

Plessy v. Ferguson (1896) – in Salem Press Encyclopedia (2017)

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One of the most notorious decisions in the history of the U.S. Supreme Court, *Plessy v. Ferguson* not only upheld racial segregation in the United States, it also lent the sanction of the Supreme Court and created the contentious doctrine of separate but equal that a later Court would eventually overturn as a self-contradiction.

Locale Washington, D.C.

Key Figures

- Homer Adolph Plessy (1862-1925), New Orleans resident of one-eighth African ancestry
- Albion Winegar Tourgée (1838-1905), Plessy's chief attorney
- Henry B. Brown (1836-1913), associate Supreme Court justice, 1890-1906
- John Marshall Harlan (1833-1911), associate Supreme Court justice, 1877-1911
- Louis A. Martinet (d. 1917), New Orleans man who led a challenge to the separate but equal doctrine
- John H. Ferguson (fl. late nineteenth century), judge of the Criminal District Court for Orleans Parish
- Charles E. Fenner (1834-1911), associate Louisiana Supreme Court justice

Summary of Event

On July 10, 1890, the Louisiana General Assembly, over the objection of its eighteen African American members, enacted a law that read, in part:

. . . all railway companies carrying passengers in their coaches in this state shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations.

upclose veiw of the Plessy v Ferguson memorial in New Orleans By Bluemarie0428 (Own work) [Public domain], via Wikimedia Commons

The Louisiana law empowered train officials to assign passengers to cars; passengers insisting on going into a car set aside for the other race were liable to a twenty-five-dollar fine and twenty days' imprisonment. In addition, the company could refuse to carry an obstreperous passenger and, if it were sued for doing so, was immune from damages in state courts. A third section outlined the penalties for noncomplying

railroads and provided that “nothing in this act shall be construed as applying to nurses attending children of the other race.”

At first the Separate Car Bill was stymied by the black legislators and by railroad officials who were as anxious to avoid the economic burden of providing separate facilities as they were to avoid a boycott of irate black passengers. After the black legislators had helped to override the veto of a major lottery bill, however, the legislature revived the Separate Car Bill and enacted it by a safe margin.

After its enactment, some of the railroad companies were inclined to disregard the law, and they apparently collaborated with black people to test its validity. In 1890, the railroads had unsuccessfully challenged a Mississippi separate but equal law; the [Supreme Court of the United States](#) had held in *Louisville, New Orleans, and Texas Railway Co. v. Mississippi* that such a law, when applied solely to travel within the state, did not encroach upon [interstate commerce](#).

The prominent black community of New Orleans organized to mount a legal attack upon the new law. A group calling itself the Citizens’ Committee to Test the Constitutionality of the Separate Car Law, led by Louis A. Martinet and Alexander A. Mary, organized to handle the litigation and enlisted the services of [Albion Winegar Tourgée](#). Tourgée was to serve as chief counsel and devote his considerable talents to rallying public opposition to the Jim Crow system typified by the Louisiana law. The new counsel had served as a classical carpetbagger in North Carolina during Reconstruction and, among other accomplishments, had published a number of novels about the Reconstruction era, among them *A Fools Errand* (1879), *An Appeal to Caesar* (1884), and *Bricks Without Straw* (1880).

Martinet engaged James Walker to assist in handling the Louisiana phase of the controversy. Before the first test of the Louisiana law (also featuring an African American who could “pass for white”) could be settled, the Louisiana Supreme Court decided in *State ex rel. Abbot v. Hicks* (1892) that the 1890 law could not be applied to interstate travelers since it was an unconstitutional regulation of interstate commerce. The Plessy case, then, relitigated the question raised in the 1890 Mississippi railroad case, but as a problem in the constitutional law of civil liberties rather than one of interstate commerce.

