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James C. Cobb

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## SEGREGATING THE NEW SOUTH: THE ORIGINS AND LEGACY OF *PLESSY V. FERGUSON*

James C. Cobb<sup>†</sup>

Journalist Pat Watters told the story of a white teacher in a southern Black Belt town who, in the first year of school desegregation, had but one black pupil in her second-grade class. As was her custom on the last day of classes, the teacher had her students file by her desk for a “good-bye hug.” “And do you know,” she recounted to Watters, “that little colored boy came, too, holding his arms out to me, just like the rest. And I just had to push him away. All the other children were watching. I just had to.”<sup>1</sup>

As disturbing in its own way as any involving police dogs or fire hoses, this incident reaffirms the sentiments of Justice Henry Billings Brown, who, in the 1896 *Plessy v. Ferguson*<sup>2</sup> opinion upholding separate but equal facilities for blacks and whites, insisted: “Legislation is powerless to eradicate racial instincts, or to abolish distinctions based on physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation.”<sup>3</sup> Brown’s opinion implied, in the jargon of sociology, that the South’s racial customs or “folkways” would ultimately prevail over any laws or “stateways” that appeared to contradict them.<sup>4</sup> Writing in 1960, economist William H. Nicholls described “the South’s primitive rural folk society” as a setting where “laws . . . follow customs,”<sup>5</sup> and for most of the century following the *Plessy* ruling, those who have studied race relations in the American South have seen segregation as a manifestation of the rural-bred folkways of racism and intolerance that once set

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† Bernadotte Schmitt Professor of History, University of Tennessee.

1. DAVID R. GOLDFIELD, *BLACK, WHITE, AND SOUTHERN: RACE RELATIONS AND SOUTHERN CULTURE, 1940 TO THE PRESENT* 171-72 (1990).

2. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

3. *Id.* at 551.

4. *Id.*

5. WILLIAM H. NICHOLLS, *SOUTHERN TRADITION AND REGIONAL PROGRESS* 181 (1960).

the region apart from the rest of the nation and effectively defined the "southern way of life."<sup>6</sup>

In recent years, however, historians have pointed out that rigid legally and extralegally enforced racial separation emerged in response to conditions not in the rural but in the urban South, as a vital part of the effort to industrialize the region and reintegrate it into the national economy. The so-called "southern way of life" may have been rooted in the slave-tended soil of Old South plantations, but it actually acquired its mature identity in the more dynamic industrializing and urbanizing New South, where it offered the promise of a stable and controlled living, labor, and investment environment.

Developments leading up to the *Plessy* ruling itself illustrate this point. The incident that precipitated the case represented the culmination of a southern trend in which black passengers, who had purchased first-class rail accommodations, frequently found themselves banished to the smoking car or other inferior quarters. Many black travelers challenged this blatantly unfair and illegal practice. Their law suits against such mistreatment mushroomed in the 1880s. In a number of instances the black travelers actually won their cases, even in southern courts. In an 1885 Tennessee case, a federal judge ruled that railroads could segregate passengers by race "so as to avoid complaint and friction," but such a policy was not permissible "when the money of the white man purchases luxurious accommodations amid elegant company, and the same amount of money purchases for the black man inferior quarters in a smoking car."<sup>7</sup> Similar rulings appeared elsewhere, offering blacks a measure of progress in securing fair treatment, but also affirming the legality of separate facilities so long as they were of equal quality. As state legislators began to write separate-but-equal statutes, however, the emphasis in the language of the laws began to shift from "equal" to "separate." Such laws meant extra expense for the railroads, which sometimes encouraged suits against them, but lawmakers soon made it clear that their primary concern was that the system of separation work smoothly and consistently rather than fairly.<sup>8</sup>

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6. GOLDFIELD, *supra* note 1, at 171-72.

7. EDWARD L. AYERS, *THE PROMISE OF THE NEW SOUTH: LIFE AFTER RECONSTRUCTION* 141-44 (1992).

8. *Id.*

When Louisiana passed its separate car law, disarmingly entitled "An Act to Promote the Comfort of Passengers," two New Orleans blacks decided to test it and enlisted the assistance of northern white activist lawyer Albion Tourg e, who responded affirmatively, noting that submission to these outrages would lead to their "multiplication."<sup>9</sup> Recruited by this group to challenge the law, Homer A. Plessy, who was seven-eighths white, was arrested, tried, and convicted in Louisiana in late 1892 for refusing to move to the car assigned to blacks.<sup>10</sup> Four years later, the United States Supreme Court upheld the Louisiana law and denied the plaintiff's contention that the "enforced separation of the two races stamps the colored race with a badge of inferiority."<sup>11</sup> The Court explained that "[i]f 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."<sup>12</sup> The lone dissenter, Justice John Marshall Harlan of Kentucky, predicted with chilling accuracy that "the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case."<sup>13</sup> He further warned that the *Plessy* ruling "will not only stimulate aggressions, . . . but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the constitution."<sup>14</sup>

Justice Harlan proved to be one of the few whites who recognized the potential long-term significance of the *Plessy* ruling, just as few observers in the 1880s could have discerned the role that the New South's expanding railroad network would play in making de jure racial segregation synonymous with the southern way of life. As historian Edward L. Ayers wrote, "[t]ough decisions forced themselves on the state legislatures of the South after the railroads came."<sup>15</sup> The expansion of the railroads brought, as Ayers noted, "the first wave of segregation laws that affected virtually the entire South in anything like a uniform way, as nine Southern states enacted railroad

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9. *Id.* at 144.

