

Plessy v. Ferguson

In *The Souls of Black Folk* (1903), W. E. B. Du Bois wrote that the principle problem of the 20th century will be that of the color line. Being black was “strange” largely because of the estrangement between the races in America. The “color line” was drawn in bold by *Plessy v. Ferguson*, 163 U.S. 537 (1896). By keeping the Jim Crow status quo, *Plessy* deepened the racial divide. This is the notorious “separate but equal” case. Although not part of the decision *verbatim*, these three words, which accurately express the legal fiction of the Supreme Court’s ruling, gave legal sanction to Jim Crow segregation. Thus “separate but equal” equals “Jim Crow affirmed.”

This opinion is couched in legal language that requires an understanding of constitutional law to decode. The high court held that the separation of the races within states does not violate the Fourteenth Amendment, which had previously granted African Americans equal protection under the laws. The technical terms notwithstanding, the Court’s purport was patent. In black and white, Justice Henry Billings Brown kept blacks from whites. This bad result was “good law” for nearly six decades. It would take *Brown v. the Board of Education*, 347 U.S. 483 (1954) to overrule Justice Brown. If, except for the *Dred Scott* case, *Plessy* was the worst Supreme Court ruling ever handed down, as Justice Harlan indicated in his dissent, then the *Brown* decision may rank as the greatest Supreme Court decision. To appreciate the greatness of *Brown v. Board of Education*, it is necessary to understand *Plessy* first.

Democracy is a process of progressive equalizing. It is a matter of degree. Mollified by democratic language and reasoning, nevertheless *Plessy* is a harsh and fundamentally undemocratic decision. More than undemocratic, it was antidemocratic because *Plessy* may be characterized as an antidemocratic reaction to the then-recent democratic reforms of Reconstruction (1865–1877).

Reconstruction was the nation’s first experiment in economic emancipation and interracial democracy. The three Reconstruction Amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments (1865, 1868, and 1870, respectively) established (legally but not factually) civil rights for all Americans. But the experiment failed; or rather, America failed the experiment. The reforms introduced by Reconstruction were being systematically

dismantled in the South. For instance, the promise of “forty acres and a mule” was proclaimed by General William T. Sherman but never delivered by Congress. Reconstruction was progressive; *Plessy* was regressive. *Plessy*, in fact, was the ultimate deconstruction of Reconstruction—the final judicial nail in its historical coffin. Far worse were its social and historical consequences, for the decision legitimized legal segregation. *Plessy* was a pact with the devil of Jim Crow, and it legitimized the American apartheid of systemic segregation. *Plessy*’s “separate but equal” doctrine was an oxymoron. Yet, as the supreme law of the law, it held sway for well over a half-century. It would take the *Brown* decision to successfully overturn it. *Brown v. Board of Education* exposed the *Plessy* decision as a contradiction, ruling that “separate but equal” is inherently unequal.

The 1890 Louisiana Separate Car Act provided that railway companies in Louisiana would have equal but separate accommodations and facilities for whites and nonwhites. Violation of this act triggered a fine and imprisonment. The local, activist *Comité des Citoyens* (Citizens’ Committee) decided to challenge the constitutionality of this law. On June 7, 1892, Homer Adolph Plessy (1863–1925), a “Creole of Color,” bought a first-class ticket at the Press Street Depot in New Orleans. This shoemaker, a man in his late twenties, was about to board a train on the East Louisiana Railroad for passage to the city of Covington, which was in St. Tammany Parish (county) in Louisiana. His ticket was for a seat in the first-class carriage, on a train scheduled to depart at 4:15 p.m. The trip was to have taken around two hours in its traverse to Covington, which was 30 miles to the north, on the other side of Lake Pontchartrain, near the Mississippi border. Plessy never reached his physical destination because he had a legal destination in mind. A dignified gentleman donning suit and hat, he quietly took his seat in a compartment reserved for whites only. Upon collecting his ticket, the conductor asked if Plessy were a “colored man.” To this query, Plessy answered in the affirmative and the conductor instructed him to go to the coach reserved for nonwhites.

