Defeat but not Ignominy: The New Orleans Afro-Creoles Behind *Plessy v. Ferguson*

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Introduction

After the end of Reconstruction in 1877, southern states began to enact laws requiring racial segregation known as Jim Crow laws. Through such laws, white southerners sought to turn back the rights established for African Americans through the Civil War and the post-Civil War constitutional amendments. Louisiana enacted the Separate Car Act in 1890 that mandated that all railways maintain "equal but separate" railcars for white persons and "colored" persons.[1.] In New Orleans, eighteen leaders of the Afro-Creole community formed the Comité des Citoyens (Citizens Committee) to organize and fund a legal case that would challenge the constitutionality of the Louisiana law.

One member of the Citizens Committee, Louis Martinet, holding degrees in law and medicine and then the editor of the New Orleans Crusader, played a leading role in bringing the case. Albion Tourgée, a prominent white civil rights activist and attorney who lived in New York, acted as the lead attorney in the case. Martinet and Tourgée together arranged for an Afro-Creole volunteer, Homer Plessy, to be arrested and charged with violating the Separate Car Act. This action set up the desired challenge to the constitutionality of the law, and the case, Plessy v. Ferguson, eventually worked its way up to the United States Supreme Court.

Tourgeé forcefully argued to the Supreme Court the constitutional, social, and moral objections to segregation laws. However, in 1896, the Court decided against Tourgée's arguments by a vote of seven to one and thus established that state laws may require separate accommodations based on race as long as the laws provide that such accommodations be equal. On the other hand, in his dissenting opinion, Justice John Marshall Harlan, a former slaveholder from Kentucky, basically adopted the views argued by Tourgée and passionately asserted that segregation laws should be struck down as unconstitutional.[2.] Because the decision in Plessy v. Ferguson upheld state-sanctioned racism, it cleared the path for a wave of Jim Crow laws that pervaded the South for many decades. Justice Harlan's dissenting opinion lay dormant during this period. However, in 1954, in Brown v. Board of Education, the Supreme Court revived the ideas argued by Tourgée as adopted and preserved in Harlan's dissent. The court reversed Plessy v. Ferguson and struck down as unconstitutional laws requiring racial segregation.[3.]

Within the context of the landmark Plessy decision, this article will describe the indispensable role played by the New Orleans Afro-Creole community that brought the challenge to the Louisiana law. While this challenge resulted in the retrogressive Plessy decision, it also provided the more inspiring Harlan dissenting opinion that served as a beacon for future generations. Afro-Creoles had benefitted intellectually and economically from generations of freedom. They had pride in their distinct mixed culture and carried high expectations that would not allow them to acquiesce to the offensive law despite the low probability of success. This article will argue that the unique history of the New Orleans Afro-Creoles made them one of the very few communities in the 1890s that possessed the education, wealth, and attitudes of resistance necessary to take to the Supreme Court a challenge to the constitutionality of Jim Crow laws.

The argument in this article will be presented in five sections. The

first section will review the historical literature regarding Plessy v. Ferguson and New Orleans Afro-Creole culture and will reflect that the contribution of Afro-Creoles to the Plessy case has not received much attention from historians. The next section will provide an overview of the facts and holding of the landmark case with emphasis on the direct participation of Afro-Creoles in setting up the case. The article then will turn to explore how the distinct and prosperous mixed-race community known as the "free people of color" developed in Louisiana prior to the Civil War. This history will lead to the fourth section that will demonstrate from the writings of Afro-Creole leaders that they possessed unique resources and attitudes of resistance in 1890. The final section of the paper will explain the significant contribution made by New Orleans Afro-Creoles to civil rights and constitutional history in the United States.

In this article, the term "Afro-Creole" refers to persons who lived in Louisiana who had both Africans and Creoles (i.e., white immigrants from Europe) as ancestors and who identified themselves as Afro-Creole. They descended from the free people of color prior to the Civil War. The term "African American" means persons who were wholly or partially of African ancestry and who did not identify themselves as Afro-Creole. They generally (but not always) descended from slaves. In the Jim Crow era, the South by law and custom attempted to draw a sharp color line between white persons and "colored" persons. The term "colored" referred to all persons who had any African ancestors whatsoever, so included both Afro-Creoles and African Americans.[4.] This article thus will use the term "persons of color" to refer to Afro-Creoles and African Americans collectively in the Jim Crow era.

Literature Review of *Plessy* and New Orleans Afro-Creole History

Historians have not given much attention to the relationship be-

tween the unique New Orleans Afro-Creole culture and history and the *Plessy v. Ferguson* case. The *Plessy* scholars have tended to focus on one or more of the following components of the story: legal analysis of the majority and dissenting opinions, the decision's place in the history of civil rights of African Americans after the Civil War, and, to a much lesser extent, the social and political setting in New Orleans from which the Afro-Creole community initiated the case. Many legal historians have dissected the rationale of the Supreme Court in upholding as constitutional state laws requiring racial segregation in the face of the equal protection clause of the U.S. Constitution. While these legal historians generally view the decision as understandable and expected from a court with a conservative, non-activist philosophy, they often cannot help but criticize the opinion as terribly backwards from a social and moral perspective.[5.]

The civil rights history of African Americans between the end of the Civil War and the beginning of the enactment of segregation laws in the late 1880s forms another aspect on which many *Plessy* historians have focused. The federal government endeavored to provide for civil rights for African Americans through constitutional amendments in the late 1860s and through enforcement of these rights by the presence of federal troops in the South during Reconstruction. The segregation laws enacted in the South after the end of Reconstruction constituted a retrenchment of white supremacy in the South. The *Plessy* decision upholding such laws helped to usher in a lengthy era in which civil rights for African Americans fell to a low point. Thus historians who review this aspect describe the important and dismal place that the *Plessy* decision holds in the history of civil rights.[6.]

Finally, the New Orleans Afro-Creole community that initiated the legal challenge has garnered some attention from *Plessy* historians. Most have described the formation of the Citizens Committee and Louis Martinet's contributions to organizing the case as basic background to the initiation of the *Plessy* case. However, only *We as*

Freemen: Plessy v. Ferguson by Keith Weldon Medley, a New Orleans historian, delved very deeply into New Orleans Afro-Creole culture and history and focused on the role played by the New Orleans Afro-Creoles in the *Plessy* case.

Outside the context of the *Plessy* case, many historians have reviewed the development of the unique New Orleans Afro-Creole culture and their continual efforts to find a fair place in American life. These sources can be divided into two categories by time period as follows: the "free people of color" prior to the Civil War, and the Afro-Creoles after the Civil War until the time of *Plessy*.[7] *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803* by Kimberly S. Hanger provided an in-depth review of the development of the community of African Americans who obtained freedom from slavery under Spanish rule prior to 1803. *Creole: The History and Legacy of Louisiana's Free People of Color* edited by Sybil Klein also offered articles that explored the continuing growth and success of the free people of color prior to the Civil War under the system of *plaçage* that resulted in long-term unions and procreation between free women of color and men of European descent. For the period after the Civil War until the time of *Plessy*, in the context of civil rights efforts affecting all persons of color in New Orleans, some historians discussed the efforts of Afro-Creoles to obtain and protect their civil rights during the hopeful period of Reconstruction and then during the resurgence of white supremacy thereafter. For example, *The African American Experience in Louisiana from the Civil War to Jim Crow,* edited by Charles Vincent, offered articles on topics such as the economic impact of the Civil War on the free people of color and political leadership among people of color in New Orleans after the Civil War.

