THE NEW ORLEANS CITIZENS COMMITTEE: UNHERALDED ACTIVISTS WHO CHALLENGED JIM CROW IN *PLESSY V. FERGUSON*

by

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ABSTRACT

PAUL R. KINNY. The New Orleans Citizens Committee: Unheralded Activists who Challenged Jim Crow in *Plessy v. Ferguson*
(Under the direction of DR. JOHN DAVID SMITH)

The Louisiana Separate Car Act of 1890 required that White and African-American passengers ride in separate railcars. Eighteen leaders of the New Orleans Afro-Creole community formed the Citizens Committee for the purpose of initiating a legal case to test the constitutionality of such Jim Crow laws. Members of the Citizens Committee owned and operated the *Crusader* newspaper in which Rodolphe Desdunes and Louis Martinet espoused the radical egalitarian views of the Citizens Committee and exhorted their uniquely prosperous community to resist the emerging Jim Crow system. Prominent civil rights attorney, Albion W. Tourgée, and Martinet meticulously engineered the arrest of volunteer defendant Homer Plessy for violating the Separate Car Act and prosecuted the test case all the way to the U.S. Supreme Court.

In the resulting landmark decision *Plessy v. Ferguson* (1896), the Supreme Court upheld Jim Crow laws as long as such laws provided for equal accommodations. This decision was a crushing defeat for the Citizens Committee and ushered in a wave of Jim Crow laws throughout the South. On the other hand, Justice John Marshall Harlan authored a passionate dissenting opinion aligned with the egalitarian vision of the Citizens Committee. The efforts of the Citizens Committee left an important dual legacy for the twentieth-century civil rights movement. First, their determined resistance in a dangerous era combined with Harlan's ringing dissent placed in motion Constitutional arguments against Jim Crow. Second, these events directly inspired Thurgood Marshall and the National Association for the Advancement of Colored People to obtain a reversal of *Plessy* in *Brown v. Board of Education* (1954) and New Orleans activists such as

Alexander P. Tureaud to achieve desegregation in New Orleans through non-violent resistance in the 1960s. Civil rights historians have not given the Citizens Committee the prominent place in civil rights history that their resolute efforts early in the Jim Crow era merit.

ACKNOWLEDGEMENTS

After retiring from a corporate law practice that extended 34 years, I decided to pursue my passion to study history at UNC Charlotte. I have never regretted that decision. A long list of UNC Charlotte professors advised and inspired me in my study of the New Orleans Citizens Committee that culminated in this thesis. That list includes Drs. Carol Higham, Amanda Pipkin, Ella Fratantuono, and David Johnson. Drs. Mark Wilson and Gregory Mixon, "readers" on my thesis committee, did much more than read. They delivered penetrating observations and suggestions. I owe a special gratitude to my committee chair, Dr. John David Smith, who suggested valuable resources, gave scholarly, incisive line-by-line comments on my manuscript, and provided wise counsel and friendly encouragement through every stage. Finally, my wife, Beth, contributed to this work by reading my drafts and providing checks and balances on my views with her own.

DEDICATION

This work is dedicated to my loving wife, Beth,

who not only has studied the principles of civil rights,

but has gone against the grain to practice them.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF ABBREVIATIONS

AAC	National Afro-American Council
AAL	Afro-American League
ACERA	American Citizens Equal Rights Association
CORE	Congress on Racial Equality
L&N	Louisville & Nashville Railroad
NAACP	National Association for the Advancement of Colored People

INTRODUCTION

After the end of Reconstruction, southern states began to enact laws requiring racial segregation in an effort to turn back the rights established for African Americans through the Civil War and the post-Civil War Constitutional amendments. The first set of such laws required racial segregation on railways. Between 1887 and 1892, nine southern states passed such laws.[1] Louisiana enacted the Separate Car Act in 1890 that mandated that all railways maintained "equal but separate" railcars for White and "colored" persons and established criminal penalties for railways and passengers who failed to comply.[2]

In New Orleans in 1891, eighteen leaders of the Afro-Creole community formed the *Comité des Citoyens* (Citizens Committee) to organize and fund a legal challenge to the constitutionality of the Louisiana Separate Car Act.[3] The Citizens Committee envisioned that it would bring a case that it ultimately would appeal to the United States Supreme Court to test the constitutionality of all the new segregation laws known as Jim Crow laws. Louis Martinet, one of the members of the Citizens Committee, recently had founded a newspaper, the *Crusader.* The Citizens Committee used the *Crusader* as a vehicle to generate community financial and moral support for the test case. In editorials in the *Crusader,* Martinet and other members of the Citizens Committee, most prominently Rodolphe Desdunes, articulated their radical vision of a color-blind America in which persons of all races would enjoy equal rights and their corresponding Constitutional, social, and moral objections to Jim Crow.

The Citizens Committee promptly contacted Albion W. Tourgée, a prominent attorney, novelist, and civil rights activist who lived in New York. Tourgée agreed to act as the lead attorney in the case. Martinet, also an attorney, immediately assumed the role of Tourgée's sole point of contact for the Committee and all-purpose local manager of the case. Tourgée and

Martinet together arranged for a volunteer named Homer Plessy to be arrested and charged with violating the Separate Car Act in June 1892. This action set up the desired challenge to the constitutionality of the Separate Car Act, and the case named *Plessy v. Ferguson* eventually worked its way through the Louisiana state court system and to the U. S. Supreme Court on appeal in January 1893.

On behalf of the Citizens Committee, Tourgée forcefully asserted to the Supreme Court the Constitutional and moral arguments against the nation's Jim Crow laws. In 1896, the court with apparent ease rejected these arguments by a vote of seven to one. The highest court in the nation thus established the separate but equal doctrine: that state laws may require separate facilities based on race as long as the laws provide that such facilities will be equal. Given the general public tolerance of racial segregation and the conservative jurisprudence of the Supreme Court in 1896, the majority ruling surprised few people. On the other hand, in his dissenting opinion, Justice John Marshall Harlan, a former slaveholder from Kentucky, adopted the views argued by the Citizens Committee and passionately asserted that Jim Crow laws should be struck down as unconstitutional.[4]

Thus the decision in *Plessy v. Ferguson* upheld state-sanctioned racism. This holding cleared the path for a wave of numerous other Jim Crow laws that pervaded the nation especially in the South. Just as the members of the Citizens Committee had feared when it formed to contest the first set of these laws, the Jim Crow regime served as a daily reminder to all African Americans of their official subordinate status in all the states of the former Confederacy, several border states, and the District of Columbia. From the 1896 decision until the mid-twentieth century, this oppressive system remained relatively undisturbed, and Justice Harlan's dissenting opinion lay dormant. However, the arguments for a color-blind society expressed by the Citizens

Committee and adopted and preserved in the dissenting opinion of a Supreme Court Justice began to gather significant momentum in the 1940s. In 1954, in *Brown v. Board of Education*, the Supreme Court finally adopted the egalitarian vision of the Constitution set forth by the Citizens Committee and by Justice Harlan. The court reversed *Plessy v. Ferguson* and struck down as unconstitutional laws requiring racial segregation.[5]

This thesis identifies the unique resources and attitudes of resistance possessed by the New Orleans Afro-Creole community that gave rise to the Citizens Committee. It further describes the role played by the Committee in initiating, organizing, funding, and setting forth the philosophical foundation for the legal challenge to the Louisiana Separate Car Act. This effort unfortunately resulted in the retrogressive *Plessy* decision, but it also yielded the inspiring and lasting Harlan dissenting opinion. Although the Citizens Committee lost the landmark case, this thesis argues that the activist organization nevertheless left a critically important legacy that contributed substantially to the civil rights movement in the twentieth century.

The Citizens Committee provided a dual legacy. First, its radical egalitarian ideology and activism impacted Constitutional jurisprudence positively in the long-term. The philosophy articulated by the Committee can be found in Harlan's dissent, in the legal arguments of civil rights organizations such as the National Association for the Advancement of Colored People (NAACP) in the 1940s and 1950s, and in the basis of the Supreme Court's monumental decision in *Brown v. Board of Education*. Its actions effectively placed in motion the Fourteenth Amendment argument that state-mandated racial segregation does not provide equal protection of the laws to all persons. This argument ultimately prevailed to result in the striking down of Jim Crow laws. Second, the Committee's resolute efforts in the face of nearly hopeless odds established a precedent of steadfast, principled legal resistance to Jim Crow in Jim Crow's

infancy. Its commitment inspired later activists to persist in this legal resistance even when they achieved very few victories and, in the 1940s and 1950s, when conditions allowed for the possibility of genuine success. Historians Shawn Leigh Alexander and Susan D. Carle studied civil rights activists in the era of *Plessy*, but they focused on other groups such as the Afro-American League (AAL) to the exclusion of the Citizens Committee. This thesis illustrates that the efforts and achievements of the generally unheralded Citizens Committee had an important, lasting legal and psychological impact that merits a more prominent place in American civil rights history.

This thesis includes five chapters. Chapter One describes the relevant historiography. In Chapter Two, the historical development of the New Orleans Afro-Creole community that gave rise to the Citizens Committee will be outlined. This chapter describes their exceptional resources and status relative to other African-American communities in the South at the time of the *Plessy* case. These resources enabled the Citizens Committee to overcome the challenges inherent in bringing a legal challenge in this era. Chapter Three delves into the radical philosophy of color-blind equality and dutiful legal resistance expressed by the Citizens Committee members in numerous published articles and private letters from 1890 to 1895. Based on this philosophy, Chapter Four argues that the Citizens Committee left a positive dual legacy for the modern civil rights movement: both Constitutional and inspirational. As demonstrated in Chapter Five, the Citizens Committee's lasting contribution in many ways exceeded the contribution of other activist groups that resisted Jim Crow during the *Plessy* era and that have received more attention from historians.

Although terms used in this thesis that refer to racial groups will be defined, racial classifications have no substantial basis in biological science. The Human Genome Project undertaken at the end of the twentieth century revealed that no substantial differences exist in the

genetic material of persons of different racial groups. Characteristics as biologically irrelevant and trivial as amount of skin pigmentation tend to define racial classifications.[6] Nevertheless, racial identity undeniably played and plays a paramount role in American history and life and forms a major subject of this thesis. Therefore, whether or not scientifically legitimate, it is necessary to clarify the meaning of racial terms used in this thesis. "Afro-Creole" refers to persons who lived in Louisiana who had both African and Creole (i.e., White immigrants from Europe) ancestors and who identified themselves as Afro-Creole. The term refers to the same group of people as the terms "Creoles of color" and "black Creoles." The term "African American," as used herein, means Americans who had any African ancestors, so includes Afro-Creoles.

END NOTES

[1] H.W. Brands, *The Reckless Decade: America in the 1890s* (Chicago: University of Chicago Press, 1995), 219.

[2] Louisiana Separate Car Act (1890) https://archive.org/stream/separateorjimcr00boydgoog/separateorjimcr00boydgoog_djvu.txt.

[3] The New Orleans Citizens Committee is sometimes hereinafter referred to as the "Committee," and the Louisiana Separate Car Act is sometimes hereinafter referred to as the "Act."

[4] *Plessy v. Ferguson,* 163 U.S. 537 (1896).

[5] *Brown v. Board of Education*, 347 U.S. 483 (1954).

[6] Natalie Angier, "Do Races Differ? Not Really, Genes Show," *New York Times,* August 22, 2000.

CHAPTER ONE

HISTORIOGRAPY OF CIVIL RIGHTS ACTIVISM DURING THE NADIR PERIOD AND THE CITIZENS COMMITTEE

In the last twenty years, some civil rights historians have expressed disagreement with the conventional view that the civil rights movement started in the 1950s and ended in the 1960s. In "The Long Civil Rights Movement and the Political Uses of the Past" (2005), historian Jacquelyn Dowd Hall criticized the short timeframe traditionally given to the movement.[1] Hall argued that the civil rights movement took root in the New Deal order of the 1930s and accelerated during World War II.[2] Political scientist and historian Robert Korstad heartily agreed with Hall's view in *Civil Rights Unionism: Tobacco Workers and the Struggle for Democracy in the Mid-Twentieth Century South* (2003). In this work, Korstad depicted as a civil rights effort the unionization of mostly African-American tobacco workers in Winston-Salem, North Carolina, in 1943.[3] Historian Glenda Gilmore extended her scope for the movement back even further as indicated in the subtitle of her book *Defying Dixie: The Radical Roots of Civil Rights, 1919-1950* (2008).[4] Similarly, historian Mark Robert Schneider wrote of the civil rights activism of the National Association for the Advancement of Colored People (NAACP) in the 1920s that laid the foundation for later success in *"We Return Fighting": The Civil Rights Movement in the Jazz Age* (2002).[5]

In the last decade, two historians, Shawn Leigh Alexander and Susan D. Carle, have extended this trend even further by looking back to the end of Reconstruction to recount the activism of African Americans who courageously resisted racial discrimination under dangerous and nearly hopeless circumstances. In *An Army of Lions: The Civil Rights Struggle Before the NAACP* (2012), Alexander chronicled the development of civil rights organizations during the

period known as the nadir of civil rights from the late 1880s through the first decade of the twentieth century.[6] Alexander's book purported to be "the first full-length study of the major local and national civil rights organizations of the era." Alexander argued that historians had not adequately studied or appreciated the brave activists of this era and that these agitators laid the institutional, ideological, and political groundwork for the establishment of the NAACP in 1909.[7] That groundwork matters because the NAACP's Legal Defense and Educational Fund succeeded in reversing *Plessy* in 1954 in *Brown v. Board of Education* through systematic long-term litigation.

Alexander showed that agitation, legal redress, and moral suasion utilized by these early activists became the model for the better-known civil rights organizations of the twentieth century such as the NAACP. Publications such as the Niagara Movement's magazine *Horizon* published from 1907 to 1910 set a precedent for the NAACP's publication of *Crisis.* Founded in 1910 and still in publication, *Crisis* has served as an important vehicle to communicate the philosophy and goals of the NAACP. In Alexander's view, these strategies had a decisive impact on the development of future civil rights activism – especially the strategy to seek justice through legal action.[8]

Alexander described the Afro-American League (AAL) as the first significant civil rights organization in the early Jim Crow era. T. Thomas Fortune led the effort to form the group in Chicago in January 1890 – six months before the Louisiana legislature passed the Separate Car Act. The AAL planned to bring cases in various courts to test the legality and constitutionality of laws that discriminated against African Americans. It identified segregation in transportation as particularly nefarious and worthy of challenge.[9] Alexander provided a prominent position in his book to a certain civil suit brought by AAL leader Fortune against the Trainer Hotel in New

York in 1890 for refusing to serve him because he was African American. Alexander argued that this case can be seen as the "origin of the legal strategy" that led to the victory of the NAACP in *Brown v. Board of Education*. The scholar concluded that the AAL's test case strategy stands as "the most enduring and significant legacy that carried forward to the NAACP" in the struggle to persuade the nation to uphold the principles of the post-Civil War Constitutional amendments.[10]

Susan D. Carle in *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (2013) reviewed in detail the efforts of the same organizations that Alexander examined during the nadir period. Carle similarly argued that these activists constituted the true founders of the civil rights movement. Carle focused on the importance of the transmission of ideas about law-related racial justice activism from the founding generation of leaders to the later leaders of the NAACP and the National Urban League. She contended that the strategies and ideas of the NAACP's leaders did not develop in a vacuum but they drew from decades of prior racial justice activism.[11] Carle expressly disagreed with what she referred to as the "hopelessness" theory that test case litigation did not effectively result in social change. Rather Carle suggested that the constant losses experienced by the early activists spurred continuous efforts and adaptive strategies, and that these leaders persisted against all odds simply because they believed that their cause was just.[12]

Carle's recounting of the efforts of Fortune and the AAL did not differ substantially from Alexander's. Carle showed that the AAL in 1890-1892 adopted the concept of a nonpartisan national organization that emphasized pursuing test cases in court that the NAACP later adopted. Its strategy sought either to have courts strike down discriminatory laws as unconstitutional, or, if the courts did not do so, to force a showing of the weakness of the Constitution so that it may receive the contempt that it deserved. Although the AAL targeted laws that mandated

segregation in transportation, it initiated very few cases in a tremendously challenging environment. The AAL collapsed in 1892 due to a lack of funds. In the following decade, the National Afro-American Council (AAC) and the Niagara Movement emerged as successors.[13] One cannot find in Carle's detailed chronicle one instance where any of these organizations put together a legal challenge to segregation in transportation that reached the appellate level in the court system.[14]

Alexander's *An Army of Lions* and Carle's *Defining the Struggle* provided strong support for this thesis by arguing forcefully for the extension of the long civil right movement all the way back to the late 1880s and by crediting the African-American activists of that time with setting the foundation for significant successes by subsequent groups. These scholars illustrated the historical significance of civil rights activism sixty years before the start of the modern civil rights movement as it is commonly conceived. Both closely reviewed and properly lauded the efforts of the fledgling AAL. Its activism took place simultaneously with the Citizens Committee's organization of its challenge in the historically important *Plessy* case in the deep South, although the AAL never managed to get a case to the federal appellate level and its activities took place almost exclusively in the North. Alexander, however, inexplicably failed even to mention the New Orleans Citizens Committee or Louis Martinet.[15] Similarly, Carle stated in only a few sentences that Martinet had led the Citizens Committee to bring a test case against Jim Crow transportation laws that resulted in the landmark *Plessy* decision.[16]

