

## Albion Tourgée & the Fight for Civil Rights

### Overview

Albion W. Tourgée spent his lifetime (1838-1905) dedicated to fighting for equality and justice, during a period when rights for many were severely restricted or entirely denied. Yet, even though his experiences range from serving as a lawyer arguing against segregation on behalf of African Americans to founding the country's first national civil rights association with an interracial membership, Tourgée's legacy is often overlooked. In this lesson, students will learn about the life and contributions of Albion Tourgée through class discussion, reading, and group work. Students will then culminate their new understanding and appreciation of Tourgée by designing a historical monument to educate others about his important role in North Carolina and the United States.

### Grades

High school

### Essential Questions

- In what ways did Tourgée advocate for equality and justice throughout his life?
- What impact did serving as a soldier in the Civil War have on Tourgée?
- In what ways were Tourgée and his wife involved in the Guilford County Quaker community?
- In what ways did Tourgée positively influence the 1868 NC State Constitution?
- In what ways was Tourgée's courtroom controversial when serving as a NC Superior Court Justice?
- Why did Tourgée investigate the KKK in North Carolina and what were the results of his investigation?
- What role did Tourgée play in the 1875 NC Constitutional Convention?
- What argument did Tourgeee present on behalf of Tabitha Holten in *In Re Application of Holten*?
- Why were Tourgée and his family often shunned when living in North Carolina?
- What was Tourgée's argument against the Separate Car Act in *Plessy v. Ferguson*?

### Materials

- Brainstorm worksheet for warm-up, attached
- "Albion Tourgée and the Fight for Civil Rights" Power Point, available in the Database of K-12 Resources (in PDF format) at <https://k12database.unc.edu/files/2012/04/AlbionToureeFightforCivilRightsPPT.pdf>
  - To view this PDF as a projectable presentation, save the file, click "View" in the top menu bar of the file, and select "Full Screen Mode"
  - To request an editable PPT version of this presentation, send a request to [CarolinaK12@unc.edu](mailto:CarolinaK12@unc.edu)
- Jigsaw activity handouts (attached):
  - Group instructions (for each student)
  - "Albion Tourgée and the Fight for Civil Rights," introductory reading (for each student)
  - Excerpt readings (each group will be assigned one of the following readings; each student in that group should receive a copy)
    - Group A: Albion Tourgée - Early Life & Military Career
    - Group B: Tourgée's Roles During Reconstruction – NC Constitutional Convention of 1868
    - Group C: Tourgée's Roles During Reconstruction – NC Superior Court Justice
    - Group D: Tourgée and *In Re Application of Holton (1878)*
    - Group E: Tourgée and the Start of the Civil Rights Movement
    - Group F: Tourgée & *Plessy v. Ferguson*
- **Teacher Note:** If possible, print each of the five readings on five different colors of paper – this will make the excerpts easier to decipher as well as make the transition to the second group easier.
  - Jigsaw notes sheet (for each student)

- Design a Historical Monument for Albion Tourgée, assignment sheet attached
- Optional Teacher Resources:
  - “Justice Deferred, Albion Tourgée and the Fight for Civil Rights,” by Mark Elliot, available at <http://www.scribd.com/doc/11923436/Justice-Deferred>
  - “A Radical Notion of Democracy: Law, Race, and Albion Tourgée, 1865-1905” – videos of the speakers from this conference are available at <http://vimeo.com/channels/267878>

### Preparation

- Students should have studied the Civil War and Reconstruction before this lesson is implemented. Students should also have knowledge of the Fourteenth Amendment.

### Procedure

#### Warm Up: Brainstorm Abolitionists and Civil Rights Activists

1. As a warm up, project slide 2 and tell students to partner up and provide them with the attached brainstorm worksheet. Tell students to first brainstorm the words “abolitionist” and “civil rights activist” by asking them what comes to mind. (This part of the brainstorm can be done as a whole class if desired.)
2. After students have shared their thoughts, instruct them to spend approximately 3-5 minutes with their partner brainstorming specific abolitionists and civil rights activists from the Antebellum, Civil War and Reconstruction era. Students should note the person’s name and then write details regarding what each person did or what special qualities they encompassed that has led our society to remember them. (For example, students might list Frederick Douglass, noting that he escaped slavery, taught himself to read, was a famous author, gave convincing anti-slavery speeches, etc.) Teachers can offer a small prize for the pair who is able to generate the most comprehensive list within the time limit should they choose.
3. Once students have had ample time to brainstorm with their partner, have each pair share their list of people. Compile these on the board or chart paper by listing the names in one column and each person’s characteristics in the other. (After the first set of students share, teachers can simply ask if the remainder of pairs have any new people not already mentioned to add to the list.)
4. Once the list is complete, discuss:
  - Do you think there were other abolitionists and civil rights activists working throughout the 1800s that are not on our list?
  - What determines, or how is it determined, who gets remembered from history and who doesn’t? Why do you think history remembers certain individuals over others, or why do our school curriculums and textbooks teach us about the people on the list you made, but not the hundreds of other people that were involved in abolition and civil rights?

#### Who Was Albion Tourgée?

5. Next, project slide 3 and ask students whether they can identify the man pictured based on the image and/or the clues about his life. Once students have provided their guesses, let them know that the man pictured is Albion Tourgée, a pioneer civil rights activist who fought for justice and equality in roles such as an American soldier, Radical Republican, lawyer, judge, novelist, diplomat, and more. Since he lived during the Civil War and Reconstruction, a time when society severely limited the rights of blacks, he was a man before his time in many ways. Yet, even though Tourgée spent many years living in North Carolina and contributing to local and state politics, with much of his work focused on ensuring equal rights of all people, few North Carolinians know about him. He also lived and worked beyond the State of North Carolina, yet he is left out of textbooks and off of the lists of prominent Civil War and Reconstruction civil rights activists. Project slide 4 and ask students why they think this is the case. Let them know you will come back to this question later.