To summarize the relevant historical literature, legal historians have analyzed the *Plessy* case from several different perspectives. Other historians have explored New Orleans Afro-Creole culture and history

in several time periods before and during the *Plessy* era. Only one historian, Keith Weldon Medley, in *We as Freemen: Plessy v. Ferguson,* combines the two and has as his primary focus the subject of this article: the indispensable role of New Orleans Afro-Creoles in *Plessy v. Ferguson*.

Overview of *Plessy v. Ferguson*

Understanding the role of Afro-Creoles in the landmark case requires review of the basic facts relating to the case including the Louisiana law that they challenged, their direct participation in the careful planning of the defendant's arrest to set up the test case, and the legal basis for the United States Supreme Court's rejection of their arguments. Turning first to the Louisiana law, many of the first Jim Crow laws passed in the South pertained to railways. The close physical proximity of railway passengers - including both men and women - sometimes for hours or even overnight must have created grave discomfort for segregationists. Thus, between 1887 and 1892, nine southern states enacted laws requiring separate railcars for white passengers and for passengers of color.[8.] In 1890, Louisiana joined these states when it passed the Separate Car Act despite the existence of eighteen persons of color serving in the Louisiana legislature. In order to "promote the comfort" of railway passengers, the Separate Car Act mandated that all railway companies maintain "equal but separate accommodations for the white and colored races." The Act further provided for criminal penalties for any employees of the railway or passengers who do not comply and authorized the railway companies to prohibit physically passengers from riding in a railcar not designated for their race.[9.]

Only nine days after the Louisiana legislature voted in favor of the Separate Car Act, Louis Martinet wrote an editorial in the New Orleans *Crusader.* Martinet explained the unfortunate politics behind

the passage of the "iniquitous" Act and concluded that "the next step is for the American Citizens Equal Rights Association to begin to gather funds to test the constitutionality of the law. We'll make a case, a test case… The American Citizens Equal Rights Association will make it if it understands its duty."[10.] However, more than a year passed without the American Citizens Equal Rights Association (ACERA) or any other group organizing a legal challenge to the Act. Martinet privately expressed concern that ACERA had become only a "purely political resolution machine" and lacked the leadership to effectively organize a long-term legal battle.[11.] Therefore, Martinet, along with seventeen other prominent New Orleans Afro-Creole leaders formed the *Comité des Citoyens* (Citizens Committee) for the sole purpose of bringing the test case.[12.] The Citizens Committee raised the funds necessary to bring the case and engaged Albion Tourgée to serve as their lead counsel. Tourgée, an Ohio native, had served in the Union Army during the Civil War. After the war, he moved to North Carolina, built a reputation as a radical Republican, and served as a judge on the North Carolina superior court. Tourgée had obtained some prominence as a novelist and as the author of a column known as the Bystander in the *Chicago Inter-Ocean,* a national newspaper, in which he forcefully advocated for civil rights for African Americans.[13.]

In the 1890s Tourgée lived in upstate New York, so had to communicate with the Citizens Committee by letter. Martinet assumed the role as Tourgée's sole point of contact with the Citizens Committee for the case. Tourgée first suggested that they arrange for a woman of color who looks nearly white to board a railcar for whites and to be arrested to set up the legal challenge. A defendant who looks nearly white would show the arbitrariness of the sharp color line that the law tried to draw. In his first letter to Tourgée, Martinet began to illustrate the complexity of race in New Orleans when he responded to

Tourgée as follows:

> It would be quite difficult to have a lady *too* nearly white refused admission to a "white" car. There are the strangest white people you ever saw here. Walking up & down our principal thoroughfare – Canal Street – you would [be] surprised to have persons pointed out to you, some as white & others as colored, and if you were not informed you would be sure to pick out the white for colored & colored for white. Besides, people of tolerably fair complexion, even if unmistakably colored, enjoy here a large degree of immunity from the accursed prejudice.[14.]

Tourgée and Martinet also agreed that the defendant must be arrested and charged with violating the Separate Car Act to position them to challenge the constitutionality of the law. Mere ejection of the defendant from a white car or a charge of disorderly conduct or any crime other than violation of the Separate Car Act would do their cause no good. In addition, they had to deal with the difficulty that the railway companies faced in enforcing the law against individuals who looked nearly white in New Orleans' mixed-race society. In other words, their volunteer defendant who looked nearly white probably could ride in the white railcar every day without anyone noticing it. For these reasons, Martinet set out to obtain the cooperation of a railway company in arranging the arrest. After meeting with three companies, Martinet reported to Tourgée that each railway company disliked the law due to the considerable expense and inconvenience of maintaining separate cars, and one even said that they do not enforce the law. "But they fear to array themselves against" the law.[15.] Finally, after consulting with legal counsel, the Louisville & Nashville Railroad informed Martinet that it would cooperate in setting up the ar-

rest, but the railroad would have to play a passive role that would not generate public attention for the railroad. "They want to help us but fear public opinion," Martinet reported.[16.]

Daniel Desdunes, a twenty-year old light-skinned Afro-Creole musician and son of Rodolphe Desdunes, a prominent Citizens Committee member, volunteered to serve as the defendant. On February 24, 1892, Desdunes took his seat in a railcar designated for whites on the Louisville & Nashville Railroad. According to the plan Martinet had worked out with the railroad company, a white volunteer on board objected to the presence of the passenger of color in the white car. The train conductor instructed Desdunes to move to the colored car and he refused to do so. Upon Desdunes' refusal, a police officer and two private detectives for whom Martinet had pre-arranged escorted Desdunes off the train at the next stop and to the police station. The Citizens Committee legal team had carefully prepared an affidavit specifying violation of the Separate Car Act. The police officer signed and presented the affidavit and had Desdunes charged with violation of the Act. None of the reports in the newspapers reflected any awareness of the choreographed nature of the arrest. The *New Orleans States* reported that the police promptly apprehended "this disturber of the peace, and soon he was hurled out of the train."[17.]

As carefully as Tourgée and Martinet had planned the arrest, they made one strategic error. Desdunes had boarded an interstate train. On May 25, 1892, before the Desdunes case could be argued in a Louisiana court, the Louisiana Supreme Court in another case ruled that the Separate Car Act violated the interstate commerce clause of the U.S. Constitution. In other words, Louisiana had exceeded its authority as a state in regulating *interstate* trains. Because Desdunes had boarded an interstate train, the Act was invalid as applied to his case and the state voluntarily dismissed it.[18.] But the dismissal had nothing

to do with the racial aspects of the law and the Act remained in place with respect to *intra-state* trains. So, after all that, Martinet had to start over with another defendant and another railroad.

