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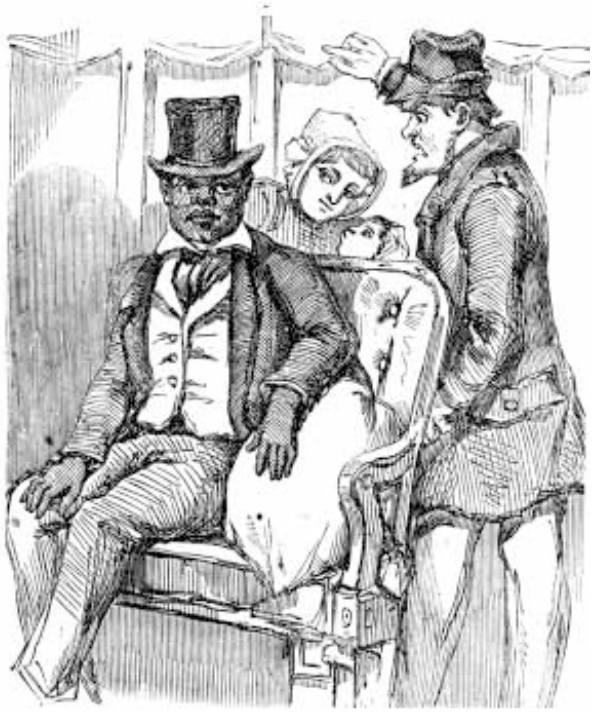
# Keeping Them Apart:

## *Plessy v. Ferguson* and the Black Experience in Post-reconstruction America

**A Unit of Study for Grades 8 –12**

**Jim Ruderman**

**Bill Fauver**



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**National Center for History in the Schools**

**University of California, Los Angeles**

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Cover Illustration: A free black man being expelled from a whites-only railway car. Library of Congress.

# Keeping Them Apart:

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**National Center for History in the Schools**

**University of California, Los Angeles**

# Acknowledgments

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Linda Symcox authored the original introductory material and was Project Director when the unit was first published. Jim Ruderman wrote the historical background information for the original unit. Gary B. Nash was the Supervising Historian and Tom Ingersoll was the Unit Editor. The Center also acknowledges the important contributions of the following to the original version of this teaching unit: Margaret McMillen for photo research and copyediting; Leticia Zermeno for copyright-research activities; Alexey Root for proofreading; and Pamela Hamilton for assistance in inputting and desktop publishing. Special appreciation is due to Brenda Thomas who created the desktop layouts and unit designs, and brought the publication to final completion.

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# Table of Contents

# Introduction

## Approach and Rationale

*Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America* is one of over sixty teaching units published by the National Center for History in the Schools that are the fruits of collaborations between history professors and experienced teachers of both United States and World History. The units represent specific issues and dramatic episodes in history from which you and your students can pause to delve into the deeper meanings of these selected landmark events and explore their wider context in the great historical narrative. By studying crucial turningpoints in history, the student becomes aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. We have selected issues and dramatic moments that best bring alive that decision-making process. We hope that through this approach, your students will realize that history in an ongoing, open-ended process, and that the decisions they make today create the conditions of tomorrow's history.

Our teaching units are based on primary sources, taken from government documents, artifacts, journals, diaries, newspapers, magazines, literature, contemporary photographs, paintings, and other art from the period under study. What we hope to achieve using primary source documents in these lessons is to remove the distance that students feel from historical events and to connect them more intimately with the past. In this way we hope to recreate for your students a sense of "being there," a sense of seeing history through the eyes of the very people who were making decisions. This will help your students develop historical empathy, to realize that history is not an impersonal process divorced from real people like themselves. At the same time, by analyzing primary sources, students will actually practice the historian's craft, discovering for themselves how to analyze evidence, establish a valid interpretation and construct a coherent narrative in which all the relevant factors play a part.

## Content and Organization

Within this unit, you will find: Teaching Background Materials, including Unit Overview, Unit Context, Correlation to the National Standards for History, Unit Objectives, and Introduction to *Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America*; A Dramatic Moment; and Lesson Plans with Student Resources. This unit, as we have said above, focuses on certain key moments in time and should be used as a supplement to your customary course materials. Although these lessons are recommended for use by grades 8-12, they can be adapted for other grade levels.

The Teacher Background section should provide you with a good overview of the entire unit and with the historical information and context necessary to link the Dramatic Moment to the larger historical narrative. You may consult it for your own use, and you may choose to share it with students if they are of a sufficient grade level to understand the materials.

## Introduction

The Lesson Plans include a variety of ideas and approaches for the teacher which can be elaborated upon or cut as you see the need. These lesson plans contain student resources which accompany each lesson. The resources consist of primary source documents, any handouts or student background materials, and a bibliography.

In our series of teaching units, each collection can be taught in several ways. You can teach all of the lessons offered on any given topic, or you can select and adapt the ones that best support your particular course needs. We have not attempted to be comprehensive or prescriptive in our offerings, but rather to give you an array of enticing possibilities for in-depth study, at varying grade levels. We hope that you will find the lesson plans exciting and stimulating for your classes. We also hope that your students will never again see history as a boring sweep of facts and meaningless dates but rather as an endless treasure of real life stories and an exercise in analysis and reconstruction.

# Teacher Background

## I. Unit Overview

This unit focuses on the African American experience in the critical years after Reconstruction. Using the landmark decision in *Plessy v. Ferguson* in 1896, the unit opens with an examination of conditions in black America during the post-Reconstruction years. Political opportunities or lack thereof; economic and class status; as well as social interaction will be illustrated through documentary material. In the *Plessy* case, the Supreme Court interpreted the Fourteenth Amendment guarantees of due process and equal protection to mean that "separate but equal" facilities could be provided on the basis of race.

By examining the Supreme Court's reasoning in *Plessy* within the historical context of the period, the student will be able to evaluate the successes and the failures of Reconstruction. Furthermore, by examining the Court's decision itself, students can investigate the nature of judicial review through an example of constitutional interpretation that stands in sharp contrast to the judicial activist character of the Warren Court's decision in *Brown v. Board of Education* nearly sixty years later. This unit challenges students to see the relationship between law and society and how prejudice works.

## II. Unit Context

This unit should be the concluding chapter of the story of Reconstruction to show the effects of the abandonment of federal Reconstruction. It could be used as a direct linking unit to the "Gilded Age" or "Progressivism," or as a background and introduction to the civil rights movement of the 1940s and 1950s.

## III. Unit Objectives

1. To evaluate the conditions of African Americans in the North and South between 1875 and 1900 using documentary and statistical evidence.

2. To analyze successes and failures of Reconstruction for freedmen.

3. To identify *Plessy v. Ferguson* as an organized resistance by African American leaders to segregation laws in the South.

4. To examine the Supreme Court's reasoning in its decision and contrast it with Justice Harlan's minority opinion.

5. To identify and discuss the concept of judicial review and its importance in American constitutional government.

## IV. Correlation to National History Standards

*Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America* provides teaching materials to support the National Standards for History, Basic Edition (National Center for History in Schools, 1996), Era 6, "The Development of the Industrial United States (1870-1900)." Lessons within this unit assist students in attaining Standard 2B by analyzing the role of new laws and the federal judiciary in instituting racial inequity.

This unit likewise integrates a number of Historical Thinking Standards. Students are challenged to examine a variety of evidence and reconstruct the literal meaning of a historical passage; to draw comparisons across in order to define enduring issues; to explain historical continuity and change; to obtain historical data from a variety of sources and uncover the social, political, and economic context in which it was created; and to evaluate the implementation of a decision by analyzing the interests it served and assessing the effects of the decision from a variety of perspectives.

## V. Introduction to *Keeping Them Apart:* Plessy v. Ferguson *and The Black Experience In Post-Reconstruction America*

Congressional Reconstruction of the southern states after the Civil War was undertaken by Congress when the former slaveowners appeared unwilling and unable to give up slavery. Northerners were angry when southern whites passed "black codes" in 1865 designed to maintain African Americans in a regulated laboring class based on color. The Radical Republicans then used the Freedmen's Bureau and the United States Army to suppress the codes and the Ku Klux Klan. After the southern states fulfilled requirements set by Congress to regain full rights in the republic, whites once again passed many laws by the 1890s that submitted African Americans to the racial regime of "Jim Crow."

Southern Democrats, who had taken control of state governments following Reconstruction, presented constant pressures on African American voters in the South. Despite attempts to reduce the political influence of African Americans, many African Americans voted and some held high office in southern states through the 1890s. The National Republican Party under its northern leaders stopped safeguarding African American voters. At the same time, conservative Southerners were deeply worried that white Populists were actively surmounting their heritage of racism and appealing to African Americans. The conservatives raised the cry of "Negro domination" and pollution of the white race. These men succeeded in passing highly restrictive literacy requirements for the right to register to vote. The laws were designed to allow many poor and illiterate whites to vote but not African Americans. Southern unions excluded African Americans. The lynching of African Americans became a serious problem again, as it had been immediately after the Civil War. African American schools were poorly funded. "Jim Crows" became even more extensive than the laws on the books suggest.