### Learning About Albion Tourgée in a Jigsaw Activity

6. Tell students that in today's lesson, they will be learning more about Albion Tourgée by participating in a jigsaw activity in which they first work with a group to become experts on a particular period during Tourgée's life and then teach a second group about what they learned, while also learning additional information from the other group members. To set up the activity:
  - Divide students into six groups and assign each group one of the six attached excerpts, all taken from "Justice Deferred, Albion Tourgée and the Fight for Civil Rights," by Mark Elliot, Ph.D. (The full text is available at <http://www.scribd.com/doc/11923436/Justice-Deferred>.) Each group should receive the Group Instructions sheet, the overview reading "Albion Tourgée and the Fight for Civil Rights," and the topical reading their group is assigned:
    - Group A: Albion Tourgée - Early Life & Military Career
    - Group B: Tourgée's Roles During Reconstruction – NC Constitutional Convention of 1868
    - Group C: Tourgée's Roles During Reconstruction – NC Superior Court Justice
    - Group D: Tourgée and *In Re Application of Holton (1878)*
    - Group E: Tourgée and the Start of the Civil Rights Movement
    - Group F: Tourgée & *Plessy v. Ferguson*
  - **Teacher Note:** If possible, print each of the six readings on five different colors of paper – this will make the excerpts easier to decipher as well as make the transition to the second group easier.
    - Teachers should assign one student in each group to be the "Facilitator." This student will be responsible for keeping the group on track and facilitating the discussion of the reading.
    - Tell students that the reading provided to their group discusses a particular period or particular experiences/accomplishments, of Tourgée's life. Explain that they will carefully read and discuss their handouts, working together to ensure a comprehensive understanding of Tourgée's dedication to justice and civil rights. Let students know that each of them must individually understand their group's excerpt, since in the second step of this jigsaw activity they will each be teaching a different group of students about their excerpt and what they learned about Tourgée.
7. Give groups approximately 15-20 minutes to work together. After all groups are finished, ask the students to "jigsaw," so that new groups are re-formed with one person representing each excerpt in every group. (If the six excerpts were copied on different colors of paper, each new group will have at least one person with each color of paper.) Once students are settled in their new groups, pass out the attached notes sheet and have each student take approximately 3-4 minutes to teach their new group members about what they learned from their excerpt regarding Tourgée's life and accomplishments. Students should take notes as they listen.
  - **Teacher Note:** Slides 5 – 34 of the accompanying Power Point contain an overview of Tourgée's life and contributions. Teachers can utilize excerpts of the Power Point in conjunction with the jigsaw activity, as a discussion piece after the jigsaw activity, or use the presentation as a whole in place of the jigsaw activity.
8. After each student has taught their group members about their excerpt, debrief as a class:
  - What do you find most interesting or surprising regarding Tourgée?
  - Out of all of his experiences and accomplishments, what do you think was most important and/or admirable and why?
  - How would you describe Tourgée overall, based on what you now know about him?
  - What was Tourgée risking by advocating for equal rights, particularly during the period of Reconstruction? Do you think you could have done the same? Why or why not?
    - It is important to discuss historical perspective with students. It is easy to sit in a 21<sup>st</sup> century society and claim we would have fought for equality, but we must remember that such a fight often meant losing friends, risking your life, risking your family's lives, etc. It is important to

understand just what courage it took to stand up against the unjust society that existed in the 1800s.

- Why should we remember and learn about Albion Tourgée all these years later?
- At the start of this lesson, most of you had not heard of Tourgée and we discussed why this might be the case. Do you have any additional thoughts now that you've learned more about him? How might the quote by Winston Churchill, "History is written by the victors," apply here?
  - Share with students that much of the reason Tourgée's contributions are less known involves the time period during which he was working, and his position as a "carpetbagger" within that period. "The history of Reconstruction was buried under a mountain of myth and propaganda that vilified 'carpetbaggers' like Tourgée and depicted the period as a shameful episode of sectional animosity rather than a high-minded egalitarian revolution on behalf of democracy. The Plessy case too has been shrouded in myth, and until recently, studied mostly as an example of racist jurisprudence. But, the rediscovery of Tourgée's role in the case by legal scholars, and the growing recognition of his arguments' relevance for our own political debates promise to give this deserving civil rights champion his due place in history at long last." (Source: "Justice Deferred, Albion Tourgée and the Fight for Civil Rights," by Mark Elliot)

9. Project [slide 35](#) and share a few final points regarding Tourgée and his legacy. Project [slide 36](#) and ask a student volunteer to read the quote. Solicit student feedback regarding the quote by asking:
- What message is the author trying to convey? What commentary is he making regarding our nation's Founding Fathers?
  - What is he saying about abolitionists?
  - How does this quote connect to what we've learned about Tourgée?
  - How can we ensure Tourgée's legacy is not forgotten? How can we ensure people learn about his contributions and dedication to civil rights? (Encourage students to consider the various ways popular historical figures are typically remembered, such as through museum exhibits, historical monuments, etc.)

