

NYSBA/LYC Brown v. Board of Education

Handout 1A: Jim Crow

Change did not come easily to the South after the Civil War. During Reconstruction (1865-1877), Radical Republicans in Congress worked to erase the stain of slavery; many white southerners worked just as hard to maintain their way of life. With the failure of Reconstruction, a new system, known as "Jim Crow," ensured that African-Americans would remain segregated from mainstream society and would not receive the equal rights to which they were entitled.

Segregation was a fact of life throughout the South and even in much of the North (New York State permitted segregated schools until the early part of the twentieth century). In the South, segregation became as accepted part of cultural life. The Jim Crow system dominated Southern society by creating separate schools, restaurants, theaters, hotels, and playgrounds for African-Americans. Trains, buses, and streetcars also segregated their passengers by race. Segregation ordinances adopted by some cities even demanded separate drinking fountains and restrooms in public places. Blacks were forbidden to serve on juries, even when the defendant was black. But "Jim Crow" meant more than just the laws on the books- it encompassed every aspect of public life, from the unspoken rules regarding deference shown to whites on the street to the use of restrictive covenants to keep blacks out of white neighborhoods. African-Americans who did not observe these rules could expect to meet with violence. Their primary hope was that in the courts they would find help in reversing state policies which had made them second-class citizens.

Source: Robert H. Jackson Center, *Jim Crow*

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Handout 1B: *Plessy versus Ferguson* (1896)

Homer Plessy was a citizen of the United States and a resident of the state of Louisiana. Plessy was of mixed descent; he was 7/8ths Caucasian and 1/8th 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 from New Orleans north around Lake Ponchartrain to Covington.

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 accommodations 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 compartment 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 the 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 black people. Plessy refused to comply 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 in conflict with the

Fourteenth Amendment to the United States 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.

Source: *Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America. A Unit of Study for Grades 8-12.* James Ruderman and Bill Fauver, National Center for History in the Schools, The Regents, University of California, 1991, pp. 49-50.

Excerpts from the Fourteenth Amendment to the United States (1868)

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

Plessy v. Ferguson (1896)

Opinion from United States Supreme Court: The Supreme Court of the United States held that the Louisiana Act, which stated that "all railway companies were to provide equal but separate accommodations for white and black races" did not violate the United States Constitution. This law did not take away from the federal government's authority to regulate interstate commerce, nor did it violate the Thirteenth Amendment, which abolished slavery. Additionally, the law did not violate the Fourteenth Amendment, which gave all blacks citizenship and forbade the states from passing any laws which would deprive blacks of their constitutional rights. The Court believed that "separate but equal" was the most reasonable approach considering the social prejudices which existed at that time.

U.S. Supreme Court Decisions: A Case Study Review for U.S. History and Government, Law, Youth and Citizenship Program, New York State Bar Association, 1998, pp. 12-13 (adapted).

Supreme Court Justices' Opinions

Justice Henry Billings Brown, majority opinion, *Plessy v. Ferguson*: "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...If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

Justice John Marshall Harlan, dissenting opinion, *Plessy v. Ferguson*: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

Justice Harlan was the only dissenter on the United States Supreme Court to the *Plessy* decision. He further predicted further "aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens." Justice Harlan's warning was fully realized in the regime of "Jim Crow" laws that, with the Supreme Court's sanction, enforced segregation of blacks and other people of color from many of the facilities enjoyed by white citizens across much of the United States. Public schools, transportation facilities, residential neighborhoods, public and private theaters, restaurants, and even public lavatories and drinking fountains were designated for the exclusive use of "whites," while separate-and supposedly equal- facilities were set aside for "coloreds." Any hope of changing these laws through democratic processes was stripped away as states erected legal barriers to the exercise of the vote by black citizens. And in courthouses across the land, blacks were systematically excluded from service on juries.

Dialogue on Brown v. Board of Education. American Bar Association, 2003, p. 1. For a .pdf version of this publication visit the ABA Division for Public Education website at www.abanet.org/publiced/.