The Supreme Court declared its unwillingness to protect the civil rights of African Americans. In 1883, it nullified the main provisions of the last legislative act of the Reconstruction era, the Civil Rights Act of 1875, which had given equal rights to the use of inns, public transportation, theaters,

and other public facilities. This was only one of many similar decisions that permitted the construction of a deeply discriminatory regime.

In 1890, when the railroad act was passed, sixteen African American Congressmen remained in the Louisiana legislature. Once the *Plessy* decision was upheld by the Supreme Court, the number of registered African American voters in Louisiana plummeted from 130,334 in 1896 to 1,342 in 1904. African Americans no longer voted or held office anywhere in the South. Thus, they were unable to fight Jim Crow through the legal process.

## V. Lesson Plans

1. The Case of Homer Plessy

2. *De Jure* and *De Facto* Discrimination

3. A Courtroom Simulation

## Dramatic Moment

In 1887 Florida passed the first Jim Crow law separating the races on railroad cars. Other southern states followed suit. Despite protests by the African American community in New Orleans, the state legislature passed a similar law in 1890, the Louisiana Railway Accommodations Act. The following year, African Americans in New Orleans formed a Citizens' Committee to raise funds to test the constitutionality of the law. In a test case an African American, Daniel Desdunes, purchased a ticket in New Orleans on the Louisville & Nashville Railroad for passage to Mobile, Alabama. The Louisiana Supreme Court ruled that the separate but equal law was unconstitutional when applied to travelers on interstate carriers but upheld the state of Louisiana's right to segregate railroad cars on intrastate trains.

In another test case Homer Plessy bought a first-class ticket on an intrastate carrier, the East Louisiana Railroad, and was arrested when he refused to leave the "white only" car. Plessy was tried before Judge John Ferguson in criminal court in New Orleans. Plessy's attorney, Albion Tourgée, argued that the Louisiana law:

> . . . establishes an insidious distinction and discrimination between citizens of the United States, based on race, which is obnoxious to the fundamental principles of national citizenship, perpetuates involuntary servitude, as regards citizens of the colored race, under the merest pretense of promoting the comfort of passengers on railway trains, and in further respects abridges the privileges and immunities of the citizens of the United State, and the rights secured by the thirteenth and fourteenth amendments to the federal constitution.

Judge Ferguson rejected Tourgée's arguments and found Plessy guilty and imposed a twenty-five-dollar fine.

Tourgée appealed the decision to the State Supreme Court. Francis Nicholls, the Chief Justice of the Louisiana Court, two years earlier had signed the separate but equal law as governor of the state. The Court upheld the conviction but agreed to Tourgée's request for a writ of error thus opening the way for an appeal to the U.S. Supreme Court.

On May 18, 1896, the Court ruled against Homer Plessy in a 7-1 decision. [1] Writing the majority opinion of the Court, Justice Henry Billings Brown stated:

> . . . The information filed in the criminal District Court charged in substance that Plessy, being a passenger between two stations with the State of Louisiana, was assigned by officers of the company to the coach used for the race to which he belonged, but he insisted upon going into a coach used by the race to which he did not belong. Neither in the information nor plea was his particular race or color averred.

[1] Justice John Marshall Harlan dissented; Justice David Josiah Brewer did not participate.

The petition for the writ of prohibition averred that petitioner was seven eights Caucasian and one eight African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every right, privilege and immunity secured to citizens of the United States of the white race; and that, upon such theory, he took possession of a vacant seat in a coach where passengers of the white race were accommodated, and was ordered by the conductor to vacate said coach and take a seat in another assigned to persons of the colored race, and having refused to comply with such demand he was forcibly ejected with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated the . . . act [Railway Accommodation Act of 1890].

. . . A statute which implies merely a legal distinction between the white and colored races-a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color-has no tendency to destroy the legal equality of the two races. . . .

. . . We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. In the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. . . .

Source: 163 U.S. 537 In *Annals of America, Vol. 12, 1895-1904* (Chicago: Encyclopedia Britannica, 1976), pp. 92-95.

# Lesson One
# The Case of Homer Plessy

## A. Objectives

- To construct initial judgments about the society in which Homer Plessy lived and to appreciate the human dimension of a major historical event.
- To provide practice in using documentary analysis and interpretation.
- To discuss and evaluate the position of African Americans in post-Reconstruction southern society.

## B. Lesson Activities

(One Day)

1. Read to the students the Dramatic Moment. This story summarizes the case of Homer Plessy who will later be the defendant in the landmark legal decision of *Plessy v. Ferguson*. Ask the students to speculate on what might happen to Homer Plessy given what they know of post-Reconstruction southern society. Make sure that they understand that this was an organized and purposeful legal and political effort by African Americans to resist laws they considered to be unjust.
2. Distribute and have the students read Document A, "Protest of the American Citizens' Equal Rights Association of Louisiana Against Class Legislation."
3. Discuss with the entire class why primary source research is important. Some of the responses you may get might include:
   a. It is firsthand information.
   b. Allows them to investigate a problem for themselves.
   c. Makes the students "a part of the problem" and "a part of the solution."
   d. Allows students and teachers to challenge one another regarding the meaning of the material.

   Then discuss with the class why one must be careful with documents. Answers might include:
   a. They are a product of the person who has selected the documents.
   b. They are subject to the interpretative process of the student.
   c. The document may reflect the experiences and needs of the person who wrote it.

4. Divide the class into groups of 3-5 students. Pass out Worksheet 1, giving them a specific amount of time (about 10 minutes) to review the documents. Have them complete the worksheet based on Document A. Discuss with the class their findings and analyses, acknowledging and responding to legitimate differences. Ask the students if they agree or disagree with the following statement:

   "*The authors of this document should have used a different approach in stating their position.*"

   Make sure that they support their answers and identify weaknesses in the arguments presented in the document.

5. Homework Assignment:

   a. Distribute Document B.

   b. Have the students complete a Document Analysis for the reading (use Worksheet 1 again).

## C. Evaluating the Lesson

1. Discuss the following questions in class to check for understanding:

   a. On what basis does Booker T. Washington criticize the railroad segregation laws? Do you believe this is the most convincing way he might have approached this issue? Why or why not?

   b. Why does Booker T. Washington believe that "National legislation and other outside attempts fail"? What arguments might you make in response?

   c. Does Washington espouse segregation? Why or why not?

   d. How does Washington's response differ in tone and content to that of the African American leaders of the American Citizens' Equal Rights Association of Louisiana? Which arguments are the most persuasive? Why?

## Protest of the American Citizens' Equal Rights Association of Louisiana Against Class Legislation

(Primary Source)

To the General Assembly:

We, the undersigned American citizens, and citizens of the State of Louisiana, do most respectfully but earnestly protest against the passage of any class legislation now pending before the honorable body, for the following reasons:

That such legislation is unconstitutional, un-American, unjust, dangerous and against sound public policy.

There is no warrant in this Constitution of the State of Louisiana for the passage of any law establishing discrimination per se against any class of American citizens, while, on the contrary, that instrument, in letter and spirit, seems to protect, with a jealous care, all the essentials of equality.

The boast of the American people is that this government is based upon the self-evident truth, that all men are created equal, and has for some of its objects the establishment of justice and the insuring of domestic tranquility. It is then difficult to conceive how any caste legislation can maintain the sacredness of these truly American principles; we are rather inclined to the belief that any measure lacking the essential of justice is an unfortunate blow at those high conceptions which adorn the preambles of the Federal and State Constitutions and the Immortal Declaration of Independence.

We ground our protest further upon the high moral precept, that men should not do unto others what they do not wish should be done unto them.

We say that it is unjust, unchristian, to inflict upon any portion of the people the gratuitous indignities which take their motive and their bitterness from the dictates of an unreasonable prejudice. The people against whom such legislation is directed are respectable, useful and law-abiding; they represent, it should be remembered, a considerable percentage of the capital and almost all the labor of the State; they share the burdens of a common responsibility with their fellow-citizens and contribute by their special qualities and temperament to the honor, peace and dignity of the commonwealth. Will it be seriously contended that such a problematical proposition as the ethnical origin of color is a sufficient cause for a deliberate interference with settled rights? We do not think that citizens of a darker hue should be treated by law on different lines than those of a lighter complexion. Citizenship is national and has no color. We hold that any attempt to abridge it on account of color is simply a surrender of wisdom to the appeals of passion.

It strikes us that the immediate effects of such legislation would be a free license to the evilly-disposed that they might with impunity insult, humiliate and otherwise maltreat inoffensive persons, and espe-

cially women and children who should happen to have a dark skin. Will our legislators, in view of such probable consequences, make themselves purposely guilty of an act that would bring them on?

Besides, we believe that the colored people will be greatly disturbed when they see that in addition to their many other grievances is to be enacted that legal degradation which is to make of them passive objects of a system as unjustifiable as it would be unmerited.

Under such circumstances the promotion of good will among inhabitants of the same State would be almost impossible. And while we thus complain of class legislation in general, there are two bills in particular against which our objections are specially formulated. These bills provide for separate cars for the accommodation of white and colored people.