This unruffled admission was not inevitable; it was planned in advance, for Plessy could easily have passed as white. Thus the conductor would probably have believed Plessy had he answered in the negative. Was Plessy white or black? To use the inartful slang of the day, Plessy was an “octoroon” (a person of one-eighth black blood), an accident of “hypodescent” (a peculiar American doctrine that classifies

anyone with the least trace of African ancestry as “colored,” with all of the legal and social stigmas that would attach to that pejorative classification). Phenotypically, Plessy exhibited none of the physical features associated with his race. There are no extant photographs of Homer Plessy, but the record is clear: he was identifiably a “bi- multi-racial” man, as the Supreme Court acknowledged in its decision. Facially, Plessy was white; racially he was black by the standards of that day. He was the perfect man to challenge the constitutionality of the Louisiana Separate Car Act.

Needless to say, both the conductor and passengers were taken aback. Pursuant to Louisiana law, Conductor J. J. Dowling informed Plessy that he had to move to the “colored car.” Reeking of soot and smoke, this Jim Crow car was typically hitched right behind the locomotive. Its seats were wooden, while the first-class seats were cushioned. With adamantine equipoise, Plessy refused. Law enforcement was summoned, and “Detective” Chris C. Cain appeared on the scene. Identifying himself as a private detective, he evidently was deputized and held police rank. In any event, Plessy did not question “Captain” Cain’s authority. When directed to leave with Cain, Plessy did so, without incident. Plessy complied with the officer of the law in order to challenge the law itself.

Captain Cain took Plessy to the Fifth Precinct police station on Elysian Fields Avenue. There he was booked for violating the Separate Car Act. His hearing took place on the morning of June 8. Waiving his right to a hearing, Plessy was released on \$500 bail, a tidy sum in those days, paid by Paul Bonseigneur, treasurer of the *Comité des Citoyens*. Plessy returned to his home on brick-paved 244 1/2 North Clairborne Avenue in the integrated, middle-class Faubourg Tremé district, where his wife Louise was waiting for him. Plessy resumed his respectable trade of making leather shoes and boots to order in Patricio Brito’s shoemaking business in the French Quarter.

The arraignment was set for October 13, nearly five months later. Plessy was to appear before John H. Ferguson, judge of Section “A” of the Criminal District Court, Parish of Orleans. In the case filed as 19117 *The State of Louisiana v. Homer Adolph Plessy*, Judge Ferguson heard arguments by 55-year-old James Campbell Walker, a local Creole attorney, and Assistant District Attorney Lionel Adams, who was reputed to be a “crack trial lawyer.” Walker had agreed to defend Plessy and took the case for \$1,000. Ironically, Homer Plessy and Judge Ferguson had the very same skin

color. After failing in his motion to have the case dismissed, Walker filed a motion to stay the proceedings so that arguments on the constitutionality of the Separate Car Act could be heard. Judge Ferguson then set a date for October 28.

Meanwhile, in his October 14 brief, Walker had argued that the Louisiana statute violated the Thirteenth and Fourteenth Amendments. By requiring him to sit in a Jim Crow car, the state was branding Plessy with a “badge of slavery,” although proscribed by the Thirteenth Amendment (1865). The Separate Car Act also offended the Fourteenth Amendment (1868), which forbade any state’s abridging the rights of U.S. citizens. The judge then congratulated Walker for the work that was evident in his brief. Judge Ferguson rendered his decision on November 18, finding that there was no evidence that Plessy was not to be provided with equal accommodations and that he was simply denied the freedom of violating a state law. On November 22, Plessy appealed to the Louisiana Supreme Court, which was docketed as case number 11134.

Albion Winegar Tourgée (1838–1905) took over as lead attorney for Plessy, although Walker remained as part of Plessy’s legal team. Tourgée argued as before, and with the same result. The brief challenging the constitutionality of the Separate Car Act (collaboratively written by Tourgée and Walker) had 14 paragraphs. After reviewing the statutory language of the Separate Car Act, the Louisiana high court noted a recent decision regarding the act’s constitutionality in which they held that the act would be unconstitutional because it ceded too much power and authority to Congress in its duties to regulate commerce and travel between the states. Because Plessy’s destination was intrastate, however, the Commerce Clause was not implicated. The court then cited a Supreme Court case known as *Civil Rights Cases*, 109 U.S. 3, in order to dismiss Plessy’s Thirteenth Amendment claim.

