

Brown v. Board of Education of Topeka / How a Dissent Can Presage a Ruling—Answer Key

The *Brown v. Board of Education of Topeka (I)* case was decided unanimously. However, sometimes there are a few justices on the Supreme Court who do not agree with the majority decision. These justices often write dissenting opinions that express how they disagree with the majority decision.

Though dissents do not have the force of law that majority opinions do, they are important because they often show the public the battle 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. One such case where a dissent presaged a future decision occurred in the *Plessy* and *Brown* cases.

In the *Plessy v. Ferguson* (1896) case, 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 14th Amendment. Justice Harlan wrote a dissent stating that segregation violated the 14th Amendment because it used the law to sanction inequality among races. Later, in the *Brown v. Board of Education of Topeka (I)* (1954) case, Chief Justice Earl Warren also declared that separate facilities violated the Constitution, though he based his argument on slightly different premises.

Excerpts from Justice Harlan’s dissent in *Plessy v. Ferguson* (1896)

“Our constitution is color-blind, and neither knows nor tolerates classes among citizens.”

“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 Chief Justice Warren’s majority opinion in *Brown v. Board of Education of Topeka (I)* (1954)

“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.”

“To separate [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.”

“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate education facilities are inherently unequal.”

Questions to Consider

1. What similarities do you see in the legal reasoning of Justice Harlan and Chief Justice Warren?

In his dissent of the *Plessy* decision, Justice 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. Chief Justice Warren echoes this in his opinion in *Brown*.

2. What differences do you see in the legal reasoning of Justice Harlan and Chief Justice Warren?

In writing for the majority in the *Brown* decision, Chief Justice Warren focuses more on the psychological effects of segregation than Justice Harlan did. He states that because segregation makes people feel inferior, it cannot be constitutional, regardless of the purpose of those who desire segregation.

3. What do you think Justice Harlan meant by his famous quote, “Our constitution is color-blind...”?

Student answers will vary, but may include that when applying the law the person’s race should be irrelevant and that race should not be a reason for treating people differently.

4. Do you agree with Justice Harlan’s famous quote, “Our constitution is color-blind...”?

Student answers will vary.