With all due respect, we must express our strongest condemnation against those two measures whose principle is vicious and a breeder of discord.

It cannot be said that such enactments are useful to the community, while they may be regarded as dangerous experiments in the line of legal abuses. We beg leave to observe that such measures becoming the law of the land would place the most innocent and the most defenseless at the mercy of the most brutal. The probable extent of such anticipated mischief must arouse in the breast of the persecuted a feeling of distrust.

It is hardly necessary to remark that such legislation is against good public policy, as it is in direct contradiction with the well recognized principle that every act of the government must rest upon the authority that it is intended for the common good.

We further beg leave to remind the General Assembly that the best people of the South are not in favor of such legislation.

It was but the other day that the Legislature of the historic State of South Carolina-one of the original thirteen-voted down a bill similar to the two above mentioned and now pending before your honorable body.

We point to the further fact that the Legislature of the empire state of the South, Texas, a few months ago, declined to enact a law on the subject matter of said bills.

And with pride do we recall that our own cherished Louisiana, the mother of us all, through her Constitutional Convention of 1879, in which body grandly figured her ablest sons, rejected all propositions establishing distinction among her citizens, and by the adoption of a uniform and exemplary bill of rights emphatically fixed the status of all on the basis of the quality of rights.

In the name of God and the constitution, Federal and State, in the name of justice, reason and equity, in the name of peace, in the name of an enlightened and Christian civilization, we humbly trust that

our protest may be heeded by the loyal hearts of our legislators, and that the chalice of political bitterness may be snatched from the grasp of intolerant persecution and made to melt into the sacred fires of patriotic mercy!


P.B.S. Pinchback
Detail from "Distinguished Colored Men"
New York: A. Muller, 1883.
Library of Congress, LC-USZC4-1561 (5-10)

*P. B. S. Pinchback,*
*A. E. P. Albert,*
*A. S. Jackson,*
*S. T. Clanton,*
*T. A. Wilson,*
*E. Lyon,*
*J. T. Newman,*
*I. E. Mullon,*
*T. B. Stamps,*
*Paul Trevigne,*
*James Lewis,*
*Laurent Auguste,*
*R. L. Desdunes,*
*L. A. Martinet,*
*J. F. Marshall,*
*W. S. Wilson,*
*J. L. Minor*

Committee A. C. E. R. A.
New Orleans, May 24, 1890

Source: Memorial, Official Journal of the House of Representatives of the State of Louisiana, 1890.

# Document Analysis

I. Type of Document: (Check one)

| | | | | | |
|---|---|---|---|---|---|
| _____ | Newspaper | _____ | Map | _____ | Advertisement |
| _____ | Letter | _____ | Telegram | _____ | Congressional Record |
| _____ | Patent | _____ | Press Release | _____ | Census Report |
| _____ | Memorandum | _____ | Report | _____ | Other |

II. Date(s) of document:

III. Author (or creator) of the document:

Position (Title):

IV. For what audience was the document written?

V. Document information: (There are many possible ways to answer A-E.)

A. List three things the author said that you think are important:

1.

2.

3.

B. Why do you think this document was written?

C. What evidence in the document helped you to know why it was written? Quote from the document.

D. List two things the document tells you about life in the United States at the time it was written.

E. Write a question to the author which is left unanswered by the document.

## Booker T. Washington's Letter to the Editor of the *Montgomery Advertiser*

(Primary Source)

Tuskegee, Ala., April 24, 1885

Editor *Advertiser*: Judging from some of your past utterances that you are in favor of justice being shown the colored man on railroads, I am encouraged to write the following for insertion in your paper. Having to some extent noticed the position of many of the county papers relative to the subject, I am glad to know that they, too, are outspoken in condemnation of the wrong which colored railroad passengers are made to suffer. In fact, I have not conversed with a single intelligent, progressive white man who has not shown the right spirit in the matter.

I wish to say a few words from a purely business standpoint. It is not a subject with which to mix social equality or anything bordering on it. To the negro it is a matter of dollars and cents. I claim that the railroads in Alabama do not provide as good accommodations for the colored passengers as those furnished white passengers for the same money and that the fare is not first class as claimed on the face of the ticket.

My reasons for the above assertions are (a) that in most cases the smoking car and that in which colored people are put are the same; (b) when not put directly into the smoking car they are crammed into one end of a smoking car with a door between that is as much open as closed, making little difference between this and the smoking car; (c) on some of the roads the colored passengers are carried in one end of the baggage car, there being a partition between them and the baggage or express; (d) only a half coach is given to the colored people and this one is almost invariably an old one with a low ceiling and it soon becomes crowded almost to suffocation and is misery to one knowing the effects of impure air. The seats in the coach given to colored people are always greatly inferior to those given the whites. The car is usually very filthy. There is no carpet as in the first class coach. White men are permitted in the car for colored people. Whenever a poorly dressed, slovenly white man boards the train he is shown into the colored half coach. When a white man gets drunk or wants to lounge around in an indecent position he finds his way into the colored department.

Plainly this treatment is not equivalent for value received. Why should the railroads be allowed to make a discrimination that no other business man or business corporation makes? I enter a dry goods store in Tuskegee, buy a yard of calico, I am shown to just as good a counter, am treated just as politely by the clerk and for the same money, receive just as good (though a separate) piece of calico as the white man. I subscribe for the *Advertiser*. For the same money you send me a paper printed just as nicely, done up as well and that costs you just as much in every way as the one sent a white subscriber. A lawyer is engaged to take a case for me. For the same money he seats me in his office, talks to me just as pleasantly and works for me just as hard before the courts as for a white client. Why should the railroads be an exception to these rules?

This unjust practice toward the negro cuts off thousands of dollars worth of negro travel every year, while just treatment of the negro would stop no white travel. There are ten times when I would take my wife or a lady friend on the railroad that I only do so once, and then am compelled to, because I shudder at the mere thought of the accommodations. Numbers of other colored men have expressed the same feeling. The mere thought of a trip on a railroad brings to me a feeling of intense dread and I never enter a railroad coach unless compelled to do so. On account of these discriminations the New Orleans Exposition has lost many dollars. Since

the Exposition opened I have asked many colored people in Northern States if they were going to attend, but in almost every case the answer came that they would like to do so, but feared the railroads.

If the railroad officials do not want to let us enter the first-class car occupied by white passengers, let them give us a separate one just as good in every particular and just as exclusive, and there will be no complaint. We have no desire to mix. Even in Philadelphia and other Northern cities where there are no social barriers, the colored people have their own churches, schools, hotels, &c., showing that there is no disposition on the part of the colored to obtrude themselves on the whites when they can receive equal, separate accommodations. I have in mind the railroad running between Selma & Marion, which furnishes a coach of the same length and height and just as good in every detail as that furnished the whites. Running in one direction the whites use one of the coaches and running in the opposite direction the colored passengers use the one previously used by the whites. There is never any discrimination on this road. A party of colored people recently traveling over it were so well pleased with this feature, and the gentlemanly bearing of the conductor, that they passed a resolution of thanks to be sent to the controllers of the road. There are a few other roads in the South whose treatment of colored passengers can be commended.

If the railroads will not give us first class accommodations, let them sell us tickets at reduced rates. This will be somewhat in keeping with the laws of honest trade.

The railroad officers make the mistake of supposing because many of the colored people are untidy, careless of their habits and contented to ride in a car with chain gang convicts that all are to be thus classed.

The writer is in favor of assortment and discrimination, for there are many colored people with whom he does not care to ride, but let assortment be made on the grounds of dress and behavior.

In Virginia, where colored people are not prohibited from riding in a first-class car, I have always noticed that colored passengers when not well dressed, voluntarily take the second class car.

I have written thus plainly because I love the South, had rather live here than in the North, and expect to remain here. My faith is that the influences which are going to permanently right such wrongs are going to come from within the South and from southern people. National legislation and outside attempts fail.

I appreciate the fact that customs that were years in forming cannot be blotted out in a day, and I am willing to exercise a wise patience, but on this subject I believe that southern public opinion is ripe for the righting of this wrong.

Regardless of the opinions of wild theorists, the negro and the white man are to remain in the South side by side. Under God I believe we can do so without these jars in our business relations. We can be as separate as the fingers, yet one as the hand for maintaining the right.

B. T. Washington
Montgomery *Advertiser*, Apr. 30, 1885.

Library of Congress, LC-USZ62-25624 (6-2)

Booker T. Washington
ca. 1890

# Lesson Two
# *De Jure* and *De Facto* Discrimination

## A. Objectives

- To analyze race relations in the South through an examination of discriminatory legislation passed in the post-Reconstruction years.
- To understand that discrimination was both *de facto* (not legislated) and *de jure* (legislated) in southern society.
- To appreciate the elimination of *de jure* discrimination in northern states, although *de facto* discrimination and continuing social strains between the races continued in that region.
- To compare and contrast race relations in the two societies.