Turning to the historiography regarding *Plessy v. Ferguson* and the Citizens Committee, historians writing about *Plessy v. Ferguson* tend to focus on the decision's place in the history of civil rights of African Americans in the century between the end of the Civil War and the period commonly thought of as the civil rights movement. The *Plessy* decision upholding Jim Crow

laws helped to usher in an era in which civil rights for African Americans fell to a low point.[17] While most *Plessy* historians described the formation of the Citizens Committee and the crafting of the case by Tourgée and Martinet as basic background to the initiation of the *Plessy* case, few of them delved very deeply into the Citizens Committee. *Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism* (2004) by Harvey Fireside primarily analyzed the legal arguments and Supreme Court opinion in the case but did include some review of New Orleans Afro-Creole history that led to the formation of the Citizens Committee.[18] Similarly, *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation* (2019) by Steve Luxenberg concentrated primarily on the other players in the *Plessy* case: the author of the majority opinion, Justice Henry Billings Brown, the dissenting Justice Harlan, and Plessy's lead attorney Tourgée. But Luxenberg did also include discussion of the role played by the Citizens Committee in initiating the case and their history.[19]

We as Freemen: Plessy v. Ferguson (2003) by Keith Weldon Medley constitutes the one monograph that focused on the role played by the Citizens Committee in the *Plessy* case.[20] "Defeat but not Ignominy: The New Orleans Afro-Creoles Behind *Plessy v. Ferguson*" (2021), written by the author of this thesis, demonstrated that the community that produced the Citizens Committee possessed a unique combination of wealth, education, and attitudes of resistance that enabled it to bring a case to the Supreme Court during the challenging early Jim Crow period.[21] In *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson* (2010), Blair L.M. Kelley reviewed resistance to Jim Crow transportation laws in several cities around the turn of the twentieth century. In her chapter concerning *Plessy*, Kelley discussed the dynamics of leadership in the New Orleans African-American community and described the tenuous relationship that the Afro-Creole community, as represented by the

Citizens Committee, had with the balance of the African-American community.[22] In her 2018 dissertation "'Separation Is Not Equality': The Racial Desegregation Movement of Creoles of Color in New Orleans, 1862-1900," Mishio Yamanaka reviewed New Orleans Afro-Creole political activism from the Civil War through the *Plessy* case. Yamanaka argued that, during this four-decade period, New Orleans Afro-Creole activists consistently engaged in efforts to build coalitions with leaders from the balance of the African-American community and with White radicals. In her chapter concerning the Citizens Committee, Yamanaka depicted their efforts in *Plessy* as representing the culmination of Afro-Creole collaborative efforts.[23] In "Albion W. Tourgée and Louis A. Martinet: The Cross-Racial Friendship behind *Plessy v. Ferguson*" (2013), Carolyn L. Karcher analyzed the correspondence between the two activists and concluded that they enjoyed many philosophical commonalities, deep mutual respect, and genuine friendship in an era when such a relationship between a White person and an African-American differed from the norm.[24]

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. For the period after the Civil War until the time of *Plessy*, some historians discussed the efforts of the Afro-Creole community 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 the economic impact of the Civil War on the free people of color, political leadership in the African-American community in New Orleans after the Civil War, the New Orleans streetcar segregation protest of 1867, and desegregation of the public schools in New Orleans during Reconstruction.[25]

Other historians explored the philosophical roots of the postbellum New Orleans Afro-Creole protest tradition. For example, Caryn Cossé Bell, in *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1879* (1997), tied the attitudes of the Afro-Creole activists to principles advanced in the French and American Revolutions.[26] Similarly, Rebecca J. Scott, in her 2008 article "Public Rights, Social Equality, and the Conceptual Roots of the *Plessy* Challenge," identified the concept of public rights that flowed from the French Revolution as a principle that drove Afro-Creole resistance to Jim Crow.[27] Several articles, such as, "Rodolphe Lucien Desdunes: Forgotten Organizer of the *Plessy* Protest," authored by Joseph Logsdon and Lawrence Powell, analyzed the philosophical underpinnings of the Citizens Committee's activism, as expressed by Committee member Rodolphe Desdunes.[28]

To summarize the relevant historiography, in the last twenty years, so-called "long" civil rights movement historians have emphasized the importance of early Jim Crow resistance as setting the framework for later successes. In the last ten years, Alexander and Carle have looked back even further and presented a persuasive case for the important legacy of the activist groups that resisted Jim Crow as early as the 1890s. However, Alexander and Carle unfortunately omitted coverage of the Citizens Committee. Historians of *Plessy*, with the exception of Medley, have focused on the landmark case's impact on civil rights history and not on the role of the Citizens Committee. Finally, historians of Afro-Creole culture, such as Bell, Scott, Logsdon, and Powell, have written about the development of the philosophy of the community in New Orleans that formed the Citizens Committee.

Significantly, none of these scholars, including Medley, concentrated on the Citizens Committee's dual legacy for the modern civil rights movement. This thesis will demonstrate first the Committee's positive, long-term impact on Fourteenth Amendment jurisprudence. Second, it

will show its important role in establishing, in the early years of Jim Crow, a model of principled legal resistance even in a racially-charged, nearly hopeless, and dangerous environment. Moreover, unlike any prior work, this thesis will compare directly the Committee's accomplishments to those of other civil rights groups during the 1890s that have received much more credit from civil rights historians. This comparison will underscore the difficulty of orchestrating a sustained legal challenge to Jim Crow in this era and will thereby reinforce the significance of the Citizens Committee's dual legacy.

END NOTES

[1] Jacquelyn Dowd Hall, "The Long Civil Rights Movement and the Political Uses of the Past," *Journal of American History* 91, no. 4 (March 2005): 1233-63.

[2] Ibid., 1235.

[3] Robert Rodgers Korstad, *Civil Rights Unionism: Tobacco Workers and the Struggle for Democracy in the Mid-Twentieth Century South* (Chapel Hill: University of North Carolina Press, 2003).

[4] Glenda Elizabeth Gilmore, *Defying Dixie: The Radical Roots of Civil Rights, 1919-1950* (New York: W.W. Norton & Co., 2008).

[5] Mark Robert Schneider, *"We Return Fighting": The Civil Rights Movement in the Jazz Age* (Boston: Northeastern University Press, 2002).

[6] See Rayford W. Logan, *The Negro in American Life and Thought: The Nadir, 1877-1901* (New York: The Dial Press, 1954).

[7] Shawn Leigh Alexander, *An Army of Lions: The Civil Rights Struggle Before the NAACP* (Philadelphia: University of Pennsylvania Press, 2012), xii.

[8] Ibid., xv – xvii.

[9] Ibid., 29, 35, 46-52.

[10] Ibid., 35, 39-40, 299.

[11] Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (New York: Oxford University Press, 2013), 3-7.

[12] Ibid., 288-89, 294.

[13] Ibid., 32, 37, 56, 62-67, 70.

[14] Ibid., 138, 206.

[15] Neither appears in the book's index.

[16] Carle, *Defining the Struggle*, 138.

[17] See, for example, Charles A. Lofgren, *The Plessy Case, A Legal-Historical Interpretation* (New York: Oxford University Press, 1987); Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004); Williamjames Hull Hoffer, *Plessy v. Ferguson: Race and Inequality in Jim Crow America* (Lawrence: University Press of Kansas, 2012); C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1957); and Otto H. Olsen, "Reflections on the Plessy v. Ferguson Decision of 1896," in *Louisiana's Legal Heritage,* ed. Edward F. Haas (Perdido Bay Press, 1986), 163-87.

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

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

[20] Keith Weldon Medley, *We as Freemen: Plessy v. Ferguson* (Gretna, LA.: Pelican Publishing Company, 2003).

[21] Paul Kinny, "Defeat but not Ignominy: The New Orleans Afro-Creoles Behind *Plessy v. Ferguson*," [Georgia College & State University] *Undergraduate Research* 1, no. 1 (Winter 2021): 64-99.

[22] Blair L.M. Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson* (Chapel Hill: University of North Carolina Press, 2010).

[23] Mishio Yamanaka, "'Separation Is Not Equality': The Racial Desegregation Movement of Creoles of Color in New Orleans, 1862-1900" (PhD diss., University of North Carolina at Chapel Hill, 2018), 13, 236.

[24] Carolyn L. Karcher, "Albion W. Tourgée and Louis A. Martinet: The Cross-Racial Friendship behind *Plessy v. Ferguson*," *Multi-Ethnic Literature of the United States* 38, no. 1 (Spring 2013): 9-29.

[25] Charles Vincent, ed., *The African American Experience in Louisiana, From the Civil War to Jim Crow* (Lafayette, LA.: University of Louisiana at Lafayette, 2000). For other examples, see T. Harry Williams, "The Louisiana Unification Movement of 1873," *Journal of Southern History*, 11, no. 3 (August 1945): 349-69; David C. Rankin, "The Origin of Black Leadership in New Orleans During Reconstruction," *Journal of Southern History,* 40, no. 3 (August 1974): 417-40; and John W. Blassingame, *Black New Orleans, 1860-1880* (Chicago: University of Chicago Press, 1973).

[26] Caryn Cossé Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1879* (Baton Rouge: Louisiana State University Press, 1997).

[27] Rebecca J. Scott, "Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge," *Michigan Law Review* 106, no. 5 (March 2008): 777-804.

[28] Joseph Logsdon and Lawrence Powell, "Rodolphe Lucien Desdunes: Forgotten Organizer of the Plessy Protest," in *Sunbelt Revolution: The Historical Progression of the Civil Rights Struggle in the Gulf South, 1866-2000*, ed. Samuel C. Hyde Jr. (Gainesville: University Press of Florida, 2003), 42-70. See also Lester Sullivan, "The Unknown Rodolphe Desdunes: Writings in the New Orleans *Crusader," Xavier Review* 10, no. 1 (1990): 1-17.

CHAPTER TWO

THE POWER TO BRING A CASE: EXCEPTIONAL RESOURCES OF THE CITIZENS COMMITTEE

New Orleans from the eighteenth century through the Civil War encompassed a free, prosperous, large, and mixed-race community known as the *gens de colour libres* (free people of color). The free people of color occupied a middle tier in a three-tier racial caste society before the Civil War. The distinct culture and exceptional economic and intellectual resources of the free people of color persisted through the broad societal changes resulting from the Civil War. These resources constituted one major factor that explains how this group, referred to after the war as the Afro-Creole community, in 1891 formed the Citizens Committee that organized and prosecuted the only legal challenge to Jim Crow that found a path to the United States Supreme Court during the nadir period. The Committee utilized its unique resources and relatively privileged status to overcome considerable practical obstacles to place the constitutionality of Jim Crow before the Supreme Court.

THE FREE PEOPLE OF COLOR

The history of the New Orleans Afro-Creole community began as early as 1684 when French explorer Sieur de La Salle sailed down the Mississippi River to the Gulf of Mexico. He claimed a vast territory for King Louis XIV and named it Louisiana after him.[1] 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 Acadians driven by the English from Nova Scotia after France's defeat in the French and Indian War (also known as the Seven Years War) in 1763, French nobles fleeing the French Revolution, salt smugglers and other convicts deported from France, White French and Spanish sugar planters who fled the violent slave revolt in St. Dominque (Haiti) in the 1790s,

and soldiers from Napoleon's armies. The children of this diverse group of White persons created a culture in Louisiana known as "Creole" that referred to persons of European descent born in America. Spain governed the Louisiana territory from 1769 until 1802 when Spain returned it 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 their French language and some French customs through the eighteenth and nineteenth centuries.[2]

During the same time period, the first substantial community of free African Americans in the United States developed in and around New Orleans. As early as 1724, French Louisiana law referenced the existence of free blacks.[3] The road to freedom included at least three paths. First, some slaves who had fought for the French against various Native-American groups had been rewarded with their freedom. Second, under a principle of Spanish law known as *coartación*, enslaved persons 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 enslaved persons 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 enslaved persons 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 race fled to New Orleans from St. Dominque to escape the slave revolt in the 1790s.[4] In 1809, the Cuban government evicted from Cuba 9,059 St. Domingue refugees and they arrived *en masse* in New Orleans. The refugees included 3,102 free people of color.[5]

These various groups constituted the first people known as the *gens de couleur libre* or "free people of color" in and around New Orleans. Table 1 reflects the steady increase in the

population of the free people of color in New Orleans between 1769 and 1840. By 1830, their numbers had grown to 11,562 – 25.1% of the total population.

TABLE 1. New Orleans Demographics: White Persons, Free People of Color, and Enslaved Persons, 1769-1860

Population

Year	White Persons	Free People of Color	Enslaved Persons	Total
1769	1,803	99	1,227	3,129
1788	2,370	823	2,126	5,319
1805	3,551	1,566	3,105	8,222
1810	6,331	4,950	5,961	17,242
1820	13,584	6,237	7,355	27,176
1830	20,047	11,562	14,476	46,085
1840	50,697	15,072	18,208	83,977
1850	89,452	9,905	17,011	116, 368
1860	144,601	10,939	14,484	170,024

Percentage of Population

Year	White Persons	Free People of Color	Enslaved Persons
1769	57.6	3.2	39.2
1788	44.6	15.5	39.9
1805	43.2	19.0	37.8
1810	36.7	28.7	34.6
1820	49.9	23.0	27.1

1830	43.5	25.1	31.4
1840	60.4	18.0	21.6
1850	76.9	8.5	14.6
1860	85.0	6.4	8.5

SOURCE: Joseph Logsdon and Caryn Cossé Bell, "The Americanization of Black New Orleans 1850-1900," in *Creole New Orleans: Race and Americanization,* ed. Arnold R. Hirsch and Joseph Logsdon (Baton Rouge: Louisiana State University Press, 1992), 206.

Thus, New Orleans included 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 both of 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.[6] 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.[7] At the end of the 1820s, the gender ratio among the free people of color still stood at 2.2 females to one male.[8] 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.[9] 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, White Creole men and free women of color had children together. At social gatherings known as "quadroon balls," young wealthy White Frenchmen met

and courted light-skinned teen-aged women of color.[10] A social system known as *plaçage* (meaning "placement"), or long-term relationships between White men and women of color, arose even though the law prohibited inter-racial marriage. 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.[11] After 1830, as the Louisiana legislature passed laws designed to limit the population of free people of color, the frequency of such inter-racial relationships declined steeply.[12]

The children 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.[13] 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.[14] In 1860, free people of color held between $13 and $15 million worth of property in New Orleans.[15] 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.[16] In 1832, the obvious capabilities of this group caused the traveling French scholar

Alexis de Tocqueville to ask a group of White New Orleanians: "But do you not count upon making these *noirs blancs* someday your equals?" When they adamantly replied no, de Tocqueville predicted "Then I much fear that they will one day make themselves your ministers."[17]

The population of the free people of color in New Orleans peaked in about 1840 as shown above in Table 1. In that year, the community had grown to 15,072 (18.0%). However, as national conflict concerning slavery intensified after 1840, White Louisianans became more uncomfortable with the presence of prosperous free persons of color in their midst. The fact that persons of color could achieve prosperity undermined the institution of slavery in America that was based on belief in the inferiority of persons of color. Louisiana thus enacted various laws to limit this population.[18] By 1860, the population of free people of color in New Orleans had dropped to 10,939 due to emigration to the North or to other countries perceived to be more welcoming and the “passing” of some lighter-skinned free people of color into the White community.[19] This group also had dropped to only 6.4% of the New Orleans population in part because, as shown in Table 1, the White population of New Orleans nearly tripled between 1840 and 1860. Nevertheless, in 1860, on the eve of the Civil War, the free people of color living in New Orleans still composed a substantial community.[20] Except for one smaller group in Charleston, South Carolina, they constituted the only free Afro-Creole community in the United States.[21] Unlike any other city in the South, during the fifty years prior to the Civil War, nearly one-half of all African Americans in New Orleans lived as free people. This demographic fact by itself must have created a social environment for persons of color in New Orleans that differed significantly from other cities in the South.

The development of the educated and prosperous community of free people of color through the long-term relationships of white Frenchmen and women of color can be illustrated by the story of the ancestors of Homer Plessy, the volunteer defendant in the *Plessy* case. Plessy's great-grandmother, Agnes Mathieu, had been enslaved in Louisiana. In 1778, a French-born White soldier and merchant, Mathieu Devaux, submitted payment to Agnes Mathieu's owner of her appraised value as a slave, and she thereby obtained her freedom under the Spanish *coartación* laws. Although they could not enter into a legal marriage, Mathieu, age twenty in 1778, and Devaux, age forty, nevertheless gave birth to seven children over the next twenty-three years. By 1804, as the United States took control of the Louisiana territory, Agnes Mathieu had accumulated substantial property, including several slaves of her own.[22]

The two oldest mixed-race daughters of Mathieu and Devaux also created large families with White Frenchmen outside of legal marriages. Their daughter Catherina bore eight children between 1803 and 1824 with Germain Plessy, a French-born merchant who fled to New Orleans from St. Domingue in the 1790s to escape the slave revolt there. Like Devaux and Mathieu, Catherina and Germain Plessy (Homer Plessy's grandparents) also accumulated substantial property and owned slaves. Their eight children lived squarely within the community of the New Orleans free people of color at the time this population reached its peak. Their seventh child, Joseph Adolphe Plessy, married Rosa Debergue, a mixed-race free woman of color in 1855. In 1863, they gave birth to Homère Patris Plessy, commonly referred to as Homer.[23] The *Plessy* legal briefs described Homer Plessy as one-eighth African. His African ancestry came from his great-grandmother Agnes Mathieu, the last of his forebears to have been of purely African descent and to have emerged from slavery more than a century before her great-grandson defied

the Separate Car Act. Plessy's ancestry provides a classic example of the manner in which the free people of color grew and prospered from the late 1700s through the Civil War.

The free people of color thus achieved a culture distinct from, and an economic and social status greater than, both enslaved and even other 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.[24] For example, 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.[25]

Thus the highest court in Louisiana ruled that free people of color enjoyed more legal rights than they possessed in other slave states based on their numbers, industry, education, and wealth.

