

### ***Plessy v. Ferguson & the Roots of Segregation***

“Justice is pictured as blind and her daughter the Law, ought at least to be color-blind.”

*Albion W. Tourgée, Civil Rights Activist*

#### **Overview**

The Jim Crow Era had a lasting impact on the history of the United States, but how far in the past do the roots of Jim Crow and segregation extend? What role did the infamous Supreme Court decision in *Plessy v. Ferguson* play in entrenching segregation throughout America? Through a Power Point overview and discussion, students will learn about the history of segregation and Jim Crow laws, starting with a review of the new Nation’s slave codes then tracing the development of such laws all the way to the infamous Supreme Court decision in *Plessy V. Ferguson*. Students will then focus on one particular topic concerning the history of segregation and create an exhibit for a class museum on segregation.

#### **Grade**

11

#### **NC Essential Standards for American History II**

- AH2.H.1.2 – Use historical comprehension.
- AH2.H.1.4. – Use historical research.
- AH2.H.2.1 - Analyze key political, economic, and social turning points since the end of Reconstruction in terms of causes and effects (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).
- AH2.H.2.2 - Evaluate key turning points since the end of Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).
- AH2.H.4.1 - Analyze the political issues and conflicts that impacted the United States since Reconstruction and the compromises that resulted (e.g., Populism, Progressivism, working conditions and labor unrest, New Deal, Wilmington Race Riots, Eugenics, Civil Rights Movement, Anti-War protests, Watergate, etc.).
- AH2.H.4.3 - Analyze the social and religious conflicts, movements and reforms that impacted the United States since Reconstruction in terms of participants, strategies, opposition, and results (e.g., Prohibition, Social Darwinism, Eugenics, civil rights, anti-war protest, etc.).
- AH2.H.5.1 - Summarize how the philosophical, ideological and/or religious views on freedom and equality contributed to the development of American political and economic systems since Reconstruction (e.g., “separate but equal”, Social Darwinism, social gospel, civil service system, suffrage, Harlem Renaissance, the Warren Court, Great Society programs, American Indian Movement, etc.).
- AH2.H.5.2 - Explain how judicial, legislative and executive actions have affected the distribution of power between levels of government since Reconstruction (e.g., New Deal, Great Society, Civil Rights, etc.).

## Materials

- “*Plessy v. Ferguson* & the Roots of Segregation” PowerPoint (in PDF format), available in the Database of K-12 Resources
  - To view this PDF as a projectable presentation, save the file, click “View” in the top menu bar of the file, and select “Full Screen Mode”
  - To request an editable PPT version of this presentation, send a request to [cnorris@unc.edu](mailto:cnorris@unc.edu)
- Plessy Ferguson and the Separate Car Act, handout attached
- Design a Museum Exhibit for the History of Segregation and Jim Crow handout (attached)
- Information handouts for the following topics (attached):
  - Slave Codes
  - Dred Scott v. Sandford
  - Reconstruction Amendments
  - Reconstruction Legislation
  - Star Cars and Civil Disobedience
  - Supreme Court and Reconstruction
  - *Plessy v. Ferguson*
  - Homer Plessy
  - Albion W. Tourgée
  - Louis Martinet
  - Jim Crow Laws & Life Under Jim Crow
  - Disenfranchisement
  - *Brown v. Board of Education*
- Supplies for creating museum exhibits might include poster boards or display boards, art supplies, tables, table clothes, etc.
- Research materials (i.e. computers with Internet access, library access, etc.)
- Segregation Museum Notes, handout attached
- “Plessy and Ferguson unveil plaque today marking their ancestors' actions,” article attached (optional)
- Optional Teacher Resources:
  - *We as Freedmen: Plessy v. Ferguson* by Keith Weldon Medley
  - “Justice Deferred, Albion Tourgée and the Fight for Civil Rights,” by Mark Elliot, available at <http://www.scribd.com/doc/11923436/Justice-Deferred>
  - “A Radical Notion of Democracy: Law, Race, and Albion Tourgée, 1865-1905” – videos of the speakers from this conference are available at <http://vimeo.com/channels/267878>
  - Blair L. M. Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson* (UNC Press, 2010)
  - Brook Thomas, ed. *Plessy v. Ferguson: A Brief History with Documents*. Boston: Bedford, 1997.

## Essential Questions

- What is segregation and what impact has it had throughout history?
- What types of things did slave codes prevent enslaved people from doing and why?
- How did the slave codes inform the post-Civil War black codes?
- What impact did the *Dred Scott v. Sanford* decision have on African Americans and on white American’s perception of African Americans?
- What was the significance and impact of the Emancipation Proclamation?

- What was the purpose of the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments?
- What impact did the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments, as well as other Reconstruction legislation, have on African Americans during Reconstruction?
- In what ways were the rights gained by African Americans during Reconstruction rolled back during the post-Reconstruction years?
- What expectations and laws were at play under the system of Jim Crow?
- What was the Separate Car Act?
- What roles did Louis Martinet, Albion Tourgée and Homer Plessy play in challenging the Separate Car Act?
- What was the argument in *Plessy v. Ferguson* and how did the US Supreme Court rule?
- In what ways did “separate but equal” open the door for further unjust laws and discrimination?
- What was the importance of the *Brown v. Board of Education* decision?

### Duration

- Two 60-90 minute periods
- Additional time will be required for the segregation museum project
- Total time will vary depending on which information in the PPT teachers choose to share, how in depth student discussion is. and how much time is provided for working on then presenting the culminating activity. Depending on their class’s own timing, teachers should determine where in the lesson to break between day one and day two.

### Preparation

- Students should have studied the Civil War and Reconstruction prior to implementing this lesson.
- Aspects of this lesson touch on Albion W. Tourgée, a prominent advocate for civil rights during the Civil War, Reconstruction, and post-Reconstruction period and one of Homer Plessy’s lawyers. For a more in-depth study of Tourgée’s life as a civil rights activist, see the Consortium’s lesson, “Albion Tourgée and the Fight for Civil Rights.”

### Procedure

#### Warm Up: Segregation

1. As a warm up, project slide 2 of the “*Plessy v. Ferguson*” PowerPoint. Without revealing any background information, instruct students to silently ponder the image for a few minutes then discuss:
  - What do you see? What do you notice first about this photograph?
  - What do think is happening in this picture and why?
  - When do you think this picture was taken? What evidence from the picture supports your answer?
  - What is segregation? What do you already know about segregation?
2. Next, tell students to assume the character of the person in the image furthest to the left (the African American male coming out of the door.) Tell students you want them to imagine themselves as this man, in this moment, and to write a first-person response regarding what is happening and what they are thinking, feeling, seeing, hearing, etc. Once students have had time to formulate and write down their thoughts, give them a 1 minute warning and tell them to review what they have written in preparation for sharing.

3. Move on to slide 3 of the accompanying Power Point, which provides definitions of segregation. Ask students to brainstorm any examples of segregation that they can think of. Segregation can often be confusing given the dichotomy between du jour and de facto segregation, as well as the disconnect that often existed between local, state, and federal laws. (For example, Jim Crow Laws, which were largely based on slave codes/black codes, were enacted in the 1870s. Such laws (de jure) mainly centered around racial segregation and greatly restricted the rights of African Americans residing in South. Even though these laws were later proven to be unconstitutional, federal law was often ignored by state and/or local governments and de facto segregation prevailed.)

### **The Roots of Segregation – Power Point Discussion**

4. Tell students that they are going to be looking at the roots of segregation and Jim Crow, tracing the development of such laws from slavery all the way up to the infamous Supreme Court decision in *Plessy V. Ferguson*. Tell students that much of the Power Point will be an overview (or in some cases, depending on what the class has already studied, a review) but that they should pay close attention, since at the end of the discussion, each of them will be assigned a topic mentioned in the Power Point that they will focus on in a creative culminating activity.
  - **Teacher Note:** Teachers should edit the Power Point as they see fit. If students have already studied particular aspects of the PPT in depth, then teachers may want to remove or condense certain slides. Whether each slide is included and how much time is spent reviewing or teaching the information will be based on the past lessons covered of each particular class.
5. Go through the Power Point, using slides as a basis for class discussion rather than lecture. Some suggestions for discussion questions are located within the slides and below:
  - Slides 4-6 – History of slave codes/black codes
    - Why do you think the free movement of slaves was so severely limited?
    - Why do you think it was illegal to teach slaves to read and write?
    - Were slave codes “de jure” or “de facto” segregation?
  - Slides 7-9 – Dred Scott v. Sanford

The Supreme Court was hoping to settle the slavery question once and for all with their decision in the *Dred Scott* case. Instead, the decision increased antislavery sentiment in the North, strengthened the Republican Party (who was opposed to the expansion of slavery), and fed the sectional antagonism that led to the Civil War.

    - What does the Supreme Court’s decision in the *Dred Scott* case tell you about how Blacks (free and enslaved) were viewed?
    - What does Keith Medley’s quote - “For those opposed to slavery’s expansion, the decision meant that America had gone from being a nation with slave states to a slave nation” - mean? What are the implications of this?
    - What did this decision mean for free blacks and those enslaved?
    - Are you surprised by the Court’s decision? Why or why not?
  - Slides 9-10 – Emancipation Proclamation
    - What was the significance of the Emancipation Proclamation?

- The proclamation declared "that all persons held as slaves" within the rebellious states "are, and henceforward shall be free." What impact did the Emancipation Proclamation have on slavery in the United States? (It only ended slavery in the Confederacy, or states that were rebelling against the United States. These were also the states that did not recognize Lincoln as having any power over them.)
- Why do you think President Lincoln didn't include slave states that supported the Union in the Proclamation?
- Even if the document did not free all of those enslaved, what purpose did it serve?
- Slides 11 – 15 – Reconstruction  
 Teachers may want to take a few minutes to review Reconstruction by asking students to summarize its purpose, people associated with it, legislation passed, etc. before moving on with the presentation. For more information on Reconstruction see <http://www.sparknotes.com/history/american/reconstruction>.
  - How did the 13<sup>th</sup> Amendment extend the Emancipation Proclamation?
  - The 14<sup>th</sup> Amendment was passed to overturn the effects of what Supreme Court decision?
    - *Dred Scott v. Sanford*; by including birthright citizenship (automatic US citizenship if you're born in the United States) it voided the ruling that African Americans could never be citizens.
  - Why was an amendment to protect voting rights important? What qualifications are not included in the 15<sup>th</sup> Amendment? (Gender and age, which were addressed in later amendments.)
  - Why were black codes passed?
  - Were you surprised to learn that even vehicles drawn by mules were segregated?
    - Let students know that just as segregation existed in the 1860s with Star Cars, so too did people protest such segregation. For example, on April 28, 1867, a black rider named William Nicholls got onto a non-starred car, tussled with the driver, and was arrested. Trying to downplay the controversy, the streetcar company dropped the charges, frustrating Nicholls, who sought to test the policy in court. Other protests followed and based on the activism of such engaged people, Star Cars were eventually disbanded. Let students know that they will learn more about Star Cars and these 1860s protests in their culminating assignment.
  - Why was the Freedmen's Bureau established after the Civil War? How did it help former slaves?
    - At the end of the war, the Bureau's main role was providing emergency food, housing, and medical aid to refugees, though it also helped reunite families. Later, it focused its work on helping the freedmen adjust to their conditions of freedom. Its main job was setting up work opportunities and supervising labor contracts. It soon became, in effect, a military court that handled legal issues.
  - Why do you think it was necessary for the Federal Government to ensure the protection of African Americans? Why wasn't this left to the states or local governments?
  - If the Congress passed the Civil Rights Act of 1875, which outlawed segregation and unequal treatment in public accommodations, how was segregation still practiced?