#### **Remembering Albion Tourgée: Design a Historical Marker**

10. Let students know that in actuality, the state of North Carolina does have a marker dedicated to Tourgée (<http://www.hmdb.org/marker.asp?marker=2325>). Project [slide 37](#) and ask students to share what this marker teaches an onlooker about Tourgée. Does it do an adequate job summarizing his life? Ask students to share how they might improve and expand this marker into a historical monument to better teach about Tourgée and his contributions.
11. Tell students that while they now know about and understand the importance of Albion Tourgée's legacy, there are still many people who do not. Tell students to imagine they have been hired to design a historical monument that educates North Carolinians about Albion Tourgée and his contributions to civil rights, which they will work together in partners or small groups to design. (Teachers should determine whether to assign groups or allow students to choose.) Hand out the attached assignment sheet and go over the details with students. Let them know that they can create anything within the realm of a monument (i.e. a statue, a mural, an interactive exhibit, etc.) and that their final monument can be installed in any location of their choosing (though they should be able to justify why they picked the spot that they did.) The assignment sheet doesn't offer any parameters in terms of the size of the sketch required— teachers should determine whether they want this done on regular art paper, or whether they want students to work on a larger scale (i.e. poster paper or poster board.) Let students know the due date of their monument and if time permits, allow students to begin brainstorming in class.
- **Optional:** An additional reading that can be assigned to students is "Albion Tourgée a pioneer for rights," by historian Frank Woods, which provides a summary of Tourgée's work and legacy. The article

is available at: [http://www.greensboro.com/editorial/albion-tourgee-a-pioneer-for-rights/article\\_15ed110f-c1e1-5367-8414-ac341e988c7b.html](http://www.greensboro.com/editorial/albion-tourgee-a-pioneer-for-rights/article_15ed110f-c1e1-5367-8414-ac341e988c7b.html)

- 12.** On the date monuments are due, allow students to share their work by instructing them to first post their monument sketches around the room. Allow the class to spend approximately 10+ minutes of class doing a “gallery walk,” during which they rotate among all of the monument sketches and observe them. Teachers may want to number each sketch and instruct students to carry paper and pencil with them, writing down “What they liked and learned” for each sketch, or for a pre-determined number of sketches (i.e., instruct students to review 5 monuments of their choosing.) This can be followed with a class debrief in which students offer feedback to one another. Optionally, the class could also vote on which sketch they feel best memorializes Tourgée, and/or which does the best job educating the public.

Name: \_\_\_\_\_

**Brainstorm**

**Abolitionist / Reconstruction Era Civil Rights Activists**

**Who comes to mind?**

**Why? What did this person do or what was she/he known for?**

Name: \_\_\_\_\_

Group: \_\_\_\_\_

## Group Instructions

### First Group Instructions

- 1. Read:** Carefully read the handouts provided to you on Albion Tourgée. Each group will read *Albion Tourgée and the Fight for Civil Rights*. In addition, your group will be responsible for reading and becoming experts on one of the topical readings below:
  - Group A: Albion Tourgée - Early Life & Military Career
  - Group B: Tourgée's Roles During Reconstruction – NC Constitutional Convention of 1868
  - Group C: Tourgée's Roles During Reconstruction – NC Superior Court Justice
  - Group D: Tourgée and *In Re Application of Holton (1878)*
  - Group E: Tourgée and the Start of the Civil Rights Movement
  - Group F: Tourgée & *Plessy v. Ferguson*
- 2. Take Notes:** Each group member will be responsible for teaching a new group about this reading in the second part of this activity; likewise, you will be learning about the information provided in the other readings not assigned to your group. To help you prepare to teach this material to others, mark the text as you read:
  - Underline any parts of the excerpt that you think are most important or that stick out to you.
  - If you are confused by any part of the excerpt, write a question mark by that line or section. You can also write out questions on the text.
  - If anything surprises you or evokes a strong emotional response from you, you can write an exclamation mark by the line or section.
  - If a particular thought pops in your head that connects to the reading, write it in the margins.
  - Circle any words that are unfamiliar to you.
- 3. Discuss & Determine Best Answers:** After you have finished the reading, your group's Facilitator will lead your group through discussing the questions at the end of the reading. Be sure to take detailed notes in preparation to teach others about what you learned.

### Second Group Instructions

- 4. Switch:** When told to do so, you will be assigned to a second group of six students. Each person in your second group will have read a different reading regarding a different period of Tourgée's life. Each person in the second group will take turns teaching about their reading. As you listen and learn more about Tourgée, you should take notes on the worksheet provided to you.
- 5. Teach:** When it is your turn to teach your new group members, you will take approximately 5 minutes to summarize your reading, sharing the main points and most important topics from your excerpt that relate to Tourgée's commitment to civil rights.

## **All Groups: Albion Tourgée and the Fight for Civil Rights**

Albion W. Tourgée (1838-1905) was in many ways a man before his time. Even though he lived during a time when slavery and Jim Crow was condoned, and African Americans and women were seen as inferior, he was passionately dedicated to the ideals of equality and justice inscribed in the Declaration of Independence and the Constitution. He fought his entire life for justice and equal rights in his roles as a:

- Union soldier in the Civil War
- member of the NC Constitutional Convention who ensured the 1868 Constitution was reformed to ensure equal rights for all
- politician and judge in Reconstruction-era North Carolina who fought for civil rights, often at the risk of his life
- novelist and journalist who tried to promote action for civil rights
- the founder of the country's first national civil rights association with an interracial membership
- lawyer arguing against segregation on behalf of African Americans
- creator of the country's first anti-lynching law

Tourgée sought to fulfill the mission of the abolitionist movement, which had culminated in ending slavery and granting African American men citizenship and voting rights. However, unlike his abolitionist predecessors, whose goals of ending slavery were reached, Tourgée was fighting for the rights of newly freed blacks during the post-war years, which unfortunately saw the abolitionist movement disband and the nation walk away from its responsibility to the emancipated slaves. In the years following the war, the courts gutted the new constitutional amendments and Congress allowed southern states to suppress African American rights with the unconstitutional state laws they passed.

