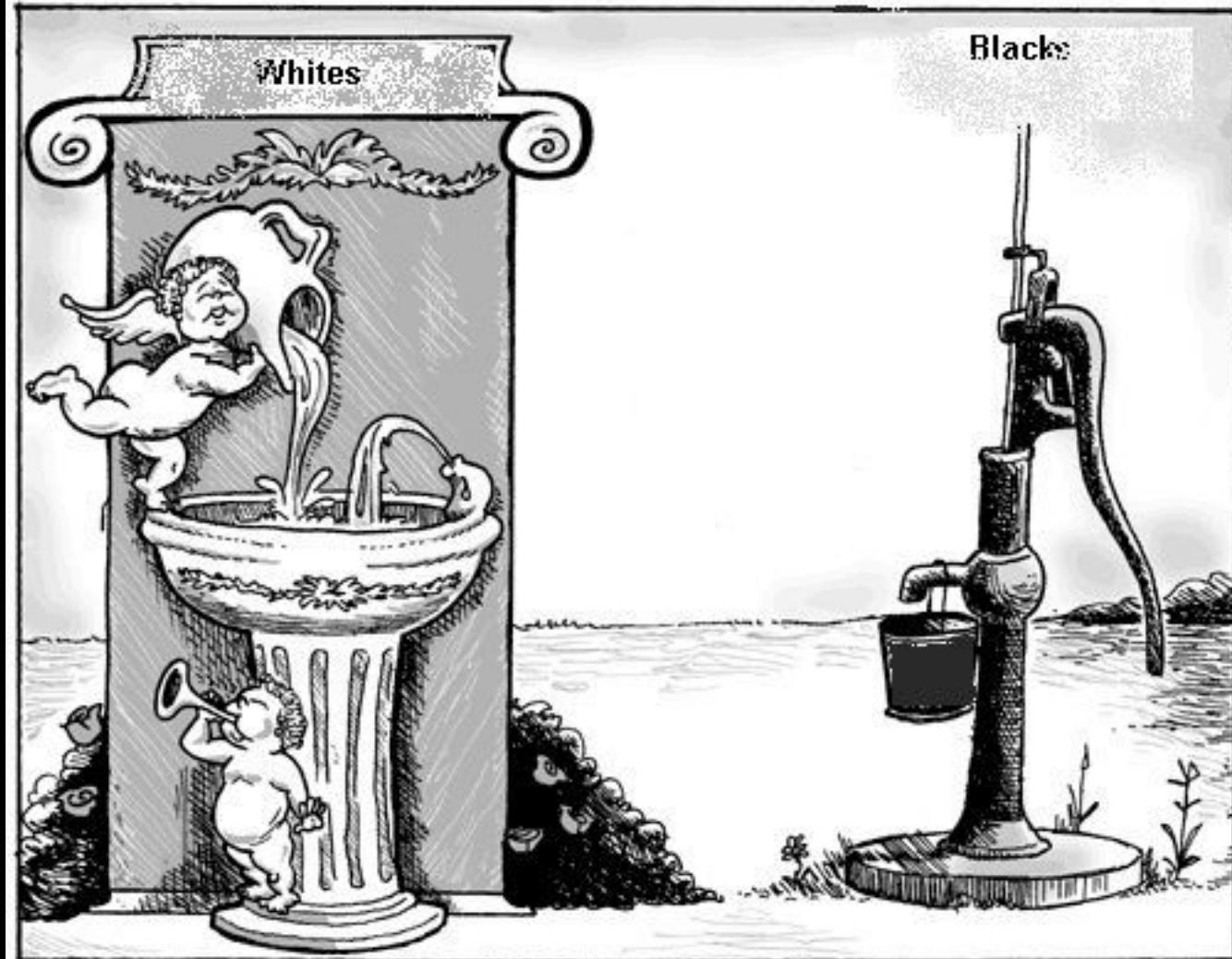


# *PLESSY V. FERGUSON* AND THE ROOTS OF SEGREGATION



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# PLESSY VS. FERGUSON



**SEPARATE  
BUT NOT EQUAL**

# What is Racial Segregation?

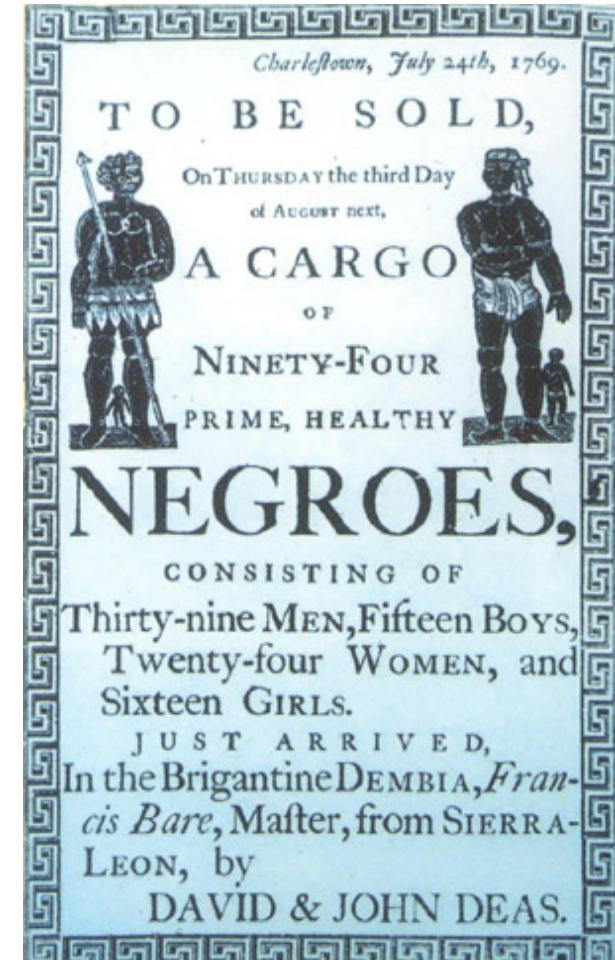
- Legal or societally enforced separation of public or private facilities based upon race.
  - *De facto*: societally enforced segregation.
  - *De jure*: legally enforced segregation.



**Brainstorm examples of de facto segregation and de jure segregation.**

# The Roots of Racist Laws & Segregation: Slave Codes

- Slave codes were laws each US colony passed which defined the status of enslaved people and the rights of enslavers. These codes were meant to give slave-owners absolute power over the African slaves.