## B. Lesson Background Materials

"Black Codes" were revisions of earlier slave codes passed by southern states immediately after the Civil War to regulate the labor and the social life of the freedmen. The laws were intended to resurrect southern society as it had existed before the war. The codes angered Northerners and convinced them to support Radical Reconstruction, which promoted African American freedom. However, as the "Radical" governments established by Congress in the rebel states began to be replaced by "Home-Rule" governments, many of these black codes began to reappear in one form or another. Document C is "A Collection of Restrictive Labor Laws" passed in in the years after the end of Reconstruction. Combined with the transportation restrictions analyzed in Document B, students will gain insight into the restrictive and discriminatory nature of southern society.

## C. Lesson Activities (Two Days)

1. Distribute Document C.

The following, provided for the teacher's convenience, is a narrative and summation of the laws presented in Document C.

I. "Enticement" laws: Established the proprietary claims of employers to "their" Negroes by making it a crime to hire away a laborer under contract to another employer.

II. Emigrant Agent Laws: Assessed prohibitive license fees against those who made their living by moving labor from one state to another. In antebellum days slave

traders prospered by arranging the relocation of slaves throughout the South to meet demands for labor where slaves were in short supply. Following emancipation, emigrant agents served as brokers who represented a menace to white employers, who feared the loss of their workers to "enticement."

III. Vagrancy Laws: Enabled police to round up African Americans in times of labor scarcity while providing employers with a coercive tool that might be used to keep workers on the job.

IV. Criminal Surety System: Gave to freed persons jailed for vagrancy or any other petty crime an "opportunity" to sign a voluntary labor contract with his former employer or some other white person who agreed to post bond for release of the vagrant.

V. Contract Enforcement Statutes: Virtually legalized peonage. The Peonage Act (1867) had made it illegal to hold an individual against his or her will in order to satisfy a debt. Contract enforcement statutes were being used to compel laborers to work even without a claim of debt, as in cases where it was made a criminal offense to break a labor contract. In other words, an African American worker under one of these contracts could not say, "*I quit.*"

2. Ask the following questions of the students regarding each law individually:

   a. What is the object of this law?

   b. If you are an employer what are your obligations? If you are a laborer what are your obligations?

   c. Are there any penalties for failure to comply with the law?

3. When you have completed the discussions regarding all the laws ask the students to come to conclusions on the following:

   a. Why did southern whites feel it was necessary to pass these types of restrictive laws?

   b. If you were an African American in southern society what options might you have in attempting to circumvent these laws?

   c. Is there a constitutional argument that could be employed to render these laws unconstitutional?

4. Homework Assignment

Teacher Instructions

Document D, the Boston School Board ruling in 1846 on the question of segregated schools will show students that white racism was deeply rooted in the North; but some northern states did abolish these types of laws. Between 1846 and 1855, this issue was at the forefront of Boston politics. In 1849, the *Roberts* case came before the Massachusetts courts. This case called for a decision regarding the legality of segregated schools. Senator Charles Sumner eloquently argued against segregation, foreshadowing arguments made over 100 years later in *Brown v. Board of Education*. Sumner decried the pretense that you can have separate schools that are equal. By their very nature, they were unequal. Sumner lost the case; however, in 1855, the Massachusetts legislature eliminated segregated schools.

When the students return the next day, discuss their findings. Inform them of the realities of the situation. Ask them why Boston, a northern city in a state which had outlawed slavery many decades before, would have these types of laws on the books up until shortly before the Civil War.

Distribute Document D, explaining only that these are the rulings of a local governmental body. Ask students to come to conclusions on the following questions after reading the document at home.

a. With what aspect of life do these rulings deal?

b. Where do you believe these rulings were made?

c. Approximately what year were these rulings handed down?

5. Pass out Document E, an outline of the passage of anti-discrimination laws in the state of Pennsylvania, a fairly typical major northern state. It was one of the last states legally to desegregate its schools in the North and lagged behind other northern states in the passage of civil rights legislation. However, by 1900 most discriminatory laws had been struck down in all the northern states.

6. Ask the class the following questions:

   a. Why did the North choose to eliminate racial standards in public schooling and in access to facilities?

   b. Imagine yourselves sitting in the Pennsylvania legislature. How might you argue in support of these pieces of legislation? What arguments might have been ventured in opposition?

c. Is the elimination of de jure (legislated) segregation enough to guarantee the rights of citizens? Why or why not?

7. Distribute Document F, "Persecution of Negroes," a description of New York's Hell's Kitchen race riots of August 1900, as recorded by Frank Moss, attorney for the Citizens' Protective League. The League, an organization formed to ensure justice for African Americans, emerged in the aftermath of riots following the death of a white police officer at the hands of an African American male.

   Rioting began on August 15, the day of the officer's funeral. Crowds harassed and beat African Americans in the streets, in many cases, as police looked on. When requests for aid were made the police answered with brutal force. Fifteen patrol wagons loaded with African Americans were taken to the police station. Upon arraignment, Judge Cornell said, "I don't see why you have no white men here. . . . I'd like to see some of the people who really started this riot in court."

8. Distribute Document G, "Copy of an Appeal to the Mayor," written by W. H. Brooks, pastor of neighboring St. Mark's Church. This document is a plea to city officials for an internal investigation of police procedures, city council action, and justice for the accused.

   In discussion, students may want to venture, once again, into the nature and causes of racism. Teachers are encouraged to examine the entire collection of depositions for use in an extended exploration of race relations in the north at the turn of the century.

## C. Evaluating the Lesson

Check for understanding by leading a discussion that addresses the following two questions:

a. Based on the documents, to what extent did northern and southern societies differ in their treatment of black Americans?

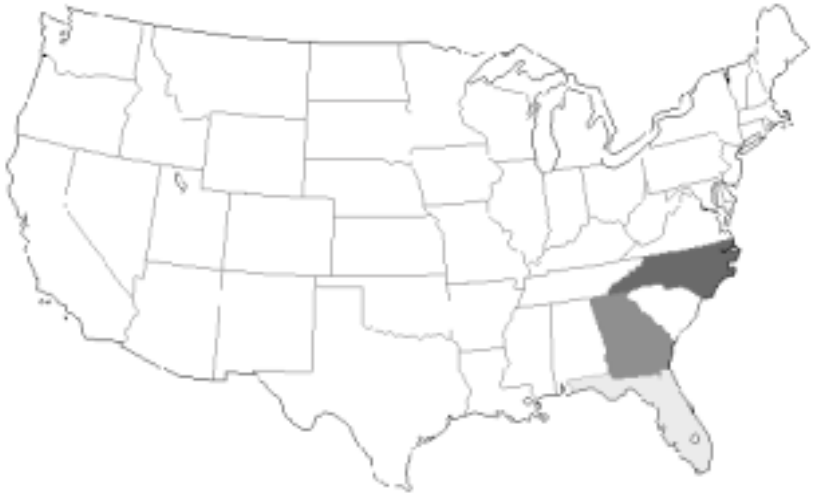
b. Why did white Americans behave in the ways they did after Reconstruction?


"Separate but equal" laws persisted into the 20th century, as evidenced by this separate "Colored Adm[ission]" entrance photographed in 1939.

Belzoni, Mississippi
Library of Congress

# A Collection of Restrictive Labor Laws

(Primary Sources)



Pages 22-26 are a collection of restrictive state labor laws from Florida, Georgia and North Carolina.

# A Collection of Restrictive Labor Laws

I. An act to regulate employment of labor for certain counties.

The General Assembly of North Carolina do enact:

Misdemeanor to hire, emply, harbor, or detain employee of another, who has contracted for a fixed period of time.

Penalty.

Section 1. Any person, firm or corporation who shall knowingly hire, employ, harbor or detain in his own service any servant, employee, or wage hand of any other person, firm or corporation, who shall have contracted in writing, or orally, for a fixed period of time to serve as his employer, and who shall have left the service of his employer, in violation of his contract, the person, firm or corporation so offending shall be guilty of a misdemeanor, and fined or imprisoned or both, at the discretion of the Court, as shall be civilly liable in damages to the party so aggrieved.

Sec. 2 That this act shall apply to the following counties: Beaufort, Edgecombe, Person and Pitt, Washington and Warren, Vance, Pender, Halifax, Guilford, Granville, Hertford and Caswell.

Sec. 3 That this act shall be in force from and after its ratification. In the General Assembly read three times, and ratified this the 14th day of March, A.D. 1901.

-North Carolina Public Laws, 1901

II. Emigrant Agents

No. XIV. (O. No. 46.)



An Act to prohibit Emigrant Agents from plying their vocation in this State without first obtaining a license therefor, and for other purposes.

Emigrant Agents shall obtain license

Section I. Be it enacted by the General Assembly, That from and after the passage of this Act, no person shall carry on the business of an Emigrant Agent in this State, without having first obtained a license therefor from the Ordinary of each County in which said business is intended to be carried on.

"Emigrant Agent" defined

Sec. II. Be it further enacted, That the term "Emigrant Agent," as contemplated in this Act, shall be construed to mean any person engaged in hiring laborers in this State, to be employed beyond the limits of the same.

Fee for license

Sec. III. Be it further enacted, That any person shall be entitled to a license, which shall be good for one year, upon payment into the Treasury of said County of one hundred dollars; and the exhibition to the Ordinary of the receipt of the County Treasurer.