This time he acted speedily. On June 7, 1892, Homer Plessy, a shoemaker twenty-nine years old, who later legal briefs described as seven-eighths white and one-eighth African, boarded a white railcar in an intra-state train on the East Louisiana Railroad. Again, in accordance with the script that Martinet had worked out with the railway company, the conductor approached Plessy and asked him if he was a colored man. Plessy replied "yes" and the conductor ordered him to switch cars. When Plessy refused, the conductor stopped the train that had just left the station and called in Martinet's private detective who also told Plessy he would have to move to the colored car. According to a report in the *Crusader*, Plessy replied that he "would go to jail first before relinquishing his right as a citizen." The private detective responded by physically pulling Plessy off the train, reportedly with the assistance of two white men for whom Martinet had *not* provided in his script, and had Plessy charged with violating the Separate Car Act.[19.]

Martinet exhibited great confidence and skill in coordinating with Tourgee, selecting the defendants, persuading the railroads, hiring the private detectives, and choreographing the arrests. In addition, as a highly educated, light-skinned Afro-Creole, he very likely was afforded a level of respect and cooperation from the white persons involved in these events that would not have been given to an African American. Martinet contributed significantly to setting the stage for the desired legal challenge.

Challenging the Law in Court

The trial court in Louisiana and then the Louisiana Supreme Court had little trouble upholding Plessy's conviction within just six months of the day Martinet's private detective pulled Plessy off the

train. In the trial court, Judge John H. Ferguson basically held that the law constituted a valid exercise of the state's power to pass laws to promote the health and safety of its citizens. Ferguson further held that the law did not violate the equal protection clause of the 14th Amendment to the U.S. Constitution because it provided for equal accommodations and applied equally to white persons and to persons of color. The Louisiana Supreme Court promptly upheld Judge Ferguson's decision and reasoning.[20.]

Not surprised at all by this outcome, the Plessy team filed its appeal to the U.S. Supreme Court on January 5, 1893. The 13th and 14th amendments to the U.S. Constitution that had been passed within three years after the end of the Civil War form critical legal context for the Supreme Court's analysis in *Plessy*. The 13th amendment outlawed slavery and the 14th amendment in part declared that "no state shall…deny to any person…the equal protection of the laws" (Equal Protection Clause). Although the authors of the 14th Amendment unmistakably had designed it primarily to establish the equal rights of African Americans in the aftermath of slavery, the Supreme Court in the twenty-five years after its enactment applied it more often to protect the rights of corporations from burdensome regulation than to protect the civil rights of African Americans.[21.] Nevertheless, Plessy argued that the Separate Car Act violated the 13th and 14th amendments.

In 1896, the Supreme Court majority rejected Plessy's arguments in a seven-to-one decision with one justice who missed the oral arguments abstaining. Responding to Plessy's Equal Protection Clause argument, the Court stated: "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either." In that sentence the majority re-

vealed its underlying social assumption that racial segregation had its roots "in the nature of things." The Court proceeded to conclude that the Separate Car Act constituted a reasonable exercise of the state's police power. Because the Act required equal facilities and applied equally to both white passengers and passengers of color, it afforded the required "equal protection of the laws." The majority observed that the "underlying fallacy" of Plessy's argument rested 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."[22.] In sum, as long as a state law provided for equal facilities, it could mandate separation of the races. Only one justice, John Harlan, forcefully disagreed.

The Free People of Color

We will forego review of Justice Harlan's powerful dissenting opinion until the last section concerning the legacy of the case. Instead, we will turn to an exploration of the genesis of the culture of the 1890 New Orleans Afro-Creoles. This history of their antebellum ancestors provides essential background to understand the distinct culture of Afro-Creoles and how their community came to possess the resources and attitudes of resistance necessary to initiate the *Plessy* case.

The history of New Orleans Afro-Creoles can begin as early as 1684 when French explorer Sieur de La Salle sailed down the Mississippi River to the Gulf of Mexico and the site of a future New Orleans. He claimed a vast territory for King Louis XIV and named it Louisiana after him. A young French Canadian, Jean Baptiste LeMoyne, established a settlement named New Orleans in 1718. The assortment of mostly French pioneers who settled in rugged New Orleans during the 1700s and early 1800s included French nobles flee-

ing the French Revolution, soldiers from Napoleon's armies, Acadians driven by the English from Nova Scotia after France's defeat in the French and Indian War, salt smugglers and other convicts deported from France, and French and Spanish sugar planters who fled the violent slave revolt in St. Domingue (Haiti) in the 1790s. The children of this diverse group created a culture in Louisiana known as "Creole" that literally means native-born (in America). Spain governed the Louisiana territory from 1769 until 1802 when Spain transferred it back to France. In 1803, in the Louisiana Purchase, France sold the territory to the United States. Despite these changes in government, the New Orleans Creoles maintained the French language and some French customs through the eighteenth and nineteenth centuries.[23.]

During the same time period, a community of free African Americans developed in and around New Orleans. The road to freedom included at least three paths. First, some slaves who had fought for the French against various Indian tribes had been rewarded with their freedom. Second, under a principle of Spanish law known as *coartación*, slaves had the legal right to purchase their freedom for their fair market value as determined by appraisers. If the owner refused to grant freedom in accordance with this process, the slave had the right to sue in court. The law also provided some opportunity for slaves to earn and save money by working for third parties in addition to working for their owners. So, during the period of Spanish rule from 1769 to 1802, the most determined or resourceful slaves bought their freedom or managed to find others willing to pay the price for them. Third, along with white refugees, many free persons of mixed or African race fled to New Orleans from St. Domingue to escape the bloody slave revolt in the 1790s. In 1809, the Cuban government evicted from Cuba 9059 St. Domingue refugees and they arrived *en masse* in New Orleans. The refugees included 3102 free people of color. These various groups constituted the first people known as the *gens de couleur libre* or "free people of color" in and around New Or-

leans. By 1803, their population had grown to 1,355 out of 10,000 total in New Orleans, and the St. Domingue influx in 1809 greatly increased these numbers.[24.]

Thus, New Orleans contained both a large white Creole population and a large number of free African Americans. Although the law prohibited inter-racial marriage, Creole men and free women of color engaged in long-term sexual relationships with each other that, over the course of one or two generations, resulted in the mixed-race free people of color community. Extreme gender imbalances in these communities undoubtedly contributed to the prevalence of such relationships. Among the free people of color, women greatly outnumbered men. In 1788, the female to male ratio was seven to one.[25.] The imbalance receded somewhat over the next twenty years. But, in 1809, the predominantly female wave of 3102 free people of color from St. Domingue boosted the lopsided gender ratio to three to one.[26.] During the same time period, the unruly and swampy New Orleans frontier attracted far more white men than white women. White men in New Orleans generally outnumbered white women by a ratio of two to one.[27.] The gender imbalances in these two racial groups complemented each other and naturally resulted in sexual unions between white men and free women of color.