- Given that slave codes were meant to give masters absolute power, what types of things do you imagine were made illegal for those enslaved?
- In what ways do you think enslaved people resisted (in both subtle and overt ways?)



# Examples of Slave Codes

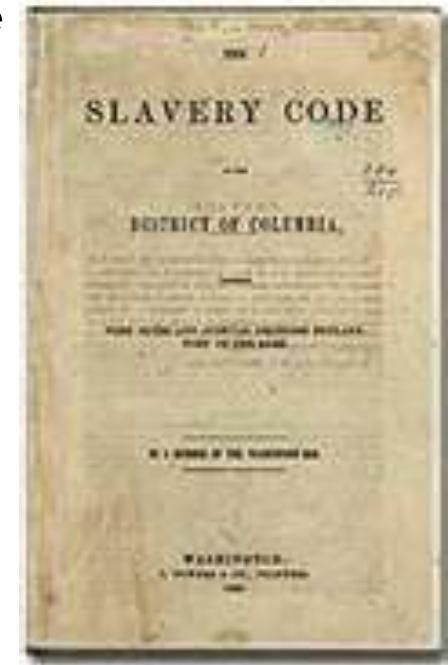
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- Enslaved people were determined by the condition of their mother and every black person or person of mixed race (referred to then as “mulatto”) was assumed to be a slave, unless evidence to the contrary could be provided.
- Those enslaved were required to carry a note from their masters, or be in the company of a white person, when traveling. If the above conditions were not met, a slave was subject to 20 lashes.
- It was illegal for enslaved people to:
  - marry
  - own property
  - carry firearms or other weapons
  - learn how to read and write
  - drink liquor