In the post-war political climate of hardening racism, Tourgée stood almost alone among whites in defending the rights of African Americans and disputing racist theories of biological inferiority. Further, at a time when social contact and friendships across racial lines had all but ceased, Tourgée maintained communication with African Americans in all walks of life, frequently addressed Black audiences, and collaborated with such radical race leaders as Ida B. Wells in agitating against lynching, disfranchisement, and Jim Crow.

Tourgée died forgotten by Americans, having paid a heavy price for his fight for equality of all people during such a controversial time. As our nation catches up with Tourgée's vision of racial equality, we can embrace his legacy with special pride and honor his commitment to America's founding ideals.

*Source: "Justice Deferred, Albion Tourgée and the Fight for Civil Rights," by Mark Elliott, PhD*



## Group A: Albion Tourgée - Early Life & Military Career

Albion Winegar Tourgée was born in the small, rural town of Williamsfield (known as the Western Reserve) in the northeast corner of Ohio on May 2, 1838. During Tourgée's youth, the Western Reserve was largely populated by evangelical-influenced abolitionists. At an early age, Tourgée was influenced by such people and viewed slavery as a sin. He was impressed by the courage of abolitionists who endured public ridicule and often risked their lives in their fight for the end to slavery. Later in life, he would write glowingly of abolitionists like Frederick Douglass and William Lloyd Garrison as "men of conscience" who refused to allow their fellow citizens to shut their eyes to this great injustice.

In 1859, Tourgée enrolled in the University of Rochester. There, he excelled in debate, earning a reputation for aggressive argumentation, and as a student willing to challenge authority both inside and outside the classroom. For example, during the 1860 election, he helped organize and lead a student chapter of the "Wide Awakes" club in support of Abraham Lincoln's candidacy for President, despite a ban on political clubs by the University.

Financial hardship led Tourgée to drop out of Rochester in the spring of 1861, though he planned to re-enter the University the following semester. However, the firing on Fort Sumter in South Carolina changed his plans. Responding to Lincoln's call for troops, Tourgée enlisted in the 27th New York infantry regiment in April. (He would never return to the University of Rochester, but the school later awarded him a Bachelor's Degree in 1862 in recognition of his military service, and a Master's Degree in 1865.)

His first term of service in the 27th New York infantry was brief, but not mercifully so. After a few weeks of inadequate training exercises, his regiment was rushed to Washington, DC in early July to defend the capitol. On July 21, he participated in the Battle of Bull Run, the first major conflict between Union and Confederate forces. After enduring several hours of intense fighting in the battle, Tourgée was grievously wounded during the Union retreat from the field. A speeding artillery vehicle struck him in the back, and by the morning, he was paralyzed in his lower extremities. Honorably discharged after doctors pronounced him permanently disabled, Tourgée returned to Ohio for ten miserable months of rehabilitation. He busied himself during this time by reading law books, assuming his paralysis would prevent him from a life of manual labor.

Miraculously, he regained the ability to walk in the summer of 1862, and to the surprise of all, promptly reenlisted by joining the 105th Ohio infantry. Though his injuries continued to plague him, Tourgée served as a Lieutenant for another eighteen months during which he participated in several significant engagements with the Confederate enemy. Stationed in Kentucky and Tennessee, he witnessed slavery—and met slaves—for the first time. Tourgée, and many others in his regiment, formed strong bonds with the fugitive slaves they encountered, men and women who entered their ranks offering information and assistance. These experiences brought about a new conviction for Tourgée that the war was serving a higher purpose.

When Lincoln implemented the Emancipation Proclamation in 1863, Tourgée wrote to his friends at the University of Rochester:

I don't care a rag for '*the Union as it was.*' I want and fight for the Union '*better than it was.*' Before this is accomplished we must have... a thorough and complete revolution and renovation. This I expect and hope. For this I am willing to die—for this I expect to *die*.

The "revolution" that he envisioned meant redeeming the nation from the sin of slavery, and making good on the principles of equality stated in the Declaration of Independence.

In January 1863, Tourgée was captured near Murfreesboro, TN and sent to a Confederate prison. He was later exchanged and returned to Ohio. That May, Tourgée married his longtime fiancée Emma Kilbourne, a former

classmate. Once his crippling back ailments returned, Emma helped persuade him to resign from the military in December of 1863.

Whenever he discussed his personal history, Tourgée would insist that his experience in the Civil War “radicalized” him on civil rights issues. There is little evidence, indeed, that he would have followed the same path in life had it not been for the trauma he suffered and the experiences he had when serving as a Union officer in the occupied south. Those memories never left him.

Back in Ohio he gained entrance to the bar, but Tourgée found it difficult to pursue a career in the overcrowded field of law. The couple soon moved to Erie, Pennsylvania where he became headmaster of the Erie Academy. But the drama of the great social upheaval he witnessed in the south during the war remained with him. As the war dragged to its close in 1865, he hatched a plan to return to the south and take part in completing the “revolution” by aiding in the transition from a slave society to a free one.