10. *Id.*

11. *Plessy v. Ferguson*, 163 U.S. 537, 551 (1896).

12. *Id.*

13. *Id.* at 559.

14. *Id.* at 560.

15. AYERS, *supra* note 7, at 137.

segregation laws in the years between 1887 and 1891.”<sup>16</sup> By 1896 only the Carolinas and Virginia lacked such segregation provisions.<sup>17</sup> The events leading up to *Plessy* suggest that the passage of these laws was prompted by the assertiveness of blacks themselves. This assertiveness was particularly threatening to whites because it manifested itself in the close quarters of the train cars that traveled over the interlaced railroad network which represented an absolute prerequisite for the region’s economic modernization. “Railroad segregation was not,” as Ayers wrote, “a throwback to the old-fashioned racism; indeed, segregation became, to whites, a badge of sophisticated, modern, managed race relations.”<sup>18</sup>

The association of segregation with modernity and sophistication contradicted the assumptions of an entire generation of social scientists and historians. No scholar is more intimately associated with the study of the origins of segregation than the distinguished historian C. Vann Woodward. Even as the Supreme Court heard the arguments that would lead to the judicial overthrow of the *Plessy* decision, Woodward was penning *The Strange Career of Jim Crow*,<sup>19</sup> arguably one of the most influential books ever written on any topic in American history. Describing white attitudes toward segregation in the Jim Crow South, Woodward explained: “Everywhere one was assured that this was the way things had always been, that it was because of Southern folkways, that colored people themselves preferred it that way, and anyway there was nothing that could be done to change it.”<sup>20</sup> Indeed, the folkways-over-stateways presumption advanced by Justice Brown in 1896 was still very much alive throughout American society in the mid-1950s. From the White House, President Dwight D. Eisenhower insisted repeatedly that “you cannot change people’s hearts merely by law,”<sup>21</sup> and even the ostensibly more liberal Democratic presidential nominee Adlai Stevenson cautioned a black audience in 1956: “We must proceed gradually, not upsetting habits or traditions that are

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16. *Id.*

17. *Id.* at 145.

18. *Id.* at 137-45.

19. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (2d ed. 1966) [hereinafter WOODWARD, *STRANGE CAREER*].

20. C. VANN WOODWARD, *THINKING BACK: THE PERILS OF WRITING HISTORY* 82, 87 (1986) [hereinafter WOODWARD, *THINKING BACK*].

21. WOODWARD, *STRANGE CAREER*, *supra* note 19, at 163.

older than the Republic."<sup>22</sup> In *The Strange Career of Jim Crow*, however, Woodward undertook to show that segregation in the South of 1954 represented a triumph not of custom but of law. As Woodward later summarized his argument:

[R]acial segregation in the South in the rigid and universal form it had taken by 1954 did not appear with the end of slavery, but toward the end of the century and later; and . . . before it appeared in this form there occurred an era of experiment and variety in race relations of the South in which segregation was not the invariable rule.<sup>23</sup>

Insisting that, before the institutionalization of Jim Crow in the 1890s, there had been a period of relative flexibility in southern race relations, Woodward clearly implied that should the legal mandates for segregation be destroyed, such a state of fluidity might reemerge.<sup>24</sup> Woodward also linked the appearance of Jim Crow legislation to the Populist agitation of the 1890s.<sup>25</sup> The Populists represented a direct threat to the economic and political supremacy of conservative white Democrats and, thus, had to be vanquished at all costs. Although defeated, the challenge they mounted against the established order created an opening for pseudo-Populist demagogues, such as Ben Tillman of South Carolina and James K. Vardaman of Mississippi to seize the political initiative—attacking bankers and railroad executives and heaping ceaseless vituperation on the blacks whose manipulated votes had actually helped in many cases to put down the Populists.<sup>26</sup> Thus, in Woodward's view, the political ascendance of the white masses, the "revolt of the rednecks," as one scholar called it, had played a key role in ushering in legalized separation of the races and wholesale disfranchisement of blacks as well.<sup>27</sup>

Woodward's interpretation held out considerable hope for mid-twentieth-century liberals. Not only did he find a reason to believe that having been created by law, segregation could be destroyed by it as well, but he associated the racial savagery

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22. *Id.* at 164.

23. WOODWARD, *THINKING BACK*, *supra* note 20, at 82-83.

24. *Id.* at 83.