Between 1790 and 1830, Creole men and free women of color had children together. At social events known as "quadroon balls" ("quadroon" means of one quarter African descent), young wealthy Frenchmen met and courted light-skinned teen-aged women of color. In fact, a system known as *plaçage* (meaning "placement"), or long-term relationships between white men and free women of color, arose. Given that the law prohibited legal marriage between white persons and persons of color, these relationships ranged from expectations of permanent financial support and inheritance for both the woman and the children of these unions and monogamy by both parties, on one end of the spectrum, to mere concubinage that lasted

until the man found a white wife, on the other end. However, even in the latter type of arrangement, the parties customarily agreed to some ongoing financial support for the woman and any children. After 1830, as tension over slavery and related fears of any racial mixing intensified, the frequency of such inter-racial relationships declined steeply.[28.]

Relative to slaves in America in the 1700s and early 1800s, the offspring of these unions benefitted from relatively intact families, education, wealth, and membership in a distinct culture that combined European, African, and American perspectives and experiences. Their children attended Catholic schools in New Orleans or, in some cases, France. Most of the free people of color made their living as skilled laborers including carpenters, masons, cigar makers, shoemakers, clerks, mechanics, and coopers. However, many pursued successful careers in business and professions such as engineering, architecture, and medicine. Aristide Mary, a prominent older member of the Citizens Committee, had inherited an entire city block on Canal Street in New Orleans and had risen to become a prominent leader in business, politics, and philanthropy.[29.] The value of the real property owned by the free people of color in Louisiana on a per capita basis roughly equaled that of the white population in the United States as a whole and roughly doubled that of white immigrants.[30.] In 1860, the free people of color living in New Orleans made up a very substantial community of approximately 11,000.[31.]

The free people of color thus achieved a culture distinct from, and an economic and social status greater than, both enslaved and even free African Americans. In addition, the Louisiana courts formalized and reinforced this higher status. Unlike any other state, north or south, Louisiana recognized free persons of color as a *legally* distinct third race. They occupied a middle caste in a three-tiered racial caste society.[32.] For example, in 1811, in *Adelle v. Beauregard,* a teen-aged girl who had immigrated from the French West Indian island of Gua-

dalupe, contested in court her uncle's efforts to sell her as a slave. The girl testified that she had the status of a free person of color, but had no other evidence to support this position. The court ruled in her favor explicitly on the basis that the girl appeared to be a "person of colour," i.e., of mixed race. The court stated that, given her skin color, she would be presumed to have the status of a free person. If the girl were a "Negro," the court stated she "perhaps would be required to establish [her] right by such evidence as would destroy the force of presumption arising from color; Negroes brought to this country being generally slaves, their descendants may perhaps fairly be presumed to have continued so, till they show the contrary."[33.]

In 1850, white criminal defendants in a New Orleans court argued that the testimony of free persons of color should not be allowed in court and cited the laws of other Southern states. The Louisiana Supreme Court ruled that such testimony would be allowed as follows:

> Our legislation and jurisprudence upon this subject differ materially from those of the slave States generally, in which the rule contended prevails. This difference of public policy has no doubt arisen from the different condition of that class of persons in this State. At the date of our earliest legislation as a territory, as well as at the present day, free persons of color constituted a numerous class. In some districts they are respectable from their intelligence, industry and habits of good order. Many of them are enlightened by education, and the instances are by no means rare in which they are large property holders. So far from being in that degraded state which renders them unworthy of belief, they are such persons as courts and juries would not hesitate to believe under oath.[34.]

Thus, ten years before the Civil War, the highest court in Louisiana ruled that free people of color enjoyed more legal rights than in other slave states based on their numbers, industry, education, and wealth. With the abolition of slavery after the war, the legal distinction between the free people of color and enslaved persons of color in Louisiana suddenly vanished. However, the higher expectations of the free people of color survived and fueled the resistance of Afro-Creoles twenty-five years later in the *Plessy* case.

After the Civil War, New Orleans had the most literate, wealthy, and sophisticated community of persons of color in the South due to the presence of the free people of color.[35.] Of the 201 political leaders of color in New Orleans after the Civil War studied by David Rankin, nearly all came from the free people of color and twenty-three had owned slaves prior to the war. Rankin summarized their favorable position relative to that of New Orleans former slaves as follows:

> At the beginning of the Civil War he was a freeman, not a slave; he wasof light, not dark, complexion; he was the son of an old New Orleans family, not an uprooted immigrant from rural Louisiana; he probably spoke beautiful French which whites admired rather than a slave dialect which they could barely understand; he was literate, perhaps even well educated, not illiterate and previously denied the most rudimentary education; he was a successful artisan, professional person, or businessman, not an impoverished, unskilled laborer; and finally, he had possibly been a soldier during the Civil War, serving in the Union army, not a runaway slave, struggling to stay alive and searching for family, friends, and food.[36.]

During Reconstruction, New Orleans Afro-Creoles must have

harbored high expectations for political rights and a fair place in society. They started the Reconstruction period with considerably more advantages than other Americans of color in the South. Then the 15th Amendment in 1870 provided the most fundamental political right of which they had always been deprived – the right to vote. In 1868, Afro-Creole leaders participated in a Republican-dominated Louisiana constitutional convention that produced the most radically egalitarian state constitution of the Reconstruction era. The Louisiana Constitution of 1868 boldly sought complete racial equality for all Louisianans. It banned discrimination on the basis of race in places of public accommodation, required state officials to take an oath recognizing civic and political equality for all men, regardless of race or previous condition of servitude, and forbade segregation in public schools.[37.] In New Orleans, civil rights leaders actually achieved desegregation of the schools until the end of Reconstruction in 1877 and the desegregation of streetcars until 1902.[38.]

New Orleans Afro-Creoles in the 1890s

Education and Wealth

In Louisiana, as in most slave states, teaching slaves to read constituted a crime.[39.] Therefore, the vast majority of slaves in Louisiana could not read or write at the time slavery ended. Despite strenuous post-war literacy efforts, in New Orleans in 1880, 62 per cent of the adult persons of color remained illiterate. In 1890, persons of color composed 27 per cent of the New Orleans population, but nearly half of them still could not read or write. Having emerged from bondage in 1865 illiterate, penniless, mostly unskilled, and with less than 20 per cent of their families intact, the African-American community only one generation later in 1890 of course remained poor and powerless despite their efforts, with some support from others, to improve their conditions.[40.]

In contrast, the free people of color enjoyed freedom, education, prosperity, and relatively intact families before the Civil War and these general conditions did not change by 1890. The majority of Afro-Creoles in 1890 worked as skilled laborers. Homer Plessy belonged to this class and made his living as a shoemaker at the time of the *Plessy* case. But professionals and business owners led Afro-Creole society and constituted the eighteen members of the Citizens Committee. The Citizens Committee included the wealthy businessperson and philanthropist Aristide Mary and an assortment of professionals: educators, businesspersons, lawyers (four had law degrees from Straight Law School), social activists, ex-Union soldiers, government workers, and writers. The majority had light skin color and could have moved elsewhere and "passed" into white society if they wished. Fifteen of eighteen had French names and nearly all spoke French fluently. Arthur Esteves, owner of a successful sailmaking business and leader in education in the Afro-Creole community, served as president of the Citizens Committee. C.C. Antoine who, unlike the other Committee members, had dark skin color and may have been of purely African descent, served as vice-president. Antoine had gained distinction as a young captain of an African-American company in the Union Army during the Civil War and served as lieutenant governor of Louisiana in 1872.[41.]