- Slides 16 – 22 – Post Reconstruction
  - Why do you think the state governments that took over in the South after the Civil War were called “redeemers”? What were they trying to “redeem?”
  - What led African Americans to lose their newly gained rights after Reconstruction?
    - The withdrawal of federal troops made much of the Reconstruction legislation unenforceable because redeemer governments were free to ignore the laws and/or write new ones aimed at reducing the gains for African Americans during Reconstruction.
  - Why do you think the federal government was uninterested in enforcing laws passed during Reconstruction?
  - How do the struggles during Reconstruction illustrate how ingrained slavery was in society?
  - In what ways would the Supreme Court’s narrower reading of the 14<sup>th</sup> Amendment (in applying it only to federal and not state rights) hurt African Americans?
    - It would allow states to discriminate against African Americans by passing laws denying them certain rights in a state.
  - What message is DuBois sending in the quote on slide 18? In what ways were African Americans moved back towards slavery?
    - Additional information to optionally share about DuBois: William Edward Burghardt Du Bois (was an American sociologist, historian, civil rights activist, Pan-Africanist, author, and editor. Born in western Massachusetts, Du Bois grew up in a tolerant community and experienced little racism as a child. After graduating from Harvard, where he was the first African American to earn a doctorate, he became a professor of history, sociology, and economics at Atlanta University. Du Bois was one of the co-founders of the National Association for the Advancement of Colored People (NAACP) in 1909. Du Bois rose to national prominence as the leader of the Niagara Movement, a group of African American activists who wanted equal rights for blacks. (Source: [http://en.wikipedia.org/wiki/Web\\_dubois](http://en.wikipedia.org/wiki/Web_dubois))
  
- Slides 19-20 – Jim Crow Laws

Explain to students that minstrel shows were performances by white people dressed in “blackface” and intended as entertainment at the expense of African Americans. Jim Crow was just one archetypal minstrel character that reinforced many racist stereotypes of African Americans. More information about minstrel shows can be found at <http://blackface.com/minstrel-shows.htm>,

  - How were Jim Crow laws similar to slave codes and black codes?
  - What does the passing of such laws tell you about American attitudes towards race in the post-Reconstruction period?
  
- Slides 21-24 – Separate Car Act
  - Is the Separate Car Act an example of *de facto* or *de jure* segregation?
  - Based upon what you have learned about post-Reconstruction America, do you think that the “equal” aspect of “equal and separate” would be applied?
  - Civil rights advocate Albion Tourgée denounced the Separate Car Act, noting it was a violation of 14<sup>th</sup> Amendment rights. How so?



- How did Tourgée and Louis A. Martinet plan to fight the Act? Why do you think they chose to fight it in this way? Do you think their plan is a sound one? Why or why not?
- Slides 25 – 31 - Plessy v. Ferguson
  - Partner Discussion: Go over the information on slides 25 & 26, then stop on slide 27 and hand out the attached “Plessy Ferguson and the Separate Car Act” partner discussion. Have students pair up for approximately 10 minutes, review the 13<sup>th</sup> and 14<sup>th</sup> Amendments, and discuss the questions that follow. Have students then share some of their thoughts with the entire class. Afterwards, continue on with slides 27-31 and discuss:
    - Explain Tourgée’s basis for his argument in the case. Why do you think he decided to challenge the law from this angle?
    - What was Justice Henry Billings Brown’s reasoning regarding segregation?
    - What was Justice John Marshall Harlan’s point in his dissention (the lone dissenter)? Why do you think he alluded to the *Dred Scott* case?
    - What impact did the infamous *Plessy v. Ferguson* decision have?
- Slide 32 - 33 The Effects of Segregation on African American Citizens
  - Given everything you have learned thus far, what overall impact do you think Jim Crow laws and segregation had on African Americans throughout history?
  - What impact does this history have on our society today?
  - Why do you think Jim Crow laws took hold so quickly after the end of Reconstruction?
  - What role did the federal, state and local governments play in upholding Jim Crow laws?
  - What recourse do you think African Americans typically had within legal institutions if mistreated?
  - Even faced with such injustice, intimidation and violence, civil rights advocates had already begun the movement of fighting back. What did they risk by speaking out, protesting, filing court cases, etc.?
- Slide 34: The “End” of De Jure Segregation
  - The Plessy decision was handed down in 1896. It wasn’t until 56 years later that “separate and equal” was overturned by the Supreme Court in the famous *Brown v. BOE* decision. Why do you think it took so long for this to happen?
  - What impact do you predict that *Brown v. BOE* had?
  - Even after *Brown v. BOE* was passed, state and local governments (as history had already illustrated) did not follow the law. What did it take to finally bring an end to segregation?

**Culminating Activity: Create an Exhibit for the Smithsonian’s New Segregation Museum**

6. Inform students that they are going to be responsible for creating an exhibit for a new segregation museum that educates people about a topic assigned to them and its relationship to the history of segregation. Distribute the attached “Design a Museum Exhibit for the History of Segregation” assignment sheet and review the instructions as a class. Teachers should determine whether to assign or allow students to choose partners. Let students know the due date of their exhibit and how much class time and/or homework time will be provided for completing the assignment.
  - **Optional:** Prior to assigning the exhibit project, provide students with the attached article “Plessy and Ferguson unveil plaque today marking their ancestors’ actions,” which offers an

interesting and personal look at the Plessy case and connects to the concept of commemoration.

7. Allow students to work on their museum exhibits for the remainder of class. The teacher should decide how much homework time and/or additional class time will be provided to complete their projects.
8. On the date exhibits are due, turn the classroom (or reserve space in a common area, such as the library) into a museum by having students set up their exhibits. After all work is displayed, allow the class to tour the museum using one of the following processes:
  - Allow all students to freely tour the museum, using the attached notes sheet to record observations and what they learn about each exhibit. Students of each pair should take turns serving as the tour guide for their exhibit (and delivering their presentation) and touring the other exhibits.
  - Split the class in half. One half will tour the museum (as a group) while the other half stands by their exhibits and delivers their presentation when visitors arrive. The class will then switch places. (This is a better option if many pairs created a creative presentation to present to visitors, such as a two-person scene.) Students will still fill out their notes sheet as they tour each exhibit.
9. After all students have toured the museum, debrief as a class:
  - What was the most interesting or surprising thing you learned about segregation in the United States, either from the lesson or from the museum?
  - Which exhibit most struck you and why? Which do you feel you learned the most from and why?
  - What role did the Supreme Court play throughout the history of segregation?
  - Do you think the *Dred Scott* decision left a lasting impact on white Americans perception of African Americans? Do you think it changed people's views regarding African Americans or just reaffirmed them? Why or why not?
  - How would you characterize people like Homer Plessy, Albion Tourgée and Louis Martinet? These men were willing to dedicate their lives to a cause they believed in - is there any cause that you would dedicate your life to fighting for?
  - What were the risks that Homer Plessy took to engage in an act of protest?
  - Do you think that the Star Car protest could have taken place during the Jim Crow Era? Why or why not?
  - Have you ever talked with any of your relatives who were alive during segregation regarding what life was like? If so, what did they say?
  - Is there still *de facto* segregation in the United States today? Can you provide examples?
  - Recently, a number of states have passed laws requiring people to present a government issued ID to vote in an election. Opponents of these laws argue that they are intended to disenfranchise minorities and people with lower incomes. Supporters of the laws argue that the laws are necessary to protect the sanctity of the vote and prevent voter fraud. Who do you agree with and why?
  - Even though such history is difficult and can be angering, why is it important to study the Jim Crow Era and segregation?



**PARTNER DISCUSSION:**  
**Plessy Ferguson and the Separate Car Act**

**Thirteenth Amendment**

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Discuss with your partner:**

1. What law did Homer Plessy violate? How did Plessy violate this law?
  
2. What rights do the Thirteenth and Fourteenth Amendments to the Constitution provide?
  
3. If you were Albion Tourgee, one of Plessy's lawyers, how would you justify your claim that the "Separate Car Act" violates the Thirteenth and Fourteenth amendments?
  
4. Are separation and equality compatible? Why or why not?
  
5. What decision do you think the US Supreme Court will make and why?

## Design a Museum Exhibit for the History of Segregation

The Smithsonian Institution, the world's largest museum and research complex, has announced that they will be opening a new museum in New Orleans, at the site of Homer Plessy's arrest for entering a "whites only" train car. The purpose of this museum will be to educate the public about the history of the Jim Crow Era and segregation in the United States. By educating the public about this vast history, the hope is that citizens will have a more comprehensive understanding of American history and understand its implications on life today. The goal is that visitors leave the museum not only understanding the facts of our past, but appreciating the need to be active, responsible citizens and community members in today's society who advocate for civil rights and hold the government and law accountable for justice.