His Thirteenth Amendment claim having failed, the court then addressed Plessy’s alternative pleading—his challenge of the Separate Car Act as a violation of the Fourteenth Amendment. Having cited a number of precedents on which it relied, the court held that the accommodations were, indeed, equal and thus a violation of the Fourteenth Amendment did not occur. Then, in a prescient, almost prophetic pronouncement, the court went on to say that to hold that the requirement of separate, though equal, accommodations in public conveyances violated the Fourteenth Amendment would nullify the statutes establishing

separate schools or those prohibiting interracial marriage. All are laws based on difference of race, and if such difference cannot furnish a basis for such legislation in one of these cases it can not in any case. Clearly, had *Plessy* gone the other way, school segregation might have been struck down as unconstitutional far in advance of *Brown v. Board of Education*.

Needless to say, Homer Plessy did not prevail before the Louisiana high court. But that was as it should have been. That way, the case could be appealed all the way to the Supreme Court, which was Plessy's real goal in challenging the constitutionality of the Separate Car Act in the first place. Although the necessary court documents were filed by the end of February 1893, it took more than three years until the matter came before the Court. The case was argued on April 13, 1896, and the Court handed down its decision on May 18, 1896. Albion Winegar Tourgée represented Homer Plessy, with former Solicitor General Samuel F. Phillips serving as co-counsel. (James C. Walker's health prevented him from making the trip to Washington.) Tourgée and Walker had filed one of the two briefs on Plessy's behalf (argued in 23 numbered paragraphs), and Phillips submitted the other. Alexander Porter Morse defended Judge Ferguson against a charge of judicial error, and M. J. Cunningham, attorney general of the State of Louisiana, and Lionel Adams prepared the legal brief on Ferguson's behalf.

"The gist of our case," Tourgée declared in his opening statement, "is the unconstitutionality of the assortment [racial discrimination]; *not* the question of equal accommodation." Space does not permit a detailed analysis of Tourgée's and Walker's constitutional arguments as laid out in their brief, which Charles A. Lofgren analyzes as (1) the Restrictive Rights Argument, and (2) the Affirmative Rights Argument (*The Plessy Case*, pp. 152–64). Nor does space allow for an epitome of Samuel Phillips's three-page brief, which focused solely on the Fourteenth Amendment issue. These briefs, however persuasive, were not determinative.

Justice Henry Billings Brown delivered the opinion of the Court. In *Plessy v. Ferguson*, 163 U.S. 537 (1896), Justice Brown dismissed Plessy's Thirteenth Amendment argument in short order by noting that legal equality and social equality are two distinct issues. The role of the Court was to rule on the former and decline from deciding on the latter, as the question of social equality was clearly outside its purview. The Fourteenth Amendment implicated a different,

albeit related, set of issues. Justice Brown assessed that the main objective of the Fourteenth Amendment was to enforce the absolute equality of the two races before the law. In his view, however, it could not have been intended to abolish distinctions based on color, or to enforce social, as distinguished from political equality, or a commingling of the two races on terms unsatisfactory to either. Thus Brown contended that laws permitting or requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.

The Court concluded that the enforced separation of the races, as applied to the internal commerce of the Louisiana, neither abridges the privileges or immunities of African Americans and other people of color, deprives them of their property without due process of law, nor denies them the equal protection of the laws, within the meaning of the Fourteenth Amendment. Nothing could be further from the truth, of course. The Deep South, for all practical purposes, became a dual society. Like oil and water, black and white were not supposed to mix. Yet the metaphor falls short in its symbolic power, for oil and water do not combust, but racial tensions do. The *Plessy* decision could only exacerbate those social tensions. Legal questions aside, social issues had to be addressed. The Court perforce had to speak to the issue of racial prejudice and the role of the law in promoting social equality beyond legal equality (or the fiction of such equality).

Here, besides discounting the Thirteenth Amendment challenge entirely (finding that forced segregation is not a vestige or "badge of servitude"), the Supreme Court completely disavows any social responsibility for the public's general welfare in terms of race relations. By giving legal sanction to Jim Crow laws, the high court was on low moral grounds. Even on purely legal grounds, the decision applies a mere test of reasonableness to the Separate Car Act. Constitutional scholars call the reasonableness standard the "rational basis test" or "rational scrutiny." This is the way that the Supreme Court has typically deferred to "states' rights" in constitutional controversies. Yet this same legal tradition has produced powerful dissenting opinions. Such was the case in *Plessy*.