Both professional and working-class Afro-Creoles funded the *Plessy* case. While Aristide Mary probably could have funded the case by himself, the Citizens Committee desired broader sources of funding. It published an urgent appeal that called for a "popular subscription whereby the mite of the poor may equal in merit the liberality of the rich; for we want this fund to constitute not only an indispensable agency to defray judicial expenses, but also a proof of public sentiment and determination." The Committee collected $3,000 from 150 donors including a wide divergence of city, religious, athletic, union, literary, Masonic, political, governmental, and individual

sources—a significant amount at that time.[42.]

While many persons contributed to the *Plessy* effort, Louis Martinet played a central role. Martinet's white father, Hippolyte Martinet, immigrated from Belgium, spoke French, and worked as a carpenter. Martinet's mother, Mary Louise Benoit, was illiterate and had lived as a slave until Martinet's father bought her freedom in 1848 after they had a son. As part of the same purchase, Hippolyte Martinet also bought the freedom of their first son and Benoit's mother. The transaction document identified Benoit as "mulatresse," i.e., mulatto. In 1849, they gave birth to Louis as their second of eight children.[43.] Thus, as a child before the Civil War, Martinet belonged to the community of free people of color. Martinet graduated from Straight Law School in 1876 as the first person of color to graduate with distinction and later earned a medical degree. At the time of the passage of the Separate Car Act in 1890, Martinet kept busy as a civil law notary, member of the board of directors of Southern University, demonstrator of anatomy at a medical school, and an editor of the New Orleans *Crusader*. His wife worked as a high school principal.[44.] In the *Plessy* case, Martinet played the indispensable roles of raising funds, selecting and coordinating with the legal team, acting as liaison between legal counsel and the Citizens Committee, recruiting the defendants Desdunes and Plessy, working with the railroads, choreographing the arrests, hiring the private detectives, and reporting on the case in the *Crusader* – all for no monetary compensation.

In 1889, one year before the Separate Car Act became law, the increase in racial violence and racial oppression in the South alarmed Martinet. To combat this trend, he founded the New Orleans *Crusader.* Martinet wanted to "disseminate information of happenings, events & outrages gathered all over the South by our own trusty correspondents with no color line about it, but colored men as writers

would be powerful… in educating the North as to conditions & affairs in the South."[45.] The *Crusader* at first published on a weekly basis, then converted into a daily in 1894 while the *Plessy* case awaited decision from the Court. This conversion would make it the only daily newspaper published by people of color in the country at that time and the sole Republican daily in the South. Reflecting its Afro-Creole connections, the *Crusader* published both English and French editions.[46.] The *Crusader* served as a critical forum for the Afro-Creole community to remain aware of racially discriminatory laws and to exhort each other to challenge such laws. In addition to the abundant education and wealth enjoyed by the New Orleans Afro-Creoles relative to the African-American community, the *Crusader* constituted another resource that enabled the New Orleans Afro-Creoles to organize a major legal effort like the *Plessy* case.

Attitudes of Resistance

In addition to having resources, many Afro-Creoles adhered to the creed that they had a duty to use them to combat racial injustice. In contrast, by the 1890s, Booker T. Washington had emerged as a new African-American leader. He gave his landmark speech at the Atlanta Exposition in September 1895, eight months before the Supreme Court issued the *Plessy* decision. In the speech, Washington asserted that of the two races "in all things purely social, we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress. The wisest of my race understand that the agitation of questions of social equality is the extremest folly, and that progress in the enjoyment of all the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing."[47.] Thus Washington advocated that African Americans focus on improving themselves through education and work rather than agitating for civil rights and integration.

In the 1890s, many African Americans in the South agreed with Washington's accommodationist philosophy. With slavery having ended only twenty-five years earlier, many strove just to obtain fundamental education, work that provided food and shelter for their families, and safety from violence perpetrated by white supremacists. One hundred and eighteen African Americans were lynched in 1895, including eighteen in Louisiana.[48.] Many African Americans therefore focused understandably on improving conditions in their own communities and schools even if segregated and disadvantaged.

While New Orleans Afro-Creoles agreed with Washington on the value of education, work, and virtuous citizenship, they manifestly disagreed with his accommodationist philosophy. Instead, many Afro-Creoles believed that all persons of color had a *duty* to resist racial injustice, including all forms of segregation, and can rely only on themselves to do it. Moreover, this duty apparently required action without regard to the probability of success. Nine days after the Louisiana legislature passed the Separate Car Act, Louis Martinet asserted in a *Crusader* editorial that the civil rights organization, ACERA, would bring a test case to challenge the constitutionality of the law "if it understands its duty." Rodolphe Desdunes, a Citizens Committee member, joined Martinet in advocating for a legal challenge to the offensive law in another *Crusader* article:

> Among the many schemes devised by the Southern statesmen to divide the races, none is so insulting as the one which provides separate cars for black and white people on the railroads running through the State. It is like a slap in the face of every member of the black race, whether he has the full measure or only one-eighth of that blood…. We are American citizens and it is our duty to defend our constitutional rights against the encroachments and attacks of prejudice. The courts are open for that purpose, and it is our fault if we do not seek the

> redress they alone can afford in case of injustice done or wrongs endured.

Desdunes also described it as the "duty" of persons of color to act and that "it is our fault" if they do not. In another *Crusader* article published six weeks later, Desdunes argued passionately against those who advised any submission in the face of white supremacy whether or not they expect to prevail. Desdunes concluded that "defeat is more honorable than flight or surrender."[49.]

Shortly after the publication of Desdunes' editorials, the New Orleans Afro-Creoles formed the Citizens Committee. In its initial public appeal, after requesting contributions to fight the Separate Car Act, the Citizens Committee concluded "it is the imperative duty of oppressed citizens to seek redress before the judicial tribunals of the country. In our case, we find it is the only means left us. We must have recourse to it, or sink into a state of hopeless inferiority."[50.] Again, they cited their "duty" to protect their rights. Even in a request to the public for money, the Citizens Committee did not express confidence that they would win the case. Their conclusion that the court battle was "the only means left to us" to avoid sinking "into a state of hopeless inferiority" reflects more of a position of desperation than one of likely victory.

Consistent with the public writings of the Afro-Creoles in the *Crusader,* Martinet privately expressed to Tourgée in an 1893 letter both his doubts about the likelihood of success in *Plessy* and in their broader fight for equal rights and his conviction that they must continue to resist anyway. "The question forces itself upon me, are we not fighting a hopeless battle - a battle made doubly hopeless by the tyranny and cruelty of the Southern white? Are the Negroes progressing, or are they not retrograding under the yoke of the Southern barbarians?" Although Martinet acknowledged that Booker T. Washington

and others were "doing a useful work," he wrote that "the colored people …must be taught not only to read & pray, but also that to combat wrong and injustice, to resist oppression and tyranny, is the highest virtue of the citizen."[51.] Thus, Martinet explicitly rejected Washington's accommodationist philosophy.