You and a partner are responsible for creating an exhibit for the museum on one of the following topics:

- Slave Codes/Black Codes
- *Dred Scott v. Sandford*
- 13<sup>th</sup>, 14<sup>th</sup>, & 15<sup>th</sup> Amendments
- Reconstruction Legislation
- "Star Cars" & Civil Disobedience
- Supreme Court & Reconstruction
- *Plessy v. Ferguson*
- Albion W. Tourgée
- Louis Martinet
- Life & Laws Under Jim Crow
- Disenfranchisement
- *Brown v. Board of Education*

1. Read the topic handout provided to you, which will provide some basic information. You and your partner will complete additional research to gain a comprehensive understanding of the topic. Your exhibit must provide a summary of what you learned and focus on the most important facts surrounding your topic. Assume museum visitors have no prior knowledge of segregation or your particular topic and work to present the important information in an engaging, interesting, and creative way.
2. As you learn about your topic and consider what information to include in your exhibit, think about:
  - What is most important for people to know about your assigned topic?
  - Why is it important for modern citizens and community members to be aware of this history?
  - What can we learn from this history? What does it teach us about the importance of being advocates for social justice today?
3. Once you have learned about your topic, it is time to design your exhibit for the museum, which will be displayed on the project's due date of \_\_\_\_\_. Consider museums that you have visited and how they creatively educate about various topics. How will your exhibit catch a visitor's eye and interest them? Final exhibits must include:
  - **Display board** (i.e., poster board, three panel cardboard display, or other) that contains:

- **Summary text** that highlights at least 5 of the most important points about your topic (this might be in essay form, in bulleted lists, in labels, etc.)
  - at least one **artistic representation** of your topic with descriptive text
  - at least one **primary source document** (text or image) with summarizing text
  - at least one **artifact** displayed with descriptive text (An artifact is an item that remains from history. For example, an old “Colored Only” sign from a segregated bathroom is an artifact. For your artifact, you might create something or manipulate something to make it look old. For example, perhaps you create a journal that would have been Homer Plessy’s personal diary.) Be creative!
  - Create a **title** for your exhibit that highlights the topic you focused on; make sure the title is displayed somewhere in your exhibit
- **Overall design** –
    - While your final exhibit must have all of the features noted above, how you choose to display them in the museum is up to you. Your final exhibit might be as simple as setting up your display board and artifact on a table, or you might take a more abstract approach, such as placing yourself in the exhibit as a “life-like statue.”
    - Your final exhibit should show that effort was made to be artistic and creative. (Think outside the box!)
- **Tour guide presentation** – You should create short presentation (2-3 minutes in length) that will be spoken by you and/or your partner when a group arrives at your exhibit. The presentation should provide a summary of your topic, highlighting key points and capturing the visitor’s interest. This can be a standard tour-guide narrative, or it can be in a creative format (i.e. a role play acted out by both partners, an “in character” monologue, in which you assume a historical character, etc.)
- What questions do you have about this assignment?

## Slave Codes/Black Codes

Slave Codes are any of the set of rules based on the concept that slaves were property, not persons. Inherent in the institution of slavery were certain social controls, which slave owners amplified with laws to protect not only the property but also the property owner from the danger of slave violence. The slave codes were forerunners of the black codes of the mid-19<sup>th</sup> century.

Slave rebellions were not unknown, and the possibility of uprisings was a constant source of anxiety in the American colonies – and, later, in the US states – with large slave populations. There was also the risk of slaves running away. When settling the New World, colonists were free to create regulations they saw fit to govern their labor supply. Thus, as early as the 17<sup>th</sup> century, slave codes were in effect in Virginia and elsewhere. Slave codes were constantly being altered to adapt to new needs, and they varied from one colony – and, later, one state – to another.

All the slave codes, however, had certain provisions in common. In all of them, the color line was firmly drawn, and any amount of African heritage established the race of a person as black, with little regard as to whether the person was slave or free. The status of the offspring followed that of the mother, so that the child of a free father and a slave mother was a slave. Slaves had few legal rights: in court their testimony was inadmissible in any litigation involving whites; they could make no contract, nor could they own property; even if attacked, they could not strike a white person. There were numerous restrictions to enforce social control: slaves could not be away from their owner's premises without permission; they could not assemble unless a white person was present; they could not own firearms; they could not be taught to read or write, nor could they transmit or possess "inflammatory" literature; they were not permitted to marry.

Obedience to the slave codes was exacted in a variety of ways. Such punishments as whipping, branding, and imprisonment were commonly used. Punishment by death was rare except in extreme cases of violence against whites; this was for a variety of reasons, not only because slaves were valued as property, but also because of an awareness of the watchful eye of northern abolitionists, who were ever attuned to the cruelties of slavery and would turn examples of such cruelties into arguments against the system. Slave codes were not always strictly enforced, but, whenever any signs of unrest were detected, the appropriate machinery of the state would be alerted and the laws more strictly enforced.

Unfortunately, the end of slavery did not see the end of slave codes. The **Black Codes** were laws put in place after the Civil War, largely as a replacement for the equally restrictive slave codes. Black codes limited the human rights and civil liberties of blacks in their control of the labor, migration and other activities of newly-freed slaves.

Source: <http://www.britannica.com/EBchecked/topic/939444/slave-code>

### Additional Information:

- **Slave Code for the District of Columbia:** <http://memory.loc.gov/ammem/sthtml/stpres02.html>
- **North Carolina Black Codes:** <http://home.gwu.edu/~jjhawkin/BlackCodes/pdfNorthCarolina.pdf>
- **Slave Life and Slave Codes:** <http://www.ushistory.org/us/27b.asp>
- **Slave Code of the State of Georgia:** <http://academic.udayton.edu/race/02rights/slavelaw.htm>

## *Dred Scott v. Sandford*

Born in Virginia c. 1800, Dred Scott, an enslaved man, came to St. Louis in 1830. In the next year or two John Emerson, an army physician who had settled in St. Louis, acquired him. Emerson took Scott to various places, including Illinois and the Wisconsin territory, where the Northwest Ordinance of 1787 and the Missouri Compromise of 1820, respectively, had prohibited slavery. In 1836, Dred Scott married an enslaved woman, Harriet. Shortly thereafter the Scotts joined Emerson and his wife, Irene, in Louisiana. Despite going along free territory along both sides of the river, the Scotts did not escape. In 1843, after the death of her husband, Irene Emerson became the owner of the Scott family. She hired them out, seemed pleased with the income, and ignored Dred's proposals to purchase his family's freedom.

By 1850 the technical issues in the case were overshadowed by a larger national controversy over citizenship in the United States and slavery in the territories. Senator John C. Calhoun led vigorous southern efforts pushing for slaveholders to be able to take their property with them into the territories. Proslavery Missourians drafted the "Jackson Resolutions" and intended to use the Dred Scott case to bring the principles of the Southern Address to bear on Missouri law. However, a previous case, *Rachel v. Walker* (1836) had established a precedent, the Missouri Supreme Court ruling that a slave owned by an army officer had been made free while residing in the Wisconsin Territory. Moreover, in a U.S. Supreme Court case, *Strader v. Graham* (1851), Chief Justice Roger B. Taney ruled that the law of the state in which the suit was tried would determine the case's outcome. But another dimension of both the *Strader* and *Scott v. Emerson* (1852) cases was what course to take when one state law conflicted with that of another. Antislavery reformers invoked this principle to argue that the law of slavery could not extend into a free state. Meeting in the Courthouse in St. Louis in October 1851, the Missouri Supreme Court moved in the opposite direction, using the *Strader* decision to overturn *Rachel v. Walker* and assert proslavery views. A proslavery majority on the court ruled that a slave in a free state did not become free by residing in a state or territory that did not recognize slavery. The court ruled that Missouri law governed the case and that the Scotts remained slaves.

Both sides argued before the U.S. Supreme Court, the proslavery advocates that African Americans could not be citizens and that the federal government had no right to interfere with the property rights of slaveholders. They also argued that since the Kansas-Nebraska Act (1854) had repealed the Missouri Compromise, the prohibition of slavery north of 36 degrees 30 minutes north latitude could not be employed to secure the Scott's freedom. The Court scheduled the case to be reargued one month after the federal election of 1856. Efforts to maintain judicial restraint quickly failed, as Taney insisted on deciding that African Americans, both free and slave, could not be citizens of the United States and that the government could not bar slave property from the territories. Each justice wrote his own opinion in the case, although Taney's "Opinion of the Court" was seen as the Dred Scott decision. In it, he insisted that citizenship existed at two levels, state and federal. State citizenship did not permit an individual to bring suit in federal court, as Taney found an insurmountable barrier in the U.S. Constitution that defined blacks as a "subordinate and inferior class of being." He first addressed the question of Negro citizenship, not only that of slaves but also that of free blacks:

Can a Negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen?

Taney further insisted Article IV, section 3 of the Federal Constitution applied only to territories that existed when the Constitution was drafted in 1787. He acknowledged that the federal government might acquire new territories, but only for the common benefit of the established several states. The Fifth Amendment obliged Congress to respect the property rights of all citizens and this protection expanded to the slave property of southern states. The sweeping decision immediately became part of an angry political debate. In the Lincoln-Douglas Debates (1858), Lincoln argued that the decision did not permit the exclusion of slavery at any point in the territorial process. Scholarly analysis of the Taney decision has been almost entirely negative. Many scholars insist that the decision did not carry the weight of law as a majority of the justices did not explicitly agree on any

other issues. On the issue of citizenship, Taney is judged to be the weakest. His effort to locate a racial barrier in the Constitution rested on little more than his racist convictions. As Justice Benjamin Curtis observed in his dissent, national citizenship followed state citizenship: if blacks were citizens of a state they were, in the meaning of the Constitution, citizens of the United States. Far from settling the issues brought before the court, Taney's decision inflamed sectional passions and helped to ensure that a constitutional debate over slavery became a crisis in constitutional government.

The Dred Scott decision served as an eye-opener to Northerners who believed that slavery was tolerable as long as it stayed in the South. If the decision took away any power Congress once had to regulate slavery in new territories, these once-skeptics reasoned, slavery could quickly expand into much of the western United States. And once slavery expanded into the territories, it could spread quickly into the once-free states. Lincoln addressed this growing fear during a speech in Springfield, Illinois on June 17, 1858:

Put this and that together, and we have another nice little niche, which we may, ere long, see filled with another Supreme Court decision, declaring that the Constitution of the United States does not permit a *State* to exclude slavery from its limits. . . . We shall lie down pleasantly dreaming that the people of Missouri are on the verge of making their State free, and we shall awake to the reality instead, that the Supreme Court has made Illinois a slave State.

For many Northerners who had remained silent on the issue, this very real possibility was too scary to ignore. Suddenly many Northerners who had not previously been against the South and against slavery began to realize that if they did not stop slavery now, they might never again have the chance. This growing fear in the North helped further contribute to the Civil War.

Clearly *Scott v. Sandford* was not an easily forgotten case. That it still raised such strong emotions well into the Civil War shows that it helped bring on the war by hardening the positions of each side to the point where both were willing to fight over the issue of slavery. The North realized that if it did not act swiftly, the Southern states might take the precedent of the Scott case as a justification for expanding slavery into new territories and free states alike. The South recognized the threat of the Republican Party and knew that the party had gained a considerable amount of support as a result of the Northern paranoia in the aftermath of the decision. In the years following the case, Americans realized that these two mindsets, both quick to defend their side, both distrustful of the other side, could not coexist in the same nation. The country realized that, as Abraham Lincoln stated, "A house divided against itself cannot stand." . . . This government cannot endure, permanently half slave and half free." Scott's case left America in "shocks and throes and convulsions" that only the complete eradication of slavery through war could cure.