For another example, in 1856 the Louisiana Supreme Court expressed its disapproval of a statute that regulated the conduct of both slaves and free persons of color together as follows: "In the eye of Louisiana law, there is (with the exception of political rights, of certain social privileges, and of the obligations of jury and militia service), all the difference between a free man of color and a slave, that there is between a white man and a slave." While this language explicitly recognized a middle racial caste, two justices vehemently disagreed in the following

comment in their dissenting opinion: "The argument that slaves are one object, and free colored people another, overlooks the fact, that both compose a single, homogenous class of beings, distinguished from all others by nature, custom, and law, and never confounded with citizens of the State. No white person can be a slave, no colored person can be a citizen."[26] Thus, on the eve of the Civil War, while the majority of the Louisiana Supreme Court reaffirmed the traditional status of the free persons of color as a middle caste, the contrary view of the dissenting justices foreshadowed the post-war collapse of the two castes of color (free and enslaved) into one subordinate caste. In other words, with the abolition of slavery, the distinction between the free people of color and enslaved persons of color in Louisiana evaporated. However, the higher expectations of the free people of color survived and fueled the resistance of the Afro-Creole community twenty-five years later in the *Plessy* case.

THE AFRO-CREOLE COMMUNITY AFTER THE CIVIL WAR

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 Afro-Creole community.[27] Of the 201 political leaders of color in New Orleans after the Civil War studied by David Rankin, nearly all came from this community and twenty-three had owned slaves prior to the war. Rankin summarized their vast advantages relative to former slaves as follows:

> At the beginning of the Civil War he was a freeman, not a slave; he was of 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 possibly attended mass at St. Louis Cathedral, the oldest Catholic church in Louisiana, instead of Sunday night prayer meetings at St. James Chapel, the first African Methodist Episcopal church in New Orleans; 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.[28]

In antebellum Louisiana, as in most slave states, teaching enslaved persons to read constituted a crime.[29] Therefore, the vast majority of slaves in Louisiana remained illiterate at emancipation. Despite strenuous post-war literacy efforts, 62 per cent of the adult persons of color remained illiterate in New Orleans in 1880.[30] A decade later, nearly half this population still could not read or write.[31] Because this group included the Afro-Creole community that was nearly 100% literate, one can deduce that a majority of non-Creole African Americans in New Orleans remained illiterate at the time Louisiana enacted the Separate Car Act. Having emerged from bondage in 1865 illiterate, penniless, mostly unskilled, and with less than 20 per cent of their families intact, the non-Creole African-American community only one generation later remained poor and powerless despite their efforts to improve their conditions.[32]

In sharp contrast, nearly all Afro-Creoles could read and write and some had reached a high level of education. The wealthier families sent their children north or even abroad, especially to Paris, to attend school. For example, the physician Louis Charles Roudanez who owned the bilingual *Tribune* newspaper in the late 1860s, attended Dartmouth College and then completed his education in Paris. Many agreed with Mortimer A. Warren, superintendent of New Orleans schools in 1866, when he boasted, "We have in our city the colored intelligence of the whole South."[33]

In addition to education, the prosperity, marketable skills, and relatively intact families enjoyed by the free people of color before the Civil War had not changed by 1890. Thus, the majority of Afro-Creoles in 1890 continued to work as skilled laborers such as carpenters, metal workers, brick masons, cigar rollers, shoemakers, and draymen. Homer Plessy belonged to this class and made his living as a shoemaker at the time of the *Plessy* case.[34] But professionals and business owners led Afro-Creole society and constituted the Citizens Committee.

The eighteen members of the Citizens Committee reflected the education, wealth, and civic achievements of the Afro-Creole community and formed a cohesive unit. The Committee included the wealthy businessperson and philanthropist Aristide Mary and an assortment of professionals: educators, businesspersons, lawyers, 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. Most lived within walking distance of each other in and around the New Orleans neighborhoods known as Fauborg Treme and the French Quarter. 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 the African-American 7th Louisiana Infantry Regiment in the Union Army during the Civil War and served as lieutenant governor of Louisiana in 1872. Four Committee members held degrees in law from Straight University, a historically black college founded in New Orleans in 1868 that offered a racially integrated law program.[35]

While education and wealth provided a strong foundation for effective Afro-Creole activism, the New Orleans *Crusader* served their cause as a powerful communication vehicle. In 1889, one year before the Separate Car Act became law, the increase in racial violence and racial oppression in the South alarmed Louis Martinet. To combat this trend, he founded the New Orleans *Crusader.*[36] For its first five years, the *Crusader* was published on a weekly basis. In 1894, while the *Plessy* case awaited decision from the Supreme Court, the newspaper was converted into a daily and renamed the *Daily Crusader*. This conversion would make the *Daily Crusader* the only daily African-American newspaper in the country at that time and the sole

Republican daily in the South. To make this change financially possible, the printers and laborers worked for half pay and the editorial staff contributed their efforts for no pay.[37]

The Citizens Committee members operated the *Crusader*. They composed the unpaid editorial staff. Moreover, ten members of the Committee served on the Board of the newspaper. Reflecting its Afro-Creole character, the *Crusader* published both English and French editions. It provided a critical forum for the Citizens Committee to inform its community about racially discriminatory laws and to exhort the readers of the newspaper to challenge such laws.[38] The *Crusader* thus constituted another effective resource not possessed by many other communities of color in the South that uniquely enabled the Citizens Committee to organize a major legal effort such as the *Plessy* case.

ORGANIZING THE *PLESSY* CASE

Effectively initiating *Plessy* required the determined application of these exceptional resources. While Tourgée deserves credit as the primary architect of the Constitutional arguments asserted before the Supreme Court in *Plessy*, the Citizens Committee also played a vital role in the landmark case. Understanding their role requires review of the Louisiana law that they challenged, the formation of the Citizens Committee, the funding of the case, and Martinet's direct participation in the careful planning of Homer Plessy's arrest to set up the test case. 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 – Florida, Mississippi, Texas, Louisiana, Alabama, Arkansas, Georgia, Tennessee, and Kentucky – enacted laws requiring separate railcars for White passengers and for passengers of color.[39]

In 1890, Louisiana's legislature passed the Separate Car Act. When Representative Joseph Saint Amante proposed the bill in May 1890, the American Citizens Equal Rights Association (ACERA) promptly sent a delegation to Baton Rouge to oppose it. The contingent included both non-Creole African-American leaders, such as former lieutenant governor P.B.S. Pinchback and Methodist minister A.E.P. Albert, and Afro-Creole leaders including Martinet and others who would later form the Citizens Committee. In its written protest, ACERA cited the principles of the Declaration of Independence and the U.S. and Louisiana Constitutions and posed that "it is difficult to conceive how any caste legislation can maintain the sacredness of these truly American principles."[40]

Notwithstanding this "manly protest" as later described by Martinet, the House voted in favor of the Act and sent it to the Louisiana Senate. During the 1890 summer, the Senate viewed a controversial lottery matter as far more important than the Separate Car Act. On July 8, two days before the end of the legislative session, the Senate voted *against* the Separate Car Act to the relief of the opponents of the act. However, on July 9, after a bruising political battle, lottery proponents scored a major victory by establishing a future referendum for a state Constitutional amendment to establish a state lottery. Most of the eighteen African-American legislators voted in favor of the lottery. On July 10, the last day of the legislative session, anti-lottery senators suddenly called for a revote on the Separate Car Act. This time the anti-lottery group switched their votes to pass the Act. So, two days after first voting against the Separate Car Act, the White anti-lottery senators passed the Act in apparent retaliation for the African-American senators voting for the lottery.[41] Louisiana's eighteen African-American legislators very likely could have defeated the act – at least in the short-term – through some simple political deal-making. They could have agreed as a bloc to oppose the lottery in return for the White anti-lottery legislators' opposition to the Separate Car Act.

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 did not define "colored." But, in Louisiana and many other southern states, either law or custom provided for the so-called "one-drop rule," meaning that all persons who had *any* African ancestors whatsoever (i.e., one supposed drop of African blood) belonged to the "colored" race.[42] The Act further provided for criminal penalties for any employees of the railway or passengers who failed to comply and authorized railway company conductors to prohibit passengers from riding in a railcar not designated for their race. The concise and straightforward statute provided for only one exception: "nurses attending children of the other race" could ride in the car designated for the race of the children.[43]

On July 19, 1890, only nine days after the Louisiana Senate voted in favor of the Separate Car Act, Martinet wrote an editorial concerning the new law in the *Crusader.* He told the story of the retaliatory motive behind the passage of the Act and decried the fact that the legislators of color could have prevented it by voting against the lottery. Martinet implied that the legislators had been corrupted by the lottery advocates by charging that they "turned their ears to listen to the golden siren" and "forsook their people's interests." Martinet 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."[44] A "test case" – planning the arrest of a volunteer defendant to challenge the constitutionality of a type of law – did not exist as a common concept in the nineteenth century. Martinet's immediate call for a test case evidenced his foresight in this political/legal arena.

Notwithstanding Martinet's declaration, more than a year passed without ACERA or any other group organizing a legal challenge to the Act. In an editorial published July 4, 1891, in the

Crusader, Rodolphe Desdunes asserted the urgent need to challenge the "barbarous" Separate Car Act in court and observed that "the trouble seems to spring from a want of proper and effective direction." Desdunes called on Republican members of the legislature to "form a purse" to fund the legal challenge and assured them that ACERA would not take offense at this initiative.[45] Similarly, Martinet privately expressed concern that ACERA had become only a "purely political resolution machine" and lacked the leadership to organize effectively a long-term legal battle.[46] Aristide Mary agreed and therefore used his political and business stature to call for a meeting of community leaders. On September 1, 1891, eighteen prominent New Orleans Afro-Creole leaders, including Mary, Martinet, and Desdunes, met at the offices of the *Crusader*. They formed the *Comité des Citoyens* (Citizens Committee) for the sole purpose of bringing a case to test the constitutionality of the Separate Car Act.[47]

Both professional and working-class Afro-Creoles and others funded the *Plessy* case. While Aristide Mary probably could have funded the case himself, the Citizens Committee desired broader sources of funding. It published "an 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."[48] The Committee collected $3,000 – a significant amount at that time – from 150 donors including a remarkably diverse group of religious, athletic, union, literary, Masonic, political, governmental, and individual sources. The contributor list published by the Citizens Committee included some non-Creoles from outside the South, such as four individuals from Chicago who together donated $113.75 and other donors from San Francisco, California, San Antonio, Texas, Woodstock, Illinois, and Washington, DC who gave smaller amounts.[49] The Committee accomplished its goal of showing that the commitment to thwart Jim Crow extended well beyond an elite local group.

While many persons contributed to the *Plessy* effort, Louis Martinet played a central role. His 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 the couple's 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.[50] Thus, as a child before the Civil War, Martinet belonged to the community of the free people of color. Martinet graduated from the racially integrated Straight Law School in 1876 as the first person of color to graduate with distinction and later earned a medical degree from Flint Medical College in New Orleans. At the time of the passage of the Separate Car Act in 1890, Martinet kept busy as a civil law notary and a member of the board of directors of Southern University, a historically black college founded in New Orleans in 1880. He served as a demonstrator of anatomy at a medical school, and an editor of the *Crusader*. His wife worked as a high school principal.[51] 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 Daniel Desdunes and Homer 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.[52]

While collecting donations the Citizens Committee engaged 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.[53] Tourgée had obtained some prominence as the author of the somewhat autobiographical novel *A Fool's Errand* (1879) concerning a northerner

who had moved to the South to help rebuild it during Reconstruction. At the time the Separate Car Act became law, he authored a column known as "Bystander" in the *Chicago Inter-Ocean,* a national newspaper, in which he forcefully advocated for civil rights for African-Americans.[54] Although the Citizens Committee was in the process of raising substantial funds for the case, Tourgée magnanimously offered his legal services at no charge so that these funds could be used to pay additional legal counsel. Although Tourgée had earned substantial income in the early 1890s from his best-selling novel, *A Fool's Errand*, the publications that he financed thereafter had lost money and had burdened him with heavy debt. The fact that Tourgée turned down the Citizens Committee's offer to pay him despite his personal financial distress at this time reflected the depth of his commitment to the cause of civil rights and possibly his immediate admiration of the Committee.[55]

In the 1890s Tourgée lived in upstate New York, so had to communicate with the Citizens Committee by letter. Martinet assumed the role of Tourgée's sole point of contact with the Citizens Committee for the case. Tourgée first suggested that Martinet arrange for a person of color who looked nearly White to violate the Separate Car Act and to be arrested to set up the legal challenge to the law. A defendant who looked nearly White would show the arbitrariness of the sharp color line that the law tried to draw. Tourgée advised that a nearly White female would furnish the most sympathetic defendant. In his first letter to Tourgée, Martinet began to illustrate the complexity of race in New Orleans when he responded to Tourgée writing:

> 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. In this respect New Orleans differs greatly from the interior towns, in this State or Mississippi.[56]

With these words, Martinet described an environment in which so much racial mixing had occurred that physical characteristics in many cases could not determine racial identity. Rather, racial identity was fluid and to some extent depended on association with a social group. Martinet seemed to be suggesting to Tourgée that a person who looked "nearly white" probably could ride in the railcar designated for White persons every day in New Orleans' mixed-race society without anyone noticing it.

Tourgée and Martinet identified another potential problem in setting up the legal challenge. A railroad conductor probably would merely eject a passenger from a car not designated for their race, as the Act explicitly allowed, rather than go to the trouble of having him arrested. But their volunteer defendant must be arrested and charged with violating the Separate Car Act. Mere ejection of the defendant or a charge of disorderly conduct or any crime other than violation of the Separate Car Act would not position them to challenge the constitutionality of the law.[57]

Tourgée and Martinet realized that uncertain racial identities and the need for a specific charge required that Martinet set out to obtain the cooperation of employees of a railroad company in arranging the arrest. After meeting with managers of three companies in the fall of 1891, Martinet reported to Tourgée that the representatives of each railway company disliked the law due to the considerable expense and inconvenience of maintaining separate cars. One manager even said that his company's conductors did not enforce the law. "But they fear to array themselves against" the law.[58] Finally, after consulting with legal counsel, the Louisville & Nashville Railroad (L&N) informed Martinet that it would cooperate in setting up the arrest, but the railroad employees would have to play a passive role that would not draw public attention to the railroad. "They want to help us but fear public opinion," Martinet reported.[59]

Daniel Desdunes, a twenty-year old light-skinned Afro-Creole musician and son of Rodolphe Desdunes, a prominent Citizens Committee member, met the requirements for their defendant.[60] On February 24, 1892, Desdunes took his seat in New Orleans in a railcar designated for White passengers on the L&N. According to the plan Martinet had worked out with the railroad company managers, 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 responded that he would not so do. Martinet had arranged for a police officer and two private detectives to be present. Upon Desdunes' refusal to switch cars, the officer and the detectives 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. The Citizens Committee had one of its members waiting at the police station to pay the bond to secure Desdunes' immediate release. 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."[61] Martinet thus succeeded in leaving the public and later the courts with the impression that Daniel Desdunes and later Homer Plessy spontaneously defied the law to pursue their civil rights.

As carefully as Tourgée and Martinet had planned the arrest, they made one strategic error. Desdunes had boarded an interstate train in New Orleans destined for Mobile, Alabama. 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, only the federal government can regulate interstate commerce, so 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 of Louisiana voluntarily dismissed it.[62] But the dismissal had nothing to do with the racial caste aspects of the law and, because a state has the authority to regulate intra-state trains, the Act remained in place with respect to intra-state trains. So, after all that effort, Martinet had to start over with another defendant and another railroad in order to challenge the racial segregation required by the Act.

This time he acted speedily. On June 7, 1892, Homer Plessy, a shoemaker twenty-nine years old, boarded a railcar designated for White persons in an intra-state train going from New Orleans to Covington, Louisiana on the East Louisiana Railroad. Later legal briefs described Plessy as seven-eighths White and one-eighth African in whom "the mixture of colored blood was not discernible."[63] Again, in accordance with the script that Martinet had worked out with the East Louisiana Railroad, 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 car for "colored" persons. 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.[64] Martinet's confidence, skill, and determination in choreographing Plessy's arrest contributed significantly to setting the stage for the desired legal challenge.

Turning to the actual prosecution of the case in court, the Plessy legal team eventually consisted of four attorneys of record plus Martinet. The Citizens Committee unanimously voted at the outset that Martinet should be hired as counsel of record, but Martinet wisely declined. The

New Orleans attorney reasoned that he could support the case more effectively in other ways and expressed concern that, as a leader in raising the funds for the case, Martinet would not want people to think that he had "any ulterior view but the defeat of the Jim Crow car." In addition, notwithstanding his obvious intellectual capabilities, Martinet probably recognized that the attorneys who wrote the briefs and argued in court needed to have much more trial experience than he had. Indeed, Martinet lamented to Tourgée that no African-American attorneys in New Orleans had sufficient courtroom experience to represent their cause effectively.[65]

The Citizens Committee engaged Tourgée long before it hired any of the other attorneys. On behalf of the Committee, Martinet clarified that Tourgée would act as the lead counsel and would direct all the legal strategy.[66] Martinet further contributed to the legal effort by undertaking an extensive search for local counsel. He selected James C. Walker, a New Orleans criminal attorney who had been active in Republican politics, to assist Tourgée in both the Louisiana courts and the U.S. Supreme Court. Walker agreed to take the case for a fee of $1,000 with the understanding that the Citizens Committee would pay him more later if possible.[67] Finally, Samuel F. Phillips and F.D. McKenny, experienced Washington, DC, civil rights attorneys, also joined the legal team by the time that the case reached the U.S. Supreme Court.[68]

The district attorney for Orleans Parish charged Homer Plessy with violating the Separate Car Act as desired. The Plessy legal team defended Plessy by forcefully arguing the unconstitutionality of the Act to the trial court in Louisiana. The trial judge, John H. Ferguson, held that the law constituted a valid exercise of the state's police power, i.e., the authority 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 Fourteenth Amendment to the U.S. Constitution because it provided for equal accommodations and applied equally to White and colored persons.[69] The judge imposed a fine of $25. Plessy appealed Ferguson's decision to the

Louisiana Supreme Court and the case took on the name *Plessy v. Ferguson*. The Louisiana Supreme Court promptly upheld Ferguson's decision and reasoning on December 19, 1892.[70] Thus, within just seven months of the day Martinet's private detective pulled Homer Plessy off the East Louisiana Railroad, the Louisiana Supreme Court experienced no consternation in rejecting the Constitutional arguments and upholding Plessy's conviction. Fully expecting this outcome, the Plessy team filed its appeal to the U.S. Supreme Court on January 5, 1893.