In the same letter, Martinet wrote to Tourgée: "You may not live to see the fruit of your labors and sacrifice, or to receive the gratitude of those benefitted by them. It will be reserved to future generations to properly and justly estimate them." This observation made prior to the time the *Plessy* case had been argued to the Supreme Court reflected again that the Afro-Creole leader did not expect to win the case. At the same time, Martinet's comment reflected his faith that merely engaging in the fight might someday benefit future generations of oppressed persons. Martinet must have realized that the same concept applied to himself.

In addition to the Afro-Creoles' sense of duty to resist, Martinet's personal experiences in post-Reconstruction politics as described in his letters to Tourgée provide additional insight into the Afro-Creoles' decision to initiate the Plessy case. Martinet had always been active in politics. He briefly served as a Louisiana legislator during his twenties after he graduated from Straight Law School in 1876. In one of his letters, Martinet described the dangers of being a Republican, especially a Republican of color, in the South: "In days gone by, when I was active in politics as a Republican leader…. I never permitted myself to be driven away… Gangs and regiments of men (Democrats) used to go about armed; … but I believe I remain the only active politician who was not, at one time or another driven from the parish through fear and intimidation. I was often threatened & several times saw guns leveled at me. But I never flinched & always maintained my ground & used to carry openly an arsenal about me."[52.]

In contrast, at other times, white Democrats made overtures to

persons of color that portended the possibility of a society with racial equality. In his first letter to Tourgée, Martinet shared his personal experience with white Democrats: "A few years back the conditions South were not, at least apparently, what they are now. There was a general appeal to colored men to join the Democratic party." Believing that the movement of southerners of color from the Republican party to the Democratic party would in time serve to make the "South habitable," Martinet resigned from all his positions with the Republican party and commenced working with white Democrats. Martinet explained:

> We thought the future assured…. But this thing did not last long. The reactionists in the Democratic party kept up a constant warfare – their cry was "white supremacy" … & they forced the more liberal & conservative whites to take stand on their ground – they kept this up until they brought about a series of outrages that exceeded in atrocity anything that had ever taken place in the State….The disappointment was bitter, but I am glad the experiment was made. Brought up under some more favored circumstances than the general mass of the colored people, & having always enjoyed a degree of consideration not accorded to all colored people, … I had not seen the worse side of their nature – their inborn & ingrained hypocrisy & treachery.

Martinet then indicated that this treachery motivated him to withdraw from the Democratic party and to start the *Crusader* in February 1889.[53.] He thus provided a first-hand account of the reneging by southern whites on their overtures for racial equality and the retrenchment of white supremacy in the South after the end of Reconstruction.

Moreover, in 1892 while the *Plessy* case was pending in the Louisiana court system, Martinet reported to Tourgée that they had defeated in the Louisiana legislature an anti-miscegenation bill without the help of Republicans. "We are determined to drop the tribe [Republicans] & hereafter battle for rights & take no more notice of them as if they were not in existence…. We must unload & stand on our manhood & dignity & rely on our own efforts."[54.] So, in addition to the earlier betrayal of people of color by the Democratic white supremacists described above, Martinet observed the abandonment of civil rights causes by the Republican Party in the post-Reconstruction period. For these reasons, Martinet again declared to Tourgée his conviction that people of color must rely solely on their own efforts to protect their rights.

This state of affairs weighed heavily on Martinet. At times he shared his bitterness with Tourgée with whom he had developed a close relationship through the mail. For example, in 1893, after returning from a trip to Chicago, Martinet wrote:

> I return South with a heavy heart…. I am a freeman in the South, and knowing it, to a great extent, I act as a free man… . but I know too how often I carry my life in my hands for doing so for I will not be ejected without physical resistance.
>
> You don't know what that feeling is, Judge. You may imagine it, but you have never experienced it. Knowing that you are a freeman, & yet not allowed to enjoy a freeman's liberty, rights, and privileges unless you stake your life every time you try it. To live always under the feeling of restraint is worse than living behind prison bars. My heart is constricted at the very thought of returning – it suffocates me.[55.]

Even as a person whose light skin color and level of education provided a "degree of consideration not accorded to all colored

people," Martinet nonetheless anguished at the danger he faced merely by taking the ordinary actions of a free person. Martinet had the expectations of a person born into the community of the free people of color. That community could not tolerate the degradation that they experienced due to the clear placement of their community on the subordinate side of the sharp color line drawn in the post-Reconstruction era. This anguish must have further fueled Afro-Creoles' determination to resist Jim Crow laws.

In sum, in the 1890s, many African Americans in the South, having been beaten down by slavery and then by post-Reconstruction white supremacist violence, turned away from civil rights protests in favor of focusing on basic education, work, and safety from violence. On the other hand, New Orleans Afro-Creoles had the expectations of people who had experienced freedom for generations and who had occupied a distinct middle tier in society prior to the Civil War. After the war, white southern Democrats gave them reason to hope for racial equality and then betrayed those hopes at the first opportunity after Reconstruction. Even white Republicans had lost interest in civil rights for persons of color in the South. Therefore, New Orleans Afro-Creoles fiercely held to the conviction that they had a *duty* to challenge the Separate Car Act, that they could rely only on themselves, and that it did not matter that they likely would lose the case. The anguish and indignation experienced by Afro-Creoles at their placement on the subordinate side of the sharp color line fueled their determination to fight the legal battle against segregation against all odds.

Constitutional and Civil Rights Legacy

Although Louis Martinet never expected to win the *Plessy* case, the defeat in the Supreme Court by the wide margin of seven to one may have defeated him also. In 1896, after the Supreme Court issued the *Plessy* decision, the financially-strapped *Daily Crusader* that Martinet had founded ceased publication. Moreover, after a life of fiery po-

litical activism, Martinet, at only age forty-seven, abandoned political activity and concentrated on practicing medicine until he died in 1917.[56.] Jim Crow apparently crushed Martinet's determination to resist injustice that he so passionately expressed in his long letters to Tourgée.

On the other hand, the Citizens Committee reflected the continuing resolute, proud, and far-sighted attitudes of the New Orleans Afro-Creole community in its final statement before disbanding. The final statement acknowledged their defeat before "the highest tribunal of this American government… Notwithstanding this decision … we, as freemen, still believe that we were right and our cause is sacred. … In defending the cause of liberty, we met with defeat, but not with ignominy."[57.] Rodolphe Desdunes later reflected that "our people had the satisfaction of pushing the American government to the wall."[58.]

In retrospect, the Afro-Creoles accomplished far more than that. Their tireless efforts in a near hopeless environment produced the dissenting opinion of Justice Harlan. Not much about Harlan's background would lead one to predict that he would stand alone of the eight deciding justices in favor of strong enforcement of the Equal Protection Clause. The other seven justices came from northern states including four from Massachusetts. He came from Kentucky, the most southern state represented on the Court. Harlan had owned slaves. Most ironically, as attorney general of Kentucky after the Civil War, he had strongly *opposed* ratification of the 13th and 14th amendments (that of course included the Equal Protection Clause) arguing that the amendments constituted federal encroachments on the rightful powers of the states.[59.]