Adapted and edited by the NC Civic Education Consortium from the sources: <http://www.watson.org/~lisa/blackhistory/scott/>; <http://www.umsl.edu/~virtualstl/phase2/1850/events/resources/documents/dscs.html>

### **Additional Information**

- ***Dred Scott v. Sandford***: [http://www.oyez.org/cases/1851-1900/1856/1856\\_0/](http://www.oyez.org/cases/1851-1900/1856/1856_0/)
- **The Dred Scott Case Collection**: <http://digital.wustl.edu/d/dre/index.html>
- **Dred Scott**: <http://www.watson.org/~lisa/blackhistory/scott/>



## 13<sup>th</sup>, 14<sup>th</sup>, & 15<sup>th</sup> Amendments

On June 13, 1866, Thaddeus Stevens, the Republican floor leader in the House of Representatives and the nation's most prominent Radical Republican, rose to address his Congressional colleagues on the Fourteenth Amendment to the Constitution. Born during George Washington's administration, Stevens had enjoyed a career that embodied, as much as any other person's, the struggle against slavery and for equal rights for black Americans. In 1837, as a delegate to Pennsylvania's constitutional convention, he had refused to sign the state's new frame of government because it denied African Americans' right to vote. During the Civil War, he was among the first to advocate the emancipation of enslaved people and the enrollment of black soldiers. The most radical of the Radical Republicans, he even proposed confiscating the land of Confederate planters and distributing small farms to the former slaves.

Like other Radical Republicans, Stevens believed that Reconstruction was a golden opportunity to purge the nation of the legacy of slavery and create a "perfect republic," whose citizens enjoyed equal civil and political rights, secured by a powerful and beneficent national government. In his speech on June 13 he offered an eloquent statement of his political dream -- "that the intelligent, pure and just men of this Republic . . . would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich. . . ." Stevens continued that the proposed amendment did not fully live up to this vision. But he offered his support. Why? "I answer, because I live among men and not among angels." A few moments later, the Fourteenth Amendment was approved by the House. It became part of the Constitution in 1868.

The Fourteenth Amendment did not fully satisfy the Radical Republicans. It did not abolish existing state governments in the South and made no mention of the right to vote for blacks. Indeed it allowed a state to deprive black men of the suffrage, so long as it suffered the penalty of a loss of representation in Congress proportionate to the black percentage of its population. (No similar penalty applied, however, when women were denied the right to vote, a provision that led many advocates of women's rights to oppose ratification of this amendment.)

Nonetheless, the Fourteenth Amendment was the most important constitutional change in the nation's history since the Bill of Rights. Its heart was the first section, which declared all persons born or naturalized in the United States (except Indians) to be both national and state citizens, and which prohibited the states from abridging their "privileges and immunities," depriving any person of life, liberty, or property without due process of law, or denying them "equal protection of the laws." In clothing with constitutional authority the principle of equality before the law regardless of race, enforced by the national government, this amendment permanently transformed the definition of American citizenship as well as relations between the federal government and the states, and between individual Americans and the nation. We live today in a legal and constitutional system shaped by the Fourteenth Amendment.

The Fourteenth Amendment was one of three changes that altered the Constitution during the Civil War and Reconstruction. The Thirteenth Amendment, ratified in 1865, irrevocably abolished slavery throughout the United States. The Fifteenth, which became part of the Constitution in 1870, prohibited the states from depriving any person of the right to vote because of race (although leaving open other forms of disenfranchisement, including sex, property ownership, literacy, and payment of a poll tax). In between came the Reconstruction Act of 1867, which gave the vote to black men in the South and launched the short-lived period of Radical Reconstruction, during which, for the first time in American history, a genuine interracial democracy flourished. "Nothing in all history," wrote the abolitionist William Lloyd Garrison, equaled "this . . . transformation of four million human beings from . . . the auction-block to the ballot-box."

These laws and amendments reflected the intersection of two products of the Civil War era – a newly empowered national state and the idea of a national citizenry enjoying equality before the law. These legal changes also arose from the militant demands for equal rights from the former slaves themselves. As soon as the Civil War ended, and in some places even before, blacks gathered in mass meetings, held conventions, and

drafted petitions to the federal government, demanding the same civil and political rights as white Americans. Their mobilization (given moral authority by the service of 200,000 black men in the Union army and navy in the last two years of the war) helped to place the question of black citizenship on the national agenda.

The Reconstruction Amendments, and especially the Fourteenth, transformed the Constitution from a document primarily concerned with federal-state relations and the rights of property into a vehicle through which members of vulnerable minorities could stake a claim to substantive freedom and seek protection against misconduct by all levels of government. The rewriting of the Constitution promoted a sense of the document's malleability, and suggested that the rights of individual citizens were intimately connected to federal power. The Bill of Rights had linked civil liberties and the autonomy of the states. Its language -- "Congress shall make no law" -- reflected the belief that concentrated power was a threat to freedom. Now, rather than a threat to liberty, the federal government, declared Charles Sumner, the abolitionist Senator from Massachusetts, had become "the custodian of freedom." The Reconstruction Amendments assumed that rights required political power to enforce them. They not only authorized the federal government to override state actions that deprived citizens of equality, but each ended with a clause empowering Congress to "enforce" them with "appropriate legislation." Limiting the privileges of citizenship to white men had long been intrinsic to the practice of American democracy. Only in an unparalleled crisis could these limits have been superseded, even temporarily, by the vision of an egalitarian republic embracing black Americans as well as white and presided over by the federal government.

Constitutional amendments are often seen as dry documents, of interest only to specialists in legal history. In fact, as the amendments of the Civil War era reveal, they can open a window onto broad issues of political and social history. The passage of these amendments reflected the immense changes American society experienced during its greatest crisis. The amendments reveal the intersection of political debates at the top of society and the struggles of African Americans to breathe substantive life into the freedom they acquired as a result of the Civil War. Their failings -- especially the fact that they failed to extend to women the same rights of citizenship afforded black men -- suggest the limits of change even at a time of revolutionary transformation.

Moreover, the history of these amendments underscores that rights, even when embedded in the Constitution, are not self-enforcing, and cannot be taken for granted. Reconstruction proved fragile and short-lived. Traditional ideas of racism and localism reasserted themselves, Ku Klux Klan violence disrupted the Southern Republican party, and the North retreated from the ideal of equality. Increasingly, the Supreme Court reinterpreted the Fourteenth Amendment to eviscerate its promise of equal citizenship. By the turn of the century, the Fourteenth and Fifteenth Amendments had become dead letters throughout the South. A new racial system had been put in place, resting on the disenfranchisement of black voters, segregation in every area of life, unequal education and job opportunities, and the threat of violent retribution against those who challenged the new order. The blatant violation of the Fourteenth and Fifteenth Amendments occurred with the acquiescence of the entire nation. Not until the 1950s and 1960s did a mass movement of black Southerners and white supporters, coupled with a newly activist Supreme Court, reinvigorate the Reconstruction Amendments as pillars of racial justice.

Today, in continuing controversies over abortion rights, affirmative action, the rights of homosexuals, and many other issues, the interpretation of these amendments, especially the Fourteenth, remains a focus of judicial decision-making and political debate. We have not yet created the "perfect republic" of which Stevens dreamed. But more Americans enjoy more rights and freedoms than ever before in our history.

Source: [http://www.gilderlehrman.org/historynow/12\\_2004/historian.php](http://www.gilderlehrman.org/historynow/12_2004/historian.php)

### **Additional Information:**

Reconstruction: <http://www.sparknotes.com/history/american/reconstruction/summary.html>

## Reconstruction Legislation

At the end of the Civil War, the defeated South was a ruined land. The physical destruction wrought by the invading Union forces was enormous, and the old social and economic order founded on slavery had collapsed completely, with nothing to replace it. The southern states were in economic and social chaos. Famine, disease, extreme poverty, violent crime, and localized anarchy plagued the south. The slaves were freed, but by and large they had no land, no money, no education, few skills, and no immediate prospects for dealing with those problems; whites exacerbated those problems by their unwillingness to cooperate equitably with former slaves. The 11 Confederate states somehow had to be restored to their positions in the Union and provided with loyal governments, and the role of the emancipated slaves in Southern society had to be defined. In addition to the 13th, 14th, and 15th Amendments, legislation passed during this time includes:

- **Freedmen's Bureau Act** - Create a government agency to provide services to freed slaves and war victims
- **Civil Rights Act of 1866** - Grants citizenship to African Americans and outlaws Black Codes, which proliferated throughout the former Confederacy after the Civil War.
- **Reconstruction Act of 1867** - Divides former Confederacy into military districts. One major purpose was to recognize and protect the right of African Americans to vote. The military closely supervised local government, supervised elections, and tried to protect office holders and freedmen from violence.
- **Enforcement Act of 1870** - Protects voting rights by making intimidation of voters a federal crime
- **Civil Rights Act of 1871 (KKK Act)** - Authorizes President Ulysses S. Grant to declare martial law, impose heavy penalties against terrorist organizations, and use military force to suppress the Ku Klux Klan. This act helped to suppress KKK activity in the former Confederacy and as a result, the organization faded away by the early 1880s.
- **Civil Rights Act of 1875** - The Act guaranteed that everyone, regardless of race, color, or previous condition of servitude, was entitled to the same treatment in "public accommodations"

### Additional Information:

- Freedmen's Bureau Act: [http://en.wikipedia.org/wiki/Bureau\\_of\\_Refugees,\\_Freedmen\\_and\\_Abandoned\\_Lands](http://en.wikipedia.org/wiki/Bureau_of_Refugees,_Freedmen_and_Abandoned_Lands)
- Civil Rights Act of 1866: <http://www.teachingamericanhistory.org/library/index.asp?document=480>
- Civil Rights Act of 1871: [http://en.wikipedia.org/wiki/Civil\\_Rights\\_Act\\_of\\_1871](http://en.wikipedia.org/wiki/Civil_Rights_Act_of_1871)
- Civil Rights Act of 1875: <http://teachingamericanhistory.org/library/index.asp?document=481>

## Star Cars and Civil Disobedience

From *We As Freeman: Plessy v. Ferguson* (p. 78 – 80)

Interestingly, Homer Plessy's manner of civil disobedience on public conveyances occurred on a more massive scale in the 1860s. While railroad trains provoked Plessy in the 1890s and buses sparked Rosa Parks in the 1950s, in the late 1860s it was segregated mule-powered streetcars, called "star cars," that engendered civil disobedience. In 1867, one-third of the mule-draw streetcars that clumped along the New Orleans's thoroughfares were painted with a huge black star. While Black Union soldiers could ride in the car of their choice, most blacks were confined to the star cars. In addition, newspapers reported that whites would use the star cars in addition to their own when it was convenient. So, in the spring of 1867, a coordinated effort to defy the regulations began in what the *New Orleans Crescent* called a "pre-concerted design on the part of a number of colored men."