*Source: “Justice Deferred, Albion Tourgée and the Fight for Civil Rights,” by Mark Elliott, PhD*

**Please answer on notebook paper:**

- What influences led Tourgée to develop a passion for equality early on?
- In what ways did Tourgée advocate for equality throughout his early life?
- What impact did the Civil War have on Tourgée?
- Based on what you read, how would you describe Tourgée? (Consider his character, personality, etc.)
- Summarize at least 5-6 major points from the reading regarding Tourgée’s life and experiences as they relate to equal rights that you think everyone should know:

## Group B:        **Tourgée's Roles During Reconstruction – NC Constitutional Convention of 1868**

Tourgée served two enlistments for the Union during the Civil War, during which he sustained a serious back injury. When his injuries became too painful, and upon persuasion from his new wife, Emma Kilbourne, he resigned from the army. Soon after, the war ended and Tourgée persuaded friends and family to move south to start a new life. After personally meeting with North Carolina State Governor William W. Holden, Tourgée arranged to purchase property in Greensboro, NC in 1865.

Once in Greensboro, both Albion and Emma were actively involved with the local Quaker community, longtime antislavery agitators, in aiding the black community to found schools and acquire property. However, such work came under attack when North Carolina conservatives swept into power in 1866 and tried to severely limit basic civil rights for former slaves. (This was largely a result of President Andrew Johnson's lenient reconstruction policies that restored the planter class to power throughout the south.)

Tourgée would often attend local political meetings in North Carolina, where he would eloquently denounce "black codes" and the unfair treatment of African Americans, which put him into a position of political leadership. Soon, he was editing a Republican newspaper, the *Union Register*, and picked to represent Guildford County at the national "Loyalist Convention" held in Philadelphia in 1866 – a group of Southern Republicans calling upon Congress to take stronger measures to counteract the President's reconstruction policies.

In 1868, he was elected to the North Carolina Constitutional Convention on the strength of the black electorate, temporarily enfranchised by the U.S. Congress. Tourgée's legal training and ability as an eloquent speaker made him a natural leader at the 1868 State Constitutional Convention in North Carolina, where he influenced the adoption of broad reforms, including:

- equal citizenship for all men, regardless of race;
- elimination of property requirements for jury duty and holding of public office;
- abolition of corporeal punishment including whips and stocks;
- free public education for all;
- popular election of most political offices and judgeships;
- and an overhaul of the civil and criminal codes.

Though he failed to secure two additional reforms that he fought for – elimination of the poll tax and abolition of capital punishment – the new Constitution was a revolutionary document given the rights it granted during the time in which it was written. Many of the rights and freedoms put forth in the 1868 NC Constitution would never be entirely reversed, even after the fall of Republican governments in the south.

After the Constitution was ratified, Tourgée served on the three-person committee to re-write the Code of Civil Procedure for the state, eliminating the outdated procedures that bogged down the justice system, and modernizing the law to make it more understandable and accessible to the common people.

Though he aspired to enter the United States Congress as his next professional move, the Republican Party convinced Tourgée to run instead for NC Superior Court Justice, out of a desperate need for qualified Republican candidates with legal training. Tourgée was elected and served six years, 1868 to 1874, throughout which he continued to fight for the less privileged.

Throughout this time, the Tourgées lived an unconventional life in the South and often faced ridicule due to their more open-minded views. They were shunned by Southern "polite society" because of their close association with blacks, northern schoolteachers and missionaries who worked with blacks, and lower class whites.

In 1869, during Tourgée's second year as a Superior Court Justice, they adopted Adaline Patillo, a destitute ex-slave, and raised her and her sister Mary in their home to the great horror of the conservative press. In 1873, they sent Adaline to Virginia's famous Hampden Institute where she was a classmate of Booker T. Washington, and then to other boarding schools in the North. But, after the birth of a daughter in 1870, Emma's enthusiasm for their work in North Carolina began to fade. She wished to raise Aimée, their only natural child, in a less hostile environment where they could freely attend church, and she feared the treatment her daughter might receive when she entered school. After several extended stays in Erie, Emma decided to take Aimée to live in the north permanently; she separated from Albion in 1878. A year later, after a failed run for U.S. Congress in the fall of 1878, Albion and Emma reconciled when he agreed to leave North Carolina for good.

Source: *"Justice Deferred, Albion Tourgée and the Fight for Civil Rights,"* by Mark Elliott, PhD

**Please answer:**

- In what ways were Tourgée and his wife involved in the local Quaker community?
- In what ways did Tourgée positively influence the 1868 NC State Constitution?
- Why was the 1868 State Constitution considered revolutionary?
- Why were Tourgée and his family often shunned?
- Based on this reading, what overall impact did Tourgée have on civil rights in North Carolina?

### **Group C:        Tourgée's Roles During Reconstruction – NC Superior Court Justice**

After serving two enlistments for the Union during the Civil War, Tourgée arranged to purchase property in Greensboro, NC, where he and his wife, Emma Kilbourne moved in 1865. Tourgée quickly became involved in the local community and in politics. In 1868, he was elected to the North Carolina Constitutional Convention where he helped ensure the State Constitution included rights such as equal citizenship for all men, regardless of race.

Even though Tourgée's views on equality were controversial at the time, he was very respected in the Republican Party. In 1868, the Republican Party convinced Tourgée to run for NC Superior Court Justice, out of a desperate need for qualified Republican candidates with legal training. Tourgée was elected and his proficiency in the law served him well during his six year term from 1868 to 1874.

Throughout these years, he distinguished himself in the courtroom and earned the respect and praise of many, including some prominent conservatives. However, Tourgée's courtroom was still controversial, particularly due to his commitment to equality during a time when many in society believed Blacks did not deserve the same rights as Whites. For example, Tourgée banned the use of racial slurs in his courtroom by practicing lawyers, and issued a heavy fine on anyone who broke his rule. He insisted on racially-integrated juries in cases that involved racial violence. Further, on several occasions, he put his own life in jeopardy by implementing harsh sentences to white men for crimes against blacks, and for taking steps to make certain justice was served in the courtroom regardless of public pressure to acquit.