Justice Harlan's Sidelined: In one of the most celebrated dissents in Supreme Court history, Justice Harlan

eloquently took his fellow justices to task for a fundamentally flawed decision. His dissent is all the more remarkable considering the fact that Justice John Marshall Harlan (1833–1911) was “a former slaveholder” from Kentucky (Lofgren 3). Harlan’s “color-blind” rhetoric echoes in court chambers, classrooms, and in civic spheres to this very day. But there was simply no jurisprudential framework at that time for asserting an individual’s “fundamental rights” over “states’ rights.”

By modern legal standards, the *Plessy* case should have triggered “strict scrutiny,” but, historically, that would be a gross anachronism. Under current equal protection theory, the Supreme Court holds all racial classifications to be constitutionally suspect and subject to strict scrutiny, which is the most stringent form of judicial review. Under strict scrutiny, a race-based law cannot pass constitutional muster absent a compelling state interest that cannot be protected by any less drastic means. But the idea that gave rise to strict scrutiny did not appear until 1938 in *U.S. v. Carolene Products Co.*, 304 U.S. 144, 153 n.4 (1938), where the Supreme Court called for a “more exacting judicial scrutiny” in certain circumstances or cases. Four years later, in *Skinner v. Oklahoma*, 316 U.S. 535 (1942), the Supreme Court coined the term “strict scrutiny” for the first time, to define the new judicial standard that the Court would apply to laws that deprive individuals of their civil rights.

Hardening of the Color Line: On January 11, 1897, more than four-and-a-half years after his arrest, Homer Adolph Plessy found himself before Orleans Parish Criminal District Court once more. On the charge of having violated Section 2 of Act 111 of the Separate Car Act, Plessy pled guilty. He duly paid his fine of \$25. Nationally, his case was met with apathy; privately, Plessy faded into obscurity. On Sunday, March 1, 1925 at 5:10 A.M., Plessy died. A local paper reported a two-line notice of his death. But Homer Adolph Plessy is immortal as a symbol of the struggle for equality and racial justice.

W. E. B. Du Bois was right. The color line would be the central problem of the 20th century. *Plessy v. Ferguson* reinforced that color line in stark black and white, even though Homer Plessy and Judge Ferguson each had the same skin color—light brown. In causing racial and legal status to converge, *Plessy*’s “separate but equal” was a “bright line” rule. First, the rule of hypodescent sustains a binary opposition between black and white and defines anyone with a perceptible trace of African ancestry as black. Based on this

simple classification scheme, all blacks must be segregated from whites where Jim Crow laws demand it. Homer Plessy was thus the perfect man to put the Separate Car Act to test, for he exposed the absurdity of hypodescent and its legal consequences. Although he was, by legal fiat, black, his skin color was as white as Judge Ferguson, who sat in initial judgment of him. Added to this irony is the fact that, as a gentleman who comported himself with the utmost dignity by aristocratic Southern standards, Homer Plessy exploded the negative stereotype of the “Negro” that the Jim Crow laws were meant to protect against.

Although the Louisiana courts differentiated between racial segregation and racial discrimination, the bottom line remains the same: race segregation is race subordination. History proves this to be true. In a certain sense, historian David Brion Davis was right: the Confederacy won the Civil War ideologically, at least insofar as civil rights were concerned. *Plessy* calcified entrenched Jim Crow laws and gave them Supreme Court sanction. “Rather, whatever the realities of the hardening color line in America,” Lofgren concludes, “the formula associated with *Plessy* [separate but equal] could be invoked against the worst deprivations” (*The Plessy Case*, p. 201). Like cracks in glass, the “separate but equal doctrine” spread throughout the Jim Crow states, as transportation segregation reinforced education segregation. Thus it took 58 years before the *Brown* decision overruled Justice Brown’s 1896 ruling to erase the color line legally, although not socially. *Plessy v. Ferguson* did not justly resolve the America dilemma of racism, but it did focus legal attention on it. In that sense, *Plessy* was as much of a milestone as it was a setback.