In *Plessy*, Albion Tourgée captured the degradation and humiliation that the Separate Car Act inflicted on his Afro-Creole clients and argued that point to the Court. The most historically significant argument presented by Tourgée involved the nature of the equality re-

quired under the Equal Protection Clause. In its essence, Tourgée argued that the Court should have looked beyond the fact that the Separate Car Act required equality of *accommodations* and should have considered the purpose and effect of the law. The law required "discrimination intended to humiliate or degrade one race in order to promote the pride and ascendancy in another…. Instead of being intended to promote the general comfort and moral wellbeing, this act is plainly and evidently intended to promote the happiness of one class by asserting its supremacy and the inferiority of another class. Justice is pictured as blind and her daughter, the Law, ought at least to be color-blind."[60.] Thus Tourgée argued that a law that is intended to and will have a degrading psycho-social impact on one race does not provide the equality required under the Equal Protection Clause. The majority of the Court completely rejected Tourgée's argument concluding that, if the Separate Car Act "stamps the colored race with a badge of inferiority…it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."[61.]

In contrast, Justice Harlan, in his dissenting opinion, agreed with Tourgée's broader concept of equality. Harlan first forcefully set forth the general principle of racial equality as follows:

> …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. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.[62.]

Harlan then adopted Tourgée's arguments as follows:

> What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens?
>
> We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done.[63.]

So Harlan charged that the Separate Car Act's guarantee of equal accommodations served as a "thin disguise" for the actual purpose of the statute that was to put "the brand of servitude and degradation" upon persons of color. Thus, as argued by Tourgée, Harlan essentially concluded that, in view of these psycho-social impacts, such laws do not provide the equal protection required by the Equal Protection Clause.

Harlan's powerful dissenting opinion has inspired civil rights activists for more than a century. Charles Thompson described Harlan's opinion as a "fount of inspiration" for Thurgood Marshall, the lead attorney in the legal battle against Jim Crow laws in the 1950s, and later the first African American to serve on the U.S. Supreme Court. At times when setbacks discouraged Marshall, he rejuvenated himself

by reading aloud from Harlan's dissent in *Plessy*. Marshall admired the courage of Harlan more than any other Supreme Court justice because he viewed Harlan as "a solitary and lonely figure writing for posterity."[64.]

Indeed, in 1954, in *Brown v. Board of Education*, the Supreme Court reversed *Plessy* and declared in a unanimous decision that Jim Crow laws violated the Equal Protection Clause. As argued by Tourgée and then by Harlan, the *Brown* court established that the provision by a state law for equality of "tangible" facilities does not by itself meet the equal protection standard. The inequality arises from the psycho-social impact of the racial distinction built into the law. With respect to school children of color, the *Brown* court observed: "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." The *Brown* Court concluded that "Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected."[65.]

Conclusion

In the 1890s, New Orleans Afro-Creoles possessed resources and attitudes that uniquely enabled them to organize vigorous resistance through the courts to the offensive Jim Crow laws. They had constituted the free people of color before the Civil War. The free people of color combined the determination and initiative of African women who obtained freedom from slavery with the relative wealth and education of white Creole men into a distinct, free, educated, and prosperous mixed-race Afro-Creole culture. Prior to the Civil War, the free people of color occupied a respected middle tier in a three-tiered

racial caste society. After the war, developments such as the new egalitarian Louisiana constitution and even the overtures of white Democrats as vividly described by Louis Martinet – all of which promised racial equality – engendered the hopes of Afro-Creoles. However, after Reconstruction ended, white supremacists in the Democratic party took control and white Republicans lost interest in the civil rights struggles of persons of color in the South. In addition, many African Americans at that time adopted the accommodationist philosophy that they should focus on basic education, work, and physical safety rather than agitating for civil rights.

Therefore, in 1890 when the Separate Car Act sought to segregate and subordinate all persons of color, the indignant Afro-Creoles asserted that they could rely only on their own efforts to initiate a legal challenge. They marshalled resources other communities of color in the South lacked, including the funds to pay for the legal effort, their own newspaper, and individuals such as Louis Martinet who had the education and the social position required to organize the case effectively. New Orleans Afro-Creoles viewed it as their *duty* to resist although they never expected to win the case. The anguish and indignation experienced by Afro-Creoles at their placement on the subordinate side of the sharp color line fueled their determination to fight the legal battle and to argue for a broader vision of equality under the Equal Protection Clause. Justice Harlan preserved their vision in his eloquent dissenting opinion for inspiration for future civil rights leaders and eventual adoption by a future Supreme Court. Their story serves as a lesson to any activist group that strenuous resistance to injustice may be rebuffed in the short term but may lay the groundwork for success in the long term. Although they lost the *Plessy* case, New Orleans Afro-Creoles thus made a little-recognized but important contribution in the early stages of the battle for civil rights in the United States.

End Notes

1. Louisiana Separate Car Act (1890) https://archive.org/stream/separateorjimcr00boydgoog/separateorjimcr00boydgoog_djvu.txt.
2. *Plessy v. Ferguson,* 163 U.S. 537 (1896).
3. *Brown v. Board of Education*, 347 U.S. 483 (1954).
4. This policy of considering as "colored" a person of any African ancestry whatsoever was known as the "one-drop rule" and was in effect explicitly or by custom in the South generally. Alice Moore Dunbar-Nelson, "People of Color in Louisiana," in *Creole: The History and Legacy of Louisiana's Free People of Color,* ed. Sybil Kein (Baton Rouge: Louisiana State University Press, 2000), 9.
5. See, for example, Charles A. Lofgren, *The Plessy Case: A Legal-Historical Interpretation* (New York: Oxford University Press, 1987).
6. See, for example, Williamjames Hull Hoffer, *Plessy v. Ferguson: Race and Inequality in Jim Crow America* (Lawrence: University Press of Kansas, 2012).
7. For clarification, the term "Afro-Creole" refers to the free people of color and their descendants *after* the Civil War. The term "free people of color" would make no sense after the abolition of slavery that gave all persons the status of being free.
8. H.W. Brands, *The Reckless Decade: America in the 1890s* (Chicago: University of Chicago Press, 1995), 219.
9. Louisiana Separate Car Act (1890).
10. "The Separate Car Bill," *Crusader,* July 19, 1890.
11. Martinet to Tourgée, October 5, 1891 (document 5760, Tourgée Papers, Chautauqua County Historical Museum, New York), 11.
12. Notwithstanding the specific stated purpose of the Citizens Committee to challenge the Separate Car Act, it also funded legal challenges to the practice of excluding persons of color from juries. In fact, on the same day that the United States Supreme Court denied Plessy's appeal, it also denied an appeal funded by the Citizens Committee that arose from a guilty verdict delivered by an all-white jury in a murder case named *Murray v. Louisiana.* Thomas Ward Frampton, "The Jim Crow Jury," *Vanderbilt Law Review* 71, no. 5 (October 2018): 1594-1595, 1606-1609.
13. Steve Luxenberg, *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation* (New York: W.W. Norton & Company, 2019), 329, 373.
14. Martinet to Tourgée, October 5, 1891, document 5760, Tourgée Papers, 4.
15. Martinet to Tourgée, December 7, 1891, document 5837, Tourgée Papers, 1-2.
16. Martinet to Tourgée, December 28, 1891, document 5877, Tourgée Papers, 1-2.
17. Luxenberg, Separate, 425-426.
18. Brands, *Reckless Decade*, 222.
19. Keith Weldon Medley, *We as Freemen: Plessy v. Ferguson* (Gretna: Pelican Publishing Company, 2003), 139-143, 146.
20. Lofgren, *The Plessy Case,* 49-60.
21. Lofgren, 78-80.
22. *Plessy v. Ferguson,* 163 U.S. 537 at 544, 551 (1896).
23. Harvey Fireside, *Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism* (New York: Carroll & Graf Publishers, 2004),111-112.
24. Luxenberg, *Separate*, 96; Kimberly S. Hanger, *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803* (Durham: Duke University Press, 1997), 165; Charles E. O'Neill, forward to *Our People and our History: Fifty Creole Portraits,* by

Rodolphe Lucien Desdunes, x, trans. and ed. Sister Dorothea Olga McCants (Baton Rouge: Louisiana State University Press, 1973).