The person recruited to test the segregation law was Homer Adolph Plessy, a person of seven-eighths Caucasian and one-eighth African ancestry, in whom “the mixture of colored blood was not discernible.” On June 7, 1892, holding a first-class ticket entitling him to travel on the East Louisiana Railway from New Orleans to Covington, Louisiana, Plessy took a seat in the car reserved for whites. The conductor, assisted by a policeman,

forcibly removed Plessy and, charging him with violating the segregation law, placed him in the parish jail. The state prosecuted Plessy in the Orleans Parish criminal district court before Judge John H. Ferguson. Plessy's plea that the law was unconstitutional was overruled by Ferguson, who directed the defense to address itself to the questions of fact. Having no defense in the facts, Tourgée and Walker appealed Ferguson's ruling on the law's constitutionality to the Louisiana Supreme Court by asking that court to issue a writ of prohibition which in effect would have directed Ferguson to reverse his ruling on the constitutional question.

On December 19, 1892, Associate Judge Charles E. Fenner of the Louisiana Supreme Court ruled the law constitutional in an opinion that served as a model for that written later by Justice Henry B. Brown of the U.S. Supreme Court. After a delay of almost four years—a delay that Tourgée encouraged on the grounds that it gave the opponents of segregation needed time—the U.S. Supreme Court heard the arguments in Plessy's case on April 13, 1896. On May 18, 1896, Justice Brown handed down the majority opinion, supported by six other justices (Justice David Brewer did not participate, and Justice [John Marshall Harlan](#) dissented).

Justice Brown first disposed of Tourgée's argument that the segregation law was a "badge of servitude," a vestige of slavery prohibited by the Thirteenth Amendment (1865). Decisions in the 1872 Slaughterhouse cases and the 1883 Civil Rights Cases, wrote Brown, indicated that it was because the Thirteenth Amendment barred only outright slavery and not laws merely imposing "onerous disabilities and burdens" that the movement for the [Fourteenth Amendment](#) had been successful. Later in his opinion Brown blended the "badge of servitude" argument of the Thirteenth Amendment with his treatment of the equal protection question:

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.

If Plessy was to gain any relief, it had to be from the Fourteenth Amendment, but that amendment, according to Brown

merely . . . enforced 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.

To support his point, Brown cited state school segregation and antimiscegenation laws and federal laws prescribing segregated schools for the District of Columbia. Special stress was placed on the 1849 decision of *Roberts v. Boston*, in which Chief

Justice Lemuel Shaw of the Massachusetts Supreme Judicial Court had upheld the constitutionality of separate but equal schools for Boston. Brown did not mention that the Massachusetts legislature had repudiated Shaw's doctrine in 1855.

To the plaintiff's argument that the principle of segregation could be used by the state to enforce extreme and arbitrary forms of racial discrimination, Brown responded that every exercise of state power must be "reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class." There was nothing unreasonable about the Louisiana law according to the Court; in determining what is reasonable, state legislators could "act with reference to the established usages, customs, and traditions of the people, with a view to the promotion of their comfort, and the preservation of the public peace and good order." Finally, Brown in his opinion delivered a famous statement on the relationship between law, prejudice, and equality:

The [plaintiff's] argument also assumes that social prejudice 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 on 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.

The law in question interfered with the "voluntary consent of individuals."

Tourgée's fears were realized: The Court had sanctioned Jim Crowism. What comfort African Americans derived from the case had to be found in the strong dissenting opinion of Justice Harlan, who once again proved himself to be a staunch champion of a broad interpretation of the Reconstruction amendments. Harlan construed the ban on slavery to cover segregation laws; he insisted on Tourgée's thesis that a railroad was a public highway and that under the Fourteenth Amendment government could make no racial distinctions whether one considered the case under the privileges and immunities, due process, or equal protection clauses of that amendment.

Harlan attacked the Court's reliance on pre-Fourteenth Amendment precedents; his most memorable language appeared in connection with his charge that the majority usurped constitutional power by assuming authority to decide on the "reasonableness" of state social legislation:

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 that 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. In respect of civil rights, all citizens are equal before the law.

Harlan turned out to be a competent soothsayer:

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.

Significance

Despite Harlan's impassioned words, it would take the general public and the justices of the Supreme Court decades to adopt his views and interpretation of the Constitution. *Plessy v. Ferguson*'s strong sanction of segregation lasted formally in transportation until the Court's decision in *Henderson v. United States* (1950) and in education until *Brown v. Board of Education of Topeka, Kansas* (1954).

Antimiscegenation laws were not outlawed until 1967 in *Loving v. Virginia*.

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