# Examples of Slave Codes

- Slaves who struck white people were put to death
- White people harboring escaped slaves were punished with fines
- Free black people harboring escaped slaves were punished with fines. If unable to pay those fines, they were sold into slavery.
- If suspected of committing a crime, free black people faced the same “justice” system as those enslaved.

★ What was the overall purpose of such laws?



# *Dred Scott v. Sanford*

- Dred Scott was an enslaved man in Missouri. From 1833 to 1843, he resided in Illinois (a free state) and in an area of the Louisiana Territory, where slavery was forbidden by the Missouri Compromise of 1820.
- After returning to Missouri, Scott sued unsuccessfully in the Missouri courts for his freedom, claiming that his residence in free territory made him a free man. Scott then brought a new suit in federal court.
- Scott's master maintained that "no pure-blooded Negro of African descent and the descendant of slaves could be a citizen in the sense of Article III of the Constitution."



# *Dred Scott v. Sanford*

- In March of 1857, the United States Supreme Court, led by Chief Justice Roger B. Taney, declared that **all blacks -- slaves as well as free -- were not and could never become citizens of the United States.**
- The court also declared the 1820 Missouri Compromise unconstitutional, thus permitting slavery in all of the country's territories.

★ “For those opposed to slavery’s expansion, the decision meant that America had gone from being a nation with slave states to a slave nation.” – Author, Keith Medley.



# Emancipation Proclamation

- President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, as the nation approached its third year of bloody civil war.

★ The proclamation declared "that all persons held as slaves" within the rebellious states "are, and henceforward shall be free." Given this, how many slaves were actually freed?



# Emancipation Proclamation

- Despite this expansive wording, the Emancipation Proclamation was limited in many ways.
  - ▣ It applied only to states that had seceded from the Union, leaving slavery untouched in the loyal border states.
  - ▣ It also exempted parts of the Confederacy that had already come under Northern control.
  - ▣ The freedom it promised depended upon Union military victory.
- Although the Emancipation Proclamation did not end slavery in the nation, it captured the hearts and imagination of millions of Americans and fundamentally transformed the character of the war.
- After January 1, 1863, every advance of federal troops expanded the domain of freedom.
- Moreover, the Proclamation announced the acceptance of black men into the Union Army and Navy, enabling the liberated to become liberators.
- By the end of the war, almost 200,000 black soldiers and sailors had fought for the Union and freedom.

# Reconstruction

- Reconstruction refers to the period after the Civil War when the federal government “rebuilt” the former Confederate states and readmitted them to the Union.
- After the Civil War, the United States passed three “Reconstruction Amendments” aimed at protecting equality for freedmen (former slaves).
  - 13<sup>th</sup> Amendment (1865): Abolished slavery
  - 14<sup>th</sup> Amendment (1868): Birth citizenship, due process, equal protection under the law
  - 15<sup>th</sup> Amendment (1870): No citizen can be denied the right to vote due to “race, color, or previous condition of servitude”

# Reconstruction - Black Codes

- Even with federal amendments protecting the rights of African Americans, **Black Codes** were laws put in place by Southern states at the end of the Civil War to control the labor, migration and other activities of newly-freed slaves.
- In many ways, the black codes represented a continuation of the slave codes that had formerly been in effect.
- The codes continued legal discrimination and reflected the unwillingness of whites to accept blacks as equals.
- Though varying from state to state, their general purpose was to secure a steady supply of cheap labor and to ensure the inferiority of freed slaves.
- An example of 1860s segregation was evidenced in segregated mule-powered streetcars, called “star cars.”
- By 1867, one-third of the mule-draw streetcars that clumped along the New Orleans's thoroughfares were painted with a huge black star. Other than Black Union soldiers, Blacks who wanted to travel could only do so in a Star Car.