25. *See id.*

26. *See id.*

27. *See id.*; ALBERT D. KIRWAN, *REVOLT OF THE REDNECKS: MISSISSIPPI POLITICS, 1876-1925* (1951).

underlying the Jim Crow system with the manipulated racial paranoia, ignorance, and irrationality of the South's white masses. Hopefully, the improved economic and educational levels that would come with urbanization and industrialization could mitigate this lower-class white pathology and thereby set the stage for the emergence of a more enlightened racial outlook in southern politics and throughout southern society.

The Reverend Martin Luther King, Jr. described *The Strange Career of Jim Crow* as "the historical Bible of the civil rights movement,"<sup>28</sup> but, within a decade after Woodward's book first appeared and well before the dust had even settled on the remains of de jure Jim Crow, historians were arguing that Woodward's assessment of the state of race relations in the South prior to the 1890s had been too optimistic.<sup>29</sup> In his study of South Carolina, Joel Williamson showed that in the wake of Appomattox, racial separation became the immediate order of the day, as whites refused racial interaction on a variety of fronts while blacks withdrew to their own churches and social organizations.<sup>30</sup> Segregation by custom emerged rapidly as the cornerstone of the postbellum racial readjustment. Though not yet spelled out by law, it quickly hardened into a pervasive and highly coercive tradition. The segregation laws of the 1890s and the *Plessy* decision, of course, had not so much imposed segregation as ratified it, reaffirming by statute what was already a socially mandated norm.<sup>31</sup>

Subsequent research by Howard Rabinowitz raised even more questions about the Woodward thesis. Studying race relations in the late-nineteenth-century urban South, Rabinowitz found that southern cities were at the vanguard of the region's move toward racial separation.<sup>32</sup> Well before 1890, white urbanites had implemented most of the strategies and policies aimed at setting blacks apart from and generally behind whites. Although liberal theorists held that the modern urban-industrial environment was incompatible with segregation and other such obsolete traditions

28. WOODWARD, THINKING BACK, *supra* note 20, at 92.

29. *Id.* at 92-93.

30. *Id.* at 92; JOEL WILLIAMSON, AFTER SLAVERY: THE NEGRO IN SOUTH CAROLINA DURING RECONSTRUCTION, 1861-1877 (1965).

31. See WOODWARD, THINKING BACK, *supra* note 20.

32. HOWARD RABINOWITZ, RACE RELATIONS IN THE URBAN SOUTH, 1865-1890 (1978); JOHN W. CELL, THE HIGHEST STAGE OF WHITE SUPREMACY: THE ORIGINS OF SEGREGATION IN SOUTH AFRICA AND THE AMERICAN SOUTH 134-35 (1982).

of the countryside, Rabinowitz's study indicated that, as John Cell observed, "Jim Crow . . . was not born and bred among 'rednecks' in the country. First and foremost, he was a city slicker."<sup>33</sup> Rigid residential segregation had become a fact of life in the urban North, and because the New South's emerging cities were the locales where the races were most likely to come into contact with each other in new and unfamiliar surroundings and circumstances, they were the settings where the structure and order promised by segregation seemed most needed. Not surprisingly, segregation made its greatest and most visible impact not in older, more racially "settled" cities such as Charleston or New Orleans, but in the dynamic emerging New South metropolises like Atlanta and Birmingham. By 1910, for example, indices of racially dissimilar residential patterns showed that Birmingham was approximately five times more segregated than Charleston.<sup>34</sup> Far from a capitulation to the past, segregation was the wave of the future in the New South of the late nineteenth and early twentieth centuries.<sup>35</sup>

Rabinowitz also argued that segregation was the product of an evolutionary process whereby separate facilities or separation in public places and accommodations actually replaced the wholesale exclusion of blacks from these venues.<sup>36</sup> Segregation was not the worst possible state of racial affairs, but rather emerged through an ongoing dialectic of accommodation and challenge—one in which blacks participated by withdrawing to their own facilities in some cases and refusing to do so in others. Certainly few black leaders embraced the segregation of public facilities and conveyances with genuine enthusiasm, but they reasoned that access to separate facilities was preferable to no access whatsoever. John Cell summed up this pragmatic black perspective on segregation: "Inadequate and inferior though they were . . . *some* facilities and services were provided. The black man's place was subordinate, humiliating, and exceedingly dangerous. It was also profoundly ambiguous, for he was not quite excluded. At least under segregation not *all* the doors were closed."<sup>37</sup> Cell explained:

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33. CELL, *supra* note 32, at 134.

34. *Id.*

35. *Id.* at 135.

36. *Id.* at 175.