Punishment for failure to obtain license

Sec. IV. Be it further enacted, That any person doing the business of an Emigrant Agent, without first having obtained such license, shall be guilty of a misdemeanor; and, upon conviction in any court of competent jurisdiction, shall be punished as prescribed in Section 4310 of the Code of Georgia.

Sec. V. Repeals conflicting laws.

Approved February 16, 1876
Georgia Acts, 1876.

III. CHAPTER 1,467 [No. 4.]

AN ACT to punish Vagrants and Vagabonds.

Vagrants to be arrested and compelled to labor.

Section 1. Be it enacted by the Senate and the House of Representatives of the State of Florida in General Assembly convened, That every able-bodied person who has no visible means of living, and shall not be employed at some labor to support himself or herself, or shall be leading an idle, immoral or profligate course of life, shall be deemed to be a vagrant, and may be arrested by warrant issued by any Justice of the Peace, or Judge of the County Criminal Court, and bound in sufficient surety for his or her good behavior and future industry for one year, and upon his or her refusing or failing to give such security, he or she may be held or committed for trial before the Criminal Court of the county, and if convicted before said Court, shall be punished by being sentenced to labor or imprisonment for a term not exceeding twelve months, or by whipping not exceeding thirty-nine stripes, or being put in the pillory not exceeding one hour, or by whipping and being put in the pillory, at the discretion of the jury; and if such person shall be sentenced to labor, the Sheriff or other officer of said Court shall hire out such person for the term to which he or she shall be sentenced, not exceeding twelve months as aforesaid, and the proceeds of such hiring shall be paid into the county Treasury.

Punishment.

Minor vagrants to be bound apprentice.

Sec. 6. Be it further enacted, That if such person convicted as a vagrant be a minor, the court before whom he or she shall be convicted, shall bind him or her apprentice to some useful trade or occupation, not beyond the time when he shall arrive at twenty-one years of age, if a male, and if female not beyond the time when she shall arrive at eighteen years of age, and during such time such minor vagrants shall in all respects be subject to the laws regulating apprentices.

*Laws of Florida*, 1865.

IV. Convicts

No. XXV. (O. No. 283.)

An Act to authorize the hiring of a certain class of Convicts to private citizens, to prescribe the conditions thereof, and to regulate the relations between the parties.

Convicts may hire out in certain cases.

13. Section I. Be it enacted, etc., That when any person is convicted of any crime or misdemeanor, the punishment whereof, according to the sentence of the Court under the law, is fine or fine and costs, or costs with an alternative imprisonment for a certain term, in default of payment, it shall be lawful for such convict to hire himself or herself to any citizen of this State, who pays the amount of said sentence, for the prescribed term, by an agreement in writing signed by the parties in the presence of and with the written approval of the presiding Judge, which agreement shall express the kind of labor to be performed, and the place of performance, and when thus executed, expressed and approved, shall be entered on the minutes of the Court.

Terms of.

Agreement, etc., approved by Judge.

Entered on minutes.

*Georgia Acts,* 1874.

V. Contracts of Persons of Color.

Sec. 2. AND WHEREAS, It is essential to the welfare and prosperity of the entire population of the State that the agricultural interest be sustained and placed upon a permanent basis*: It is therefore enacted*, That when a person of color shall enter into a contract as aforesaid, to serve as a laborer for a year, or any other specified term, on any farm or plantation in this State, if he shall refuse or neglect to perform the stipulations of his contract by willful disobedience of orders, wanton impudence, or disrespect to his employer or his authorized agent, failure or refusal to perform the work assigned to him, idleness or abandonment of the premises of the employment of the party with whom the contract was made, he or she shall be liable, upon the complaint of his employer, or his agent, made under oath before any Justice of the Peace of the county, to be arrested and tried before a criminal court of the county, and upon conviction shall be subject to all the pains and penalties prescribed for the punishment of vagrancy: Provided, That it shall be optional with the employer to require that such laborer be remanded to his service, instead of being subjected to the punishment aforesaid: Provided, further, That if it shall on such trial appear that the complaint made is not well founded, the court shall dismiss such complaint, and give judgment in favor of such laborer, against the employer, for such sum as may appear to be due under the contract, and for such damages as may be assessed by the jury.

Persons of color failing or refusing to fulfill contract how dealt with.

*Laws of Florida*, 1865.

## The Boston School Board Ruling on Segregated Schools, 1846

(Primary Source)

In applying these principles to the case of colored children we maintain,

1. That their peculiar physical, mental and moral structure, requires an educational treatment, different, in some respects, from that of white children. Teachers of schools in which they are intermingled, remark, that in those parts of study and instruction in which progress depends on memory, or on the imitative faculties, chiefly, the colored children will often keep pace with the white children; but, when progress comes to depend chiefly on the faculties of invention, comparison, and reasoning, they quickly fall behind.

2. That the number of colored children, in Boston, is so great, that they can be advantageously placed in separate schools, where all needful stimulus, arising from numbers and competition, may be felt, without their being degraded or discouraged.

3. That they live so compactly, that in very few (if in any) cases, is it at all inconvenient to attend the special Schools provided for them.

4. That the facts, connected with the origin and history of these Schools, show, that, without them, the colored people would have remained ignorant and degraded, and very few would have been found in the Schools.

5. That if these special Schools were now abolished, the number of colored children in the Public Schools would be greatly diminished, while serious injury would also be done to the other Schools, and no benefit would result.

6. That the majority of the colored, and most of the white people, prefer the present system.

As, then, there is no statute, nor decision of the civil Courts, against classifying children in schools according to a distinction in races, color, or mental and physical peculiarities, the Committee believes that we have the right to classify on these principles; nor do we believe, that, by so doing, we defeat the intent, or violate the spirit, of the law, the Constitution, or the invaluable common-school system established by our fathers; nor in any way infringe the rights of the colored child, or degrade the colored people. These Schools were established for their special benefit: for the same reason we would have them vigorously sustained. No man, colored or white, who understands their real value to the colored people, would seek their destruction.

While, therefore, your Committee propose no change in the policy of this Board, they recommend the adoption of the annexed Resolution, as expressive of their opinions.

Respectfully submitted,

WILLIAM CROWELL,
JOSEPH W. INGRAHAM,
DAVID KIMBALL

Resolved, That, in the opinion of this Board, the continuance of the separate Schools for colored children, and the regular attendance of all such children upon those Schools, is not only legal and just, but is best adapted to promote the education of that class of our population.

*Boston School Board Ruling*, 1846.

National Archives NWDNS-111-B-2602

Hon. Charles Sumner
In 1849, the *Roberts* case challenged this 1846 ruling by the Boston School Board. Sumner argued against school segregation, but lost the case.

# Anti-discrimination Laws Enacted in Pennsylvania

(Primary Source)

To the school laws of this commonwealth and to abolish all distinction of race or color in the public schools thereof.

Distinctions in schools by reason of race or color unlawful.

Section 1. Be it enacted, &c., That hereafter, it shall be unlawful for any school director, superintendent or teacher to make any distinction whatever, on account of, or by reason of the race or color of any pupil or scholar who may be in attendance upon, or seeking admission to, any public or common school, maintained wholly or in part under the school laws of this commonwealth.

Section twenty-four, act 8th May, repealed.

When act to take effect.

Section 2. That the twenty-fourth section of an act of assembly, approved the 8th day of May, Anno Domini, one thousand eight hundred and fifty-four, entitled "An act for the regulation and continuance of a system of education by common schools," which section is as follows: "That the directors or controllers of the several districts of the state, are hereby authorized and required to establish within their respective districts, separate schools for the tuition of negro and mulatto children, whenever such schools can be located as to accommodate twenty or more pupils; and whenever such separate schools shall be established, and kept open four months in any year, the directors or controllers shall not be compelled to admit such pupils into any other schools of the district: Provided, That in cities or boroughs, the board of controllers shall provide for such schools out of the general funds assessed and collected by uniform taxation for educational purposes," be and the same is hereby repealed.

Section 3. This law shall take effect on the fourth day of July, ensuing the passage thereof.

Approved-The 8th day of June, A.D. 1881
HENRY M. HOYT.

*Pennsylvania Law,* 1881.

NO. 72.

AN ACT

To provide civil rights for all people, regardless of race or color.

Refusal to accommodate, &c., any person on account of race or color declared a misdemeanor.

Section 1. Be it enacted, &c., That any person, company, corporation, being owner, lessee or manager of any restaurant, hotel, railroad, street railway, omnibus line, theater, concert, hall or place of entertainment, or amusement, who shall refuse to accommodate, convey or admit any person or persons on account of race or color over their lines, or into their hotel, or restaurant, theater, concert, hall or place of amusement, shall upon conviction thereof, be guilty of a misdemeanor, and be punished by a fine not less than fifty dollars nor more than one hundred dollars.

Approved: The 19th day of May, A.D. 1887.
JAMES A. BEAVER.

*Pennsylvania Law*, 1887.

# Persecution of Negroes

By Roughs and Policemen, in the City of New York, August, 1900.
Statement and Proofs Written and Compiled by Frank Moss and
Issued by the Citizens' Protective League.
(Primary Source)

Statement of the Persecution.