On April 28, 1867, a black rider named William Nicholls got onto a non-starred car, tussled with the driver, and was arrested. Trying to downplay the controversy, the streetcar company dropped the charges, frustrating Nicholls, who sought to test the policy in court. The company adopted a strategy of their own and ordered their drivers to refuse to move the car if a black person sought access to a non-starred car.

However, on May 4, 1867, Joseph Guillaume led a group of downtown residents a block from the Plessy home to confront the separate-streetcar policy and the companies' new strategy. A local newspaper reported:

"At half past 11:00 yesterday morning, the car no.148 allotted for whites was entered by a dusky son of Africa, rejoicing in the name of Joseph Guillaume, who insisted upon riding therein. When remonstrated by the driver, he coolly took the reins in his own hands and was about transforming himself from a loyal citizen to a ...bruiser to anyone who dared interfere with him."

The situation escalated after Guillaume's protest. The next Sunday morning broke with two black women sitting in the whites-only car, engaging in a battle of patience with the driver who refused to move. On another car not far away, a white man and a black man argued over the latter's right to board. All over the city, in varying stages of defiance, blacks were on cars previously intended for whites' use only. A citywide sit-in was in progress. Things grew more heated that same day, particularly in the Congo Square area of New Orleans:

"About 500 congregated on Rampart, near Congo Square, and after stringing themselves out into line on each side of the road along which the cars had to pass, called upon the negroes who were passing in the star cars to get out and ride in the other; that they had the same right to ride them as the white man had. A colored man jumped aboard a white car. The driver told him to get off. He was about to go when the crowd ran pell-mell towards the car with cries of "stay on, stay on." Colored men got into white cars on Canal and adjacent streets and all times between 1 and 8 o'clock."

The next day, the streetcar companies abolished the star-car system. Thomas Adams, chief of police, issued an edict:

"Have no interference with negroes riding in cars of any kind. No passenger has a right to reject any other passenger, no matter what his color. If he does so, he is liable to arrest for assault, or breach of the peace."

### Additional Information:

- **A Pioneer Protest: The New Orleans Street-Car Controversy of 1867:**  
<http://www.jstor.org/stable/2716217>
- **Civil Rights in America: Racial Desegregation of Public Accommodations:**  
<http://www.nps.gov/nhl/themes/Public%20Accom.pdf> (p. 10 – 12)

## Supreme Court and Reconstruction

Ineffectual during the war, the United States Supreme Court in the 1870s ushered in a long procession of rulings that limited the scope of the Reconstruction laws and constitutional amendments. In April 1873, the five-to-four Supreme Court ruling in the *Slaughterhouse Cases* narrowed the Fourteenth Amendment's definition of national-citizenship rights. The Court distinguished between "state citizenship" and "federal citizenship," and that state actions could not be struck down. Critics have argued that this decision severely undermined the ability of the government to protect the rights of the freedmen, although the case had nothing to do with black Louisianans as such. In March 1876, in *United States v. Reese*, by a vote of eight to one, the Supreme Court invalidated part of the Enforcement Act of 1870. In this Kentucky case, the Supreme Court established a legal platform for states to later adopt literacy tests, poll taxes, grandfather clauses, and other mechanisms that excluded large numbers of African-Americans from elections. In January 1878, in another Louisiana case, *Hall v. DeCuir*, the United States Supreme Court overturned a judgment in favor of Josephine DeCuir, a black woman denied entrance into steamship restaurant until the white diners finished eating. Citing federal preeminence in interstate commerce, the Court declared that the Louisiana law that guaranteed equal access in public transportation to be unconstitutional. In 1880, the *Virginia v. Rives*, the Supreme Court stated that no matter how pervasive the absence of black jurors, the process remained constitutional unless evidence showed that explicit discrimination occurred.

As the Supreme Court overturned or narrowed civil-rights statues, states enacted more discriminatory laws. In 1881, Tennessee passed laws that segregated its railroad cars. Between the years 1887 and 1889, legislatures in Florida, Mississippi, and Texas followed suit. In the *Civil Rights Cases of 1883*, the Court declared the 1875 civil-rights laws that granted equal access to public accommodations to be unconstitutional. Also in 1883, in *Pace v. Alabama*, the Supreme Court upheld an Alabama law that punished adultery more severely if the offending parties were of different races. In *United States v. Harris*, the Supreme Court declared part of the act of 1871 (the Ku Klux Klan Act) unconstitutional when it was applied to a lynch mob that beat a black prisoner to death. The Court ruled that the Fourteenth Amendment only applied to state action and not individual action.

In March 1890, in *Louisville, New Orleans & Texas Railway Co. v. Mississippi*, the Supreme Court upheld a Mississippi law that forced railways to provide separate accommodations for black and white passengers. Unlike the Plessy case, which opposed such laws on the basis of the Fourteenth Amendment, the railroad that brought the suit argued that such laws constituted unfair regulation of interstate commerce. Within a year after that decision, five additional states passed laws that segregated railroad cars. In August, the Mississippi Constitutional Convention of 1890 enacted a two-dollar poll tax and barred people who could not read and interpret the state constitution from voting. The sole black convention delegate, Isaiah Montgomery, predicted the move would disenfranchise over 123,000 black voters.

Source: Adapted and edited by the NC Civic Education Consortium from the following sources: *We as Freeman: Plessy v. Ferguson* by Keith Medley, p. 89-91

<http://www.jimcrowhistory.org/scripts/jimcrow/courtcases.cgi?casetype=Segregation>

### Additional Information

- **Jim Crow Supreme Court Cases:**  
<http://www.jimcrowhistory.org/scripts/jimcrow/courtcases.cgi?casetype=Segregation>
- **The Rise and Fall of Jim Crow: the Supreme Court:**  
[http://www.pbs.org/wnet/jimcrow/struggle\\_court.html](http://www.pbs.org/wnet/jimcrow/struggle_court.html)



## *Plessy v. Ferguson*

In 1890, Louisiana passed a statute called the "Separate Car Act," which stated "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. . . ." The penalty for sitting in the wrong compartment was a fine of \$25 or 20 days in jail.

The Plessy case was carefully orchestrated by both the Citizens' Committee to Test the Constitutionality of the Separate Car Act, a group of blacks who raised \$3000 to challenge the Act, and the East Louisiana Railroad Company, which sought to terminate the Act largely for monetary reasons. They chose a 30-year-old shoemaker named Homer Plessy, a citizen of the United States who was one-eighth black and a resident of the state of Louisiana. He was a Creole of Color, a term used to refer to black persons in New Orleans who traced some of their ancestors to the French, Spanish, and Caribbean settlers of Louisiana before it became part of the United States. On June 7, 1892, Plessy purchased a first-class passage from New Orleans to Covington, Louisiana and sat in the railroad car designated for whites only. Plessy deliberately sat in the white section and identified himself as black. The railroad officials, following through on the arrangement, arrested Plessy and charged him with violating the Separate Car Act. Well known advocate for black rights Albion W. Tourg e, a white lawyer, agreed to argue the case without compensation.

He was arrested and the case went all the way to the United States Supreme Court. Plessy's lawyer argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution.

In 1896, the Supreme Court of the United States heard the case and held the Louisiana segregation statute constitutional. Speaking for a seven-man majority, Justice Henry Brown wrote: "A statute which implies merely a legal distinction between the white and colored races -- has no tendency to destroy the legal equality of the two races. ... The object of the Fourteenth 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."

Justice John Harlan, the lone dissenter, saw the horrific consequences of the decision. "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 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."

The Plessy decision set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal." The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools. The doctrine was a fiction, as facilities for blacks were always inferior to those for whites. Not until 1954, in the equally important *Brown v. Board of Education* of Topeka, would the "separate but equal" doctrine be struck down.

Adapted and edited by the NC Civic Education Consortium from the sources: [schoolweb.dysart.org/TeacherSites/uploads/5223/PlessyvFerg.doc](http://schoolweb.dysart.org/TeacherSites/uploads/5223/PlessyvFerg.doc); [http://www.pbs.org/wnet/jimcrow/stories\\_events\\_plessy.html](http://www.pbs.org/wnet/jimcrow/stories_events_plessy.html)

### **Additional Information**

- **How the Case Moved Through the Court System:** [http://www.streetlaw.org/en/Page/424/How\\_the\\_Case\\_Moved\\_through\\_the\\_Court\\_System](http://www.streetlaw.org/en/Page/424/How_the_Case_Moved_through_the_Court_System)
- **Street Law: Landmark Cases:** [http://www.streetlaw.org/en/landmark/cases/plessy\\_v\\_ferguson](http://www.streetlaw.org/en/landmark/cases/plessy_v_ferguson)
- **After the Civil War:** <http://www.watson.org/~lisa/blackhistory/post-civilwar/plessy.html>
- **Plessy & Ferguson Foundation:** <http://plessyandferguson.org/history.html>



## Albion W. Tourgée

Albion W. Tourgée (1838-1905) was in many ways a man before his time. Even though he lived during a time when slavery and Jim Crow was condoned, and African Americans and women were seen as inferior, he was passionately dedicated to the ideals of equality and justice inscribed in the Declaration of Independence and the Constitution. He fought his entire life for justice and equal rights in his roles as a:

- Union soldier in the Civil War
- member of the NC Constitutional Convention who ensured the 1868 Constitution was reformed to ensure equal rights for all
- politician and judge in Reconstruction-era North Carolina who fought for civil rights, often at the risk of his life
- novelist and journalist who tried to promote action for civil rights
- the founder of the country's first national civil rights association with an interracial membership
- lawyer arguing against segregation on behalf of African Americans
- creator of the country's first anti-lynching law

Tourgée sought to fulfill the mission of the abolitionist movement, which had culminated in ending slavery and granting African American men citizenship and voting rights. However, unlike his abolitionist predecessors, whose goals of ending slavery were reached, Tourgée was fighting for the rights of newly freed blacks during the post-war years, which unfortunately saw the abolitionist movement disband and the nation walk away from its responsibility to the emancipated slaves. In the years following the war, the courts gutted the new constitutional amendments and Congress allowed southern states to suppress African American rights with the unconstitutional state laws they passed.

In the post-war political climate of hardening racism, Tourgée stood almost alone among whites in defending the rights of African Americans and disputing racist theories of biological inferiority. Further, at a time when social contact and friendships across racial lines had all but ceased, Tourgée maintained communication with African Americans in all walks of life, frequently addressed Black audiences, and collaborated with such radical race leaders as Ida B. Wells in agitating against lynching, disfranchisement, and Jim Crow.