37. *Id.*



Like any system of control, segregation was a continually evolving process of negotiation and bargaining. The scales of power were extremely uneven. . . . The process was mainly white action and black-brown reaction. Yet in any such system, in periods of apparently placid stability, as well as in times of crisis, the limits of tolerance are being tested and renegotiated. What was at stake was not only what the dominant group wished to impose but how much the oppressed were willing to accept for the time being.<sup>38</sup>

Whereas black leaders who made a strategic adjustment to segregation were more realists than Uncle Toms, by the standards of their day, the white leaders who endorsed segregation were actually more racially moderate than reactionary. However it appeared in the social and political climate of the 1950s, in the late nineteenth century most relatively enlightened whites saw segregation as an alternative that was both pragmatic and humane. Certainly those whites who proposed separate schools, hospitals, or other such facilities for blacks were eminently preferable to demagogues who offered nothing but the coarsest and most inflammatory racial rhetoric and whose most common pronouncements about the future of southern blacks usually amounted to calls for brutal subjugation, outright expulsion, or even extermination.

Segregation was less commonly associated with James K. Vardaman or Ben Tillman than with the apostles of New South progress like Walter Hines Page and Henry W. Grady. The ultimate salesman, Grady argued that segregation was the best available racial option to serve the interests of not only southern whites but also southern blacks and the rest of the nation as well.<sup>39</sup> According to Paul Gaston, segregation was a vital element of Grady's "New South Creed."<sup>40</sup> As early as 1883, Grady was extolling the virtues of separate but equal facilities, especially to northern audiences. More than a decade before the *Plessy* verdict, Grady insisted in a widely read *Century Magazine* article that the United States Constitution mandated "equal accommodations for the two races, but separate."<sup>41</sup> This

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38. *Id.* at 234.

39. *Id.* at 181.

40. *Id.*; PAUL M. GASTON, *THE NEW SOUTH CREED: A STUDY IN SOUTHERN MYTHMAKING* (1970).

41. GASTON, *supra* note 40.

provision should apply “[i]n every theater,” and Grady believed, “the same rule should be observed in railroads, schools and elsewhere.”<sup>42</sup>

As they sought northern industrial capital, Grady and his New South cohorts insisted that racial and political home rule for southern whites—in effect rolling back the tragically misguided policies of Reconstruction—was the prerequisite for stabilizing the South’s investment climate and facilitating the region’s rapid reintegration into the national economy.<sup>43</sup> Segregation was vital to the success of the New South movement because a stable racial climate was essential to a stable labor climate, which, in the euphemistic rhetoric of New South boosters, actually meant an abundance of cheap, dependable, and docile workers. As the legacy of Reconstruction began to unravel and the courts validated the process, segregation promised to ease tensions not just between southern blacks and southern whites, but between southern whites and northern blacks as well, thus facilitating the flow of capital from North to South. Seen in a broader national, as well as regional, economic perspective, the emergence of the Jim Crow system surely reaffirms Ralph Ellison’s observation that “the welfare of the most humble black Mississippi share cropper is affected less by the flow of the seasons and the rhythms of natural events than by the fluctuations of the stock market” and Ellison’s reminder that “[n]egro life does not exist in a vacuum but in the seething vortex of those tensions generated by the most highly industrialized of Western nations.”<sup>44</sup>

As early as 1885, Henry Grady was telling all who would listen that “[n]owhere on earth is there kindlier feeling, closer sympathy, or less friction between two classes of society than between the whites and the blacks of the South to-day.”<sup>45</sup> Ten years later, with lynchings practically an everyday occurrence and the outlook for racial progress as dim as it had been since the Reconstruction era, black educator and spokesman Booker T. Washington was invited to speak at the opening session of the Cotton States Exposition in Atlanta. Intended to showcase the South’s economic resurgence, the exposition’s target audience

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42. *Id.*

43. *See id.*

44. JAMES C. COBB, *THE MOST SOUTHERN PLACE ON EARTH: THE MISSISSIPPI DELTA AND THE ROOTS OF REGIONAL IDENTITY* 299 (1992).

45. GASTON, *supra* note 40, at 208.

consisted primarily of the northern investors and entrepreneurs that Grady's New South disciples had been wooing so ardently. Ironically, exposition organizers drew criticism from local whites, both for their decision to have a special building for exhibits featuring black accomplishments and for their decision to allow Washington to speak. On the other hand, many Atlanta blacks boycotted the extravaganza in protest of the strict policies of segregation that governed the affair.<sup>46</sup>

Introduced as "a great Southern educator" and a "representative of Negro enterprise and Negro civilization," Washington immediately put his white audience at ease, assuring them that "[t]he wisest among my race understand that the agitation of questions of social equality is the extremest folly."<sup>47</sup> In the most famous passage from the speech, he reasoned that, "[i]n all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress."<sup>48</sup> Washington asked only for fairness and cooperation, assuring whites that by providing reasonable economic and educational opportunities for blacks, they could "be sure in the future, as in the past, that you and your families will be surrounded by the most patient, faithful, law-abiding, and unresentful people that the world has seen."<sup>49</sup> Although Washington had privately encouraged and supported anti-Jim Crow efforts, his public acquiescence on this occasion seemed to provide the ultimate endorsement of the New South racial agenda. One reporter even insisted that no event since Henry Grady's famous 1886 speech at Delmonico's restaurant in New York had demonstrated "so profoundly the spirit of the New South."<sup>50</sup>

In the rhetoric of Washington and Grady, "separate but equal" sounded less like repression than reform. More ironically still perhaps, the same was true of disfranchisement, whose proponents sold it as an enlightened attempt to restore honesty and rationality to an unstable southern political scene, where white competition for black votes often led to extreme examples of both violence and fraud. By the end of the nineteenth century,

46. See James C. Cobb, *Georgia Odyssey*, in *THE NEW GEORGIA GUIDE* (1996).

47. LOUIS R. HARLAN, *BOOKER T. WASHINGTON: THE MAKING OF A BLACK LEADER, 1856-1901*, at 219 (1972); GASTON, *supra* note 40, at 208.