The riots and persecutions described in this pamphlet occurred mainly in the 20th Police Precinct, which is under the command of Acting Captain John Cooney, and within the jurisdiction of Inspector Walter L. Thompson. Chief William S. Devery resides in the precinct, near the scene of the disorder.

New York Policeman,
circa 1900
Detail from National Archives,
NWDNS-30-N-49-1481

The district has a large colored population, and mixed with it are many dissolute and lawless white persons.

On August the 12th last a Negro named Arthur Harris was with his wife at 41st Street and 8th Avenue. He says that he left her to buy a cigar, and when he returned he found her in the grasp of a man in citizen's dress. This man was a police officer, named Robert J. Thorpe, who had arrested her, as he claimed, for "soliciting." Harris says that he did not know Thorpe was an officer, and that he attempted to rescue his wife. The policeman struck Harris with his club, and Harris retaliated with his penknife, inflicting a mortal wound, and then ran away.

Thorpe was attached to the 20th Precinct, and was much liked by his comrades. Policemen thronged his home, and his funeral, on August 16th, was attended by Chief Devery, Inspector Thompson, and other officials.

Harris, the murderer, had disappeared, and many policemen who were interested in Thorpe were seized with a desire of vengeance on Negroes generally. During the day of the funeral there were rumors of coming trouble, and those colored people who have illicit dealings with the police keepers of gambling, disorderly, and badger houses seeing the signs of coming trouble, closed their places and kept off the streets. Several officers told informants of mine that they were going to punish the Negroes that night. There are numerous gangs of rowdies in the district who are hostile to Negroes and friendly with the unofficial powers that are now potent in police affairs. There was an understanding between the forces that night that resulted in the holding of the streets for hours by crowds of roughs who raced up and down Broadway, 7th and 8th Avenues, and the side streets from 34th to 42nd Streets in pursuit of Negroes, and were not attacked by the police except in one or two cases where they invaded Broadway hotels hunting for colored men.

The unanimous testimony of the newspaper reports was that the mobs could have been broken and destroyed immediately and with little difficulty. In many instances of brutality by the mob policemen stood by and made no effort to protect the Negroes who were assailed. They ran with the crowds in pursuit of their prey; they took defenseless men who ran to them for protection and threw them to the rioters, and in many cases they beat and clubbed men and women more brutally than the mob did. They were absolutely unrestrained by their superior officers. It was the night sticks of the police that sent a stream of bleeding colored men to the hospital, and that made the station house in West 37th Street look like a field hospital in the midst of battle. Men who were taken to the station house by officers and men in the station house were beaten by policemen without mercy, and their cries of distress made sleep impossible for those who lived in the rear of the station house.

Colored men being denied official protection, many of them obtained weapons, and if they were found armed, or if revolvers were found in their houses, then official brutality was redoubled.

The tumult of August 15th was repeated on a smaller scale on the night of the 16th, but public attention had been directed to the shameful conduct of our "guardians of the peace," and the precinct swarmed with reporters and sightseers. Then the dilatory officials speedily quelled the riot and ended the punishment of the Negroes.

In the courts many false charges were made by policemen; and although some Negroes were discharged by the magistrates, others were convicted and punished on the false testimony of their accusers. One magistrate commented severely on the comparatively small number of white men that were arraigned before him for rioting.

Had a force of regular soldiers been sent to quell such a disturbance, and had it failed so utterly and so long as did the police, and had the soldiers abandoned their duty, and vied with the roughs in beating the men whom they should have protected, undoubtedly some guilty privates would have been punished but the severest penalty would have fallen on their incompetent or derelict commanders. The commanders in this case were Acting Captain Cooney, Inspector Thompson, and Chief Devery.

The newspapers told of the shocking outrage, and printed many specific cases of cruelty, giving the addresses of the victims and the circumstances of their persecution. By this and other means the Police Commissioners and the Mayor were fully apprised of the facts. There was no suspicion of politics in the universal demand that went up for a prompt and efficient investigation and for the severe punishment of the offenders. This request was unheeded, until the acting Mayor called on the Police Commissioners to investigate the conduct of their subordinates. The Commissioners delayed, knowing full well how such cases deteriorate by delay, and after several weeks announced that they would investigate.

The colored people of the city, realizing their unexpected danger as a race, and discovering the surprising unwillingness of the city authorities to punish their assailants and to protect them in the future, formed "The Citizens' Protective League." This society and the Society for the Prevention of Crime and the City Vigilance League communicated with the Mayor in writing and urged him to hold an investigation or to direct the Commissioner of Accounts to hold one for him. His answer was that the whole matter was in the hands of the Board of Police. A number of Negroes who had been injured retained Israel Ludlow, Esq., to bring suits against the city for damages in-

flicted on them by the mob. He filed with the Police Commissioners the affidavit of William J. Elliott, who had been clubbed in the station house. The Police Board began its "investigation" by calling Elliott and his witnesses on the 7th of September. The examination of witnesses was conducted by the President of the Board, Bernard J. York, and, with the approval of the Board, he refused to give subpoenas to Mr. Ludlow, and refused to allow him or any other lawyer to examine or cross-examine any witnesses, or to suggest any step to take. Elliott and all other colored witnesses were examined by the President as hostile parties, and their testimony was controverted by the policemen who were called at once and were carefully nursed and led by him. Glaring discrepancies and disagreements in their testimony were passed over in spite of specific protests by Mr. Ludlow. The writer appeared on behalf of the societies that had memorialized the Mayor, and filed a complaint of inefficiency and neglect of duty against the Captain, the Inspector, and the Chief of Police, and announced that he had much testimony to offer on the specifications, but insisted on his right to examine his own witnesses and to cross-examine the police witnesses. These rights were emphatically denied, and the complaint was disdainfully pigeonholed.

The Protective League separately asked the Mayor for justice; he responded that the whole matter was with the Police Board, and he made the same response to Mr. Ludlow, who complained to him of the farce that was being enacted at Police Headquarters. The hearing was continued several days. Witnesses were examined superficially in eight cases of cruelty by policemen, and were controverted by double the number of policemen, and it was suddenly announced that the hearings were closed. Claims of sixteen Negroes against the city were then on file in the Comptroller's office, the names and addresses of many more victims had appeared in the newspapers, and the writer had announced that he had in his possession over forty affidavits of police brutality. The "investigation" was a palpable sham.

At this date not a single complaint has been preferred by the Chief, the Inspector, the Captain, or the Commissioners against any police brutality or neglect of duty during the riots.

On September 12th a great meeting was held at Carnegie Hall to protest against the brutality and against the failure of the city authorities to act, and take measures for the prevention of such outbreaks in the future. Fully thirty-five hundred people attended, and listened to addresses by Rev. R. S. MacArthur, D. D., Rev. D. W. Cook, D. D., Rev. C. T. Walker, D. D., Rev. W. H. Brooks, D. D., Rev. Bishop W. B. Derrick, D. D., Miss M. R. Lyons, Hon. D. M. Webster.

A subscription was started, and measures were taken to make the Citizens' Protective League a permanent and a vital institution.

The League and its representatives are using every possible lawful measure to secure justice to its people, and to vindicate their right to live in peace. They are having a difficult task to get a hearing. Several cases have been brought by it in the Magistrates' Court, but they are difficult to carry in the face of a solid and lusty swearing lot of policemen, an d they cannot show the crime in its mass, and cannot reveal the responsibility of the higher officials for the outbreak and for the failure to discover and punish the guilty policemen and their commanders.

The Mayor has abundant authority to hear the matter, but he has washed his hands of it, and the Police Board has not hesitated to write another page of its damning history. There is no other way

open for a full and connected presentation of the case to the public except by legal process through the Mayor and the Commissioners. A Grand Jury investigation was had, and resulted in no indictment. Such an investigation is necessarily held behind closed doors, and the sole question is whether there is sufficient evidence to warrant the indictment of a specific individual for a specific act, unrelated to other acts, and with a reasonable probability of conviction.

I have advised the Citizens' Protective League of the great barriers to be overcome in securing the conviction of even a patrolman, and of the inadequacy of a criminal proceeding in an attempted presentation of the great wrong that the Negroes have suffered. They need the sympathy and support of the good people of New York to secure a vindication, and to prevent a recurrence of the outbreak. Under my advice the appended affidavits have been secured, and are now printed, so that they may be read and considered in their relation to each other. I may say that with hardly an exception the affiants have shown themselves to be respectable, hard-working men and women. The dissolute Negroes who are so often seen lounging about the "Tenderloin" and its neighborhood are not to be found among the witnesses. They are the friends of the police, contributing very largely to their comfort and happiness, and it is quite clear that they had their warning and kept out of the way.

With this simple introduction, I present the affidavits, confident that they will speak for themselves, and that they will lead to the condemnation of the high official criminals, and contribute to the overthrow of the infernal system that they represent.