In summary, the free people of color of New Orleans prior to the Civil War benefitted from prosperity, education, and status in New Orleans' racial hierarchy that far exceeded any other community of African Americans in the South. The dramatic difference in these resources and those of non-Creole African Americans who had just emerged from the deprivations of slavery had not changed much by 1890 when the Separate Car Act became law. In addition, Louis Martinet had added the *Crusader* to their arsenal to resist Jim Crow. These unique resources enabled the formation of the Citizens Committee, the retention of the prominent civil rights advocate Tourgée, and the funding and effective organization of the case. One member of the Citizens Committee, Martinet, embodied the intellect, confidence, and skill of this community in coordinating with Tourgée, selecting the defendants, working with the railroads, hiring the private detectives, and choreographing the arrests. Due to Martinet's status as a highly educated, light-skinned Afro-Creole, the White persons involved in these events very likely afforded him a level of respect and cooperation that they never would have given to a non-Creole African American. While the material resources of the Citizens Committee gave them the power to bring the *Plessy* case, their radical egalitarian ideology and attitudes of resistance discussed in the next chapter gave them the will to do so.

END NOTES

[1] Lynn Hunt, Thomas R. Martin, Barbara H. Rosenwein, and Bonnie G. Smith, *The Making of the West: Peoples and Cultures* (Boston: Bedford/St. Martin's, 2013), 545.

[2] Harvey Fireside, *Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism* (New York: Carroll & Graf Publishers, 2004),111-12.

[3] 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), 12.

[4] Steve Luxenberg, *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation* (New York: W.W. Norton & Company, 2019), 96.

[5] Kimberly S. Hangar, *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803* (Durham: Duke University Press, 1997), 165.

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

[7] 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.

[8] Emily Clark, *The Strange History of the American Quadroon: Free Women of Color in the Revolutionary Atlantic World* (Chapel Hill: University of North Carolina Press, 2013), 62.

[9] Ibid., 92; Fireside, *Separate and Unequal*, 112.

[10] "Quadroon" means of one quarter African descent.

[11] Martin, "*Plaçage,*" 57-70; Fireside, *Separate and Unequal*, 99.

[12] Alakson, *Making Race in the Courtroom*, 188.

[13] Mary Gehman, "Visible Means of Support: Businesses, Professions, and Trades of Free People of Color,*"* in Kein, *Creole,* 208-22; Keith Weldon Medley, *We as Freemen: Plessy v. Ferguson* (Gretna, LA.: Pelican Publishing Company, 2003), 23.

[14] Fireside, *Separate and Unequal,*100.

[15] Violet Harrington Bryan, "Marcus Christian's Treatment of *Les Gens de Couleur Libre*," in Kein, *Creole*, 52-53.

[16] Loren Schweninger, "Antebellum Free Persons of Color in Postbellum Louisiana," in Vincent, *The African American Experience in Louisiana*, 369.

[17] David C. Rankin, "The Origin of Black Leadership in New Orleans During Reconstruction," *Journal of Southern History,* 40, no. 3 (August 1974), 427.

[18] Bryan, "Marcus Christian's Treatment of *Les Gens de Couleur Libre*," 53-54; Luxenberg, *Separate*, 101-3.

[19] Fireside, *Separate and Unequal*, 97.

[20] Medley, *We as Freemen,* 22.

[21] Fireside, *Separate and Unequal*, 90.

[22] Clark, *The Strange History of the American Quadroon*, 97-100; Luxenberg, *Separate*, 96-97. Incidentally, Mathieu and Devaux eventually ended their long relationship. Mathieu then bore a child with a free man of color in 1803 and married him three years later. Mathieu's story carries historical significance in its own right and not only because of her relationship with Homer Plessy. For example, Emily Clark reviewed the life of Agnes Mathieu in her book concerning free women of color and did not mention any relationship between Mathieu and Homer Plessy.

[23] Alakson, *Making Race in the Courtroom*, 186-87; Luxenberg, *Separate*, 97-98, 183.

[24] Alakson, *Making Race in the Courtroom*, 181-83.

[25] *State v. Levy*, 5 La. Ann. 64 (1850).

[26] *State v. Harrison*, 11 La. Ann. 722 (1856).

[27]John W. Blassingame, *Black New Orleans, 1860-1880* (Chicago: University of Chicago Press, 1973), xvi.

[28] Rankin, "The Origin of Black Leadership," 420-21, 435.

[29] 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.

[30] Blassingame, *Black New Orleans,* 214.

[31] Blair L.M. Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson* (Chapel Hill: University of North Carolina Press, 2010), 57.

[32] Blassingame, *Black New Orleans,* 49-78, 216.

[33] Rankin, "The Origin of Black Leadership,"433.

[34] Medley, *We as Freemen*, 16, 23. Kelley, *Right to Ride*, 56-57.

[35] Medley, *We as Freemen,* 118-126.

[36] Martinet to Tourgée, October 5, 1891, 23-24, Albion W. Tourgée Papers, Chautauqua County Historical Society, Westfield, New York.

[37] Medley, *We as Freemen*, 186.

[38] Ibid., 103-06, 186-87; Joseph Logsdon and Lawrence Powell, "Rodolphe Lucien Desdunes: Forgotten Organizer of the Plessy Protest," in *Sunbelt Revolution: The Historical Progression of the Civil Rights Struggle in the Gulf South, 1866-2000*, ed. Samuel C. Hyde Jr. (Gainesville: University Press of Florida, 2003), 65.

[39] H.W. Brands, *The Reckless Decade: America in the 1890s* (Chicago: University of Chicago Press, 1995), 219.

[40] "Protest of the American Citizens' Equal Rights Association of Louisiana Against Class Legislation," May 24, 1890, Tourgée Papers.

[41] Medley, *We as Freemen*, 95-103; "The Separate Car Bill," *Crusader,* July 19, 1890.

[42] Dunbar-Nelson, "People of Color in Louisiana," 9. Tourgée's argument to the Supreme Court that the Separate Car Act's failure to define "colored" persons was a serious deficiency carried no weight with the Court. In 1910, a court in Louisiana clarified the meaning of "colored" as follows: "The word 'colored,' when used to designate the race of a person, is unmistakable, at least in the United States. It means a person of negro blood pure or mixed; and the term applies no matter what may be the proportions of the admixture, so long as the negro blood is traceable." *State v. Treadway,* 126 Louisiana 300, 305 (1910).

[43] Louisiana Separate Car Act (1890), https://archive.org/stream/separateorjimcr00boydgoog/separateorjimcr00boydgoog_djvu.txt.

[44] "The Separate Car Bill," *Crusader,* July 19, 1890.

[45] Rodolphe L. Desdunes, "To Be or Not to Be," *Crusader*, July 4, 1891, Box 1, Folder 8, Charles B. Roussève Papers, Amistad Research Center, Tulane University.

[46] Martinet to Tourgée, October 5, 1891, 11, Tourgée Papers.

[47] Medley, *We as Freemen*, 118.

[48] "Report of Proceedings of the Citizens Committee," 1891, Box 1, Folder 13, Roussève Papers.

[49] Ibid.

[50] Luxenberg, *Separate*, 360, 555.

[51] Medley, *We as Freemen*, 150-51.

[52] Ibid., 152.

[53] Brands, *The Reckless Decade,* 220.

[54] Luxenberg, *Separate*, 329, 373.

[55] Mark Elliott, "Race, Color Blindness, and the Democratic Public: Albion W. Tourgée's Radical Principles in *Plessy v. Ferguson*," *Journal of Southern History* 67, no. 2 (May 2001): 306; Luxenberg, *Separate*, 377-78, 410.

[56] Martinet to Tourgée, October 5, 1891, 4, Tourgée Papers.

[57] Ibid., 7-8.

[58] Martinet to Tourgée, December 7, 1891, 1-2, Tourgée Papers.

[59] Martinet to Tourgée, December 28, 1891, 1-2, Tourgée Papers.

[60] The existing documents do not reflect why a woman did not play this role as Tourgée had suggested. See Kelley, *Right to Ride,* 77-78, for her speculation on this point.

[61] Luxenberg, *Separate*, 425-26.

[62] Brands, *Reckless Decade*, 222.

[63] *Plessy v. Ferguson*, 538.

[64] Medley, *We as Freemen*, 139-143, 146.

[65] Martinet to Tourgée, December 7, 1891, 5-6, Tourgée Papers.

[66] Martinet to Tourgée, October 5, 1891, 2-3, Tourgée Papers.

[67] Martinet to Tourgée, December 7, 1891, 3, Tourgée Papers.

[68] Charles A. Lofgren, *The Plessy Case, A Legal-Historical Interpretation* (New York: Oxford University Press, 1987), 148.

[69] Ibid., 49.

[70] Ibid., 50-60.

CHAPTER THREE

THE WILL TO BRING A CASE: PHILOSOPHY OF COLOR-BLIND EQUALITY AND LEGAL RESISTANCE OF THE CITIZENS COMMITTEE

By 1891, the members of the Citizens Committee had become unshakably committed to the principle of color-blind legal equality. They organized to battle Jim Crow in court on behalf of all African Americans – Creole and non-Creole alike. During a period when many African-Americans retreated to a philosophy of accommodation of segregation, the members of the Citizens Committee rejected that approach and believed fervently that all persons had the duty to exercise their legal right to challenge the unconstitutional Jim Crow laws in court.

RECONSTRUCTION HOPE

During Reconstruction, the New Orleans Afro-Creole community must have harbored high expectations for equal 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 three post-war Constitutional amendments promised to improve dramatically the political landscape for all African Americans. The Thirteenth Amendment enacted in 1865 abolished slavery. Abolition by itself did not enhance the position of the free people of color, none of whom had been enslaved and some of whom had owned slaves. However, the Fourteenth Amendment enacted in 1868 declared that all persons born in the U.S. are citizens. It further prohibited states from abridging the privileges or immunities of citizens of the U.S., depriving any person of life, liberty, or property without due process of law, or denying any person equal protection of the law. Finally, the Fifteenth Amendment ratified in 1870 provided that no citizen could be denied the right to vote on the basis of race. These provisions collectively appeared to grant equal legal status to all African Americans.

Similarly, the rights of African Americans appeared to be enhanced to a breathtaking degree by changes to the Louisiana Constitution in 1868. Afro-Creole leaders participated in a Republican-dominated Constitutional convention that produced the most radical state constitution of the Reconstruction era. The Louisiana Constitution of 1868 boldly sought complete racial equality for all Louisianans. It stood apart from the Reconstruction constitutions in all the other southern states in that it explicitly banned discrimination on the basis of race in transportation and other places of public accommodation and required state officials to take an oath recognizing civic and political equality for all men, regardless of race or previous condition of servitude. The radical Constitution further forbade segregation in public schools.[1]

In 1873, the Unification Movement resulted in another remarkably egalitarian document in Louisiana. Fifty White Louisianans, including ex-Confederate Maj. Gen. P.G.T. Beauregard, and fifty African-American Louisianans, published in the *New Orleans Daily Picayune* "An appeal for the Unification of the People of Louisiana." This proclamation called for the unification of "all men, of whatever race, color, and religion" and advocated for the "equal and impartial exercise by every citizen of Louisiana of every civil and political right guaranteed by the constitution and laws of the United States, and by the laws of honor, brotherhood and fair dealing."[2] The movement included at least five men who joined the Citizens Committee eighteen years later, including Aristide Mary, who served as co-chair of the Unification Movement.[3] Some African-American leaders expressed skepticism about the sincerity of the White participants, and the Unification Movement quickly faded away. Nevertheless, the public expression of such lofty ideals by White leaders using terms such as "brotherhood" must have fueled the expectations for equality held by Afro-Creoles.[4]

On the other hand, these expectations should have been mitigated by the post-war context in which these ostensible advancements occurred. The Reconstruction Acts of 1867-68 required that the Confederate states create new constitutions that must be approved by the Republican Congress for the states to be readmitted to the Union. Even White supremacists thus had a strong incentive to support the inclusion of equal rights provisions in the 1868 state Constitution. Despite this incentive, some southern newspapers did not conceal their bitter disapproval of the new Louisiana Constitution referring to it using the vilest racist terms.[5] Similarly, the Unification movement took place in the context of a campaign conducted by White Louisianans to reestablish "home rule," i.e., to displace carpetbaggers from positions of political power. To achieve home rule, they needed votes from African Americans. So White Louisianans pragmatically courted African-American voters by joining with African-American leaders to publish the Unification declaration imbued with high-minded egalitarian ideals.[6]

In retrospect, the evidence suggests that the principles set forth in the 1868 Constitution and in the 1873 Unification declaration did not reflect the genuine sentiments of the majority of White Louisianans. Looking back on these events decades later, Rodolphe Desdunes reckoned that most White Louisianans had never sincerely desired any degree of racial equality. In a *Crusader* article published March 20, 1892, Desdunes condemned a unanimous New Orleans School Board resolution to expel all children of color from "white schools." In that context, Desdunes wrote that the only time that the Democrats on the School Board did not operate under the principle of White supremacy occurred when they came into power after the end of Reconstruction in 1877. "Fearing no doubt the danger of a change, they promised all they could think of in the line of justice and equity. Then the cry was 'home rule' and local self-government. Thus were the national authorities hoodwinked by a semblance of good faith which

was used only for the purpose immediately in view, and then dropped when the danger was over."[7]

Martinet's personal experiences in post-Reconstruction Louisiana politics as described in his letters to Tourgée corroborated Desdunes' charges of Democratic duplicity. Martinet had briefly served as a Republican Louisiana legislator during his twenties after he graduated from Straight Law School in 1876.[8] Martinet described the dangers of being a Republican, especially a Republican of color, in the South as follows: "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."[9]

In contrast, at other times, White Democrats sought political support from persons of color and made overtures that portended the possibility of a society with racial equality. In his first letter to Tourgée, Martinet shared his personal experience with such overtures: "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 within 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" all along the campaign & after the election, & 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, though I had seen many mean & cruel things on the part of the Southern whites, yet I had not seen the worse side of their nature – their inborn & ingrained hypocrisy & treachery; and if this trial of securing harmony & friendly relations between the two races had not been earnestly, honestly and disinterestedly made on our part, I perhaps never would have rested contented that these blessings could not have been secured by these means & sacrifices.[10]

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

VISION OF A COLOR-BLIND SOCIETY

Despite the perceived deception and hypocrisy on the part of White Louisianans, the Citizens Committee held steadfastly to its vision of a multi-cultural, integrated, color-blind society with absolute equality for persons of all races. They sought color-blindness with respect to *rights*. While they did not seek to eliminate or to deny cultural differences or to dilute their own unique culture, they emphatically strove for a society where various cultures respected each other and integrated at least in the public sphere. The Citizens Committee found repugnant laws such as the Separate Car Act that explicitly sought to draw a sharp color line between White persons and African Americans. As mixed-race individuals, the Citizens Committee members respected and sought to work with fair-minded persons of all races including White persons and non-Creole African-Americans.[11]

The radical egalitarian principles of the Citizens Committee consistently appeared in the *Crusader* articles written by its members. For example, in an 1892 article titled "The Coming Struggle," Rodolphe Desdunes wrote of the upcoming Republican National Convention in Minneapolis. Desdunes wrote that he expected a formal denunciation of the "Anti-American

policy of 'white supremacy.'" He expected the party to "demand the repeal of all caste legislation and also equal rights to all men before the law, recognizing merit alone as the basis of individual claims." Desdunes further illustrated his openness to candidates of all colors: "As to the complexion of the ticket, the question of race or color is of no moment to us. We want as standard bearers men of ability, character, and undoubted Republicanism."[12] Thus, at the time that Martinet and Tourgée planned the arrest of Desdunes' son Daniel and then Homer Plessy, Desdunes expressed his fervent hope that the Republican party would support the Citizen Committee's vision of a color-blind meritocracy by denouncing Jim Crow laws.

Desdunes further expressed his egalitarian convictions in his response to an article espousing White supremacy written under the pseudonym "Lynx-Eye." He wrote:

> Lynx-Eye must not lose sight of the fact that the white race inaugurated property in man, and forced even the Church to endorse such a crime, and all its attendant cruelties …. For when he says that "Negroes were placed upon this earth as hewers of wood and drawers of water," he addresses an insult to Providence, and an absurdity to mankind. God has made of one blood all nations of men, and none of His creatures, by reason of color are denied His Omnipotent Presence. "Educate the Negroes," says a philosopher, "and you will see if there is any difference between them and other men." … The Negro thinks, works, and prays. Does the white man do any more?[13]

A decade after the *Plessy* battle and the publication of the *Crusader* had ended, Desdunes continued to write about the struggle for equal rights. In 1907, he urged African Americans to subordinate racial identity to more important ideals as follows: "Negroes, in treating of essential principles, should cease to be Negroes in order to live, think, feel, and act as true Americans, just as Brown, Garrison, Lovejoy, Phillips, Lincoln, and Longworth ceased to be whites, that they might become the instrument of loving humanity." Desdunes asserted that a future that included true emancipation "will depend on the moral Negro and the moral white man, both cooperating for the uplifting of humanity."[14] These passages reflected Desdunes' conviction, even after

defeat in *Plessy* and in the dark depths of the so-called nadir period of civil rights, that considerations of race should be placed aside in favor of considerations of character.