48. HARLAN, *supra* note 47, at 218.

49. GASTON, *supra* note 40, at 210.

50. *Id.* at 208.

some of the white South's ostensibly most advanced thinkers had embraced disfranchisement as an absolute necessity that would reduce both racial tension and electoral fraud. In essence, blacks were to be denied their vote, one Virginia cynic observed, to prevent Democratic election officials from stealing it from them.<sup>51</sup> Some New South intellectuals even saw disfranchisement leading to the rise of two-party politics, because, freed from the divisive and potentially threatening presence of the black vote, southern whites could calmly and soberly entertain the Republican Party's platform and principles solely on their merits. The likely upshot of the emergence of two-party political competition, they reasoned, would be the South's full and speedy reintegration into the national political system. Thus, after surveying its numerous potential benefits, President Edwin A. Alderman of the University of Virginia hailed disfranchisement as one of the "most constructive acts of Southern history."<sup>52</sup>

Historian J. Morgan Kousser argued in 1974 that the ultimate impact of disfranchisement on southern and national politics hardly could have been more antithetical to what its architects had promised.<sup>53</sup> Kousser showed convincingly that disfranchisement was sponsored by the white elites of the Black Belt in an effort to insure that white supremacy meant conservative white Democratic supremacy. Sure enough, the disfranchisement statutes kept almost all blacks and many poor whites away from the polls and, in so doing, effectively concentrated power in the tight grip of those who had the most to gain from perpetuating the Democratic Party's political hegemony. With the Democrats comfortably ensconced as Dixie's party of no other choice, electoral participation plummeted, but corruption still flourished as fierce intraparty factional struggles quickly became the order of the day.<sup>54</sup>

Contrary to expectations, issues and ideology fell by the wayside as one-party elections forced all aspirants into a single Democratic primary featuring a huge field of candidates. Not surprisingly, victory often went to the candidate who managed to

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51. C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH, 1877-1913*, at 327 (1951).

52. BRUCE CLAYTON, *THE SAVAGE IDEAL: INTOLERANCE AND INTELLECTUAL LEADERSHIP IN THE SOUTH, 1890-1914*, at 159 (1972).

53. J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880-1910* (1974).

54. *Id.*

catch the electorate's attention by yelling "white supremacy" the loudest and generally acting the biggest fool. Hence, with flamboyant rusticity, Georgia's Gene Talmadge flashed his red suspenders and lustily denounced blacks and city slickers, especially "them lying Atlanta newspapers,"<sup>55</sup> while Mississippi's Theodore G. Bilbo demonstrated not only his vitriolic racism but also his willingness to take a controversial stand by declaring himself a sworn foe of both "international well-poisoners" and "skunks who steal Gideon Bibles."<sup>56</sup>

By rewarding demagoguery, disfranchisement heightened rather than reduced racial tensions. In fact, the debates on disfranchisement usually featured incendiary racist rhetoric that often exploded in firestorms of white-on-black violence typified by the horrific Atlanta riot of 1906, in which some of the black victims were piled, symbolically enough, at the foot of a statue of Henry Grady. The Atlanta riot hardly gave evidence of the racial stability that Grady had promised, but disfranchisement did achieve one goal sought by Grady and his New South counterparts. The white South reintegrated itself into national politics, and it did so on its own terms. Insulated from the masses of black and white voters, reactionary southern senators and congressmen eagerly did the bidding of Black Belt chieftains and corporate bosses, returning to Washington year after year to use their seniority on behalf of their patrons and thwart any and all reform initiatives that might contradict their interests. When the civil rights agitation of the post-World War II years began, southern stalwarts in Congress capitalized on their strategic, seniority-endowed committee chairmanships to defend the "southern way of life" against the onslaughts of black activists or whatever legislative or judicial assaults their cohorts in Washington might mount.

Politics and social interaction were not the only areas where the law played a key role in stabilizing race relations to the economic benefit of certain southern whites. As legalized segregation emerged in part as a response to the urbanization of a growing segment of the black population, labor relations in the countryside fell under the influence of a large body of statutes aimed at restricting the mobility and economic leverage of black

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55. See WILLIAM ANDERSON, *THE WILD MAN FROM SUGAR CREEK: THE POLITICAL CAREER OF EUGENE TALMADGE* (1975).

