin to all of her headache patients. After all she must treat everyone equally, right?

Here's another example. There are probably students with disabilities in your school. Most schools have special accommodations like ramps at the entrance, larger bathroom stalls for wheelchairs, and special education teachers. This means that some students are treated differently from others. But the different treatment helps those students get an equal education.

These are two examples of how different treatment can lead to equal treatment. However, no one would deny that sometimes treating people equally means treating them exactly the same. For instance, if two people, a man and a woman applied for a job as a shoe sales person, we would expect that they would be given the same chance for the job.

You can probably see how conflicting ideas about what it means to treat people equally could present problems for a court. When the Supreme Court of the United States must decide cases where people who have been treated differently sue claiming a violation of their Fourteenth Amendment, the justices must determine whether the different treatment leads to inequality. This is not an easy task.

### ***Fourteenth Amendment v. Tenth Amendment: Federalism***

The arguments presented to the Supreme Court of the United States in *Plessy v. Ferguson* involve two competing amendments to the Constitution. The Fourteenth Amendment says states may not deny people equal protection of the law and the Tenth Amendment reserves broad, undefined powers (often referred to as police powers) for the states.

#### **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.

#### **Tenth Amendment**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Plessy argued that by restricting him to a separate train car, the State of Louisiana violated his Fourteenth Amendment right. However, the State of Louisiana countered that it had the power under the Tenth Amendment to create laws that preserve order and public peace.

Explain the two positions.

## ***Fourteenth Amendment v. Tenth Amendment: Federalism***

### **The Supreme Court's Opinion**

After much discussion by the United States Supreme Court over the *Plessy v. Ferguson* decision, the Court stated that Louisiana's Separate Car Act did not violate the 14th Amendment.

"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 [the state] 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."

—*Plessy v. Ferguson* (1896)

## Interpreting the Constitution

When the courts must decide a case, the meaning of the laws in question is not always clear. The Fourteenth Amendment, which guarantees equal protection of the laws, has been particularly difficult to interpret over the years because of the ambiguous nature of the concept of equality. Does treating people equally mean treating them exactly the same? Or are there circumstances when equal treatment sometimes requires different treatment? The courts have come to different conclusions at different points in history and in different cases.

Judges use their reasoning skills to decide what particular laws mean when they rule on cases. Different judges sometimes use different reasoning skills to interpret the Constitution, meaning that judges do not always agree on the meaning of the Constitution. There are six widely accepted methods of interpretation that shed some light on the meaning of the Constitution.

<b>Historical Interpretation</b>	A judge looks to the intentions of the framers and ratifiers of the Constitution to shed light on its meaning.
<b>Textual Interpretation</b>	A judge looks to the meaning of the words in the Constitution, relying on common understandings of what the words mean today.
<b>Structural Interpretation</b>	A judge infers structural rules (power relationships between institutions, for instance) from the relationships specifically outlined in the Constitution.
<b>Doctrinal Interpretation</b>	A judge applies rules established by precedents.
<b>Ethical Interpretation</b>	A judge looks to the moral commitments reflected in the Constitution.
<b>Prudential Interpretation</b>	A judge seeks to balance the costs and benefits of a particular ruling.

Keeping these interpretation tools in mind, read the following excerpts from the majority and dissenting opinions in *Plessy v. Ferguson*. The majority and dissenting opinions each had different interpretations of the Fourteenth Amendment. Consider the original wording of the Fourteenth Amendment and determine which method of reasoning (historical, textual, etc.) was used to reach an opinion. Discuss your findings with the class and then proceed by answering the questions following the excerpts.

### **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.

### **Majority Opinion**

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....

### **Dissenting Opinion**

They [Thirteenth, Fourteenth and Fifteenth Amendments] removed the race line from our governmental systems. They had . . . 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.'

They declared, in legal effect, this court has further said, 'that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states; and in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.'

' . . . The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity or right, most valuable to the colored race, the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy; and discriminations which are steps towards reducing them to the condition of a subject race.'