# Reconstruction Legislation

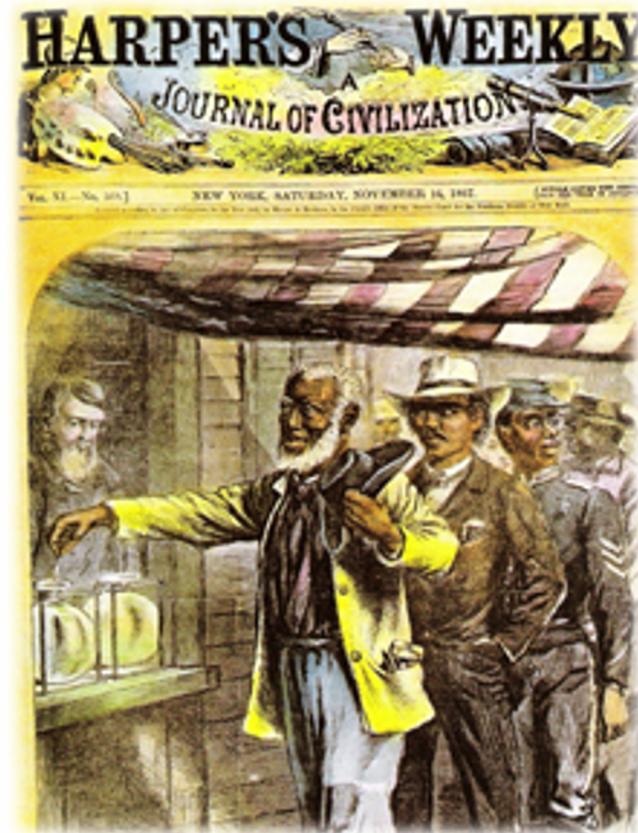
|                                   |  |
|-----------------------------------|--|
| <b>Freedmen's Bureau Act</b>      | Create a government agency to provide services to freed slaves and war victims   |
| <b>Civil Rights Act of 1866</b>   | Grants citizenship to African Americans and outlaws Black Codes, which proliferated throughout the former Confederacy after the Civil War.   |
| <b>Reconstruction Act of 1867</b> | Divides former Confederacy into military districts. One major purpose was to recognize and protect the right of African Americans to vote. The military closely supervised local government, supervised elections, and tried to protect office holders and freedmen from violence. |

# Reconstruction Legislation

|   |  |
|---|--|
| <b>Enforcement Act of 1870</b>                | Protects voting rights by making intimidation of voters a federal crime  |
| <b>Civil Rights Act of 1871<br/>(KKK Act)</b> | Authorizes President Ulysses S. Grant to declare martial law, impose heavy penalties against terrorist organizations, and use military force to suppress the Ku Klux Klan. This act helped to suppress KKK activity in the former Confederacy and as a result, the organization faded away by the early 1880s. |
| <b>Civil Rights Act of 1875</b>               | The Act guaranteed that everyone, regardless of race, color, or previous condition of servitude, was entitled to the same treatment in "public accommodations"   |

# Reconstruction

- During Reconstruction, some strides were made to educate and politically empower freemen.
- Many African American men were elected to office, allowed to vote freely in elections, and gain economic independence.
- However, such advancements were unfortunately short lived due to a backlash of white supremacy.



