

Plessy v. Ferguson / Excerpts from the Majority Opinion—Answer Key

The following are excerpts from Justice Brown's majority opinion:

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 13th amendment of the Constitution, abolishing slavery, and the 14th amendment, which prohibits certain restrictive legislation on the part of the states.

1) That it does not conflict with the 13th 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 13th amendment is strenuously relied upon by the plaintiff.

2) The object of the [14th] 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 14th 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 14th 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.

Questions to Consider

1. What do the justices state is the object of the 14th Amendment?
The object of 14th Amendment was to enforce the absolute equality of the two races before the law, according to Justice Henry Brown.
2. The *Plessy* decision distinguishes between political and social equality. Discuss this distinction. Can one exist without the other?
Answers will vary. One point that can be made is that while the law may declare equality among groups of people, to a great extent the law—and courts—rely on society to carry out that equality. If society does not enforce or support equality it may not be achieved despite what the law says.
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?”
The assumption is that there is something innate in human beings that makes them want to distinguish one another based on race. Justice Brown says that the law is unable to change these inherent biases and distinctions.
4. The decision states that legislation cannot overcome social prejudice. Can it reinforce social prejudice? How?
Answers may vary, but a reasonable person may conclude that if the law corresponds to people's social prejudices, then people may be less likely to change those prejudices or think them wrong.
5. According to Justice Brown's opinion, social equality must be the result of what three factors?
He says that 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."
6. After the court dismissed the 13th Amendment violation argument, it reduced the question before the court to whether or not Louisiana's legislation is reasonable. What factors did the court consider to decide if the law was “reasonable?”
Justice Brown states, “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.” In this

case, the Court felt that maintaining segregation was in line with established customs and traditions and that society would be more stable and orderly if it were maintained.