See also: *Brown v. Board of Education*; Fourteenth Amendment; Jim Crow

Christopher George Buck

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Poitier, Sidney

Sidney Poitier (1927–) was born prematurely in Miami, Florida. His parents, Reginald James and Evelyn Outten Poitier, were impoverished Bahamian tomato farmers. Three months after his birth, Poitier and his family moved to Cat Island in the Bahamas. Because of the family's poverty, Poitier's formal education did not begin until he was 11. By age 12, he had finished his education to help his father work on the fruit farm. Hoping Poitier would have more opportunities, his father sent him to Miami to live with his brother Cyril in 1943. He worked several jobs until the Ku Klux Klan threatened him for failing to deliver a package to the rear door. In fear, he fled to New York and worked as a dishwasher. Unable to pay for housing, Poitier was jailed for vagrancy and eventually found shelter at an orphanage. Looking for a change, he joined the army at age 16 and pretended to be the required age of 18.

A year later, Poitier was discharged and found a job as a dishwasher and janitor in New York. Upon seeing an advertisement for black actors in Harlem's *Amsterdam News*, he auditioned for a role. Because of his thick West Indian accent and poor reading skills, Poitier was rejected. After learning how to read and working on his accent, Poitier reauditioned and was accepted into the American Negro Theater. In 1945, he earned his first role with the American Negro Theater as the understudy of Harry Belafonte in the *Days of Our Youth*. A year later, he made his first starring appearance on Broadway in *Lysistrata*. Poitier stumbled through his lines, but the critics found his foibles humorous. This performance then led to a role in *Anna Lucasta* in 1947 and a tour of the play in 1948.

Poitier took his success on the stage to acting in films in 1949. He started with an appearance in an army documentary called *From Whom Cometh My Help*. A year later, Poitier starred in his first Hollywood production titled *No Way Out*. He expanded his acting credits to include the films *Red*

Ball Express (1952), *Go, Man, Go* (1954), and *Blackboard Jungle* (1955). Critics took notice of Poitier and praised his emotional range, especially in his performance of *Cry, the Beloved Country* in 1955. Poitier's acting accomplishments then led to a host of laudable performances in *Goodbye, My Lady* (1956), *Band of Angels* (1957), *Something of Value* (1957), *Edge of the City* (1957), *The Defiant Ones* (1958), *Mark of the Hawk* (1958), *Virgin Island* (1958), and *Porgy and Bess* (1959).

In-between acting, Poitier found time to marry Juanita Marie Hardy, a dancer, in 1950. After having four children, they divorced in 1965. In 1976, Poitier married Joanna Shimkus, an actress, and they later had two daughters. Poitier returned to the theater in 1959 and played the lead role in Lorraine Hansberry's *A Raisin in the Sun*. In 1960, he appeared in the acclaimed film version. Poitier continued his notable roles in *All the Young Men* (1960), *Paris Blues* (1961), and *Pressure Point* (1962). In 1963, he won an Academy Award for his performance in *Lilies of the Field* and became the first African American actor to win in the category of leading actor. He followed this performance with impressive work in *The Long Ships* (1964), *The Greatest Story Ever Told* (1965), *A Patch of Blue* (1965), and *To Sir, With Love* (1967). Poitier's most significant roles came with his next two films *Guess Who's Coming to Dinner* (1967) and *In the Heat of the Night* (1967). Both roles promoted equal treatment of blacks and social integration. He later turned to television movies and played Supreme Court Justice Thurgood Marshall in *Separate but Equal* in 1991 and Nelson Mandela in *Mandela and de Klerk* in 1997.

After finding success in acting, Poitier turned his attention to directing. His debut came with *Buck and the Preacher* in 1972. This western movie showed the significance of African Americans in the West's development and featured black heroes. Poitier's second directorial film, *A Warm December* (1973), had nominal success. He rebounded in 1974 with *Uptown Saturday Night*. The popular film showcased the talents of Bill Cosby, Harry Belafonte, Flip Wilson, and Richard Pryor. He later reteamed with Bill Cosby in *A Piece of Action* (1977) and *Ghost Dad* (1990). In 1980, he directed Richard Pryor in the hit *Stir Crazy*. His later directing projects, *Shoot to Kill* (1998) and *Little Nikita* (1988), also received some praise.

Poitier reflected on his successful career in his 1980 autobiography *This Life*. He wrote another memoir in 2000 titled *The Measure of a Man: A Spiritual Autobiography* and