## Interpreting the Constitution

### Questions to Consider:

1. Decide what methods of interpretation are being used in each of the opinions.
2. What language in each opinion supports your finding of the methods of interpretation being used?
3. Using the Fourteenth Amendment and the facts in the *Plessy v. Ferguson* case, give your interpretation of the Fourteenth Amendment as it applies to *Plessy*. What method of interpretation did you use? Why?
4. What are the inherent drawbacks to each type of interpretive method?
5. What are the inherent benefits of each type of interpretive method?
6. Do you believe the courts should follow only one type of interpretive method? Why or why not?

## The Impact of the Case: "Separate But Equal"

Although not specifically written in the decision, *Plessy* set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal." The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools.

The Supreme Court of the United States determined that if legislation makes distinctions based on race, but does not deprive anyone of rights or privileges, it is constitutional. The Court seemed to believe that the common practice of separation was an inconvenience, not something that abridged the rights of African Americans. The Court also presumed that legislation was powerless to do away with racial instincts or to abolish distinctions based on physical differences.

Think about the following situations. Each situation offers separate accommodations for the people involved. Are those accommodations equal? Do you think the Supreme Court of the United States considered all possible situations when they rendered their decision in *Plessy v. Ferguson*? Discuss each situation with your classmates.

1. A black woman is thirsty, so she walks over to the water fountains. There is one fountain for blacks and one for whites. The black woman uses the fountain for whites because the other one is out of order.
2. A black man has been traveling for many hours. He stops at a diner to eat and use the restroom. This diner only serves whites. In order to eat, the black man must travel another two hours to another diner that serves blacks. The black man cannot wait two hours to use the restroom, so he uses the diner's restroom despite the posted signs.
3. A white man is not allowed to have his colored attendant with him in the same train coach even though the white man's health condition requires constant supervision. The colored attendant ignores the rules and sits beside his employer in the coach for white passengers.
4. A black seven-year-old girl must walk two miles to the nearest school for blacks even though there is a school two blocks away. The school two blocks away is only for white students. The girl's parents worry about their daughter walking such a long distance to and from school everyday.

## How a Dissent Can Presage a Ruling

Some Supreme Court cases are decided unanimously. However, sometimes the justices do not agree with the majority decision. These justices often write dissenting opinions that express how and why they disagree with the majority decision.

Though dissents do not become law as majority opinions do, they are important because they document the struggle between different interpretations of the law. Sometimes the dissent in one case becomes the prevailing viewpoint in a future case that overturns an earlier decision. A dissent presaged a future decision in the *Plessy* and *Brown* cases.

In *Plessy v. Ferguson* (1896), Justice Harlan disagreed with the majority of his colleagues. The majority declared that it was possible for segregated facilities to be equal, therefore segregation did not violate the Fourteenth Amendment. Justice Harlan wrote a dissent stating that segregation violated the Fourteenth Amendment because it used the law to sanction inequality among races. Later, in *Brown v. Board of Education I* (1954), Chief Justice Earl Warren also declared that separate facilities violated the Constitution, though he based his argument on slightly different premises.

Read excerpts from Justice Harlan's dissent and Chief Justice Warren's majority opinion on the next page.

The justices clearly have the same opinion of the constitutionality of segregation. Can you determine how they differ?

### How a Dissent Can Presage a Ruling

<b><i>Plessy v. Ferguson</i> (1896) Justice Harlan's Dissent</b>	<b><i>Brown v. Board of Education</i> (1954) Chief Justice Warren Writing for the Majority</b>
<p>Our constitution is color-blind, and neither knows nor tolerates classes among citizens. . . . "</p> <p>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."</p>	<p>"Today, education is perhaps the most important function of state and local governments. . . . Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . . "</p> <p>To separate them [children in grade and high schools] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . .</p> <p>"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."</p>

Both justices believe that segregation violates the Constitution. However, they differ slightly in their reasoning. Can you determine the difference?

## Harlan & Warren's Differences

### Answer

Harlan focuses on the purpose of segregation, which is clearly to use law to enforce social inferiority of African Americans. He has a distinct focus on law and the intentions of those who use the law for segregation. Warren, however, focuses more on the psychological effects of segregation. He states that because segregation makes people feel inferior, it cannot be constitutional, regardless of the purpose of those who desire segregation.