56. JOHN SAMUEL EZELL, *THE SOUTH SINCE 1865*, at 379 (1975).

farm labor. In the wake of emancipation, vagrancy and anti-enticement statutes clearly sought to provide an ample and stable pool of farm workers from which white landlords could draw.

In recent years, a number of scholars have shown that at its inception the southern sharecropping system actually grew out of a process of mutual accommodation between whites with land but no labor to work it and newly freed blacks in the Deep South whose labor the landlords earnestly sought. Both groups suffered the adverse effects of the severe scarcity of capital in the South, and the so-called crop-lien laws provided a means of financing the growing of the crop that secured the loan. For most employers, this meant offering a post-harvest wage to workers who they initially hoped could be organized into work gangs similar to those employed on antebellum plantations. Rejecting gang labor for wages as all too reminiscent of slavery, most freedmen sought instead to farm discrete parcels of land in exchange for a share of the crop, the proceeds from which would be adjusted against their annual advances for support and sustenance. Because of the financial risks involved, many landlords resisted this sharecropping arrangement, relenting only out of desperation for labor. In the eyes of the freedmen, on the other hand, the sharecropping system made them virtual partners in the crop while allowing them considerable personal and family autonomy and freedom from white supervision.

For all the promise sharecropping seemed to offer at the end of the 1860s, however, by the turn of the century an intricate combination of custom and law had severely circumscribed the sharecropper's options, demoting him from a partner in the crop to a simple laborer paid a post-harvest wage in kind with little or no control over the planting, cultivation, or marketing of the crop that his toil had helped to produce. Denying that a sharecropper was anything other than "a mere laborer for wages," a South Carolina court ruled in 1882 that such a tenant could not secure credit by granting a lien on his portion of the anticipated crop because "the laborer has no interest in the crop as such, and to authorize him to encumber the crop of his employer would be to give him rights in the property of another, to introduce great confusion, and, indeed, to destroy the important business of farming with hired labor."<sup>57</sup>

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57. See HAROLD D. WOODMAN, *NEW SOUTH—NEW LAW: THE LEGAL FOUNDATIONS*

Thus, the relationship between landlord and tenant was legally clarified to the benefit of the landlord with the stated aim of further stabilizing the South's system of agricultural labor. With the landlord's position at the top of the economic pyramid secured by both custom and law, it remained only for the sharecroppers to sink despairingly into an essentially rootless, forever shifting farm labor force, more concerned about survival than advancement. Their existence and outlook was captured by the bluesman's resigned lament:

Goin' no higher;  
 Goin' no lower down.  
 Gonna stay right here,  
 Gonna stay right here,  
 'Til they close me down.<sup>58</sup>

In the years after *Plessy*, the Supreme Court offered further federal judicial sanction for the consignment of black southerners behind a wall of discrimination, disfranchisement, and economic deprivation. In 1899, the Court all but deleted, or certainly obscured the meaning of, the "equal" in "separate but equal."<sup>59</sup> In the case of *Cumming v. Richmond County Board of Education*, the Court upheld a Georgia county's elimination of a black high school, ruling in a disappointing majority opinion written by Justice Harlan, the eloquent dissenter in *Plessy*, that so long as the move was economically rather than racially motivated, the matter fell under state jurisdiction and was not the business of the Supreme Court.<sup>60</sup> One year earlier, the Court upheld Mississippi's disfranchisement plan centered on the literacy test and the poll tax, accepting at face value the state's contention that the provisions were applied equally to both races.<sup>61</sup>

The executive, congressional, and judicial consensus that the race problem was a southern problem whose solution was best left to white southerners, left black southerners to trudge through the better part of a century of legal and extralegal brutalization and exploitation. Observing that the emancipation of the slaves "had required the condemnation of slavery and the

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OF CREDIT AND LABOR RELATIONS IN THE POSTBELLUM AGRICULTURAL SOUTH 104 (1995).

58. COBB, *supra* note 44, at 284.

59. *Cumming v. Richmond County Bd. of Educ.*, 175 U.S. 328 (1899).

60. *Id.*

61. *Williams v. Mississippi*, 170 U.S. 213 (1898).

South as intolerable national problems," Don H. Doyle concluded that the postbellum oppression of these same people required the "complicity" of the entire nation as well.<sup>62</sup>

By 1900, national acquiescence to de jure Jim Crow as a fact of southern social, political, and economic life left white southerners free to use the law to maintain a rigid racial bottom line in practically every phase of southern life. In instances in which the region's highly coercive racial customs fell short of providing the desired levels of racial control, the southern courts gave formal institutional sanction to white dominance. In segregated courtrooms, often featuring separate bibles for black witnesses, white judges and juries handed out Jim Crow justice on a sliding scale, measured by the extent to which white interests had been threatened by the black defendant's alleged offense. In the event of physical or sexual assault against whites, most considered the black defendant fortunate even to be around for the trial. On the other hand, black-on-black crime, even homicide, was often considered trivial unless the victim or the alleged perpetrator was a humble, acquiescent black who enjoyed the protection of an influential white or group of whites. In such cases, the court's verdict was likely to reflect the perceived interests of the dominant white community rather than the tangible realities of the case. So pervasive was white influence on the judicial system that condemned black defendants were often expected to apologize for their offense before they were executed while simultaneously seeking God's forgiveness and thereby indicating their ultimate acquiescence to the punishment about to be inflicted on them. Within such a context, it was hardly surprising that among black southerners real life outlaws or legendary bad men like "Stagolee" achieved folk-hero status for their fearless and remorseless defiance of white social mores and the white man's system of justice. The racial divisions revealed recently by the O.J. Simpson verdict clearly reflect contemporary conditions and trends in American society at large. However national these divisions may be in scope, insofar as they have regional roots, those roots are surely in the South.