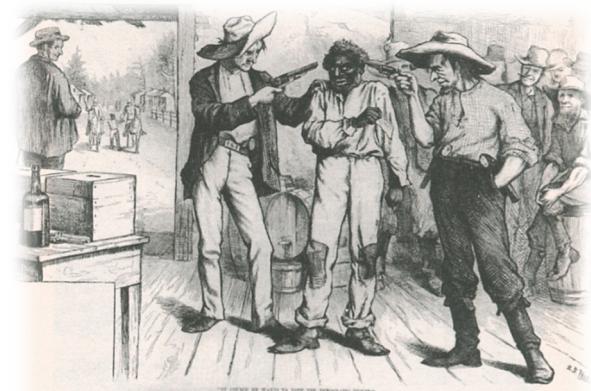
# Reconstruction Ends

- Reconstruction ended in 1877, when federal troops withdrew from the South.
- Starting in the 1870's, "Redeemers" – white Southerners who wanted to reclaim the South from the federal government's intervention - began to assume power over many state and local governments.
- The redeemer governments in the South sought to relegate African Americans to second class citizens.



# The Supreme Court After Reconstruction

- In a series of decisions during the 1870s and 1880s, the Supreme Court rolled back many African American gains made during Reconstruction.
- The Court issued narrow interpretations of the 14<sup>th</sup> Amendment, assuming that it only protected federal citizenship, but not state citizenship.
- The Court also invalidated many federal laws designed to protect African Americans from discrimination.



Of Course He Wants to Vote the Democratic Ticket,  
Harper's Weekly, October 21, 1876.

**“The slave went free; stood a brief moment in the sun; then moved back again toward slavery.”**

*W. E. B. DuBois*



# Jim Crow Laws

- From the 1880s into the 1960s, Black Codes were replaced by equally unjust and racist laws called "Jim Crow" laws (so called after a black character in minstrel shows).
- States and cities across the South could impose legal punishments on people for breaking Jim Crow laws, largely focused on keeping the races segregated.



# Examples of Jim Crow Laws

- All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races. *Alabama*
- All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation inclusive, are hereby forever prohibited. *Florida*
- All persons licensed to conduct a restaurant, shall serve either white people exclusively or colored people exclusively and shall not sell to the two races within the same room or serve the two races anywhere under the same license. *Georgia*
- Separate schools shall be maintained for the children of the white and colored races. *Mississippi*
- Books shall not be interchangeable between the white and colored schools, but shall continue to be used by the race first using them. *North Carolina*

# Jim Crow Laws: The Separate Car Act of 1890

- In 1890, the State of Louisiana proposed the “Separate Car” Act, which would require railroads to maintain “equal and separate” facilities for whites and non-whites. Despite the presence of 16 black legislators in the state assembly, the law was passed.
- Though segregation was widely practiced at this time, this was the first state Jim Crow law passed that officially required racial segregation in any business or public service.
- The Separate Car Act required either separate passenger coaches or partitioned coaches to provide segregated accommodations for each race. Passengers were required to sit in the appropriate areas or face a \$25 fine or a 20-day jail sentence.

# The Separate Car Act, 1890

- This law was one of several bold new attempts by conservative southern governments to deprive blacks of civil and political rights through the law (as opposed to their otherwise attempts outside of the law, with violence and intimidation)
- Civil rights activists, such as Albion Tourgée, denounced the law.
- Tourgée wrote about the unfairness of the Separate Car Act, calling it unconstitutional.
- He called upon Louisiana blacks and civil rights advocates to challenge the law, arguing that it violated the



# The Separate Car Act, 1890

- Within a year, a group of New Orleans activists led by Louis A. Martinet, the editor of an African American newspaper, organized the “Citizens’ Committee” to challenge the law. The East Louisiana Railroad Company, which also sought to terminate the Act largely for monetary reasons, worked with them.
- The group raised \$3000 to challenge the Act, and contacted known civil rights advocate Albion Tourgée and asked him to assist.
- Tourgée agreed to take part in the planning and legal defense, refusing payment even though he remained in debt, and worked with the team through long-distance correspondence.
- With Tourgée’s assistance, the group planned to have a pre-determined person break the segregation law, ensuring he be arrested. The legal team would then challenge the arrest in the courts, appealing throughout the local, state, and federal courts, calling attention to the unconstitutionality of the law.
- Their first case, *State of Louisiana v. Desdunes*, involved a black man being kicked out of a “white-designated” car as planned, but it was dismissed on a technicality and never made it beyond local courts.

