“SEPARATE BUT EQUAL” AND THE HARLAN DISSENT

In 1896, the Supreme Court of the United States gave its verdict in *Plessy V. Ferguson*. The court case had begun in New Orleans as a protest against discrimination in public transportation, but turned into a test of whether separating people into “races” would be ruled constitutional. The Court’s seven to one decision sanctioned “Jim Crow” and added another legal way to the use of race to categorize and separate people. The majority opinion argued that separation was not inherently unequal. However, the ruling occured at a time when politicians and community leaders openly advocated for “white supremacy.” The lone dissent on the Supreme Court came from Justice John Marshall Harlan. Although Harlan does not dispute the categories of race, he acknowledges that they are set up to put the “white” race above others.



The “For Colored Only” sign on the streetcar marked the day-to-day realities of Jim Crow segregation in New Orleans. Photograph courtesy of the Charles Frank Studio Collection at The Historic New Orleans Collection, 1979.325.6222

*In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case. It was adjudged in that case that the descendants of Africans who were imported into this country and sold as slaves were not included nor intended to be included under the word “citizens” in the Constitution, and could not claim any of the rights and privileges which that instrument provided for and secured to citizens of the United States; that, at the time of the adoption of the Constitution, they were considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.*

*The recent amendments of the Constitution, it was supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the States, a dominant race— a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. 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.*

After the court ruling, state and local governments passed other laws and ordinances to separate people. Then came the issue of enforcement. In in 1921, Mrs. Mary Glenn Cashman and Mrs. Jeanne Serpas Ruiz sat in the “white-only” section of the streetcar on North Claiborne Avenue in New Orleans and refused to move after the conductor accused them of “being Negro.” Like Homer Plessy and Rosa Parks, the women were arrested. In protest, they filed a lawsuit against the transit company and won a settlement. This example is one of countless decisions that people of every “racial” background made each day in how to live together, or further apart, under state sanctioned segregation.