A campaign of terror and vilification against Republican governments spread in 1868-1870, often undertaken by the Ku Klux Klan, who disagreed with Republican ideals of equality of the races. Tourgée personally found himself the target of threats and assassination plots by the KKK. Yet, not one to back down, Tourgée instead stood up to the Klan and personally led an investigation in 1871 into their violent activities. His investigation brought indictments against sixty-three Klan members that ensnared several prominent citizens.

Due in part to the intimidation of black voters and ballot box fraud, Conservatives took back the State legislature in North Carolina in 1870, and initiated a slow rollback of Republican policies over the next decade. Most convicted Klansmen were pardoned, and the civil rights of black citizens were gradually eroded. At the reactionary North Carolina Constitutional Convention of 1875, Tourgée stood with the Republican minority that sought to prevent the complete undoing of their 1868 constitutional reforms. While most Republican reforms were thankfully left intact, Conservatives were able to mandate public school segregation and a ban on interracial marriage in the State Constitution. When Tourgée's Superior Court term expired in 1876, he was shut out of most political opportunities in the state and was forced to take the modest government position of Pension Officer in Raleigh.

In 1869, during Tourgée's second year as a Superior Court Justice, they adopted Adaline Patillo, a destitute ex-slave, and raised her and her sister Mary in their home to the great horror of the conservative press. In 1870, Emma gave birth to their daughter, after which her enthusiasm for their work in North Carolina began to fade. She wished to raise Aimée, their only natural child, in a less hostile environment where they could freely attend church, and she feared the treatment her daughter might receive when she entered school. After several extended stays in Erie, Emma decided to take Aimée to live in the north permanently; she separated from Albion in 1878. A year later, after a failed run for U.S. Congress in the fall of 1878, Albion and Emma reconciled when he agreed to leave North Carolina for good.

*Source: "Justice Deferred, Albion Tourgée and the Fight for Civil Rights," by Mark Elliott, PhD*

**Please answer:**

- How long did Tourgée serve as a NC Superior Court justice?
- In what ways was Tourgée’s courtroom controversial?
- Why did Tourgée investigate the KKK?
- What role did Tourgée play in the 1875 NC Constitutional Convention?
- What did Tourgée risk by fighting for civil rights during this time period?

**Group D:        *Tourgée and In Re Application of Holton (1878)***

In 1878, Albion Tourgée decided to leave North Carolina and reconcile with his wife and daughter in the North. Before he left the state, however, Tourgée made one last contribution to the fight for equal rights in North Carolina. He appeared before the Supreme Court of North Carolina and made a brilliant argument on behalf of Tabitha A. Holton, a white woman who had applied for admission to the bar but was rejected based on her gender.

Tabitha, who grew up in a family in which education was very important, developed a strong interest in the law and held ambitions of being admitted to the North Carolina bar. In 1878, after years of hard work and study, 25-year-old Tabitha accompanied her 22-year-old younger brother, Samuel, to Raleigh, where both planned to take the bar exam. However, since no woman had ever taken the exam nor been admitted to the bar in North Carolina, the State refused to give Tabitha the exam arguing that women were not eligible.

Tabitha enlisted the help of Albion Tourgée in order to challenge the State. A special hearing of the North Carolina Supreme Court was called to decide Tabitha's future and Tourgée soundly argued her case.

At the time, the North Carolina law regarding attorney practice used the language: "all persons who may apply for admission to practice..." The State argued that women were not included in the term "persons" when the governing statute was originally framed and thus they should not be admitted to the bar.

Tourgée on the other hand argued that the term 'persons' could be construed to include women. While the legislature had not considered women practicing law when they drafted it, they also had not specifically excluded women, he maintained. He referenced a recent case in the North Carolina Supreme Court where 'persons' was found to include black males, which the legislature had also not considered at the time of enacting that law. Tourgée contested that the same citizenship rights extended to former slaves ought to extend to women as well.

Tourgée further made Tabitha's case by pointing out that five other states had statutes allowing women to become attorneys. He also highlighted an 1868 law that allowed anyone admitted to practice in any state to practice anywhere in the Union. This would mean that a woman admitted to practice in another state would thus be allowed to practice in North Carolina should they move here. Thus, he argued that a woman born and raised in North Carolina should not be excluded from the North Carolina bar.

He also addressed a law in the North Carolina Constitution which said that women could not be elected to office. He pointed out that lawyers were officers of the court, not the state, so this law was inapplicable to female attorneys and could not be used as a reason to not admit Tabitha. In addition, Tourgée pointed out that while it had taken a revolution (the Civil War) to change the role of black men in the South, the Court should be enlightened enough in mind to change the role of women. He concluded his case with the statement, "She asks no favors, but a fair chance if the court can grant it to her."

The Court deliberated briefly and decided to allow her to take the bar examination. After answering the questions posed accurately and with knowledge of the law, she was granted admittance to the bar. Tabitha's law license was issued on January 9, 1878. With this, North Carolina became the first Southern state, and only the sixth state in the Union, to admit women to the bar.

**Please answer:**

- Who was Tabitha Holton and what issue was she having?

- What arguments did Tourgée pose to the Court to win Tabitha's case?
- What was the final opinion of the Court?
- Why was the outcome important to women in North Carolina?
- Why would the case be controversial in the time it was heard and what did Tourgée risk by helping Tabitha?



