Fall 2016 1L Orientation
Sample Class – Sections 319 & 339
Reading Assignment

Attached is a (heavily) edited excerpt from the written report of the United States Supreme Court's decision in a case called *Plessy v. Ferguson*, decided in 1896. No doubt many of you have heard of this case before, and some of you may have read it. Most or all of you will study it as part of your required Constitutional Law I course.

We will discuss the *Plessy* case during the sample class that is part of your 1L orientation program. In preparing for that class, you should read the attached excerpt from *Plessy* very carefully, guided by the following questions, which are designed to help you focus on some of the issues we will discuss in class.

1. Are there words or phrases in the *Plessy* opinions that you don't understand? Of course there are. Look up these phrases on the internet or, better yet, using a legal dictionary such as *Black's Law Dictionary*.

2. Are there any provisions (that is, parts) of the United States Constitution that are referred to in the opinions but that you have not committed to memory? Of course there are. Find a copy of the Constitution online or in the library (or maybe you already have one) and read the provision or provisions mentioned.

3. What was the dispute that got Homer Plessy into court in the first place? What law was Plessy convicted of violating, and what does that law prohibit or require? What law does Plessy point to as a reason to overturn his conviction, and what is Plessy's interpretation of this law? *Hint: The specific legal language that Plessy points to, and that the Supreme Court focuses on in the case, is part of a longer section of an even longer source of law. Make sure you identify the specific language in question, which is helpfully paraphrased by Justice Brown in his opinion for the Court.*

4. What argument can Plessy make that the second law you identified in response to the previous question requires the Court to overturn his conviction? Be as thorough and precise as you can in constructing and stating Plessy's potential argument. (Note that Justice Brown, writing for a majority of the Supreme Court, does not expressly recite the entire argument on behalf of Plessy. But you might be able to piece it together using the language of the law in question, the dissenting opinion of Justice Harlan, and common sense. Do your best.)

5. Why, exactly, does Justice Brown (writing for the majority) reject Plessy's argument? Why does Justice Harlan write a separate opinion? On what points does Justice Harlan differ from Justice Brown? Be as thorough and precise as you can in stating the reasoning of both justices.

6. What is the practical result of this decision for Homer Plessy?

7. As the majority opinion in *Plessy* indicates, many states and localities in the late 19th century had laws requiring that public schools be segregated by race, with separate public schools for white children and nonwhite ("colored") children. These laws remained in force well into the 20th century. Suppose that in the mid-1950s, a group of black schoolchildren and their parents brings a lawsuit alleging that one of these local school segregation laws violates § 1 of the Fourteenth Amendment to the U.S. Constitution. The record in the case shows that the material facilities and amenities of the nonwhite public schools in the locality are at least equal in quality to those of the white schools. The Supreme Court agrees to decide the case.

    a. Imagine you are a lawyer representing the defendant school district in the case. You must argue in good faith that the school segregation law does not violate § 1 of the Fourteenth Amendment. How would you use the *Plessy v. Ferguson* decision in your argument?

    b. Imagine you are a lawyer representing the plaintiffs in the case. You must argue in good faith that the school segregation law violates § 1 of the Fourteenth Amendment. How would you use the *Plessy v. Ferguson* decision in your argument?

I look forward to our classroom discussion.

C.J. Peters

163 U.S. 537
Supreme Court of the United States

PLESSY
v.
FERGUSON.*

May 18, 1896.

Mr. Justice 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 [known as the Separate Car Act], passed in 1890, providing for separate railway carriages for the white and colored races.

The first section of the statute enacts '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 …. No person or persons shall be permitted to occupy seats in coaches, other than the ones assigned to them, on account of the race they belong to.'

By the second section it was enacted 'that the officers of such passenger trains shall have power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison, and any officer of any railroad insisting on assigning a passenger to a coach or compartment other than the one set aside for the race to which said passenger belongs, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this state.' …

[A citizen of New Orleans named Homer Patrice Plessy was prosecuted in a Louisiana state criminal court for violating the Separate Car Act. According to the charging documents, Plessy was] a passenger between two stations within the state of Louisiana, [and] was assigned by officers of the company to the coach used for the race to which he belonged, but he insisted upon going into a coach used by the race to which he did not belong. …

The petition for the writ of prohibition** averred that petitioner was seven-eighths Caucasian and one-eighth African blood; … and that … he took possession of a vacant seat in a coach where passengers of the white race were accommodated, and was ordered by the conductor to vacate said coach, and take a seat in another, assigned to persons of the colored race, and, having refused to comply with such demand, he was forcibly ejected, with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated the above act.

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* [Edited for content. Omissions indicated by ellipses, additions or substitutions by brackets. Some citations or footnotes omitted without indication. – CJP]

** [A "writ of prohibition" is a legal name for a certain type of order from an appellate court to a lower-court judge. Plessy was convicted in the Louisiana state criminal court of violating the Separate Car Act. After his conviction, he petitioned the state Supreme Court of Louisiana for a writ of prohibition directing the trial court judge to vacate his conviction and dismiss the charge against him. The Louisiana Supreme Court declined to do so and affirmed Plessy's conviction. Plessy then filed another petition – to the United States Supreme Court – asking it to reverse the Louisiana Supreme Court's decision on the grounds stated in the text of this opinion. The U.S Supreme Court agreed to hear the case, and this decision resulted. Plessy is referred to in these opinions as "petitioner," "plaintiff in error," or simply "plaintiff." – CJP]

The constitutionality of this act is attacked upon the ground that it conflicts … with the fourteenth amendment [of the United States Constitution], which prohibits certain restrictive legislation on the part of the states. …

By the fourteenth amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the state wherein they reside; and the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws. …

The object of the 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. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced. …

The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theaters, and railway carriages has been frequently drawn by this court. Thus, in *Strauder v. West Virginia*, [100 U.S. 303 (1879),] it was held that a law of West Virginia limiting to white male persons 21 years of age, and citizens of the state, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step towards reducing them to a condition of servility. …

[It is] suggested by the learned counsel for the plaintiff in error that the same argument that will justify the state legislature in requiring railways to provide separate accommodations for the two races will also authorize them to require separate cars to be provided for people whose hair is of a certain color, or who are aliens, or who belong to certain nationalities, or to enact laws requiring colored people to walk upon one side of the street, and white people upon the other, or requiring white men's houses to be painted white, and colored men's black, or their vehicles or business signs to be of different colors, upon the theory that one side of the street is as good as the other, or that a house or vehicle of one color is as good as one of another color. The reply to all this is that every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class. …

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 necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. 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. …

The judgment of the court below [upholding Plessy's conviction] is therefore affirmed.

Mr. Justice HARLAN dissenting. …

In respect of civil rights, common to all citizens, the constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. … I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by every one within the United States. …

It was said in argument that the statute of Louisiana does not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Every one knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. …

[If] a state can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street, and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in street cars or in open vehicles on a public road or street? Why may it not require sheriffs to assign whites to one side of a court room, and blacks to the other? And why may it not also prohibit the commingling of the two races in the galleries of legislative halls or in public assemblages convened for the consideration of the political questions of the day? Further, if this statute of Louisiana is consistent with the personal liberty of citizens, why may not the state require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics? …

The white race deems itself to be the dominant race in this country. … 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 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. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race. …

The present decision … 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. …

I am of opinion that [this statute of] the state of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that state, and hostile to both the spirit and letter of the constitution of the United States. …

For the reason stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

[END]