Meanwhile, having made their peace with segregation and disfranchisement, southern white racial moderates left

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62. Don H. Doyle, *Slavery, Secession, and Reconstruction as American Problems, in THE SOUTH AS AN AMERICAN PROBLEM* 102, 123 (Larry J. Griffin & Don H. Doyle eds., 1995).



themselves little option other than ineffectual pleadings for fair and humane treatment of a race that had been socially stigmatized and legally and politically neutralized. Though in subsequent years southern moderates would eventually support voting by qualified blacks, until the Civil Rights movement reached its activist phase, save for Lillian Smith and few others, most confined their efforts to trying to force their peers to live up to the "equal" facilities mandate handed down in *Plessy* while actually warning Washington against any interference with the practice of racial separation in the South. Even a restrained position like this required enormous courage, but nevertheless, Jim Crow was practically on death row before Hodding Carter or Ralph McGill or many other southern moderates joined the call for his execution.

Both internal and external white acquiescence to the southern version of "the final solution" to the race problem allowed the South to attain what John Cell called "the highest stage of white supremacy."<sup>63</sup> Yet, solid as the Jim Crow system seemed on the eve of World War I, its very solidity and oppressiveness helped to sow the seeds of its own destruction. Massive outmigration shifted a significant segment of the black population from a part of the nation where they could not vote to a part where they could, thus encouraging the Democratic Party's growing solicitousness toward black voters. Though resisted bitterly by the right-wing congressional perennials sustained by the South's closed political system, the New Deal's centralized response to the South's socioeconomic ills and President Franklin Roosevelt's appointments of Supreme Court justices more sympathetic to civil rights also proved crucial, as did the growing strength and increasing effectiveness of black activism and NAACP litigation efforts. Finally, where the *Plessy* case had reflected the influence of scientific racism and the imperialist context of late-nineteenth-century American foreign policy, the deliberations in the 1954 *Brown* case noted the emergence of egalitarian racial theory and the rising tensions of the Cold War. The latter was suggested by a government brief which argued that "[i]t is in the context of the

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63. CELL, *supra* note 32, at 275; James W. Ely, Jr., *The Supreme Court and Race Relations, in THE SOUTH AS AN AMERICAN PROBLEM*, 126, 135 (Larry J. Griffin & Don H. Doyle eds., 1995).

present world struggle between freedom and tyranny . . . that the problem of racial discrimination must be viewed.”<sup>64</sup>

The significance of the *Brown* decision’s overthrow of *Plessy* can hardly be exaggerated. Yet, in the face of the southern white leadership’s strategy of “massive resistance” to the implementation of the Court’s ruling, “all deliberate speed” proved considerably more deliberate than speedy until the explosion of black activism in the early 1960s spurred a reluctant executive and legislative branch to adopt a comprehensive civil rights agenda, which included the desegregation of all public accommodations as well as aggressive, high-profile protection of the Fifteenth Amendment franchise guarantees.

Institutionalized racial segregation had emerged in tandem with the late-nineteenth-century crusade to build a “New South” by courting low-wage, low-value-added manufacturing firms and seeking thereby to integrate the region into the national industrial economy at the trailing edge. The New South strategy prevailed over most of the next three-quarters of a century, yielding a pattern of slow growth and a decidedly labor-intensive manufacturing economy. Spurred by the massive economic boost supplied by World War II, however, the leaders of the region’s more dynamic metropolitan areas began to enjoy some success in courting more sophisticated, socially responsive companies, which operated nearer the leading edge of the national and global economy. Concerned that violence and racial confrontation would undermine their efforts to recruit such firms, financial and business leaders in cities like Atlanta and Charlotte played a key role in insuring that desegregation proceeded more smoothly in their communities than it did in less growth-oriented cities such as Birmingham or New Orleans. Segregation and disfranchisement had appeared to offer the stability deemed good for business in the 1890s. In the dramatically altered sociopolitical and investment climate of the 1960s, however, with black protests sweeping across the region, instead of stability and growth, continued adherence to Jim Crow promised nothing but social conflict and economic stagnation.

The case of Atlanta and its broader impact on the desegregation struggle throughout Georgia is particularly instructive. Not only did Mayor William B. Hartsfield’s “Too-

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64. Ely, *supra* note 63, at 135.