## Group E:        **Tourgée and the Start of the Civil Rights Movement**

Albion Tourgée spent a good part of his life fighting for civil rights. He volunteered as a soldier for the Union army, aided his Quaker neighbors in North Carolina in assisting freed slaves, helped ensure equal rights be prioritized in the NC Constitutional Convention of 1868, and served as a NC Superior Court Justice from 1868 to 1874, where he advocated for equal rights and even led an investigation of the KKK's violent activities. Tourgée eventually used these experiences and more to inform his work as an author. In 1879, he used the pen to advocate for civil rights when he published *A Fool's Errand, by One of the Fools*, a novel based on Reconstruction which became a best seller. Its sequel, *Bricks Without Straw*, also was a bestseller.

When not writing works of fiction, Tourgée went on lecture tours and contributed a steady stream of lively and often controversial newspaper editorials on a variety of political and social issues, often involving civil rights. In 1888, the Chicago Daily *Inter-Ocean*, a leading Republican newspaper, gave him a regular weekly column entitled "A Bystander's Notes." In his column, he attacked the Republican Party for failing to take action against the new wave of white supremacy in the South. "A Bystander's Notes" carried gruesome details on an alarming number of incidents involving racial violence and brutal lynching—a growing phenomenon—that failed to receive attention in mainstream northern press. His columns provoked extreme responses, from hate mail to admirers. African Americans in particular cheered his unwavering devotion to principle. "A Bystander's Notes" was soon being republished across the nation in black-owned newspapers, bringing Tourgée renewed status and visibility.

In 1890, the State of Louisiana passed the Separate Car Act requiring railroads to maintain "equal but separate" facilities for blacks and whites. Tourgée denounced the unfair law in his column. Though segregation was already widely practiced throughout the south, no States had passed laws that actually *required* racial segregation in any businesses or public services for fear that it violated the 14<sup>th</sup> Amendment. Tourgée certainly agreed. He called upon Louisiana blacks to challenge the constitutionality of the law, citing the 14<sup>th</sup> Amendment's guarantee of "equal protection" of the laws and its clear language that "no state may make or enforce any law" that deprived American citizens of their "privileges or immunities."

Within a year, a group of New Orleans activists led by Louis A. Martinet, the editor of an African American newspaper, the New Orleans *Crusader*, and an avid reader of "A Bystander's Notes," organized a "citizen's league" to challenge the law. The group planned to have an African American break the law by sitting in the whites-only section of a train. Upon his arrest, the group would challenge the law via the court system. Once they had raised \$1,412.70, Martinet contacted Tourgée and offered him the entire fund to serve as "lead counsel in the case from beginning to end." Though he was in debt, Tourgée agreed to take the case without pay. The fund was used instead to hire co-counselors with more experience in the procedures of Louisiana and in guiding a case to the Supreme Court.

Through long-distance correspondence, Tourgée worked with his colleagues on every detail of their test case, from the choice of defendant and the staging of his arrest, to the fine points of argument to be made at the local, state, and federal levels. Their 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. After the Desdunes case failed, Tourgée enlisted the help of Homer Plessy for the next attempt, which would result in the infamous US Supreme Court case, *Plessy v. Ferguson*.

From the beginning, Tourgée and Martinet saw the Louisiana test case as only one prong in a larger strategy to stop the assault on black civil rights. With their collective experience in journalism, they agreed to launch a national civil rights organization and publicize their activities as widely as possible. On October 17, 1891, Tourgée announced in "A Bystander's Notes" the founding of a new organization to protect the rights of all citizens, regardless of color, and to find out "whether justice is still color-blind or National citizenship worth a rag for the defense of right." The National Citizens' Rights Association (NCRA) enlisted 20,000 members by the end of 1891 (membership was free), and planning began for a journal to be called the *National Citizen*.

Under the auspices of the NCRA, Tourgée would meet with political leaders, publish pamphlets and editorials, and lecture extensively over the following three years.

In 1894, Harry Smith, African American editor of the Cleveland *Gazette*, enlisted the NCRA's support in his campaign to draft an anti-lynching law in the State of Ohio. Tourgée drew up a law that would penalize any county that had an incidence of a mob lynching with a steep fiscal penalty in the theory that lynchings usually occurred with tacit approval of communities and law enforcement. When elected to the State House of Representatives in 1896, Smith introduced the Tourgée Bill, which was later enacted into law and upheld by the State Supreme Court. It was the first of its kind in the country.

Source: "Justice Deferred, Albion Tourgée and the Fight for Civil Rights," by Mark Elliott, PhD

**Please answer on notebook paper:**

- In what ways did Tourgée advocate for civil rights in his writing?
  
- What was the Separate Car Act and how did Tourgée feel about it?
  
- How did Tourgée and Louis Martinet plan to fight the Separate Car Act?
  
- What happened in *State of Louisiana v. Desdunes*?
  
- What organization did Tourgée launch and what was its purpose?
  
- Describe the anti-lynching law Tourgée wrote:

## **Group F:        *Tourgée & Plessy v. Ferguson***

In 1890, Louisiana implemented the Separate Car Act, which required blacks and whites to sit in separate railway cars. Wanting to challenge the constitutionality of this Act, Louisiana activists hired Albion Tourgée to create a lawsuit which would do so.

In their first case, *State of Louisiana v. Desdunes*, Tourgée and his team arranged for a black to sit in a “white-designated” train car. Understanding that he would be removed and arrested, they would then challenge the law in the courts to highlight its unconstitutionality. However, the case never made it beyond the local court, as it was dismissed on a technicality. After the Desdunes case failed, Tourgée enlisted the help of Homer Plessy for the next attempt. Because Plessy was only 1/8th black, he could pass for white while boarding the train. Tourgée’s idea was to have Plessy again sit in the white train car and then announce his ethnicity, thereby resulting in his removal and arrest. This would have the effect of emphasizing the difficulties in determining a person’s race, which Tourgée felt should result in the law being overturned.