# Other states follow the example of The Separate Car Act...

- As Martinet and Tourgée worked to challenge Louisiana's unfair law, all across the South, states began enacting similarly unjust laws.
- Alabama, Kentucky, Arkansas, and Georgia passed railroad-segregation laws throughout 1891.
- At the same time, Mississippi established literacy and “understanding” tests as a requirement to vote.
- That year, the Fifty-second Congress contained only one black Congressman, down from the 19<sup>th</sup> century high of eight who served in the 1875-77 Congress.
- Indicative of the growing political strength of the Southern states, Congress abandoned a bill that authorized federal supervision of elections.
- Nationwide, one hundred thirteen blacks died from lynching in 1891.

# Homer Plessy, 1892

- While their first test case failed, in 1892, Tourgée and his team's plans of testing the Separate Car Act in the courts became a reality.
- Tourgée had determined that the best way to challenge the law in court was to raise the legal question of how race can even be determined for the purposes of ensuring separate seating. They planned to have a man light-skinned enough to pass for white board a train in New Orleans and sit in the white car.
- Tourgée and his team approached Homer Adolphe Plessy and asked him to serve as the plaintiff in the case. Plessy one-eighth black and appeared to be a white man.



# Homer Plessy, 1892

- On June 7, 1892, Plessy boarded a New Orleans train and sat in the “whites only” car.
- Plessy then informed the conductor that he was black and the railroad officials, following through on the arrangement, arrested Plessy and charged him with violating the Separate Car Act. Tourgée’s plan was officially in motion.
- In the Criminal District Court for the Parish of Orleans, Tourgée argued that the law requiring “separate but equal accommodations” was unconstitutional as it violated the 13<sup>th</sup> & 14<sup>th</sup> Amendments. Further, as illustrated by Plessy’s arrest, there was no way for railroad companies to enforce the law. (Had Plessy not announced himself, no one would have ever known he was black.)
- As Tourgée anticipated, Judge John H. Ferguson ruled against him and convicted Plessy of violating the Separate Car Act.
- Tourgée appealed Ferguson’s decision and the case was sent to the Louisiana State Supreme Court, which also upheld Ferguson’s decision.

# PARTNER DISCUSSION:

## Plessy Ferguson and the Separate Car Act

1. What law did Homer Plessy violate? How did Plessy violate this law?
2. What rights do the Thirteenth and Fourteenth Amendments to the Constitution provide?
3. If you were Albion Tourgee, one of Plessy's lawyers, how would you justify your claim that the "Separate Car Act" violates the Thirteenth and Fourteenth amendments?
4. Is it possible for two races to remain separated while striving for equality? Are separation and equality compatible? Why or why not?
5. What decision do you think the US Supreme Court will make and why?

# *Plessy v. Ferguson, 1896*

- Three and a half years later, on April 13, 1896, the US Supreme Court finally heard oral arguments. Tourgée and his co-counsel Samuel F. Phillips argued the case for Plessy.
- Unfortunately, the Supreme Court of the United States upheld the lower courts' decisions.
- The Supreme Court reasoned that while the Thirteenth Amendment abolished slavery, it could not protect African Americans from state laws that treated them unequally.
- The language of the Court further determined that the Louisiana law was constitutional under the 14<sup>th</sup> Amendment in its establishment of “separate but equal” cars for African Americans.

# Plessy v. Ferguson, 1896



- Speaking for a seven-person majority, Justice Henry Brown wrote:

"That [the Separate Car Act] does not conflict with the Thirteenth Amendment, which abolished slavery...is too clear for argument...A statute which implies merely a legal distinction between the white and colored races -- a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color -- has no tendency to destroy the legal equality of the two races...The object of the [Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either."