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Tourgée was born in Williamsfield, Ohio, the son of a Methodist farm family that migrated to the Western Reserve from Massachusetts. He was enrolled at Rochester University from the fall of 1859 until he volunteered to join the Union army in May 1861. Paralyzed by a severe back injury received in the Battle of Manassas, he was medically discharged, but in July 1862, he reenlisted as an infantry lieutenant. He participated in the Battle of Perryville, was captured, and spent four months in Confederate prisons. He was exchanged and took part in the Battle of Chickamauga. In December 1863, still troubled by his back injury, he left the service. For the remainder of the war he served as a journalist, studied law, earned his M.A. at Rochester University, and taught school. In 1863 he married Emma Lodoilska Kilbourne.

After the war ended Tourgée, persuaded friends and family to move south to start a new life. After personally meeting with North Carolina State Governor William W. Holden, Tourgée and his wife purchased property in Greensboro, NC in 1865.

Once in Greensboro, both Albion and Emma were actively involved with the local Quaker community, longtime antislavery agitators, in aiding the black community to found schools and acquire property. However, such work came under attack when North Carolina conservatives swept into power in 1866 and tried to severely limit basic civil rights for former slaves.

Tourgée would often attend local political meetings in North Carolina, where he would eloquently denounce “black codes” and the unfair treatment of African Americans, which put him into a position of political leadership. Soon, he was editing a Republican newspaper, the *Union Register*, and picked to represent Guildford County at the national “Loyalist Convention” held in Philadelphia in 1866 – a group of Southern Republicans calling upon Congress to take stronger measures to counteract the President’s reconstruction policies.

In 1868, he was elected to the North Carolina Constitutional Convention on the strength of the black electorate, temporarily enfranchised by the U.S. Congress. Tourgée's legal training and ability as an eloquent speaker made him a natural leader at the 1868 State Constitutional Convention in North Carolina, where he influenced the adoption of broad reforms, including: equal citizenship for all men, regardless of race; abolition of corporeal punishment including whips and stocks; free public education for all; popular election of most political offices and judgeships; and much more. The new Constitution was a revolutionary document given the rights it granted during the time in which it was written. Thankfully, many of the rights and freedoms put forth in the 1868 NC Constitution would never be entirely reversed, even after the fall of Republican governments in the south.

After the Constitution was ratified, Tourgée served on the three-person committee to re-write the Code of Civil Procedure for the state, eliminating the outdated procedures that bogged down the justice system, and modernizing the law to make it more understandable and accessible to the common people.

Throughout this time, the Tourgées lived an unconventional life in the South and often faced ridicule due to their more open-minded views. They were shunned by Southern "polite society" because of their close association with blacks, northern schoolteachers and missionaries who worked with blacks, and lower class whites.

Though he aspired to enter the United States Congress as his next professional move, the Republican Party convinced Tourgée to run instead for NC Superior Court Justice, out of a desperate need for qualified Republican candidates with legal training. Tourgée was elected and served six years, 1868 to 1874, throughout which he continued to fight for the less privileged. Tourgée's courtroom was controversial, and he earned the hatred of many Southerners, particularly due to his commitment to equality during a time when many in society believed Blacks did not deserve the same rights as Whites. For example, Tourgée banned the use of racial slurs in his courtroom by practicing lawyers, and issued a heavy fine on anyone who broke his rule. He insisted on racially-integrated juries in cases that involved racial violence. In 1871, Tourgée personally led an investigation into the violent activities of the Ku Klux Klan. His investigation brought indictments against sixty-three Klan members that ensnared several prominent citizens.

Following his judgeship Tourgée was often denied electoral opportunity within his own party because of his Yankee origins. Although he was elected to the constitutional convention of 1875, he decided to leave the South and focus on being a writer. In 1879, his largely autobiographical novel regarding Reconstruction, *A Fool's Errand by One of the Fools*, was released and became a huge success. He continued to write novels, and among other literary accomplishments, he began writing a weekly editorial column entitled "A Bystander's Notes" for the *Chicago Inter Ocean* in 1888. Tourgée used this column to continue his crusade for social reform and justice, leading him to be one of the nation's leading white advocates of racial equality and justice. In his editorials, essays, and books as well as his public and private affairs, he was forever exposing and denouncing white racism.

He extended his work beyond the pen however, working with black leaders in such endeavors as the founding of the Afro American League and the passage of the Ohio anti-lynching law of 1896. He founded his own civil rights association in 1891 and was appointed chief counsel by Louisiana black leaders in a legal struggle that culminated in another defeat, the *Plessy v. Ferguson* segregation decision of 1896.

After Tourgée's death in 1905 the black Niagara Movement sponsored nationwide memorial services honoring "Three Friends of Freedom"—William Lloyd Garrison, Frederick Douglass, and Albion W. Tourgée.

Source: "Justice Deferred, Albion Tourgée and the Fight for Civil Rights," by Mark Elliott, PhD;  
<http://docsouth.unc.edu/church/tourgee/bio.html>

#### **Additional Information:**

- **A Voice Against Segregation: Albion W. Tourgée:** [http://www.aaregistry.org/historic\\_events/view/voice-against-segregation-albion-tourgee](http://www.aaregistry.org/historic_events/view/voice-against-segregation-albion-tourgee)
- **Albion W. Tourgée: Radical Republican Spokesman of the Civil War Crusade:** <http://www.jstor.org/stable/274157>
- **Plessy & Ferguson Foundation:** <http://plessyandferguson.org/history.html>

## Louis Martinet

Martinet, Louis Andre (28 Dec. 1849–7 June 1917), physician, newspaper founder, and attorney, initiated the challenge to Louisiana's "Separate Car Law," which led to the U.S. Supreme Court decision to uphold "separate but equal" public accommodations in *Plessy v. Ferguson* (1896).

Martinet was born free, the second of eight children born to Pierre Hyppolite Martinet, a carpenter who arrived sometime before 1850 in St. Martinsville, Louisiana, from Belgium, and his wife, the former Marie-Louise Benoît, a native of Louisiana. Benoît is generally referred to as a free woman of color, but there is a record in St. Martin Parish Courthouse that Pierre Martinet purchased her freedom on 10 January 1848 from Dr. Pierre Louis Nee, along with her mother and their infant son Pierre. They were married on 7 December 1869 in St. Martin de Tours Catholic Church, St. Martinsville, Louisiana—before the Civil War, Louisiana law did not permit them to marry.

At age twenty-three, Martinet was elected a state representative from St. Martin Parish, serving in that capacity from 1872 to 1875. He lost his seat in April 1875, as part of the compromise engineered by U.S. Representative William A. Wheeler, a New York Republican, seating eleven conservative Democrats and removing the same number of Republicans, most of them colored. In 1876 Martinet graduated from Strait Law School, which claimed him as its "first Negro graduate." He had already passed the Louisiana bar exam in 1875, at the time permitted after one year of law school. He supported himself and paid his tuition by teaching French and Latin courses at Straight. He was one of four people of African descent appointed to the Orleans Parish school board in 1877.

Allied for a time with the former senator and lieutenant governor P. B. S. Pinchback, Martinet joined him in supporting the "Redeemer" state constitution of 1879, which replaced Louisiana's 1867 constitution drafted during Reconstruction, laying the groundwork for a new post slavery version of white supremacy. Pinchback, not native to Louisiana, was the son of a free woman of color and an Alabama planter, who at times represented the English-speaking colored population of the state, but made political enemies simply by advancing his own career and patronage network. He offered his support in exchange for the establishment of an all-black Southern University. Martinet was rooted in the free colored population, who drew much of their culture and politics from the legacy of the French revolution. He firmly opposed any acknowledgment of race in the law or public institutions, while some of the darker-skinned English-speaking colored population wanted their own schools. His father died 1875; in 1880 Louis Martinet remained in his mother's home, with his younger brother Jules, a carpenter like their father, and their brother-in-law Auguste Mora (a constable), married to their sister Mathilde, twenty-three, with a daughter of the same name. His grandmother, Hortense Armand Benoît, and aunt Elmira Lemella also lived with the family. Martinet married Leonora Jeanne Miller, a New Orleans native teaching at Southern University, on 27 September 1882. The couple had two children, Marie Divonne, who died in infancy, and Leslie Louise. They divorced around 1900. Martinet's mother died in 1886. On 2 June 1885 Martinet was admitted to practice in the U.S. District Court for the Eastern District of Louisiana.

In 1889 Martinet began publishing the *Crusader* in English and French, a weekly newspaper covering civil rights struggles in Louisiana and nationally, which expanded to daily publication. In 1894 it was the only black paper in the United States and the only Republican paper in the southern states, described by Martinet and other editors as "the enemy of wrong and injustice, the friend and defender of right and justice." The editorial style of the *Crusader* is represented by the following report: "Last week in Fayette County, Ga., eight Negroes were killed and six were wounded. Eight whites were shot, but only one fatally. However deplorable these affrays, it is refreshing to see the Negro defending himself, but he must learn to shoot straight." Martinet closed the paper in 1896, shortly after the Supreme Court's ruling in *Plessy v. Ferguson*.

In September 1891, Martinet called for a *Comité de Citoyens* or Citizens Committee for the Annulment of Act No. 111—the "Separate Car Act" adopted by the Louisiana legislature 10 July 1890. This committee, which continued to have an active role in litigation to turn back racially motivated legislation, gave rise to the American Citizens' Equal Rights Association (ACERA). In ACERA's official protest to the Louisiana

legislature, responding to the “Separate Car Act,” Martinet openly questioned racial distinction and identity as arbitrary and without scientific basis (Elliott, p. 250). Martinet successfully represented Daniel Desdunes, son of the activist Rodolfe Lucien Dedunes, who openly boarded a “white only” car on a train bound for Mobile, Alabama. Desdunes was acquitted because the Louisiana law was in conflict with federal laws governing interstate commerce. However, when the legal team tested the law on an intrastate train, boarded by Homer Adolph Plessy, the U.S. Supreme Court ruled 18 May 1896 that the statute did not violate the Thirteenth or Fourteenth Amendments to the federal constitution.

Martinet held an appointment as clerk in the Collector of Customs Office in 1882, as deputy surveyor for the Port of New Orleans in 1883, and as a carrier in the U.S. Post Office in 1885. It was common in post-Reconstruction southern states that Republicans who could no longer win state offices received appointments to federal jobs, and in New Orleans free men of color were among them. Martinet completed a medical degree from Flint Medical College in New Orleans in about 1894. He was able to obtain some appointed state positions, including an appointment by Governor Samuel Douglas McEnery to the Board of Trustees of Southern University, 1889–1897.

