the schools of Boston, Massachusetts.[1594] *Plessy* concerned not schools but a state law requiring "equal but separate" facilities for rail transportation and requiring the separation of "white and colored" passengers. "The object of the [Fourteenth] [A]mendment 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 exercise of their police power."[1595] The Court observed that a common instance of this type of law was the separation by race of children in school, which had been upheld, it was noted, "even by courts of states where the political rights of the colored race have been longest and most earnestly enforced."[1596]

Subsequent cases following *Plessy* that actually concerned school segregation did not expressly question the doctrine and the Court's decisions assumed its validity. It held, for example, that a Chinese student was not denied equal protection by being classified with African-Americans and sent to school with them rather than with whites,[1597] and it upheld the refusal of an injunction to require a school board to close a white high school until it opened a high school for African-Americans.[1598] And no violation of the Equal Protection Clause was found when a state law prohibited a private college from teaching whites and African-Americans together.[1599]

In 1938, the Court began to move away from "separate but equal." It held that a state that operated a law school open to whites only and did not operate any law school open to African-Americans vio-

---

[1594] Roberts v. City of Boston, 59 Mass. 198, 206 (1849).

[1595] Plessy v. Ferguson, 163 U.S. 537, 543–44 (1896). "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." Id. at 552, 559.

[1596] 163 U.S. at 544–45. The act of Congress in providing for separate schools in the District of Columbia was specifically noted. Justice Harlan's well-known dissent contended that the purpose and effect of the law in question was discriminatory and stamped African-Americans with a badge of inferiority. "[I]n 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." Id. at 552, 559.

[1597] Gong Lum v. Rice, 275 U.S. 78 (1927).

[1598] Cumming v. Richmond County Bd. of Educ., 175 U.S. 528 (1899).

[1599] Berea College v. Kentucky, 211 U.S. 45 (1908).