The Citizens Committee's aspiration to foster a multi-cultural egalitarian nation aligned poorly with the binary view of race that had firmly taken hold: that one is either White or, in the language of the 1890s, "colored" and that there is a clear and significant distinction between the two. Their unique view likely arose from the generations of racial mixing that resulted in the Afro-Creole community from which the Citizens Committee arose. The members of the Citizens Committee lived in a society where race was fluid and not easily identifiable. Martinet described this racial environment when he wrote that, if Tourgée walked down 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."[15] When an article in the *New Orleans Time-Democrat* described the *Crusader* as "a Negro paper," Desdunes objected to this simplistic description and, perhaps tongue-in-cheek, retorted that Martinet, the editor of the *Crusader*, was "as white as the editor of the *Times-Democrat*, as any who can see both together can judge."[16]

This theme of racial ambiguity appeared frequently in Desdunes' *Crusader* articles. For example, in 1892, a few months before Homer Plessy defied the Separate Car Act, Desdunes attacked the New Orleans School Board resolution to expel from "white schools" all children "of colored extraction." A Mr. Chrétien had proposed the resolution. Desdunes charged that Chrétien knows "that it is of the last absurdity" to identify all children of color in New Orleans schools and asked who will determine their race. "The fact is that Mr. Chrétien would prove to be a great man indeed, if he could designate every child of colored extraction now in the white schools." Desdunes then suggested that many children of families who have identified

themselves as White have some ancestors of color as follows: "Mr. Chrétien knows very well that he dare not touch or point his finger at some children in this city without paying some cost for his temerity." Desdunes concluded "it has always been a matter of the greatest difficulty to find out exactly who is white and who is colored in New Orleans. We advise Mr. Chrétien to abandon his project under penalty of being ridiculous."[17]

In another 1892 article, Desdunes attacked the Separate Car Act and anti-miscegenation legislation (law prohibiting inter-racial marriage) that legislators had proposed. He suggested that laws prohibiting inter-racial marriage raise "very delicate" questions in Louisiana. Desdunes speculated that the sponsor of the legislation had lived too far from the "large centers of the State to appreciate that fact in all its bearings …. We are so intermixed in Louisiana, that it would be hazardous to make a law which might any time be the cause of testing the secrets of filiation." The hazard of course lay in the possibility that the application of law could reveal some African-American ancestry of some who lived as members of the White community. Desdunes further suggested that African-Americans generally had not exposed the ancestry of those who had decided to "pass" into the White community as follows: "The magnanimity of the known to be colored people has been productive of so much good for suppressed origins, that no one but the uninformed can feel surprise at the defeat of laws on the prevention of intermarriage between the races."[18]

The openness of the members of the Citizens Committee to persons of all races can be illustrated further by the members' insistence that civil rights groups welcome White members. Martinet wrote to Tourgée that "I heartily approve your suggestion for a national organization, without the race or color line, to speak for the oppressed & defend their rights." Martinet explained that "the 'Afro-American' League will not take with the best of our people here"

because its name referred to a distinct race. Martinet shared that, at the time T. Thomas Fortune initiated the formation of the Afro-American League, Martinet wrote a letter to Fortune "informing him that if the color line was not drawn that we wish our names enrolled as members of the convention…; but that if the organization were to be on a distinct race or color line that we would have nothing to do with it." Fortune later informed Martinet that he did not receive the letter until it was too late to consider a change in name. In a *Crusader* article, Martinet criticized the racially-exclusive name Afro-American quipping that the hyphen "keeps the 'Afro' just so far away from the 'American.'"[19] Similarly, Martinet told Tourgée that he participated in the formation of the American Citizens Equal Rights Association and that he and a few others made sure "that the color line was rejected."[20] Thus, the Citizens Committee adhered strictly to the principle of color-blindness in their associations.

Another example of a highly principled position of the Citizens Committee against any type of racial segregation arose when a White Catholic nun, Mother Katharine Drexel (later canonized), donated $5000 to fund the establishment of St. Joseph's, a separate church for African Americans in New Orleans. In the *Daily Crusader* in 1895, Desdunes acknowledged the debt African Americans in the United States owed to Mother Drexel for her "bounteous acts of charity and benevolence." Nevertheless, he adamantly opposed the establishment of a separate church for African Americans reasoning that "separation in one form may bring separation in another." Desdunes pled that "the colored people were created by the same God who created other nations of men, and like others, they were born to live in society with their neighbors so as to contribute their share of responsibility on this planet."[21]

Desdunes' criticism of Mother Drexel intensified in another *Daily Crusader* article when he contrasted her with an unnamed recently deceased "saintly woman." Like Mother Drexel, the

woman had spent her life engaging in philanthropic and religious devotion. She had strong connections to and donated substantial time and money to St. Joseph's church and the sick and the poor without regard to color. However, unlike Mother Drexel, the unnamed philanthropist refused to endorse the "sacrilegious arrangement" of separate space for African-Americans in the church. "We, her survivors, must ever remember her firmness when tempted by the devil to prevaricate, she did not yield; we must not fail."[22] In a later article, Desdunes asserted an even more biting criticism of Mother Drexel, citing "how much sorrow her ill-used devotion is likely to bring to innocent hearts. It will strike the average reader as strange that the pious lady should strive to spread the light of the gospel among the lowly by practicing the very reverse of what the Gospel teaches. We hope to see Miss Drexel try someday to consult that inward oracle mentioned by the poet to find out what it has to say on the equality of Christians before God."[23] So, even where a donor generously provided material benefits to the African-American community, Desdunes denounced her racially-exclusive philanthropy as the work of the devil and urged his readers to take inspiration from the other donor's firm opposition to a segregated church.

REPRESENTATIVES OF ENTIRE AFRICAN-AMERICAN COMMUNITY

Although the Citizens Committee advocated for a color-blind society, some historians have questioned whether it really sought to advance its Afro-Creole community only and did not truly represent the interests of the broader African-American community. Undoubtedly, a social distinction between the Afro-Creole community and the balance of the African-American community had existed in New Orleans since the early days of the free people of color.[24] Historian David C. Rankin argued that Afro-Creoles demanded desegregation in an attempt to protect their antebellum class status and hoped to be classified differently from formerly

enslaved people. He suspected that Afro-Creoles reluctantly formed political alliances with African Americans after the Civil War only because the racially binary Jim Crow regime left them with no practical choice but to do so.[25] Rankin's view may or may not accurately depict the collective Afro-Creole motives during the Reconstruction era. But the important point is that by 1891 the Afro-Creole community, as embodied by the Citizens Committee, had thoroughly committed to egalitarian ideals and thus did represent the interests of the entire African-American community in the *Plessy* case and in other matters.

Non-Creole African Americans understandably may have harbored some skepticism about the purity of the Citizens Committee's egalitarian purposes owing to the Afro-Creoles' pre-war history. As illustrated in Chapter Two, the free people of color prior to the Civil War enjoyed a dramatically elevated economic and social position relative to enslaved persons. In fact, some of the more prosperous free people of color had owned slaves prior to the war. In 1830, 753 (7%) of the free people of color in New Orleans held other African Americans as slaves.[26] Given their reasonably comfortable position in society, some of the free people of color publicly expressed their support of the Confederacy and their opposition to the abolition of slavery.[27] Accordingly, at the beginning of the war, 1,400 free men of color formed a part of three regiments and two batteries of artillery in the Louisiana State militia in New Orleans. However, their commitment to the Confederacy was shallow. The Union Army took control of New Orleans in April 1862. Within five months, a full regiment of free men of color – initially the First Regiment of the Louisiana Native Guards – formed to serve as part of the Union Army.[28]

When the Citizens Committee arose to challenge Jim Crow, some factions of the African-American community apparently questioned whether the Committee really represented all

African-Americans. In 1891, Martinet reported to Tourgée that the Reverend A.S. Jackson had started a legal defense fund (that was already defunct by the time Martinet wrote the letter) "ostensibly to wage war on the Jim Crow car but really to obstruct the Committee." An unnamed person had told Martinet that Jackson "charged that the people who support our movement were nearly white or wanted to pass for white & that in subscribing to our fund they did not sign their names." Martinet considered the Reverend Jackson's charge "absurd and malicious." He explained that the great majority of the Committee's supporters "boldly advocate the cause" while a few chose to remain anonymous because they did not seek notoriety.[29] Martinet further complained that some politicians and preachers wished to revive ACERA rather than throw their support behind the Citizens Committee even though ACERA "did absolutely nothing when they had the wheel…and cared little about this matter."[30]

The Citizens Committee had sought support from prominent non-Creole African-American leaders such as P.B.S. Pinchback, the former lieutenant-governor of Louisiana who had moved north by the time of the *Plessy* case, and Frederick Douglass. Martinet informed Tourgée that Pinchback pledged a financial contribution that never came because, in Martinet's view, Pinchback saw no personal political advantage from it. Douglass responded expressing "his disapproval of the project – refused to give any aid." Douglass doubted that the courts would strike down Jim Crow laws and thus said that he "was opposed to making decisions and establishing precedents against his race." Martinet explained that the Citizens Committee had not sought money from Pinchback and Douglass but just their endorsement and moral support. Martinet expressed his bafflement to Tourgée at Douglass' more strategic and less principled approach: "He saw no good in the undertaking – no good in protesting against encroachments on your rights!"[31] The *Crusader* publicly lamented the refusal of national African American leaders

to provide "aid or encouragement" to the Citizens Committee's legal challenge to Jim Crow. For example, the newspaper reported that "Frederick Douglass – the greatest of all Negroes – wrote that he was opposed to making decisions and establishing precedents against his race. The greatest representative of the Negro was unpardonably ignorant, it is seen, of the constitutional rights of his race."[32]

Thus the non-Creole African American community did not respond to the efforts of the Citizens Committee with the unequivocal support that the Committee had desired. It is quite possible that the African-American community misinterpreted the fact that Homer Plessy, the defendant in the case, looked nearly White. Tourgée had suggested a voluntary defendant who looked nearly White in order to show the absurdity and arbitrariness of separating people by race on railways when their race could not even be determined. But, given the mixed-race identity of almost all the members of the Citizens Committee, some African Americans may have believed that the very light-skinned Homer Plessy did not represent their cause. They may have believed that the Citizens Committee somehow sought to restore the relatively privileged status of their Afro-Creole community only.

Notwithstanding the skepticism that African Americans may have harbored concerning the motives of the culturally distinct Citizens Committee, Homer Plessy necessarily did represent the interests of all African Americans in the case. He sought to overturn the law that applied to *all* African Americans. Moreover, the Citizens Committee consistently advocated for absolute equality for people of all shades of color and opposed all forms of racial segregation. In a *Crusader* article published July 4, 1891, before the formation of the Citizens Committee, Rodolphe Desdunes wrote: "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."[33] Desdunes thus explicitly included Afro-Creoles as members of the "black race" and made clear his view that all persons of color had the same interest in the *Plessy* case.

As early as 1881, Desdunes suggested organizing "an Equal Rights Association" to defend African-American civil rights and to force public accommodations such as hotels and bars to serve all customers. He argued that this campaign should not be confined to the matter of "respectability, but must serve all people of color regardless of class or skin color." Desdunes asserted that "the law presumes every man to be respectable" and advocated "we…must assume that the whole public is of the same degree of respectability. Our purpose is to defend public rights, and not to draw the fine shades of social distinctions." The activist further pointed out that "certain colored men enjoy certain exceptional considerations, by reason of special favors bestowed" but asserted that "personal consideration of no kind can be admitted to solve the problem of public rights."[34] So, even before Jim Crow had taken hold in the South, Desdunes attempted to create an organization based on the principle of equal access to public rights. His disdainful references to "exceptional considerations" and "fine shades" of distinction expressly rejected a privileged status for his light-skinned Afro-Creole community in favor of equal rights for all persons.

The consistent and outspoken opposition of the members of the Citizens Committee to any qualifications to vote in Louisiana also reflected their principled commitment to equal rights even when their community may not have had a direct stake in the matter. In the early 1890s White supremacists asserted various proposals to limit suffrage based on literacy and/or property qualifications. Such restrictions on suffrage would disfranchise the vast majority of African

Americans along with some poor White persons. However, given the high rate of literacy and relatively high rate of property ownership in the Afro-Creole community, these qualifications likely would have limited Afro-Creole voting rights no more than White voting rights.

Nevertheless, in 1891 Martinet expressed concern that he saw "looming up the ominous figure of a [Louisiana] constitutional convention to qualify suffrage after the Mississippi plan."[35] Mississippi had led the southern states in 1890 in taking legal steps to disfranchise African Americans.[36] Numerous articles in the *Crusader* adamantly opposed any qualifications on suffrage. For example, in an article published ten days before Homer Plessy defied the Separate Car Act, Desdunes warned "that all this agitation about qualified suffrage tends directly to the establishment of caste rule… power for the few and dependence for the many." Desdunes further predicted (incorrectly) that qualified suffrage would result in class conflict where poor White persons "by a sort of affinity" would be driven to act in concert with persons of color.[37]

Three years later in 1895, the threat of legislation imposing literacy and property requirements to vote in Louisiana persisted. Desdunes again described the question of qualified suffrage as "one in which all the common people, whether colored or white, are vitally interested. They are likely to bind their descendants to a life of civil nullity, when once the wealthy classes get the laws as they want them." Desdunes railed against this "preposterous and wicked" proposal. In addition to citing the post-Civil War Constitutional amendments, Desdunes argued: "this government rests upon the consent of the majority lawfully expressed …. We can never recognize the authority of any one to prescribe one mode of procedure for one class of men, and none at all for another – which process simply would be usurpation and tyranny."[38] Desdunes' objections did not focus on race. Rather, his concern with suffrage qualifications revolved around the fundamental rights in a democracy of men of all classes and races.

In another 1895 article, Desdunes contrasted the anti-democratic attitudes of White Louisianans in the 1890s with the generous attitude of African Americans regarding suffrage qualifications reflected in the radically progressive Louisiana Constitution of 1868. Desdunes first cited the Declaration of Independence and argued that the founders believed that "the deprivation of suffrage was the alienation of liberty and the pursuit of happiness. The right of consent is nothing else but the essence of suffrage."[39] Desdunes then suggested that the authors of the 1868 Louisiana Constitution incorporated the values of the founders. Article 99 of the Louisiana Constitution allowed ex-Confederates to regain voting rights merely by signing a statement of regret for the rebellion. In Desdunes' view, the Louisiana men of color involved in drafting the 1868 Constitution "acted in accordance with the light of a clear conscience, never permitting enmity, revengefulness, or malice to dictate their sentiments. Although they were kept in bondage, or otherwise persecuted, when in the whirligig of times they were for a moment on the top wave of the current, their soul went out to their tormentors to save and to comfort."[40]

In addition to the Citizens Committee's fervent opposition to qualified suffrage, it held up abolitionists of the past as deeply admired models. Because almost all of the Citizens Committee members had a free status before slavery's abolition, the institution of slavery did not directly affect them or their community. Nevertheless, Desdunes referred to John Brown, William Lloyd Garrison, Elijah Lovejoy, Wendell Phillips, and Nicholas Longworth – all prominent abolitionists decades earlier – as "instruments of loving humanity."[41] Similarly, Citizens Committee member Numa Mansion rallied citizens to resist Jim Crow and to take inspiration from those "who found the courage to help them struggle in those dark days when it was almost a hopeless fight" – referring to the slavery era. Mansion exhorted that, even if they suffer injustice, "we will fall with colors flying, believing in the immortal principles of the immortal

John Brown and Charles Sumner, and for which they shed their blood."[42] *Crusader* authors also described the most prominent African-American abolitionist Frederick Douglass "in his younger days by his public service in behalf of his enslaved brethren" as the heroic "leader to which the race could point with increasing pride and admiration."[43] Although some members of the Afro-Creole community had owned slaves and many had even supported the Confederacy early in the war, the leaders of this community by the 1890s had shed completely any such inclinations and unequivocally looked upon abolitionist leaders as the racial justice heroes of an earlier era.

The Citizens Committee writers consistently reflected their commitment to absolute equal rights without regard to shades of color through their statements and articles in the *Crusader* – the newspaper that Committee members directed, managed, and edited. The Committee's two most prolific members, Desdunes and Martinet, never suggested in any existing documents (including Martinet's private letters to Tourgée) that light-skinned educated Afro-Creoles deserved any more privileges or considerations than non-Creole African Africans. Desdunes and Martinet acted and wrote in lockstep on this critical point. They advocated absolute equality for all men – whether White or African-American, whether Afro-Creole or non-Creole African American.