25. Joan M. Martin, "*Plaçage* and the Louisiana *Gens de Couleur Libre*," in Kein, *Creole*, 66.

26. Kenneth R. Alakson, *Making Race in the Courtroom: The Legal Construction of Three Races in Early New Orleans* (New York: New York University Press, 2014), 105.

27. Fireside, *Separate and Unequal*, 112.

28. Martin, "*Plaçage*," 57-70; Alakson, *Making Race in the Courtroom*, 188.

29. Mary Gehman, "Visible Means of Support: Businesses, Professions, and Trades of Free People of Color," in Kein, *Creole,* 208-222; Fireside, *Separate and Unequal,*100.

30. Loren Schweninger, "Antebellum Free Persons of Color in Postbellum Louisiana," in Charles Vincent, ed., *The African American Experience in Louisiana, From the Civil War to Jim Crow* (Lafayette: University of Louisiana at Lafayette, 2000), 365-382.

31. Medley, *We as Freemen,* 22.

32. Alakson, *Making Race in the Courtroom*, 181-183.

33. *Adelle v. Beauregard*, 1 Mart (o.s.) 183 (La. 1810).

34. *State v. Levy*, 5 La. Ann. 64 (1850).

35. John W. Blassingame, preface to *Black New Orleans, 1860-1880* (Chicago: University of Chicago Press, 1973), xvi.

36. David C. Rankin, "The Origin of Black Leadership," *Journal of Southern History* 40, no. 3 (August 1974): 420-421, 435.

37. Alakson, *Making Race in the Courtroom*, 189.

38. Louis R. Harlan, "Desegregation in New Orleans Public Schools During Reconstruction," in Vincent, *The African American Experience in Louisiana*, 315-327; Roger A. Fischer, "A Pioneer Protest: The New Orleans Street-Car Controversy of 1867," in Vincent, *The African American Experience in Louisiana*, 328-338.

39. Kim Tolley, "Slavery," in *Miseducation: A History of Ignorance-Making in America and Abroad,* ed. A.J. Angulo (Baltimore: The John Hopkins University Press, 2016), 14.

40. Blassingame, *Black New Orleans, 1860-1880,* 49-78, 214, 216.

41. Medley, *We as Freemen,* 16, 118-126.

42. Medley, 125-126, 130.

43. Luxenberg, *Separate*, 360, 555.

44. Medley, *We as Freemen*, 150-151.

45. Martinet to Tourgée, October 5, 1891, document 5760, Tourgée Papers, 14-15.

46. Medley, *We as Freemen*, 103, 186.

47. Luxenberg, *Separate*, 458-459, 461-463.

48. Medley, *We as Freemen*, 174.

49. Medley, *We as Freemen,* 114 -117.

50. Medley, 126.

51. Martinet to Tourgée, May 30, 1983, document 6998, Tourgée Papers, 3-5.

52. Martinet to Tourgée, July 4, 1892, document 6377, Tourgée Papers, 26.

53. Martinet to Tourgée, October 5, 1891, document 5760, Tourgée Papers, 19-25.

54. Martinet to Tourgée, July 4, 1892, document 6377, Tourgée Papers, 7-9.

55. Martinet to Tourgée, May 30, 1983, document 6998, Tourgée Papers, 2.

56. Nils R. Douglas, "Who Was Louis A. Martinet?" Nils R. Douglas Papers 1893-1967, typescript, Amistad Research Center, Tulane University, New Orleans, Box 1, Folder 3.

57. Medley, *We as Freemen,* 206.

58. Rodolphe Lucien Desdunes, *Our People and our History: Fifty Creole Portraits*, trans. and ed. Sister Dorothea Olga McCants (Baton Rouge: Louisiana State University Press, 1973), 148.

59. Medley, *We as Freemen*, 194; Luxenberg, *Separate,* 198-199, 202, 211.

60. Albion W. Tourgée and James C. Walker, "Brief of Plaintiff in Error. In the Supreme Court of the United States," document 8250, Tourgée Papers, 19.

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

62. *Plessy v. Ferguson* at 559.

63. *Plessy v. Ferguson* at 560, 562.

64. Charles Thompson, "Plessy v. Ferguson: Harlan's Great Dissent," *Kentucky Humanities* 1 (1996): 2.

65. *Brown v. Board of Education*, 347 U.S. 483 at 494-495 (1954).

REFERENCES

Alakson, Kenneth R. *Making Race in the Courtroom: The Legal Construction of Three Races in Early New Orleans.* New York: New York University Press, 2014.

Blassingame, John W. *Black New Orleans, 1860-1880.* Chicago: University of Chicago Press, 1973.

Desdunes, Rodolphe Lucien. *Our People and our History: Fifty Creole Portraits.* Translated and edited by Sister Dorothea Olga McCants. Baton Rouge: Louisiana State University Press, 1973.

Fireside, Harvey. *Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism*. New York: Carroll & Graf Publishers, 2004.

Hanger, Kimberly S. *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803*. Durham: Duke University Press, 1997.

Hoffer, Williamjames Hull. *Plessy v. Ferguson, Race and Inequality in Jim Crow America*. Lawrence: University Press of Kansas, 2012.

Kein, Sybil, ed. *Creole: The History and Legacy of Louisiana's Free People of Color.* Baton Rouge: Louisiana State University Press, 2000.

Lofgren, Charles A. *The Plessy Case, A Legal-Historical Interpretation*. New York: Oxford University Press, 1987.

Luxenberg, Steve. *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation.* New York: W.W. Norton & Company, 2019.

Martinet, Louis A. Letters to Albion W. Tourgée. Albion W. Tourgée Papers. Westfield Chatauqua County Historical Society Archive.

Medley, Keith Weldon. *We as Freemen: Plessy v. Ferguson*. Gretna: Pelican Publishing Company, 2003.

Rankin, David C. "The Origin of Black Leadership in New Orleans During Reconstruction." *Journal of Southern History* 40, no. 3 (August 1974): 417-440.

Vincent, Charles, ed. *The African American Experience in Louisiana, Part B, From the Civil War to Jim Crow*. Lafayette: University of Louisiana at Lafayette, 2000.