On June 7, 1892 Homer Plessy boarded a New Orleans station and sat in the car reserved for “whites only.” After announcing that he was an African American, he was kicked off and arrested. With their plan in motion, Tourgée and his team made their case for the unconstitutionality of the Act. The judge in the local trial, John Ferguson, ruled that there was no violation of the Constitution. Tourgée and Plessy then appealed their case to the Louisiana State Court, which upheld the lower decision. The case then went to the US Supreme Court as intended, where the infamous decision in *Plessy v. Ferguson* was handed down.

The basis for Plessy’s argument stemmed from the recent 13th and 14th amendments to the US Constitution, which respectively abolished slavery and applied the Bill of Rights to state governments. The Separate Car Act sought to circumvent the Equal Protection Clause in the 14th amendment by making the argument that the separation of the races didn’t make them any less equal.

Arguing against this, Tourgée made the case that race was a poor basis for separation because there was no real way to judge it. In Plessy’s case, he was not discovered to be “black” until he announced his heritage in the train car. It was during these arguments that Tourgée is said to have coined the phrase “color-blind” to illustrate his point.

The State of Louisiana argued that nothing in the new Constitutional amendments prohibited the “separate but equal” philosophy which underscored the Separate Car Act. They contended that equality could be met as long as the same accommodations were afforded to each race. (While equivalent accommodations may have been offered in terms of railway cars, it was certainly not the case in terms of schools, restaurants, and many other places where blacks were also “separate but equal”.) However, because this particular case related to the Constitutionality of only the Separate Car Act, the conditions in other places such as schools and cafes weren’t a factor in this decision. As long as the cars were equal, Louisiana said, there was no violation of the Constitution.

The Supreme Court held that railway accommodations for blacks and whites were, in fact, equal and that Louisiana had not violated the 14th amendment. The court rationalized that as long as the accommodations showed no difference in quality, the mere act of separation was not unconstitutional. Furthermore, it was stated that segregation did not “stamp the colored race with a badge of inferiority” as Tourgée had argued. According to the Supreme Court, if African-Americans felt that way, it was merely because they chose to view it as such.

The impact of *Plessy v. Ferguson* shaped American views on race for the next 60 years. Seeing the decision as an approval of segregation from the Supreme Court, states used it as a justification for further legal implementation of various types of racial segregation.

As noted by Justice Harlan, the only Supreme Court justice who disagreed with the ruling, the decision in this case effectively undid the advancements in equality which were intended by the 13th and 14th amendments. It was not until 1954, in the landmark case of *Brown v. Board of Education*, that the “separate but equal” doctrine was overturned and found to be unconstitutional.

**Please answer:**

- How did Toussaint plan for Homer Plessy to challenge the Separate Car Act?
- How did *Plessy v. Ferguson* make its way to the US Supreme Court?
- What was Toussaint’s argument against the Separate Car Act in *Plessy v. Ferguson*?
- How did the State of Louisiana defend the Separate Car Act?
- What decision did the US Supreme Court make?
- What impact did the *Plessy v. Ferguson* decision have?

Name: \_\_\_\_\_

**Albion Tourgée and the Fight for Civil Rights Notes**

**Early Life & Military Career**

**Reconstruction – NC Constitutional Convention of 1868**

**Reconstruction – NC Superior Court Justice**

**Start of the Civil Rights Movement**

<b><i>Plessy v. Ferguson</i></b>

**After everyone in your new group has presented on their section of the reading, discuss and answer:**

- What do you find most interesting or surprising regarding Tourgée?
  
- Out of all of his experiences and accomplishments, what do you think was most important and/or admirable and why?
  
- How would you describe Tourgée overall, based on what you now know about him?
  
- Why should we remember and learn about Albion Tourgée?

**ASSIGNMENT:**  
**Design a Historical Monument for Albion Tourgée**

You have been hired to design a historical monument that educates the public about Albion Tourgée and his dedication to civil rights throughout the period of Civil War and Reconstruction. The monument/marker will be located at any site of your choosing. Assume that people who visit your monument do not know anything about Albion Tourgée.

1. Brainstorm ideas for your monument and consider:
  - What is most important for people to know about Albion Tourgée? What contributions did he make to North Carolina and beyond? Why should he be remembered and honored?
  - How will you design a monument to educate the public on Tourgée, his accomplishments and his legacy?
  - How will your monument encompass and illustrate some of the themes (freedom, justice, equal rights, activism, courage, self-determination. etc.) present throughout Tourgée's life?
  
2. You may use any creative medium you choose to design your monument. The monument can be literal or abstract, simple or complex. Examples may include (but are NOT limited to):
  - art work
  - mural(s)
  - statues
  - plaques, written descriptions, quotes from residents, or other text displayed in some way
  - structures or buildings
  - symbolic or abstract shapes
  - inclusion of music or voice over's (i.e. you push a button and narration plays)
  - performance art that takes place live at the monument on a particular schedule,
  - a television screen that plays a particular performance clip or narration
  - PICTURE YOUR OWN CREATIVE IDEAS HERE!
  
3. Once you have thought through your idea, you will create a detailed sketch of your monument that shows what it will look like when finished and installed in its final location. Your sketch can contain labels, in which you point to certain aspects of the drawing and use text to describe additional details that may not be clear in the visual.
  
4. You must also turn in a paragraph in which you provide an overview of your monument/marker, describe what it represents, as well as explain why it is important to memorialize Albion Tourgée. You will share your work on the due date.

**DUE DATE:** \_\_\_\_\_