However, a close reading of Martinet's published and private writings, on the one hand, and the published writings of Desdunes, on the other hand, reflects a subtle difference in their identification with the broader African-American community. In his letters to Tourgée, Martinet acknowledged several times that he had not been subjected to the prejudice suffered by other African-Americans due to his very light skin color. After a trip to Chicago in 1893, Martinet's complex feelings about his racial identity came pouring out with stunning candor to Tourgée, a White man, as follows:

> When a boy, a youth, I hated almost every white man I met. I wished, longed, for a chance to fight or kill - but I never had occasion to kill in self defense & would not commit murder. Later this feeling passed to the collective mass. I no longer hate the individual, but the whole people, the Nation. I feel at times as if I could tear the flag - the Stars & Stripes - into shreds. … And yet why this feeling? I have no special love for the Negro - never perhaps had - only sympathy. … Personally I have always been treated with respect by those with whom I have come in contact - often have been treated with much consideration. I do not hanker for companionship or social relations with those who do not want to associate with me. All I want is my civil rights & privileges as a citizen, and simple justice for all who are denied it.[44]

Martinet told Tourgée that he had considered moving permanently to Chicago or out of the country altogether where he could live "quietly & pleasantly." But he decided to stay in New Orleans despite his infuriation with Jim Crow because the activist had friends in New Orleans and the "great, ignorant, and helpless mass needed our defense."[45]

These remarkable passages reflect that Martinet clearly did not enjoy a strong connection with or wish to associate with the White community for which he felt hatred. With equal clarity, Martinet did not identify with the general African-American community into which Jim Crow had forced him. He had only sympathy due to the injustices African Americans had suffered and perhaps some sense of superiority. When referencing "Negroes" or "colored men" as a group, Martinet often used the pronoun "they" implying that the Afro-Creole leader distanced himself from "them." However, notwithstanding his emotional distance from the African-American community, and his condescending language, Martinet was not satisfied with the privileges that his personal status afforded him, nor did the activist focus his efforts on improving the position of his Afro-Creole community only. Martinet relentlessly and unselfishly poured his time and energy into defeating segregation and obtaining civil rights for all men.

Rodolphe Desdunes certainly shared Martinet's commitment to universal civil rights. However, unlike Martinet, Desdunes' language left the impression that he comfortably included

himself and his Afro-Creole friends when he referred to "Negroes" or "colored men." Desdunes' ancestors had joined the multitudes of free mixed-race persons who left Haiti at the turn of the nineteenth century to escape the Haitian Revolution. They ended up in New Orleans and lived as free people of color. Desdunes was born in 1849 making him approximately the same age as Martinet.[46] Desdunes' father, Jeremie, worked as a wheelwright. Desdunes made his living as a police officer in New Orleans between 1871 and 1874. He benefitted from Republican patronage to work as a customs officer for the federal government during periods when the Republican party held the White House. At other times, the activist worked in his family's cigar business. Desdunes graduated from Straight Law School in 1882 – a few years after Martinet – but never practiced law.[47] He contributed to the cause by serving as an editor of the *Crusader* and writing possibly hundreds of editorials and articles attacking the injustice of Jim Crow.

Desdunes undoubtedly identified strongly as Afro-Creole as evidenced by his *Our People and our History: Fifty Creole Portraits* (1911) written in French. Nevertheless, he viewed all African-Americans – whether Creole or not – as united in their opposition to segregation. As reflected in his language quoted throughout this thesis, Desdunes grounded his arguments in principles rooted in the French and American Revolutions that made no distinctions between the Creole and non-Creole victims of Jim Crow.[48]

Desdunes' *Crusader* articles written during the heat of the *Plessy* battle in the 1890s thus evidenced his identification with the broad African-American community. However, in 1907, Desdunes asserted certain deep cultural distinctions between Afro-Creoles and non-Creole African Americans – referring to these two groups as "Latin Negroes" and "Anglo-Saxon" Negroes respectively. Desdunes observed as follows:

> There are two distinct schools of politics among the Negroes. The Latin Negro differs radically from the Anglo-Saxon in aspiration and in method. One hopes,

> the other doubts. Thus we often perceive that one makes every effort to acquire merits, the other to gain advantages. One aspires to equality, the other to identity. One will forget that he is a Negro in order to think that he is a man; the other will forget that he is a man in order to think that he is a Negro. … One is a philosophical Negro, the other [a] practical [Negro].[49]

The traits that Desdunes ascribed to "Latin Negroes" could explain why the Citizens Committee poured so much effort into *Plessy* even though its members knew that they probably would lose the case. Using Desdunes' language, the Committee based its endeavor on hope that the Supreme Court would uphold foundational principles, the aspiration to acquire merits and equality, and the philosophy that their status as citizens took priority over racial identity.

Desdunes advocated for absolute equality and for color-blindness. But his commitment to those principles did not prevent him from expressing great disdain for African Americans who "passed" into or catered to the White community. He referred to such persons as "amalgamated Negroes" as follows:

> He is not touched by the picture of the cross under the weight of which his brother falls, but joins the persecutors as a bid to immunity. … He still strives entirely to separate himself from his kind through 'ways that are dark and tricks that are vain.' … He defies the law, practices deception, ignores family ties. … He … esteems nothing so much as the fairness of his skin and the souple strains of his hair. These two convenient accessories are his most precious possessions with which to fix himself in the sphere of tolerated consideration. He hides the place of his birth, tries to die unknown so as not to be confounded; he often turns his back on his mother, and will despise his children in obedience to his delusions.[50]

The Citizens Committee members, as represented by Martinet and Desdunes, had to manage a complex racial identity. They believed in color-blind equality. At the same time, Committee members took pride in their distinct Afro-Creole culture and its success. But the Jim Crow regime – based on *binary* racial classifications – also forced them to identify with the broader African-American community. In any case, no evidence supports any charge that the

Citizens Committee "wanted to pass for white," that it sought any rights that would not apply equally to all African-Americans, or that it did not sincerely represent the interests of all African-Americans in *Plessy* and in other matters of racial justice.

DUTY TO ENGAGE IN LEGAL RESISTANCE

During the 1890s, dismal conditions forced many African Americans in the South to adopt the strategy of accommodating rather than actively resisting Jim Crow. Through accommodation to White supremacy, African Americans sought to survive in the short term and to work to improve their position and perhaps obtain their rights in the long term. In 1890, although African Americans constituted a majority of the population in Mississippi, Isaiah Montgomery was the only African-American delegate elected in 1890 to the Mississippi Constitutional Convention. In 1887, Montgomery had founded Mound Bayou, Mississippi, a Mississippi Delta community populated only by African Americans. At the Constitutional Convention, the wealthy planter supported the proposal to impose literacy and property requirements to vote despite the fact that such requirements expressly were intended to exclude the vast majority of African Americans from the electorate. Montgomery agreed to surrender African-American voting rights that he described as "a fearful sacrifice laid upon the burning altar of liberty." He hoped that this sacrifice would end racial violence and turmoil. Speaking to the White convention delegates, Montgomery said that the enormous concession would "bridge a chasm that has been widening and deepening for a generation, to divert the maelstrom that threatens destruction to you and yours, while it promises no enduring prosperity to me and mine." Montgomery further justified this forfeiture of fundamental rights, reasoning that it would encourage African Americans to acquire education and property.[51] Mississippi thus led the southern states in taking steps that soon disfranchised nearly all African Americans throughout

the South. Martinet in 1891 expressly referenced these Mississippi suffrage restrictions as the "Mississippi plan" that he and his political allies must fight to keep Louisiana from following.[52]

By the mid-1890s leadership in the African-American community had shifted from those who fought fiercely for abolition and civil rights during Reconstruction to leaders in the mold of Isaiah Montgomery. While the *Plessy* case was pending before the Supreme Court in February 1895, the militant abolitionist and revered African-American orator, writer, and political philosopher Frederick Douglass died at age seventy-seven. Notwithstanding the criticism that the *Crusader* and Martinet directed at Douglass in his later years for what they perceived as compromises he made for personal gain, Douglass had never backed away from his fervent advocacy for equal rights, including voting rights, for African Americans.

By the time of Douglass' death, Booker T. Washington had emerged as the new African-American leader, espousing ideas similar to Montgomery's, but who addressed a national audience. After becoming the principal in 1881 of the historically black college, the Tuskegee Institute in Tuskegee, Alabama, Washington rose to prominence as an educator, author, orator, and advisor to U.S. presidents. Washington delivered his landmark speech, known as the "Atlanta Compromise," at the Atlanta Cotton States Exposition in September 1895, eight months before the Supreme Court issued the *Plessy* decision. In the address, Washington advocated acquiescence to segregation and disfranchisement in return for racial peace and the opportunity for African Africans to make educational and economic advances. He assured White southerners in his audience 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." Washington further assured White persons

that African-Americans will be "the most patient, faithful, law-abiding, and unresentful people that the world has seen."[53]

To African Americans, Washington offered hope for the future. In order to survive in the Jim Crow era, they would have to accommodate a subordinate position, to "suffer in silence," and to exercise "patience, forbearance, and self-control." The founder of Tuskegee advised each person of color to "cast down your bucket where you are," meaning to focus on improving himself through education and work rather than agitating for civil rights. In Washington's opinion, an African-American would achieve a desirable place in the South when he had "entwined himself about America in a business and industrial sense."[54]

Significant numbers of African-Americans of course disagreed with accommodation. The Afro-American League advocated staunch resistance to Jim Crow during its brief existence between 1890 and 1893 as discussed in Chapter Five of this thesis. In addition, the National Afro-American Council formed in 1898 contained a faction that rejected the strategy of accommodation. This faction in 1905 organized the Niagara Movement that expressly called for a more aggressive resistance to Jim Crow than advocated by Washington.[55]

Nevertheless, in the 1890s, many African Americans, especially 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. Since Reconstruction lawless White supremacists had wielded lynching as a weapon to instill fear and implement oppression. In just one year, 1895, mobs lynched 118 persons of color, including eighteen in Louisiana.[56] An African-American from Mississippi wrote to Tourgée in response to the civil rights advocate's frequent calls to African-American southerners to pursue their civil rights. The man wondered whether Tourgée fully realized that such pursuit could result in the violent death of the pursuer.[57] Even

Martinet, in a moment of self-doubt, worried that, if African Americans in the South adopted his commitment to "true manhood, of manly courage & resistance to oppression, they would not be tolerated in the communities where they are."[58] Many African Americans therefore focused understandably on improving conditions in their own communities and schools even if segregated and disadvantaged. The mild disdain that Desdunes and Martinet seemed to carry for the "practical" rather than philosophical attitudes of non-Creole African Americans was unfair to them. The wealth of Afro-Creoles and the extraordinarily safe and tolerant racial environment of New Orleans made it vastly easier for the Citizens Committee members to cast aside practical considerations and to resist segregation on principle compared to non-Creole African Americans living in other southern cities.

The experience of the Reverend A.E.P Albert illustrated however that, even in relatively tolerant New Orleans, an African American who veered too far from Booker T. Washington's accommodationist philosophy could be disfavored by those with power in the 1890s. Albert's father was a working-class White Frenchman and his mother had been born a slave. Because Albert had been born a slave in 1852 and because his mother had broken from the Catholic Church during his childhood, he did not consider himself Afro-Creole. In 1890, Albert served as pastor of the racially-integrated Methodist Episcopal Church and as editor of the influential *Southwestern Christian Advocate,* a publication that the church governed and funded.

Although a non-Creole leader, Albert frequently expressed admiration for the Afro-Creole community reporting on the achievements of "our people of French extraction" and serving on the *Crusader*'s Board. When in 1890 a Louisiana legislator proposed a bill that became the Separate Car Act, Albert served as the president of ACERA and led the delegation that included Martinet and other Citizens Committee members to Baton Rouge to protest the proposed law. As the editor of the *Advocate*, Albert preached part of Booker T. Washington's

message. He advocated that African Americans must work hard and live as virtuous citizens. However, the editor of the *Advocate* also reported on lynchings and encouraged his readers to protect and exercise their civil rights. Albert's moderate position in favor of advocating for civil rights as the leader of ACERA, and as editor of the *Advocate*, did not support accommodation strongly enough for some in his integrated congregation. In 1892, the majority of the White delegates to the Methodist convention voted to remove Albert as the editor of the *Advocate* in favor of a more accommodationist editor. Although he continued to remain involved in the church, Albert thereafter turned away from political controversies and pursued a career in medicine.[59] Martinet fumed that, while the church "adopted resolutions denuncitory of Southern outrages," it nevertheless replaced Albert as the editor of the church newspaper with a man "less aggressive, more conservative."[60]

While members of the Citizens Committee agreed with Booker T. Washington on the value of education, work, and virtuous citizenship, they manifestly disagreed with his accommodationist philosophy. Although Martinet acknowledged that 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." He expounded that "this is what the colored youth most need – they must be taught manhood, manly courage & resistance to oppression in the schools, alongside with the teaching of the 'dignity of labor' & the elevating influence of religion of which we hear so much in connection with the Negro schools."[61] Thus, Martinet found that Washington's otherwise commendable accommodationist philosophy lacked the critical element of resistance to wrong.

An unattributed *Daily Crusader* article titled "A Typical Negro 'Leader'" voiced Martinet's view publicly as follows:

> The doctrine of [Isaiah] Montgomery, the philosophy of Booker T. Washington, are on a par with the plaintive wail about sparing the Negro because he was a bread-winner or a faithful slave on the old plantations. Today the Negro is a man and a citizen; his status is well-defined in the Constitution and laws of the United States, and his rights must be defended from that standpoint, not because he built a fort and proved to be a good 'nigger' 'befo the wha.' This is the way Mr. Tourgée, … and the other champions of justice look at the matter, and it is the proper view of it to make the cause one of principle and law, and not one of reward, for menial services rendered.[62]

The members of the Citizens Committee in the mid-1890s, through the *Crusader*, explicitly rejected the accommodationist philosophy preached by Montgomery and, most prominently, by Washington that had found favor with many African Americans and White persons in the South.

Instead, Citizens Committee members believed that persons of color had a duty to resist racial injustice, including all forms of segregation, and could rely only on themselves to do it. Moreover, this duty required action without regard to the probability of success. A series of articles published between the enactment of the Separate Car Act in July 1890 and Homer Plessy's arrest in June 1892 vividly illustrated this commitment to resistance. On July 19, 1890, only nine days after the passage of the Separate Car Act, Louis Martinet asserted in a *Crusader* editorial that ACERA would bring a case to challenge the constitutionality of the law "if it understands its duty."[63]

Desdunes joined Martinet in advocating for a challenge to the offensive law in court in another *Crusader* article published on Independence Day, 1891. Desdunes wrote that the Act

> is like a slap in the face of every member of the black race. … 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.

Echoing Martinet, Desdunes described it as the "duty" of persons of color to act. His admonition that "it is our fault" if they do not go to court reflects their sense of self-reliance. In the same article, Desdunes emphasized the vital importance of challenging the Separate Car Act exhorting that "the responsibility of the situation is resting upon us, the offended citizens" to "exhaust every legal remedy which the law holds out against such evils. It is to be or not to be, life or death, civilly speaking. We must stand or fall with the Constitution, Equal Rights, and American Manhood."[64]

In another *Crusader* article published August 1, 1891, Desdunes responded to the position taken in a letter to the editor of the *Crusader* that the effort to defeat the Separate Car Act in the courts would not likely succeed referring to it as a "forlorn" battle. Although Desdunes acknowledged that Supreme Court precedents provided cause for discouragement, he nevertheless passionately argued against any submission to racial injustice, noting that "decisions of the Courts were the opinions of men." Therefore, he posited "can we not build the hope of succeeding in the future where we failed in the past?"

Desdunes contended further that "forlorn hopes like utopias have been the cause or the beginning of all the great principles which now bless with their sacred excellence, the free and progressive nations of the earth." He described the valiant efforts of a diverse, eclectic mix of historical figures such as Galileo, Patrick Henry, George Washington crossing the Delaware River, Haitian revolutionary Touissant L'Ouverture, and French abolitionist Cardinal Lavigerie. These leaders carried their "forlorn hopes" into battles that seemed futile at the time believing that "defeat is more honorable than flight or surrender." Desdunes concluded that "liberty has always had a hard road to travel, wherever prejudice was the consulted oracle, and that has been almost everywhere. … But the obligation of the people is resistance to oppression. … If the

separate car act is a forlorn hope, we trust to see the people show a noble despair, and be prepared to face any disappointment that might await them at the tray of American justice."[65] Using courageous historical leaders as models, Desdunes eloquently urged his readers to battle the offensive Jim Crow law on principle and to hope for, but certainly not to expect, success.

Shortly after the publication of Desdunes' articles, community leaders formed the Citizens Committee to contest the constitutionality of the "obnoxious" separate car law. In its initial public appeal for support, the Committee offered extremely measured hope for victory in court. Although segregationists had circulated the incorrect message that the Supreme Court already had upheld such laws, the Committee's message asserted "that the chances of success are at least on par with the dangers of defeat…At all events, 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."[66] Again, the Committee cited the "duty" of citizens to protect their rights. Even in a request to the public for money, the Citizens Committee failed to express much confidence that the courts would rule in its favor. Their conclusion that the court battle was "the only means left to us" to avoid sinking "into a state of hopeless inferiority" reflected more of a position of desperation than one of likely victory.

The Committee's attitude of active resistance extended at this time to other types of racial segregation. When in 1892 an attorney named Chrétien proposed a resolution to the New Orleans School Board to expel all children of color from "white schools," Desdunes noted that Chrétien and his physician brother depend in part on persons of color for the success of their professional practices. Desdunes advised persons of color to boycott their practices. "We must fall back upon our manhood and our right of self-defense. We cannot remain in the viper's maw. And inasmuch

as persecution is known to justify all manner of resistance, it is the least we might do to cease 'feeding frogs for the benefit of snakes.' Manhood cannot be counted an important factor until it has taken the shape of active assertion."[67]

In 1892, as Tourgée and Martinet planned Homer Plessy's arrest, Citizens Committee member Numa Mansion wrote an article in the *Crusader* discussing the significance to their cause of the upcoming Republican National Convention held in Minneapolis, Minnesota in June 1892. "That convention will be most important one ever convened in this country on account of the class or caste legislation to be approved or condemned by it. It will heed Titans to lead the, perhaps, forlorn fight. From its result our condition will be that of a freeman or a slave." So Mansion still held out some hope that the Republican party actively would protect the rights of African Americans against White supremacists in the South as it did during the Civil War and Reconstruction. But he also perceived "great danger for us" in the national party. "We see and feel all the forerunners of the storm." Mansion wondered with evident concern "who will present himself in the arena…to defend that now gospel of the equality of men?"[68] Mansion realized that without that defense persons of color could be returned to a condition akin to slavery.