Brutality and insolence of policemen have increased greatly, and the Police Commissioners seldom, if ever, convict officers for these offenses. Humble citizens of all races to-day are in more danger from policemen's clubs than they are from the assaults of criminals. The inaction of the Commissioners in the cases of the Negroes is entirely consistent with their general conduct in all citizens' complaints.

Frank Moss
Dated October 1, 1900.

Source: Reprinted from *Mass Violence in America*. Eds. Robert M. Fogelson and Richard E. Rubenstein. New York: Arno Press and the *New York Times*, 1969.

## Copy of an Appeal to the Mayor.

(Primary Source)

New York, September 12, 1900.

TO HIS HONOR, ROBERT A. VAN WYCK, MAYOR, NEW YORK CITY.

Dear Sir:
Your communication of the 7th inst. in reply to my letter received. We appreciate the consideration shown and interest manifested, but earnestly petition your Honor for a fair and impartial investigation. We condemn in unqualified terms lawlessness among our people, and by no means condone the crime of Harris, nor his associates; but this crime, as black as it may be, does not justify the policemen in their savage and indiscriminate attack upon innocent and helpless people.

We ask for no money consideration, and our counsel, Hon. Frank Moss, has been so advised.

We are not responsible for what private individuals may do the rights of citizenship we value above money.

We ask for the conviction, and removal from the force of those officers whom we are able to prove guilty.

We appeal to you, sir, as chief magistrate of this city, to give this matter special personal attention.

If the guilty are shielded it will encourage the mob to repeat the same offense, the officers to commit the same deeds, and our people to prepare for self-defense in spite of law or gospel. This can have no other termination than bloodshed and butchery.

This, I believe, may all be avoided by a course of simple justice. The color of a man's skin must not be made the index of his character or ability. From the many ugly threatening letters I have received I feel that my own life is not safe, but I am unwilling to purchase it by silence at the expense of my unfortunate race. We feel keenly our position, and again appeal to you for common justice.
I am, dear sir,

Yours,
W. H. Brooks

Source: Robert M. Fogelson and Richard E. Rubenstein, eds. *Mass Violence in America* (New York: Arno Press and the *New York Times*, 1969).

# Lesson Three
# A Courtroom Simulation

## A. Objectives

- To understand and formulate the major arguments presented in *Plessy v. Ferguson* through the use of a courtroom simulation.
- To analyze the actual reasoning in the majority's opinion in Plessy as well as the dissent of Justice Harlan and the nature of judicial review.
- To reach conclusions on the probable effects Plessy had in the further deterioration of race relations in the United States.
- To evaluate the successes and failures of Reconstruction.

## B. Lesson Activities (Two Days)

Day One

1. Divide the class as follows:

   Four attorneys for Mr. Plessy.

   Four attorneys for Judge Ferguson (the judge who was to enforce the Louisiana law).

   A judge that will act as moderator and timekeeper, and will be able to ask questions at any time during the proceedings.

   The rest of the class will act as the jury.

2. Pass out Documents H, I, and J to the students. Tell them that they will simulate the legal case which decided the nature of race relations for the next fifty years. Remind them of the dramatic moment. Inform them that Homer Plessy's case went all the way to the United States Supreme Court.

3. Distribute Worksheet 2 to the attorneys. Tell them to use these questions to help them develop the arguments they will present on the following day. Explain that they have the questions that will help their opponent. This will help them develop points of rebuttal. Instruct the judge and the jury to read Documents H and I carefully and write at least five questions they will have to address to the attorneys.

Explain that each side will get five minutes to present their arguments and will have one minute to rebut their opponent's arguments. After the two cases have been prepared, the jury will have time to ask any questions they might have for the attorneys.

Day Two

4. Have the room set up in a comfortable courtroom fashion. For the first five minutes give the attorneys an opportunity to clarify the arguments they have developed based on their research of the previous night.

5. Tell the jurors that they will be turning in all notes they take on the case for review to insure that the judgments they cast are on the basis of the information presented in the case.

6. Instruct the judge beforehand to have the attorneys for Mr. Plessy present their arguments first (3 minutes). Have the attorneys for Mr. Ferguson present their rebuttal (1 minute).

7. Continue with the attorneys for Mr. Ferguson making their arguments (3 minutes). Allow Mr. Plessy's attorneys an opportunity to offer a rebuttal (1 minute). The judge may interrupt at any time. He also acts as the moderator and timekeeper. At the conclusion of arguments and rebuttals allow jurors to ask questions of the attorneys.

8. Call for a secret vote of the jurors and have the judge count and announce the results.

9. Provide the judge with the following summation of the actual decision:

   The Supreme Court ruled in favor of the state of Louisiana. The court said that it was not the intention of the Fourteenth Amendment to "abolish distinctions based upon color, or to enforce social, as distinguished from political equality." According to the court, the State of Louisiana could make laws that took into account the customs and traditions of the people and the need to keep public peace and order. The court said that if the two races were ever to meet "on terms of social equality, it must be the result of natural affinities . . . and voluntary consent of individuals," not a result of law.

   After the class decision has been read have the judge explain that although the jury was conscientious and helpful, their opinion is only advisory.

10. Conduct a class discussion on the decision and its consequences.

## C. Evaluating the Lesson

1. Homework Assignment:

   Have the judge distribute Document K, which includes actual excerpts from Justice Brown's majority decision, and the famous dissent of Justice Harlan. Have students read the document for a discussion in class the next day. The following questions are provided to aid the discussion and in developing meaningful essay questions.

   a. By what criteria can one determine race? Plessy was alleged to have been seven-eighths Caucasian and one-eighth African blood and that the mixture of colored blood was not discernible in him. Was Plessy white or "Negro?"

   b. The Court drew a line between "social" and equality and claimed that the Fourteenth Amendment's equal protection clause only applies to the latter. Is this distinction logical? Is this distinction work able? Could the separate but equal doctrine be applied to a mixed jury, or would it require that the jury be of one race?

   c. What promotion of the public's welfare was achieved by Louisiana's law?

   d. How legitimate was Justice Brown's argument that legislation is unable to "eradicate racial instincts or to abolish distinctions based upon physical differences?" How was this argument used to thwart attempts to secure civil rights?

   e. Is it possible for two educational facilities, one for African American students and one for whites, ever to be equal in faculty, facilities, and quality of classroom instruction? What does equal separate but equal mean if one is dominant in political and social power? Will other races actually enjoy "equal" educational or other opportunities when another race dominates?

# Plessy v. Ferguson
## Background Information
(Secondary Source)

On June 7, 1892, Homer Plessy bought a first-class rail ticket from New Orleans to Covington, Louisiana. Mr. Plessy deliberately boarded the car marked "FOR WHITES ONLY." There he waited. Soon the conductor arrived and informed Mr. Plessy that he would have to move to the car marked "FOR COLOREDS ONLY." Plessy coolly refused and remained seated. The conductor summoned the New Orleans police. When they arrived they found Homer Plessy still seated in the "WHITES ONLY" car. The policeman removed Mr. Plessy, who did not resist, and imprisoned him for violating Louisiana Statute No. 111. His fate would determine the future of African Americans for the next 50 years.

The state of Louisiana had passed a law in 1890 which required separate train cars for white and "colored" passengers. A number of African Americans immediately protested, among them Louis Martinet, a physician and attorney and publisher of Crusader, a leading African American newspaper, and Rudolphe Desdunes, a customs official (both were members of the American Citizens' Equal Rights Association) who denounced the law in letters to the legislature and the governor as violating the basic American tenet that "all men are created equal." Their protest was ignored and they turned to the courts as their only chance to overturn this detested law.

Martinet and Desdunes decided on a "set-up" or test case. After raising about $3,000 for legal fees they set out to challenge the law. They recruited a 34-year-old friend of Desdunes who they were assured would appear on the platform "well-dressed, well-behaved, neither intoxicated not afflicted with any noxious diseases." Homer Plessy was that man. He was of mixed race: $^{7}/_{8}$ white and $^{1}/_{8}$ black, meaning that only one of his eight great-grandparents was black!

# Louisiana Statute No. 111 (1890)

Homer Plessy was a citizen of the United States and a resident of the state of Louisiana. Plessy was of mixed descent; he was $^{7}/_{8}$ Caucasian and $^{1}/_{8}$ African-American. On June 7, 1892 he purchased a first-class ticket on the East Louisiana Railway from New Orleans to Covington, Louisiana. The train made the trip Homer Plessy walked to the waiting train. Some cars were marked "FOR COLOREDS ONLY," others "FOR WHITES ONLY." Plessy went to the car "for whites only," entered, and took a seat.

The General Assembly of the State of Louisiana had passed a law in 1890 requiring in-state trains to provide "separate but equal" coaches for members of the "white race" and members of the "black race." No passenger, because of his or her race, was allowed to take a seat in a car marked for those of another race. The law stated:

Louisiana Statute, No. 111, (1890)

Section I: That all railway companies carrying passengers in their coaches in the State, shall provide equal but separate actions for the white and colored races by providing two or more passenger coaches for each train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: Provided that this section shall not be construed to apply to street railroads. No person or persons shall be admitted to occupy seats in coaches, other than the ones assigned to them on account of the race they belong to.