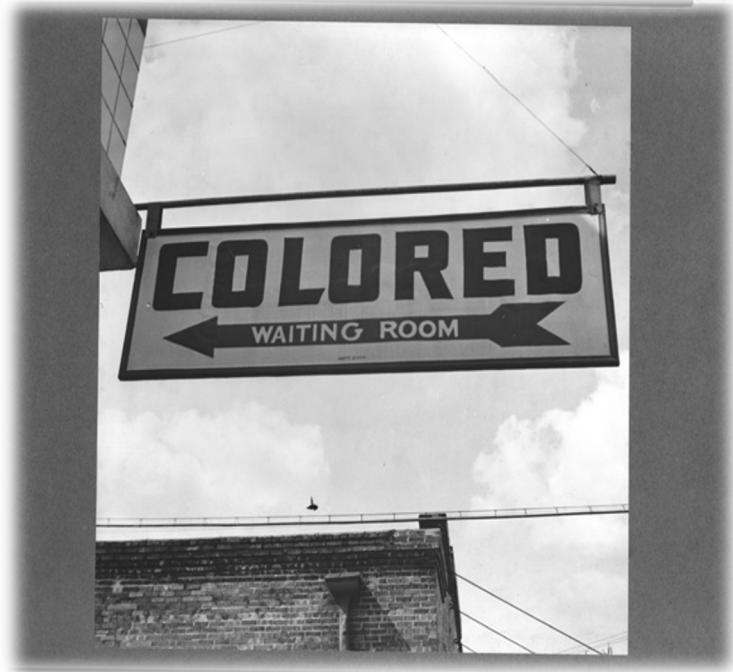
# *Plessy v. Ferguson, 1896*

- The lone dissenter, Justice John Harlan, showed foresight when he wrote:

"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...In my opinion, 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...The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, 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."

# *Plessy v. Ferguson, 1896*

- Over time, the words of Justice Harlan rang true.
- The *Plessy* decision set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal."
- The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools.
- The door for widespread discrimination against African Americans across the US had been opened and many of the gains made by African Americans during Reconstruction were rolled back.



# Think About It...

- Given everything you have learned thus far, what overall impact do you think Jim Crow laws and segregation has on African Americans throughout history?
- In what ways do we still see the effects of Jim Crow and our history at play in society today? What impact does this history still have on us?

# The Effects of Segregation on African American Citizens

- Many African Americans faced violent intimidation for violating Jim Crow laws.
  - ▣ Lynchings
  - ▣ Police brutality
- Disenfranchisement
  - ▣ Grandfather Clauses
  - ▣ Poll Taxes
  - ▣ Literacy Tests
- Lack of protection from state and local governments
  - ▣ Failure to prosecute violence against African Americans
  - ▣ Harassment by state and local officials, include police
  - ▣ Unequal application of the law

# The “End” of De Jure Segregation

- Not until 1954, in the equally important *Brown v. Board of Education* decision, would the "separate but equal" doctrine be struck down, legally ending *de jure* segregation.
- However, **de facto segregation was still widely practiced**, and it would take numerous activists and many years before integration was finally implemented.

★ Are we truly an integrated society today?



“Nations reel and stagger on their way; they make hideous mistakes; they commit frightful wrongs; they do great and beautiful things. And shall we not best guide humanity by telling the truth about all this, so far as the truth is ascertainable?”

~W. E. B. Du Bois

# Segregation Museum



Smithsonian

- The Smithsonian Institution, the world's largest museum and research complex, has announced that they will be opening a new museum in New Orleans, at the site of Homer Plessy's arrest for entering a “white's only” train car.
- The purpose of this museum is to **educate the public about the history of segregation** in the United States.
- Your group's job is to design an exhibit for your assigned topic.