Just a few months later, while the *Plessy* case was active in the Louisiana court system, Martinet reported with relief to Tourgée that Citizens Committee members had helped to defeat in the Louisiana Senate an anti-miscegenation bill that had been passed in the Louisiana House. Because they had accomplished this political success without the help of the Republican party, Martinet remarked that "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."[69] So, in addition to the earlier betrayal of persons of color by Democratic White supremacists as described in his October 5,

1891 letter, Martinet observed the abandonment of civil rights causes by the Republican party in the early 1890s. For these reasons, Martinet again conveyed to Tourgée his strong conviction that African Americans must rely solely on their own efforts to protect their rights.

There is no evidence that the Citizens Committee ever deluded itself about its chances of having Jim Crow laws struck down in *Plessy*. In a May 1893 letter to Tourgée, Martinet wrote: "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." [70] Martinet's far-sighted observation prior to the time that the *Plessy* case had been argued to the Supreme Court reflected his doubt that they would prevail. At the same time, Martinet's comment reflected his faith that merely engaging in the fight might someday benefit future generations of African Americans.

In October 1893, after reviewing the record of each of the Supreme Court justices, Tourgée in effect advised the Citizens Committee that only a very slim chance existed that a majority would rule for them.[71] In his January 1896 letter to U.S. Senator William E. Chandler, Tourgée expressed his modest hope that, if he and the Committee could not defeat the Separate Car Act, perhaps they can give it "a very black eye."[72] Nevertheless, Citizens Committee members continued to exhort *Daily Crusader* readers to resist injustice notwithstanding these odds. For example, in 1895, Numa Mansion wrote that men of color had found the courage during the Civil War to struggle for their rights "in dark days when it was almost a hopeless fight. Their sentiment was true and unadulterated. … Have those years passed on us…only to convince us that we are not worthy to enjoy the rights of a man? We cannot admit such a doctrine; it is a heresy; we cannot willingly submit to it. Injustice can deprive us of our rights … but we will fall with colors flying."[73]

Notwithstanding the passionate calls to battle announced by members of the Citizens Committee, they should not in any sense be considered revolutionaries. The Citizens Committee members never advocated violence, violation of the law, or any radical change in the American system of government. Rather, they believed in complying with the law. Their form of activism and legal resistance indisputably held a legitimate place in the existing American political and legal system. The Committee regularly referenced the U.S. Constitution with deep respect. They did not even seek to amend it. The necessary amendments – the Thirteenth, Fourteenth, and Fifteenth Amendments that promised equal rights – had already been achieved through a long and deadly civil war. Committee members only sought enforcement of the principles set forth in these amendments by the courts. As business owners and professionals, Committee members could be described as middle-class activists. They sought to live as productive law-abiding citizens in a society where all men had equal rights – nothing more, nothing less. The middle-class status of the Citizens Committee members foreshadowed the leadership of the NAACP that succeeded in overthrowing Jim Crow sixty years later.

An example of the Citizens Committee's principled engagement in the legal system arose when it supported financially an appeal of a conviction for murder of a defendant nicknamed Greasy Jim. In that case, the judge had held the exclusion of African Americans from the jury valid "because of their lack of intelligence and moral standing." A *Daily Crusader* editorial explained that the Citizens Committee members had no particular concern about Greasy Jim's personal fate. Rather their consternation resulted from a justice system that excluded African Americans from jury service. Whether or not Greasy Jim committed murder, the writer of the editorial reasoned that the entire community should question the legitimacy of any jury verdicts against any African Americans in a system so prejudiced against them.[74]

Stunning advancements during Reconstruction such as the 1868 Louisiana Constitution and the 1873 Unification movement provided hope that African Americans in Louisiana might enjoy equal rights. But, after Reconstruction, White supremacists assumed control of the Democratic party and the Republican party abandoned the cause of civil rights in the South. The Citizens Committee nevertheless envisioned and strove for a color-blind, integrated, and multi-cultural society. It fervently believed in absolute equality for all men. While the Citizens Committee proudly recognized its distinct mixed and prosperous culture, the Committee truly represented the interests of all African Americans in the *Plessy* case and in other racial justice matters. In the 1890s, many African Americans in the South, having been beaten down by slavery and then by White supremacists, adopted Booker T. Washington's philosophy of accommodating segregation. In the relative safety of New Orleans, and having high expectations arising from generations of freedom and prosperity, the Citizens Committee rejected accommodation and fiercely held to the conviction that all oppressed citizens had a duty to challenge unjust laws through the legal process, that such citizens could rely only on themselves, and that it did not matter that the courts likely would rule against them. This principled philosophy fueled the determination of the Citizens Committee to fight the legal battle against segregation against all odds.

END NOTES

[1] 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), 189; Caryn Cossé Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1879* (Baton Rouge: Louisiana State University Press, 1997), 1-2; Steve Luxenberg, *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation* (New York: W.W. Norton & Company, 2019), 274-78.

[2] "An Appeal for the Unification of the People of Louisiana," *New Orleans Daily Picayune*, July 15, 1873, in T. Harry Williams, "The Louisiana Unification Movement of 1873," *Journal of Southern History*, 11, no. 3 (August 1945), 359-60.

[3] Keith Weldon Medley, *We as Freemen: Plessy v. Ferguson* (Gretna, LA.: Pelican Publishing Company, 2003), 27.

[4] See Williams, "The Louisiana Unification Movement," 349-69, for a thorough review of the rapid rise and fall of the Unification Movement.

[5] Luxenberg, *Separate*, 275.

[6] Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana*, 278-79.

[7] Rodolphe L. Desdunes, "White Supremacy," *Crusader*, March 20, 1892, New Orleans *Crusader* Newspaper Collection (1889-1896), Xavier University of Louisiana, New Orleans.

[8] Luxenberg, *Separate*, 360.

[9] Martinet to Tourgée, July 4, 1892, 26, Albion W. Tourgée Papers, Chautauqua County Historical Society, Westfield, New York.

[10] Martinet to Tourgée, October 5, 1891, 19-25, Tourgée Papers.

[11] In her dissertation, Mishio Yamanaka demonstrated that the New Orleans Afro-Creole community consistently collaborated with non-Creole African-American and White liberal groups from the Civil War through the *Plessy* era. Mishio Yamanaka, "'Separation Is Not Equality': The Racial Desegregation Movement of Creoles of Color in New Orleans, 1862-1900" (PhD diss., University of North Carolina at Chapel Hill, 2018), 13, 236.

[12] Rodolphe L. Desdunes, "The Coming Struggle," *Crusader*, January 2, 1892, New Orleans *Crusader* Newspaper Collection.

[13] Rodolphe L. Desdunes, "Reflections on Lynx-Eye," *Daily Crusader*, May 7, 1895, New Orleans *Crusader* Newspaper Collection.

[14] Rodolphe L. Desdunes, "A Few Words to Dr. Du Bois 'with Malice Towards None,'" March 1907, Box 77, Folder 38, 5, 12, Alexander P. Tureaud Papers, Amistad Research Center, Tulane University.

[15] Martinet to Tourgée, October 5, 1891, 4, Tourgée Papers.

[16] Blair L.M. Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson* (Chapel Hill: University of North Carolina Press, 2010), 61.

[17] Rodolphe L. Desdunes, "White Supremacy," *Crusader*, March 19, 1892, New Orleans *Crusader* Newspaper Collection.

[18] Rodolphe L. Desdunes, "Legislation and Legislators," *Crusader*, June 11, 1892, New Orleans *Crusader* Newspaper Collection.

[19] Mark Elliott, *Color-Blind Justice: Albion Tourgée and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson* (New York: Oxford University Press, 2006), 251.

[20] Martinet to Tourgée, October 5, 1891, 11-13, Tourgée Papers.

[21] Rodolphe L. Desdunes, "Mother Katherine Drexel and the Color Line," *Daily Crusader*, February 28, 1895, New Orleans *Crusader* Newspaper Collection.

[22] Rodolphe L. Desdunes, untitled article, *Daily Crusader*, February 28, 1895, New Orleans *Crusader* Newspaper Collection.

[23] Rodolphe L. Desdunes, "Mother Katherine Drexel," *Daily Crusader*, March 5, 1895, New Orleans *Crusader* Newspaper Collection.

[24] Arthé A. Anthony, "The Negro Creole Community in New Orleans, 1880–1920: An Oral History" (PhD diss., University of California, Irvine, 1978), 54-57; and Joan M. Martin, "*Plaçage* and the Louisiana *Gens de Couleur Libre*," in *Creole: The History and Legacy of Louisiana's Free People of Color,* ed. Sybil Kein (Baton Rouge: Louisiana State University Press, 2000), 58.

[25] Yamanaka, "'Separation Is Not Equality,'" 10; Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana,* 5-6.

[26] Loren Schweninger, "Antebellum Free Persons of Color in Postbellum Louisiana," in *The African American Experience in Louisiana, From the Civil War to Jim Crow*, ed. Charles Vincent (Lafayette, LA.: University of Louisiana at Lafayette, 2000), 367; David C. Rankin, "The Origin of Black Leadership in New Orleans During Reconstruction," *Journal of Southern History,* 40, no. 3 (August 1974), 420-21.

[27] Kimberly S. Hangar, *Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803* (Durham: Duke University Press, 1997), 170.

[28] Alice Moore Dunbar-Nelson, "People of Color in Louisiana," in Kein, *Creole*, 31-33.

[29] Martinet to Tourgée, December 7, 1891, 4-5, Tourgée Papers.

[30] Martinet to Tourgée, October 11, 1891, 3, Tourgée Papers.

[31] Martinet to Tourgée, July 4, 1892, 13-14, Tourgée Papers; Kelley, *Right to Ride*, 71.

[32] "Jim Crow is Dead," *Crusader*, September 16, 1892, New Orleans *Crusader* Newspaper Collection.

[33] Rodolphe L. Desdunes, "To Be or Not to Be," *Crusader,* July 4, 1891, Box 1, Folder 8, Charles B. Roussève Papers, Amistad Research Center, Tulane University.

[34] Yamanaka, "'Separation Is Not Equality,'" 196.

[35] Martinet to Tourgée, October 25, 1891, 8, Tourgée Papers.

[36] Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Vintage Books, A Division of Random House, Inc., 1998), 352-53.

[37] Rodolphe L. Desdunes, "Caste Rule," *Crusader,* May 28, 1892, New Orleans *Crusader* Newspaper Collection.

[38] Rodolphe L. Desdunes, "Sentiment in Politics (No. 19)," *Daily Crusader,* June 12, 1895, New Orleans *Crusader* Newspaper Collection.

[39] Desdunes' depiction of the founders' commitment to universal suffrage may not be historically accurate.

[40] Rodolphe L. Desdunes, "Is and Is Not," *Daily Crusader,* October 21, 1895, New Orleans *Crusader* Newspaper Collection; "Article 99 of the State Constitution of 1868," *Daily Crusader*, December 21, 1895, New Orleans *Crusader* Newspaper Collection.

[41] Desdunes, "A Few Words to Dr. Du Bois," 5, Tureaud Papers.

[42] N. E. Mansion, "Not Too Soon," *Daily Crusader*, June 1, 1895, Box 1, Folder 11, Roussève Papers.

[43] "A Baleful Tendency," *Daily Crusader*, June 1, 1895, Box 1, Folder 11, Roussève Papers. The same editorial then severely criticized Douglass for his opportunism in his older years evidenced

by Douglass' acceptance of "invitations to deliver addresses wherever a big Jim Crow affair" took place.

[44] Martinet to Tourgée, May 30, 1983, 8, Tourgée Papers.

[45] Martinet to Tourgée, August 4, 1983, 1-2, Tourgée Papers.

[46] The fact that Martinet and Desdunes – both age forty-two when the Citizens Committee was formed – were two of the youngest members reflects that the Committee comprised mature, established leaders.

[47] Lester Sullivan, "The Unknown Rodolphe Desdunes: Writings in the New Orleans *Crusader,*" *Xavier Review* 10, no. 1 (1990), 2.

[48] Rebecca J. Scott, "Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge," *Michigan Law Review* 106, no. 5 (March 2008), 777-804.

[49] Desdunes, "A Few Words to Dr. Du Bois," 13, Tureaud Papers.

[50] Ibid., 10-11.

[51] Litwack, *Trouble in Mind*, 352-53.

[52] Martinet to Tourgée, October 25, 1891, 8, Tourgée Papers.

[53] Luxenberg, *Separate*, 458-59, 461-63. Although Washington publicly advocated for accommodation, he privately supported and funded test case litigation and national legislative efforts to obtain equal rights. Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (New York: Oxford University Press, 2013), 74.

[54] Litwack, *Trouble in Mind,* 354.

[55] Carle, *Defining the Struggle*, 73-92.

[56] Medley, *We as Freemen*, 174.

[57] Otto H. Olsen, *Carpetbagger's Crusade: The Life of Albion Winegar Tourgée* (Baltimore: The Johns Hopkins University Press, 1965), 315-16.

[58] Martinet to Tourgée, May 30, 1893, 4, Tourgée Papers.

[59] Kelley, *Right to Ride*, 59-60, 63-64, 69.

[60] Martinet to Tourgée, July 4, 1892, 17, Tourgée Papers.

[61] Martinet to Tourgée, May 30, 1893, 4-5, Tourgée Papers.

[62] "A Typical Negro 'Leader,'" *Daily Crusader*, November 6, 1895, New Orleans *Crusader* Newspaper Collection.

[63] "The Separate Car Bill," *Crusader,* July 19, 1890.

[64] Rodolphe L. Desdunes, "To Be or Not to Be," *Crusader,* July 4, 1891, Box 1, Folder 8, Roussève Papers.

[65] Rodolphe L. Desdunes, "Forlorn Hope and Noble Despair," *Crusader*, August 15, 1891, Box 2, Folder 6, Roussève Papers.

[66] "Report of Proceedings of the Citizens Committee," 1891, Box 1, Folder 13, Roussève Papers.

[67] Rodolphe L. Desdunes, "White Supremacy," *Crusader*, March 19, 1892, New Orleans *Crusader* Newspaper Collection.

[68] N.E. Mansion, "The Lesson, the Duty," *Crusader*, April 30, 1892, Box 2, Folder 8, Roussève Papers.

[69] Martinet to Tourgée, July 4, 1892, 7-9, Tourgée Papers.

[70] Martinet to Tourgée, May 30, 1983, 5, Tourgée Papers.

[71] Tougée to Martinet, October 31, 1893, 1-2, Tourgée Papers.

[72] Tourgée to William E. Chandler, January 30, 1896, Tourgée Papers.

[73] N.E. Mansion, “Not Too Soon,” *Daily Crusader*, June 1, 1895, Box 1, Folder 11, Roussève Papers.

[74] “The Monitor and the Greasy Jim Question," *Daily Crusader*, April 30, 1895, New Orleans *Crusader* Newspaper Collection.

CHAPTER FOUR

CONSEQUENCES OF THE CASE: THE CONSTITUTIONAL AND INSPIRATIONAL LEGACY OF THE CITIZENS COMMITTEE

The Citizens Committee possessed both the power and the will to prosecute a legal case to challenge the constitutionality of Jim Crow laws. The Committee advocated for its position to the U.S. Supreme Court where it suffered a crushing defeat. However, its efforts left a positive dual legacy. First, the Committee's uncompromising commitment to the principle of equality as expressed in its publications and in the letters from Martinet to Tourgée likely influenced and inspired the Constitutional arguments that its attorneys presented in the *Plessy* case. These arguments led to the acceptance and eloquent promulgation of the Citizens Committee's vision of the Fourteenth Amendment in the dissenting opinion of Supreme Court Justice John Marshall Harlan. In the 1950s the NAACP argued to the Supreme Court the same egalitarian ideals found in Harlan's dissent. The Supreme Court incorporated these principles into Constitutional law in *Brown v. Board of Education*. The *Brown* decision stands as the first major achievement in the modern civil rights movement.

The second important legacy is more psychological and less measurable. At the very beginning of Jim Crow, the Citizens Committee established a model of principled legal resistance. The group's activism provided educational, organizational, and inspirational benefits for their successors in the civil rights movement. In addition, the very existence of a powerful dissenting opinion from a Supreme Court justice that embodied its vision of equality provided hope that activists needed to persevere decades later. Such valiant efforts made during the dark and nearly hopeless nadir period inspired later civil rights activists, especially those in New Orleans, to continue the fight in an environment more receptive to their claims.