Martinet began his notarial practice in 1888 and operated it until his death in 1917. Throughout the early years of his practice, Martinet was also a key figure in the civil rights activities surrounding the end of Reconstruction. In 1889 Martinet began publishing *The Crusader*, a first weekly then daily paper chronicling the struggle for civil rights. In 1891 Martinet was a founding member of the *Comité des Citoyens* (Citizens’ Committee). The Citizens’ Committee, comprised of prominent people of color in New Orleans, sought to end the encroaching practice of racial segregation in the south by challenging the practice in the courts. Martinet was a key figure in this challenge, and played a large role in the orchestrated act of Homer Plessy’s arrest for violating the Separate Car Act, an act that resulted in the landmark *Plessy v. Ferguson* case, the prolonged legal battle which ultimately led to the 1896 Supreme Court decision legalizing the separate but equal doctrine.

A politician, lawyer, educator, activist, journalist, medical doctor, and notary, Louis André Martinet played a role in some of the seminal events of the Reconstruction Era, both in New Orleans, and nationally.

Source: <http://dev.anb.org/article/opr/t0001/e4913>

**Additional Information:**

- **Plessy & Ferguson Foundation:** <http://plessyandferguson.org/history.html>
- **Alternate Biography:** <http://www.notarialarchives.org/martinet.htm>

## Jim Crow Laws and Life under Jim Crow

Jim Crow was the name of the racial caste system which operated primarily, but not exclusively, in southern states between 1877 and the mid-1960s. Jim Crow was more than a series of rigid anti-Black laws. It was a way of life. Under Jim Crow, African Americans were relegated to the status of second class citizens and Jim Crow represented the legitimization of anti-Black racism. Throughout society, a majority of people and institutions reflected and supported the oppression of Blacks.

The following Jim Crow “etiquette” provides examples of the expected behavior during the Jim Crow Era:

- A Black male could not offer his hand (to shake hands) with a White person.
- Blacks and Whites were not supposed to eat together. If they did eat together, Whites were to be served first, and some sort of partition was to be placed between them.
- Blacks were not allowed to show affection toward one another in public, especially kissing, because it offended Whites.
- Jim Crow etiquette prescribed that Blacks were introduced to Whites, never Whites to Blacks. For example: "Mr. Peters (the White person), this is Charlie (the Black person), that I spoke to you about."
- Whites did not use courtesy titles of respect when referring to Blacks, for example, Mr., Mrs., Miss., Sir, or Ma'am. Instead, Blacks were called by their first names. Blacks had to use courtesy titles when referring to Whites, and were not allowed to call them by their first names.
- If a Black person rode in a car driven by a White person, the Black person sat in the back seat, or the back of a truck.
- White motorists had the right-of-way at all intersections.

Stetson Kennedy, the author of *Jim Crow Guide*, offered these simple rules that Blacks were supposed to observe in conversing with Whites:

- Never assert or even intimate that a White person is lying.
- Never impute dishonorable intentions to a White person.
- Never suggest that a White person is from an inferior class.
- Never lay claim to, or overly demonstrate, superior knowledge or intelligence.
- Never curse a White person.
- Never laugh derisively at a White person.
- Never comment upon the appearance of a White female.

Jim Crow etiquette operated in conjunction with Jim Crow laws (stemming from black codes). Even though the passage of the 13th, 14th, and 15th Amendments to the Constitution had granted Blacks the same legal protections as Whites, after the 1877 election of Republican Rutherford B. Hayes, southern and Border States began restricting the liberties of Blacks. For example, in 1890, Louisiana passed the "Separate Car Law," which mandated "equal but separate" cars for Blacks and Whites. (This was a ruse. No public accommodations, including railway travel, provided Blacks with equal facilities.) Even though a group of civil rights activists challenged the Separate Car Act all the way to the Supreme Court, the law was upheld in the infamous *Plessy v. Ferguson* (1896) decision, which legitimized Jim Crow laws and sent the message that discrimination is acceptable.

Blacks were denied the right to vote by grandfather clauses (laws that restricted the right to vote to people whose ancestors had voted before the Civil War), poll taxes (fees charged to poor Blacks), white primaries (only Democrats could vote, only Whites could be Democrats), and literacy tests. Jim Crow states passed statutes severely regulating social interactions between the races. Jim Crow signs were placed above water fountains, door entrances and exits, and in front of public facilities. There were separate hospitals for Blacks and Whites, separate prisons, separate public and private schools, separate churches, separate cemeteries, separate public restrooms, and separate public accommodations. In most instances, the Black facilities were grossly inferior -- generally, older, less-well-kept. In other cases, there were no Black facilities -- no Colored public restroom, no public beach, no place to sit or eat. *Plessy* gave Jim Crow states a legal way to ignore their constitutional obligations to their Black citizens.



Jim Crow laws touched every aspect of everyday life. For example, in 1935, Oklahoma prohibited Blacks and Whites from boating together. Boating implied social equality. In 1905, Georgia established separate parks for Blacks and Whites. In 1930, Birmingham, Alabama, made it illegal for Blacks and Whites to play checkers or dominoes together. Additional examples of Jim Crow laws:

- Barbers. No colored barber shall serve as a barber (to) white girls or women (Georgia).
- Blind Wards. The board of trustees shall...maintain a separate building...on separate ground for the admission, care, instruction, and support of all blind persons of the colored or black race (Louisiana).
- Burial. The officer in charge shall not bury, or allow to be buried, any colored persons upon ground set apart or used for the burial of white persons (Georgia).
- Buses. All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races (Alabama).
- Child Custody. It shall be unlawful for any parent, relative, or other white person in this State, having the control or custody of any white child, by right of guardianship, natural or acquired, or otherwise, to dispose of, give or surrender such white child permanently into the custody, control, maintenance, or support, of a negro (South Carolina).
- Education. The schools for white children and the schools for negro children shall be conducted separately (Florida).
- Libraries. The state librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to the library for the purpose of reading books or periodicals (North Carolina).
- Mental Hospitals. The Board of Control shall see that proper and distinct apartments are arranged for said patients, so that in no case shall Negroes and white persons be together (Georgia).
- Militia. The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available and where whites are permitted to be organized, colored troops shall be under the command of white officers (North Carolina).
- Nurses. No person or corporation shall require any White female nurse to nurse in wards or rooms in hospitals, either public or private, in which negro men are placed (Alabama).
- Prisons. The warden shall see that the white convicts shall have separate apartments for both eating and sleeping from the negro convicts (Mississippi).
- Reform Schools. The children of white and colored races committed to the houses of reform shall be kept entirely separate from each other (Kentucky).
- Teaching. Any instructor who shall teach in any school, college or institution where members of the white and colored race are received and enrolled as pupils for instruction shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined... (Oklahoma).
- Wine and Beer. All persons licensed to conduct the business of selling beer or wine...shall serve either white people exclusively or colored people exclusively and shall not sell to the two races within the same room at any time (Georgia).

The Jim Crow laws and system of etiquette were upheld through violence, real and threatened. Blacks who violated Jim Crow norms, for example, drinking from the White water fountain or trying to vote, risked their homes, their jobs, even their lives. Blacks had little legal recourse against assaults because the Jim Crow criminal justice system was all-White: police, prosecutors, judges, juries, and prison officials seldom defended the rights of blacks. Violence was instrumental for Jim Crow. It was a method of social control, with the extreme example of Jim Crow violence being lynchings. Lynchings were public, often sadistic, murders carried out by mobs. Between 1882, when the first reliable data was collected, and 1968, there were 4,730 known lynchings.

While many Blacks resisted the indignities of Jim Crow, they risked paying for their bravery with their lives.

Source: <http://www.ferris.edu/jimcrow/what.htm>

#### **Additional Information:**

- **The History of Jim Crow (includes personal accounts of life under Jim Crow):** <http://www.jimcrowhistory.org/>
- **The Rise and Fall of Jim Crow:** <http://www.pbs.org/wnet/jimcrow/>



## Disenfranchisement

"Direct" disenfranchisement refers to actions that explicitly prevent people from voting or having their votes counted, as opposed to "indirect" techniques, which attempt to prevent people's votes from having an impact on political outcomes (e.g., gerrymandering, ballot box stuffing, and stripping elected officials of their powers).

The 15th Amendment prohibited direct disenfranchisement on the basis of race or prior enslavement. So, Southern states devised an array of alternative techniques designed to disenfranchise blacks and, to a lesser extent, poor whites. From 1868-1888, the principal techniques of disenfranchisement were illegal, based on violence and massive fraud in the vote counting process. However, starting in 1877, when Georgia passed the cumulative poll tax, states implemented statutory methods of disenfranchisement. From 1888-1908, states entrenched legal techniques in their constitutions to ensure those deemed inferior could not vote.

- **Violence and intimidation** was a principal means of direct disenfranchisement in the South. For example, in 1873, a band of whites murdered over 100 blacks who were assembled to defend Republican officeholders in Colfax, Louisiana.
- **Electoral fraud** by ballot box stuffing, throwing out non-Democratic votes, or counting them for the Democrats even when cast for the opposition, was the norm in the Southern states before legal means of disenfranchisement were entrenched.
- Georgia initiated the first **poll tax** in 1871, and made it cumulative in 1877 (requiring citizens to pay all back taxes before being permitted to vote). Every former confederate state followed its lead by 1904. Although these taxes of \$1-\$2 per year may seem small, it was beyond the reach of many poor black and white sharecroppers, who rarely dealt in cash. The Georgia poll tax probably reduced overall turnout by 16-28%, and black turnout in half. The purpose of the tax was plainly to disenfranchise, not to collect revenue, since no state brought prosecutions against any white individual for failure to pay the tax.
- **Literacy tests** were used to deny suffrage to African-Americans, with the first formal voter literacy tests introduced in 1890. Whites were exempted from the literacy test if they could meet alternate requirements that, in practice, excluded blacks. These included demonstrating political competence in person or showing descent from someone who was eligible to vote before 1867 ("**The Grandfather Clause.**")
- Southern states made **registration difficult**, by requiring frequent re-registration, long terms of residence in a district, registration at inconvenient times (e.g., planting season), provision of information unavailable to many blacks (e.g. street addresses, when black neighborhoods lacked street names and numbers), and so forth. When blacks managed to qualify for the vote even under these measures, registrars would use their discretion to deny them the vote anyway.

The history of black disenfranchisement demonstrates that it was a product not simply of the actions of Southern states and individuals, but of a failure to uphold and exercise federal power. Congress failed to fully enforce the 14th amendment and the Supreme Court actively undermined federal executive powers to protect black voting rights, refused to acknowledge racial discrimination even when it was obvious, and acquiesced in blatant constitutional violations by resorting to specious reasoning. Although it slowly came around in some cases, historian Eric Foner's judgment, that reconstruction is "America's unfinished revolution" remains true to this day.