Busy-to-Hate" city manage to turn the judicially mandated, token desegregation of its own schools into a veritable public-relations coup, but the long reach of its business community manifested itself in the 1961 John A. Sibley Commission recommendation that defied white-majority opinion statewide by recommending that Georgia's public schools remain open in the face of court-ordered integration. Likewise, litigation supported by Atlanta business interests proved crucial to the Supreme Court's overthrow of the state's outrageously anti-urban county-unit electoral system that paved the way for the election of more racially moderate state officials and which, in concert with the Voting Rights Act of 1965, helped to enhance the influence of the state's black voters as well.

The South defined by *Plessy* lived a long time, but once it came under direct assault from activists, lawmakers, and jurists, it died a relatively quick, though by no means painless, death. Even in the majority-black, race-obsessed Mississippi Delta, white politicians were soon visiting juke joints and churches and locking arms with local blacks to sing "We Shall Overcome." Citing better treatment at the hands of public officials, especially law enforcement agents, one Delta black leader explained, "[t]hese officials see us now as a citizen, not as a Negro."<sup>65</sup>

Though race relations remain far from ideal, in many ways the contrasts between the Souths of 1896 and 1996 could hardly be more stark. De jure segregation is gone and blacks and whites mingle and interact throughout the public realm. Blacks not only vote but hold office in far greater concentrations than anywhere else in the nation. Ironically, black political allegiance belongs overwhelmingly to the party that sponsored their disfranchisement and whose regional representatives once fought bitterly against any and all efforts to promote their socioeconomic advance. On the other hand, whereas racially conservative southern whites were once the bedrock of the southern Democratic Party, their ideological descendants now stand firmly in the camp of the Republicans. Despite concerns over political polarization and economic disparity, however, contemporary polling and demographic data show southern blacks as the most satisfied of all African-Americans and the South as the nation's

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65. COBB, *supra* note 44, at 250.

most attractive region for black migrants.<sup>66</sup> “I’d rather be in the South than any place else,” declared one Georgia-born black who was returning after a long absence. “It’s not just that the opportunities are here,” he explained. “It’s that the opportunities to solve the problems that exist are here too.”<sup>67</sup>

More than any single legal or political development, the *Plessy* decision rendered racial segregation virtually synonymous with the southern way of life. A near-textbook example of the propensity of the law to confirm emerging social and economic trends and reconcile them to existing cultural mores, the decision was the crucial element in a sequence of interrelated adjustments to the sociopolitical and economic realities of emancipation. In the post-Civil Rights era, another process of readjustment led ultimately to vastly improved, if inconsistent, race relations and allowed blacks and whites to begin, on considerably more equal footing this time, to redefine their relationship with each other and with their region as well.

Unwilling to “accept the Confederate battle flag as an emblem in which all Georgians can take pride,” black journalist John Head insisted: “The South is my home. . . . I am a Southerner,” and therefore he refused “to allow others to say what that means.”<sup>68</sup> Head’s comments affirmed Peter Applebome’s recent observation that “in a logical extension of the civil rights battles of the past,” southern blacks “are staking claim to their own vision of the South—not as background figures on the mythic landscape of moonlight and magnolias, not as victims of oppression dragged here from Africa, but as Southerners, with as much stake in the region as any Mississippi planter or Virginia farmer.”<sup>69</sup> As Applebome’s comments suggest, no phenomenon of the post-Civil Rights era is more striking than the widespread inclination of southern blacks to identify themselves as southerners, thereby, as Thadious M. Davis put it, “laying of claim to a culture and to a region that, though fraught with pain and difficulty, provides a major grounding for identity.”<sup>70</sup> If the

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66. *Id.*

67. Peter Applebome, *A Sweetness Tempers South’s Bitter Past*, N.Y. TIMES, July 31, 1994, at A1.

68. John Head, *Southern Past, Present, Future*, ATLANTA CONST., Mar. 21, 1994, at A13.

69. Applebome, *supra* note 67.

70. Thadious M. Davis, *Expanding the Limits: The Intersection of Race and Region*, 20 S. LITERARY J. 3, 6 (Spring 1988).

overthrow of *Plessy* freed blacks to claim the South as home, it likewise gave southern whites the opportunity to reconsider their own identities and demonstrate that there was more to their regional heritage than what Hodding Carter called a “wretched record of racial murders, political demagogues, separate rest rooms and school closings.”<sup>71</sup>

Their common quest for a redefined identity seems to hold out the prospect for bringing black and white southerners closer together, although contemporary conflicts over songs, symbols, and monuments—either to the Confederacy or to the crusade against Jim Crow—suggest that this may take a while. Still, as we observe the centennial of the *Plessy* decision, the South’s stateways no longer separate its residents by color, and they are free as never before to determine for themselves whether, despite their conflict-ridden past, the customs and traditions they share, the folkways of region rather than race, will sustain a new and truly meaningful “southern way of life” into the new century that lies just ahead.

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71. Hodding Carter, III, *The End of the South*, TIME, Aug. 6, 1990, at 82.