Section II: That the officers of such passenger trains shall have the power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; Any passenger insisting on going into a coach or comment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison And should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this State.

When the conductor arrived, Plessy was ordered to leave and to take a seat in the section of the train for African American people. Plessy refused to com-

ply with the demands of the conductor. A policeman was summoned, and Plessy was forcibly removed from the train. Plessy was taken to jail to answer a charge of having violated Louisiana law.

Plessy filed for a *writ of prohibition* against the Honorable John H. Ferguson, judge of the criminal District Court for the Parish of Orleans. The writ of prohibition was to stop Judge Ferguson from enforcing the law because that law was in conflict with the Fourteenth Amendment to the U.S. Constitution and was, therefore, null and void. Because the Fourteenth Amendment had made him a citizen, Plessy claimed that he was entitled to the privileges and immunities of citizens and to equal protection of the laws.

Because this was an important legal question, the case had to be heard by the Supreme Court of Louisiana. There the lawyers for the state argued that the Fourteenth Amendment was intended to protect political rights such as voting or holding public office. Seating on a train was not a political right; therefore, the state, by law, could separate the races as long as equal rights were provided for both races. The Supreme Court in Louisiana denied the writ of prohibition and ordered Plessy to stand trial.

Homer Plessy then took his case to the Supreme Court of the United States.

# Excerpts from the Constitution of the United States of America

(Primary Source)

Amendment XIII [1865]

Section I

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.

Amendment XIV [1868]

Section I

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the united States and the State wherein they reside. No State shall make or enforce any law whish 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.

Amendment XV [1870]

Section I

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

## The Fourteenth Amendment's "Privileges or Immunities" and "Due Process of Law" Clauses

The Fourteenth Amendment held out a promise of full citizenship. It defined "citizens of the United States" in a way that included African-Americans-thus nullifying the *Dred Scott* decision on the point.

### Privileges and Immunities

Next, the Fourteenth Amendment prohibited any state from interfering with the "privileges or immunities" of U.S. citizens. What did this mean? To the amendment's sponsor, Rep. John A. Bingham of Ohio, the "Privileges and Immunities Clause" referred to the liberties guaranteed under the Bill of Rights. In Barron v. Baltimore (1833), the Supreme Court had ruled that the first ten amendments to the Constitution protected citizens against interference by the federal government only. Bingham, strongly opposed to such a narrow ruling, insisted that the Fourteenth Amendment protected Bill of Rights liberties against state interference as well.

Five years after the amendment's adoption, however, the first Supreme Court case interpreting the amendment rejected this idea. The Slaughterhouse Cases (1873) involved a Louisiana statute confining all livestock-slaughtering business in New Orleans to one corporation in one small section of the city. Other butchers complained that the law was a monopoly taking away their businesses. It deprived them of their "privileges and immunities" as U.S. Citizens. The Supreme Court answered no. The butchers' rights were state, not federal, privileges and immunities. Besides, the butchers' claim did not involve race. The Fourteenth Amendment, the court held, was designed chiefly to protect cit ship rights of ex-slaves.

### Due Process of Law

Two other passages have loomed as the vital power-clauses of the Fourteenth Amendment. The "Due Process Clause," applying Fifth Amendment liberties to the states, barred a state from taking any person's "life, liberty, or property without due process of law." Due process meant all the proper steps required for a fair hearing in a legal proceeding. The other clause, the "Equal Protection Clause," prohibited a state from denying any citizen "equal protection of the laws." For African-Americans, here was the heart of the Fourteenth Amendment, the potential key stone upon which would rest their historic quest for equal rights.

### Background of Equal Protection

The Fourteenth Amendment provides the first clear reference to equal rights in the Constitution. True, the Declaration of Independence in 1776 had proclaimed as a fundamental American principle "that all men are created equal." Of course, this did not imply that all persons were equal in intelligence, skills, or strength. It simply meant that all persons should be treated equally by the government. The concept of equality before the law, however, was not spelled out in the original Constitution. The Equal Protection Clause of the Fourteenth Amendment focuses on guaranteeing equal rights of former slaves but was deliberately worded in such a way as to protect the equal rights of all citizens.[2] During Reconstruction, the Congress drafted the Fourteenth Amendment as a means of

[2] In recent years the Supreme Court has interpreted the clause to include the rights of all persons, including non-citizens.

protecting the Civil Rights Act of 1866 that protected the civil rights of former slaves to own property, make contracts, and appear as witnesses in courts of law. The Amendment did not mention the equality of political rights thus the drafting and ratification of the Fifteenth Amendment guaranteeing the right to vote for all men regardless of "race, color, or previous condition of servitude." In the 1860s, for the majority, the issue of social rights-rights rising from interactions among people-was not with the power of the federal government to regulate. In the *Slaughterhouse Cases* of 1873, the Court ruled in a 5-4 decision, narrowly interpreted the rights of citizens and declared that the Fourteenth Amendment protected only the rights deprived from federal citizenship. In essence the *Slaughterhouse Cases* placed civil rights under the protection of state governments. In his dissent to the majority opinion, Justice Noah Swayne wrote, "Equal protection of the laws' places all upon a footing of legal equality and gives the same protection to all for the preservation of life, liberty and property, and the pursuit of happiness."

"Equal protection of the laws" places all upon a footing of legal equality and gives the same protection to all for the preservation of life, liberty and property, and the pursuit of happiness.

Justice Swayne, The Slaughterhouse Cases (1873)

National Archives NWDNS-111-B-3277

Hon. Noah H. Swayne

Even these words, "equal protection of the laws," did not require a state law to apply to each and every person. A law could constitutionally apply to a special class of persons or groups. It could, for instance, apply to rail roads or burglars. But the category, or class, had to be "reasonable." A law could not be valid if, for example, it levied a tax on blue-eyed females. The category could not be so unequal that it was completely discriminatory.

State Action

Besides reasonable classification, the Supreme Court has placed another restriction on the "Equal Protection Clause." The rule arose in The Civil Rights Cases of 1883. Here the court held unconstitutional sections of the Civil Rights Act of 1875. That law made it a crime for one person to deprive another of the "full and equal enactment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement." The 1875 provisions were based on the Fourteenth Amendment. The Supreme Court, however, ruled that the amendment was limited to "state action." It did not apply to action by individuals.

Individual invasion of individual rights is not the subject matter of the (14th) Amendment. It has a deeper and broader scope. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws.

-Justice Bradley, *The Civil Rights Cases* (1883)

## Argument and Rebuttal Preparation

You are going to be allotted five minutes to make your best possible case for the judge and jury. In developing your argument, you may wish to consider the following questions based upon the readings you have completed and discussed or will complete.

Questions to Consider for the Respondent John Ferguson

1. Based on your reading of the 14th Amendment, what type of rights was this amendment meant to protect? (e.g. civil, social, political, etc.)

2. Think of the laws you are familiar with and that you must deal with on a daily basis. What are the purposes of laws? What do laws try to protect? What do they reflect?

3. Based on the materials you have seen and discussed over the past few days, are there instances of segregation that have been upheld by the courts? Have any decisions made by the Supreme Court or any other courts been favorable to what you are trying to prove?

4. Does segregation necessarily mean one race is in or to the other? What convincing arguments can you make to prove that it does not?

Questions to Consider for the Petitioner (Plaintiff), Homer Plessy

1. Does the Fourteenth Amendment's privileges and immunities clause support your client's position?

2. What is the meaning of the Fourteenth Amendment's "Equal Protection Clause?" Are you prepared to argue that your client deserves the same protections and guarantees enjoyed by all other citizens? How can you make this point clear to the court?

3. Can your client ever be truly equal in a society when he may, by law, be separated out for "special treatment" because of his race?

4. What was the intent of the Louisiana legislature when it passed law No. 111? What did the Pennsylvania legislature intend when it voted to abolish separate schools for African American children in 1887?

# The Verdict: Plessy Loses
## U.S. Supreme Court Votes 7-1 Against Him
(Primary Source)

Although the concept of race lacks scientific validity, the Supreme Court of the United States approved the use of legislatively defined racial classification in 1896. In Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), the Court sustained the constitutional validity of a Louisiana statute requiring "equal but separate actions" for white and Negro railway passengers. The statute had been attacked as violative of the Fourteenth Amendment's prohibition that no state shall ". . . deny to any person within its jurisdiction the equal protection of the laws." In his Opinion for the Court, Mr. Justice Brown approved of the "separate but equal doctrine" holding that:

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. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislature in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.

[This] case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that [this law] is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assump-

tion. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

Mr. Justice Harlan dissented, saying:

John Marshall Harlan
Associate Justice, Supreme Court
Dictionary of American Portraits
Dover Publications, 1967

It was said in argument that the statute of Louisiana does not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Every one knows that [Louisiana's law] had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. The thing to accomplish was, under the guise of giving equal action for whites and blacks, to compel the latter to keep to themselves while travelling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. The fundamental objection, therefore, to the statute is that it interferes with the personal freedom of citizens. . . .

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. There is no caste here The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana. . . .

The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. It cannot be justified upon any legal grounds The thin disguise of 'equal' accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done. . . .

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