Source: <http://www.umich.edu/~lawrace/disenfranchise1.htm>

### Additional Information:

- **The Grandfather Clause:** <http://www.blackpast.org/?q=aah/grandfather-clause-1898-1915>
- **Disenfranchisement After Reconstruction:** [http://en.wikipedia.org/wiki/Disfranchisement\\_after\\_Reconstruction\\_era](http://en.wikipedia.org/wiki/Disfranchisement_after_Reconstruction_era)

## *Brown v. Board of Education*

In the early 1950's, racial segregation in public schools was the norm across America. Although all the schools in a given district were supposed to be equal, most black schools were far inferior to their white counterparts.

In Topeka, Kansas, a black third-grader named Linda Brown had to walk one mile through a railroad switchyard to get to her black elementary school, even though a white elementary school was only seven blocks away. Linda's father, Oliver Brown, tried to enroll her in the white elementary school, but the principal of the school refused. Brown went to McKinley Burnett, the head of Topeka's branch of the National Association for the Advancement of Colored People (NAACP) and asked for help. The NAACP was eager to assist the Browns, as it had long wanted to challenge segregation in public schools. With Brown's complaint, it had "the right plaintiff at the right time." Other black parents joined Brown, and, in 1951, the NAACP requested an injunction that would forbid the segregation of Topeka's public schools.

The U.S. District Court for the District of Kansas heard Brown's case from June 25-26, 1951. At the trial, the NAACP argued that segregated schools sent the message to black children that they were inferior to whites; therefore, the schools were inherently unequal. One of the expert witnesses, Dr. Hugh W. Speer, testified that:

"...if the colored children are denied the experience in school of associating with white children, who represent 90 percent of our national society in which these colored children must live, then the colored child's curriculum is being greatly curtailed. The Topeka curriculum or any school curriculum cannot be equal under segregation."

The Board of Education's defense was that, because segregation in Topeka and elsewhere pervaded many other aspects of life, segregated schools simply prepared black children for the segregation they would face during adulthood. The board also argued that segregated schools were not necessarily harmful to black children; great African Americans such as Frederick Douglass, Booker T. Washington, and George Washington Carver had overcome more than just segregated schools to achieve what they achieved.

The request for an injunction put the court in a difficult decision. On the one hand, the judges agreed with the expert witnesses; in their decision, they wrote:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children...A sense of inferiority affects the motivation of a child to learn.

On the other hand, the precedent of *Plessy v. Ferguson* allowed separate but equal school systems for blacks and whites, and no Supreme Court ruling had overturned *Plessy* yet. Because of the precedent of *Plessy*, the court felt "compelled" to rule in favor of the Board of Education.

Brown and the NAACP appealed to the Supreme Court on October 1, 1951 and their case was combined with other cases that challenged school segregation in South Carolina, Virginia, and Delaware. The Supreme Court first heard the case on December 9, 1952, but failed to reach a decision. In the reargument, heard from December 7-8, 1953, the Court requested that both sides discuss "the circumstances surrounding the adoption of the Fourteenth Amendment in 1868." [10] The reargument shed very little additional light on the issue. The Court had to make its decision based not on whether or not the authors of the Fourteenth Amendment had desegregated schools in mind when they wrote the amendment in 1868, but based on whether or not desegregated schools deprived black children of equal protection of the law when the case was decided, in 1954.

On May 17, 1954, Chief Justice Earl Warren read the decision of the unanimous Court:

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does...We conclude

that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

The Supreme Court struck down the "separate but equal" doctrine of Plessy for public education, ruled in favor of the plaintiffs, and required the desegregation of schools across America.

The Supreme Court's *Brown v. Board of Education* decision did not abolish segregation in other public areas, such as restaurants and restrooms, nor did it require desegregation of public schools by a specific time. It did, however, declare the permissive or mandatory segregation that existed in 21 states unconstitutional. It was a giant step towards complete desegregation of public schools. Even partial desegregation of these schools, however, was still very far away, as would soon become apparent.

Source: <http://www.watson.org/~lisa/blackhistory/early-civilrights/brown.html>

### **Additional Information**

- ***Brown v. Board of Education* (includes Court's full decision):** [http://www.oyez.org/cases/1950-1959/1952/1952\\_1/](http://www.oyez.org/cases/1950-1959/1952/1952_1/)
- **Separate is not Equal:** <http://americanhistory.si.edu/brown/>
- **Brown Foundation:** <http://brownvboard.org/>
- **"With an Even Hand": *Brown v. Board* at 50:** <http://www.loc.gov/exhibits/brown/brown-brown.html>

Name \_\_\_\_\_

**Segregation Museum Notes**

**Directions:** As you view the museum exhibits, take notes about the important and/or interesting information from each exhibit.

<b>Slave Codes/Black Codes</b>
<i>Dred Scott v. Sandford</i>
<b>Reconstruction Amendments</b>
<b>Star Cars and Civil Disobedience</b>
<b>Supreme Court and Reconstruction</b>
<b>Reconstruction Legislation</b>

**Homer Plessy**

**Albion W. Tourgée**

**Louis Martinet**

**Jim Crow Laws & Life Under Jim Crow**

*Plessy v. Ferguson*

**Disenfranchisement**

*Brown v. Board of Education*

## **Plessy and Ferguson unveil plaque today marking their ancestors' actions**

*Published: Wednesday, February 11, 2009, 6:50 PM Updated: Tuesday, October 06, 2009, 3:38 PM*

By Katy Reckdahl, The Times-Picayune

Keith Plessy, right and Phoebe Ferguson stand on the railroad tracks at the corner of Royal and Press Streets on Wednesday where on June 7, 1892, Homer Plessy was arrested after boarding a train designated for whites only.

Today, *Plessy versus Ferguson* becomes Plessy and Ferguson, when descendants of opposing parties in the landmark U.S. Supreme Court segregation case stand together to unveil a plaque at the former site of the Press Street Railroad Yards.

Standing behind Keith Plessy and Phoebe Ferguson will be a large group of students, scholars, officials and activists who worked for years to honor the site where in 1892, Treme shoemaker Homer Plessy, a light-skinned black man, was arrested for sitting in a railway car reserved for white people.

People often think that his ancestor held some responsibility for the legalized segregation known as "separate but equal," said Keith Plessy, 52, a longtime New Orleans hotel bellman whose great-grandfather was Homer Plessy's first cousin. In actuality, Homer Plessy boarded that train as part of a carefully orchestrated effort to create a civil-rights test case, to fight the proliferation of segregationist laws in the South.

Keith Plessy first learned about his relationship to the case from his teachers at Valena C. Jones Elementary School, who called him to the front of the room as they discussed the case. But his textbooks simply listed the name of the case and its result: a half-century of "separate but equal" schools, drinking fountains and buses.

Phoebe Ferguson, 51, a documentary filmmaker, left New Orleans in 1967 but moved back after discovering her great-great-grandfather's role in the infamous legal fight.

Judge John Howard Ferguson ruled against Plessy from his bench in Orleans Parish Criminal Court. The judge was born in Massachusetts and had strong ties to abolitionists, she said. So she doesn't think he was a racist.

Still, Phoebe Ferguson can't quite get over the powerful impact his decision had on the black community, which would endure a half-century of government-sanctioned segregation.

"That a part of my family started Jim Crow is kind of a load to carry," she said. "I wish I could change that."

### **'A mixed-up time'**

Three years before Keith Plessy and Phoebe Ferguson met, students not far from the site of the former railroad yard, at Frederick A. Douglass Senior High School, began writing about Homer Plessy and other New Orleans civil-rights heroes. The students worked the past three years with the Crescent City Peace Alliance to recognize the 9th Ward site, helped by an \$11,000 grant from Transforma Projects New Orleans, said the Alliance's Reggie Lawson.

In a book published under the auspices of the school's writing program, *Students at the Center*, Demetrious Jones summed up the Plessy case:

"As you can see, 1892 was a mixed-up time. Someone had to do something fast. This is where the Citizens' Committee came in. This group of people mapped out a plan to challenge the Separate Car Act. They recruited Homer Plessy to get arrested, because they knew he could pass for white and that he didn't have any children to take care of. This was important, because at this time in New Orleans," she wrote, "he could have been killed."

### **Dedicated researchers**

A central figure behind today's event is Keith Weldon Medley, whose book "We As Freemen" details players on both sides of the *Plessy v. Ferguson* fight against segregation.



Medley wrote the text for the new plaque, just as he wrote the text for a plaque on Plessy's grave in St. Louis Cemetery. The Douglass students read his book to learn about the case. And Phoebe Ferguson and Keith Plessy consider him the midwife of their friendship because the two met at a book signing of Medley's in 2004.

Most of what they know about the case comes from Medley's years of research, the two say. Through Medley, Plessy met Bobby Duplissey, a relative from the white side of his family who had researched their ancestry all the way back to France.

Plessy, born in 1863 on St. Patrick's Day, grew up at a time when black people in New Orleans could marry whomever they chose, sit in any streetcar seat, and attend integrated schools, Medley said. But as an adult, those gains from the Reconstruction era eroded.

On any other day in 1892, Plessy could have ridden in the car restricted to white passengers without notice. According to the parlance of the time, he was classified "7/8 white."

In order to pose a clear test to the state's 1890 separate-car law, the Citizens' Committee in advance notified the railroad -- which had opposed the law because it required adding more cars to its trains.

On June 7, 1892, Plessy bought a first-class ticket for the commuter train that ran to Covington, sat down in the car for white riders only and the conductor asked whether he was a colored man, Medley said. The committee also hired a private detective with arrest powers to take Plessy off the train at Press and Royal streets, to ensure that he was charged with violating the state's separate-car law.

Everything the committee plotted went as planned -- except for the final court decision, in 1896. By then the composition of the U.S. Supreme Court had gained a more segregationist tilt, and the committee knew it would likely lose. But it chose to press the cause anyway, Medley said. "It was a matter of honor for them, that they fight this to the very end."

### **A beautiful friendship**

These days Keith Plessy and Phoebe Ferguson act as if they've been friends their entire lives. They ask about family members, track each other's work schedules. Through the newly formed Plessy and Ferguson Foundation for Education and Reconciliation, they hope to provide more depth to textbook writers' treatment of the Plessy case, create more historical markers for little-known figures and promote use of Louisiana history as a window into the past.

"You don't know American history until you know Louisiana history," Plessy said.

Even today, he predicted, many neighbors of the new marker, at Press and Royal streets, will be surprised to learn that the corner's nondescript span of railroad track was the backdrop for a significant event in this country's history.