CONSTITUTIONAL LEGACY

Citizens Committee Arguments Against Act

The Supreme Court's narrow interpretation of the Fourteenth Amendment formed critical context for the Supreme Court's analysis in *Plessy*. The Fourteenth Amendment declared that "no state shall…deny to any person…the equal protection of the laws" (Equal Protection Clause) or "deprive any person of life, liberty, or property without due process of law" (Due Process Clause).[1] Although the congressional authors of the Fourteenth Amendment unmistakably had designed it primarily to establish equal rights for African Americans in the aftermath of slavery, the Supreme Court in the twenty-five years after the enactment of the amendment indisputably gave it an extremely narrow construction as it applied to civil rights. The court applied the amendment more often to protect the rights of corporations from burdensome regulation than to protect the civil rights of persons of color.[2] Between 1868 and 1930, the Supreme Court ruled on 604 cases involving Fourteenth Amendment arguments. Only twenty-eight of them involved the civil rights of African Americans.[3]

The 1883 Supreme Court decision in the *Civil Rights Cases* provided an important example of the court's conservative attitude concerning the Fourteenth Amendment. In that decision, the Supreme Court addressed together five cases that challenged the constitutionality of the 1875 federal Civil Rights Act. The Civil Rights Act prohibited racial discrimination in accommodations, public transportation on land and water, theaters, and other public places. In its 1883 decision, the Supreme Court rejected the argument that the Thirteenth and Fourteenth Amendments gave Congress the authority to pass laws to protect the civil rights of African Americans in this manner. Partly because it prohibited discrimination by *private* persons and businesses rather than by government only, the Supreme Court majority ruled that Congress had exceeded its authority and that the act therefore was void. The justices reasoned that a former

slave should have the "rank of mere citizen" and not as "special favorite of the law" who would be protected from the decisions of private business owners concerning who to serve or not to serve.[4]

However, Justice John Marshall Harlan, the youngest justice on the Court, disagreed. Having noticed the young justice's struggle to write his dissenting opinion that would separate him from his judicial brethren, Harlan's wife Mallie supplied inspiration by placing on his writing desk the inkstand used by Supreme Court Justice Roger Taney to write the infamous 1857 *Dred Scott* decision that declared that persons of color had no rights under the Constitution. Ironically, Harlan drew from the same inkwell to write his sharply divergent views.[5] In his dissenting opinion, Harlan declared that the majority disregarded the "substance and spirit" of the Constitutional amendments that provided broad authority for the federal government to protect civil rights.[6] Harlan's bold dissenting opinion in the *Civil Rights Cases* moved Frederick Douglass to send to him a letter providing effusive praise and suggesting that Harlan's thoughts "should be scattered like the leaves of autumn over the whole country."[7]

The Court's narrow construction in the *Civil Rights Cases* of the authority of the federal government to protect civil rights surely discouraged civil right advocates, but it did not answer the question posed in the *Plessy* case. While the Court struck down the federal law prohibiting *private* racial discrimination in the *Civil Rights Cases*, in *Plessy* a state government sought to *require* racial segregation. This state-mandated racism presented a far more profound harm in the eyes of civil rights advocates.

The members of the Citizens Committee articulated objections to the Separate Car Act that would form the basis of legal arguments that Tourgée developed and delivered to the Supreme Court several years later. Even before the Louisiana legislature passed the Act, Martinet acted as the primary author of the written protest that the American Citizens Equal

Rights Association presented to the Louisiana legislature. In the protest, ACERA set out at least four concepts that Tourgée would later present to the court. First, the protest asserted that "citizenship is national" implying that a state may not deprive a citizen of national rights. Second, it asserted that citizenship "has no color." Third, the protest stated that the Act will provide "free license" to "insult, humiliate, and otherwise maltreat inoffensive persons." Finally, the protest raised the issue of the unscientific and ambiguous nature of racial identity when it railed against using "such a problematical proposition as the ethnical origins of color" as a cause to interfere with "settled rights." Moreover, the ACERA protest set forth the following observation that Justice Harlan's dissenting opinion almost parroted: "The boast of the American people is that their government is based upon the self-evident truth, that all men are created equal, and has for some of its objects the establishment of justice and the insuring of domestic tranquility. It is then difficult to conceive how any caste legislation can maintain the sacredness of these truly American principles."[8]

In its initial public appeal for funding, the Citizens Committee reported the racial hostility and violence that the Act already had encouraged and expressed concern that it could grow worse as follows: "Every manner of outrage, up to murder, without redress, has followed the operation of the obnoxious law. With such revelations, we cannot but be apprehensive of worse results in the future. We feel that unless promptly checked by the strong power of the courts, the effects of that unconstitutional and malicious measure will be to encourage open persecution, and increase, to a frightful degree, opportunities for crimes and other hardships."[9] In his dissent, Harlan similarly expressed concern about the hostility between the races that the Separate Car Act would engender.

In *Crusader* articles published before Plessy's orchestrated arrest, Desdunes seemed to anticipate arguments in support of the Separate Car Act and offered rebuttals. On July 4, 1891, he expressed fierce disagreement with the notion that the Act provided a neutral separation of the races to promote racial harmony and order. Rather, he described the Act as "that badge of Negro inferiority, that menace to society, that breeder of discontent."[10] In his article published June 11, 1892, Desdunes rejected any suggestion that the Act sought to assure the safety and comfort of passengers. He argued that racially mixed railcars had "never interfered with the safety and comfort of anybody." Therefore, the "silly plea of 'comfort and safety' will not stand up to a fair assessment." Desdunes further urged the Louisiana legislature to accept the Constitutional concept of "National citizenship" of which the Act ran afoul.[11] Tourgée and his colleagues employed all of these concepts in their arguments to the Supreme Court.

In the brief for Homer Plessy, Tourgée asserted that the Separate Car Act violated the Thirteenth Amendment in that it returned persons of color to the condition of a subject race akin to slavery. More importantly, Tourgée argued that the Act violated the Fourteenth Amendment's Equal Protection Clause and Due Process Clause.[12] Tourgée pressed four particularly interesting lines of argument that aligned with the public expressions of the Citizens Committee.

First, he argued that the Civil War and the Fourteenth Amendment had created a *national* citizenship and corresponding rights of all Americans that the U.S. government had the Constitutional authority to enforce as follows: "The Fourteenth Amendment, creates a new citizenship of the United States embracing new rights, privileges and immunities, derivable in a new manner, controlled by new authority, having a new scope and extent, dependent on national authority for its existence and looking to national power for its preservation." The provisions of section 1 of the Fourteenth Amendment "taken together … constitute this section the *magna*

charta of the American citizen's rights." The argument concluded that any state law inconsistent with these rights must be held invalid.[13]

Second, Tourgée emphasized the intent of the amendment to create a society without discrimination of the basis of color. "The words of the Amendment are prohibitive but they contain a necessary implication of a most positive immunity or right most valuable to the colored man—the right to exemption from unfriendly legislation against them as colored—exemption from legal discrimination implying inferiority in civil society, lessening the enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."[14] Tourgée famously argued that: "Justice is pictured blind and her daughter, the Law, ought at least to be color-blind."[15]

The third argument involved the unscientific and ambiguous nature of race. Living as a mixed-race community in a state where the law and general culture sought to divide sharply persons into the binary categories of White or "colored" made the Citizens Committee particularly attuned to the tenuousness of racial classifications. In his decades of racial justice activism, Tourgée also had developed nuanced thinking on this point. In oral argument, Tourgée charged: "a [railway passenger] may not know whether he is a white man or colored. It is a question which the law of Louisiana has not decided, and which science is totally unable to solve. … How shall a man who may have one-eighth or one-sixteenth colored blood know to which race he belongs? The law does not tell him; science decides perhaps one way and common repute may decide the other."[16]

Plessy's brief also insisted "that a wholesale assortment of the citizens of the United States, resident in the state of Louisiana, on the line of race, is a thing wholly impossible to be made, equitably and justly by any tribunal, much less by the conductor of a train without

evidence, investigation or responsibility. The Court will take notice of the fact that, in all parts of the country, race-intermixture has proceeded to such an extent that there are great numbers of citizens in whom the preponderance of the blood of one race or another, is impossible of ascertainment, except by careful scrutiny of the pedigree. As slavery did not permit the marriage of the slave, in the majority of cases even an approximate determination of this preponderance is an actual impossibility, with the most careful and deliberate weighting of evidence, much less by the careful scrutiny of a busy conductor."[17] This argument further explained Tourgée's strategy of selecting a defendant who looked nearly White. Homer Plessy's light skin color helped to underscore the uncertainty of racial identity and the absurdity of enacting laws on that basis. On this point, Tourgée and the Citizens Committee in fact may have been extraordinarily prescient. Neither Harlan in his dissent nor even the Supreme Court much later in *Brown* incorporated this concept into their reasoning.

Fourth, Plessy's most historically significant argument involved the nature of the equality required under the Equal Protection Clause. In its essence, Tourgée argued that the Court should look beyond the fact that the Separate Car Act required equality of *accommodations* and instead should consider the purpose and effect of the law. Reminiscent of Desdunes' language in the *Crusader*, its purpose was to impose a "badge of servitude" upon persons of color; and that was the real-world effect.[18] The brief contended:

> The court will take notice of a fact inseparable from human nature, that, when the law distinguishes between the civil rights or privileges of two classes, it always is and always must be, to the detriment of the weaker class or race. A dominant race or class does not demand or enact class-distinctions for the sake of the weaker but for their own pleasure or enjoyment. … The object of such a law is simply to debase and distinguish against the inferior race. … Its object is to separate the Negroes from the whites in public conveyances for the gratification and recognition of the sentiment of white superiority and white supremacy of right and power.[19]

Thus 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." To prove this point, Tourgée noted that the Act made an exception for nurses attending children of the other race. Tourgée reasoned that this exception showed that it is not necessarily the physical proximity of the races that the law sought to prevent. Rather, the lawmakers intended to avoid the appearance of equal status. If the person of color is "dependent," his presence "may be endured: if he is not, his presence is insufferable."[20] Tourgée explained further: "They do not object to the colored person in an inferior or menial capacity—as a servant or dependent, ministering to the comfort of the white race—but only when as a man and a citizen he seeks to claim equal right and privilege on a public highway with the white citizens of the state."[21]

In *Plessy*, Tourgée captured the degradation and humiliation that the Separate Car Act inflicted on his Afro-Creole clients and argued that point to the Court. He effectively argued that a law that is intended to and will have a degrading psycho-social impact on one class of persons does not provide the equality required under the Equal Protection Clause. Harlan fully embraced this point in his dissent, and this is the key concept on the basis of which the *Brown* court turned away from the reasoning in *Plessy*.

In addition to the *ideas* that the members of the Citizens Committee forcefully expressed, they, especially Martinet, on a personal level may have helped to generate the energy and conviction that Tourgée and his legal team brought to the case. Admittedly, Tourgée had established himself as a dedicated activist and an advanced thinker on racial justice concepts long before he corresponded with Louis Martinet or read the articles authored by Rodolphe

Desdunes. He needed no motivation or education from them. Nevertheless, the commonality of their visions and goals and the close working and personal relationship that Tourgée and Martinet developed must have reinforced and inspired Tourgée's strenuous efforts in *Plessy*. Mark Elliott, Tourgée's biographer, described Tourgée and Martinet as "ideological soulmates."[22] Carolyn Karcher similarly described them as "political soulmates" and close friends.[23]

In "Albion W. Tourgée and Louis A. Martinet: The Cross-Racial Friendship behind *Plessy v. Ferguson*" (2013), Karcher analyzed the exceptional relationship between the two activists. Commonalities between them included "fiery rhetorical styles, uncompromising adherence to principle, contempt for trucklers, fearless disregard of threats against their lives, and possibly their French names, bespeaking roots in cultures outside the Anglo-Saxon sphere (Huguenot in Tourgée's case, Belgian and francophone Creole in Martinet's."[24] Karcher provided examples of their deep respect for each other. While they agreed on almost all issues, when Tourgée and Martinet disagreed, they did so openly trusting in their mutual respect. Martinet, writing as a man of color to a White man during the Jim Crow era, showed no deference in his letters. For example, while Tourgée expressed his Christian faith, Martinet candidly expressed his contempt for religion and its associated hypocrisy.[25] Karcher concluded that their inter-racial friendship had the following significant and unusual characteristics: "Martinet's and Tourgée's refusal to be bound by the racist norms of the nadir, the striking reciprocity their interactions with each other displayed, their recognition of each other as kindred spirits who shared the same tenacious commitment to principle while occupying parallel situations as political outsiders in a hostile society, and their poignant efforts to overcome the barriers that blocked honest communication between the races."[26]

Tourgée held the entire Citizens Committee in the highest regard. In a January 1896 letter to U.S. Senator William E. Chandler, he heaped lavish praise on them as follows: "The effort of the men who have run the *Crusader*, to establish a daily Republican newspaper in New Orleans, is the bravest thing I have ever known and the most heroic endeavor ever made by individuals of the colored race in the United States. I have been familiar with the enterprise, in a sense, ever since its initiation and I must say I have never seen such a dogged resolution and such cheerful self-sacrifice displayed by any group of men as a mere matter of principle and for the benefit of others." Tourgée proceeded to describe in great detail the determined efforts of the men who operated the *Crusader* nearly all of whom also participated on the Citizens Committee. He went so far as to suggest that, if they achieved anything positive in *Plessy*, "the credit will belong wholly to this little company of *Crusader* heroes." He described Martinet as "the glowing heart of the whole enterprise" and "a wonderful man."[27] Although Tourgée may have overstated his case in this letter, the resolute determination of the Citizens Committee deeply impressed and inspired the civil rights lawyer.

Martinet's letters to Tourgée concentrated mostly on political analysis. But his lengthy letters also strayed far into Martinet's personal emotions about the new Jim Crow laws that would give all African-Americans a subordinate status. His profound indignation and anguish sometimes leapt off the page. 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.[28]

Tourgée admittedly already understood the depth of the injustice and damage resulting from Jim Crow. But, given the respect he held for Martinet and the other members of the Citizens Committee, Tourgée's reading of poignant letters from his friend Martinet, such as the one quoted above, must have sharpened his arguments about the social harm of segregation and must have deepened his commitment to give his very best in the multi-year *Plessy* battle.

Plessy Majority Opinion and Harlan Dissent

Of the nine justices on the Supreme Court, seven held that the Separate Car Act did *not* violate the Thirteenth or Fourteenth Amendments, one held that it did violate these amendments, and one who missed the oral arguments abstained. The seven-justice majority completely rejected Plessy's arguments with apparent ease. The majority did not see the need to address the first of the four themes of Tourgée's case discussed above: national rights of all citizens. The Court easily dismissed the second theme – the ambiguity of race – by stating that this point raised questions to be determined by state law. The Court rejected the third argument – laws must be color-blind – as follows: "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."[29] The majority thus revealed its underlying social assumption that racial segregation had its roots "in the nature of things."

The Committee's fourth argument discussed above perhaps constituted the heart of Plessy's case. The real purpose and effect of the Separate Car Act was to place a stamp of inferiority on African Americans. Therefore, the law did not provide the "equal protection"

guaranteed by the Fourteenth Amendment. Consistent with the formalistic approach utilized by most courts at the turn of the twentieth century, the majority in *Plessy* showed little interest in the purpose of the Separate Car Act or its psycho-social effects. The Court held simply that, because the Act required equal facilities and applied equally to both White and "colored" passengers, it afforded the required "equal protection of the laws."[30] The majority observed that the "underlying fallacy" of Plessy's argument consisted 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."[31] In other words, the majority declined to consider the obvious social reality argued so vociferously by Tourgée that Jim Crow laws were intended to and would formalize White supremacy. As long as no inequality appeared on the face of the statute, i.e., as long as the law provided for equal tangible facilities, the law could mandate separation of the races without running afoul of the Equal Protection Clause.

Justice Harlan saw it differently. Not much about Harlan's background would lead one to predict that he would stand alone among the eight deciding justices in favor of vigorous enforcement of the Equal Protection Clause. The seven justices who composed the majority came from northern states including four from Massachusetts. He came from Kentucky, the most southern state represented on the Court.[32] When Harlan's father died in 1863, Harlan administered his father's estate that owned nine slaves. Harlan sold two of them, but kept the other seven slaves in the family. He also purchased two more slaves to assist with household chores in the final years before the abolition of slavery. Harlan's status as a former slaveholder would not normally foretell his bold advocacy for racial equality. Even more ironically, as attorney general of Kentucky after the Civil War, he had strongly *opposed* ratification of the

Thirteenth Amendment abolishing slavery as federal overreach. He argued that Kentuckians must "stay the tide of fanaticism which threatens to sweep away the landmarks erected by our fathers." Harlan similarly opposed the Fourteenth and Fifteenth Amendments between 1867 and 1870 arguing that the amendments constituted federal encroachments on the rightful powers of the states.[33]

However, when he ran for governor of Kentucky (unsuccessfully) as a Republican in 1871, Harlan desperately needed African-American votes. He suddenly reversed his position on the Reconstruction amendments and advocated enforcement of them. Responding to his opponents' charges of inconsistency, the Kentuckian pointed to the paramount importance of ridding the nation of the "perfect despotism" of slavery and concluded "let it be said that I am right rather than consistent."[34] In any case, because Harlan earlier had taken strong positions against the amendments based on states' rights, his confirmation to the Supreme Court in 1877 faced significant opposition in the Senate from some who questioned whether he would support civil rights. Harlan had to confirm his support for strong enforcement of the Constitutional amendments to be confirmed.[35]

In contrast to the majority, Justice Harlan, in his dissenting opinion, agreed in nearly all respects with the broad concept of equality held by the Citizens Committee and articulated to the Court by Tourgée. Harlan implicitly adopted the concept of national citizenship that meant the existence of certain rights for all Americans that cannot be invaded by a state. Harlan flatly declared in favor of the principle that no law may make distinctions on the basis of race and even used Tourgée's "color-blind" term as follows:

> [I]n 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. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.[36]

Unlike the majority, Harlan showed a willingness to look past the form of the Act and to take into account its purpose and its psycho-social consequences. While the majority insisted that nothing on the face of the Act implied the inferiority of African Americans, Harlan vehemently disagreed as follows: "Everyone knows that the statute in question had its origin in the purpose not so much to exclude white persons from railroad cars occupied by blacks as to exclude colored people from coaches occupied by or assigned to white persons. … No one would be so wanting in candor as to assert the contrary."[37]

Using language similar to the "badge of Negro inferiority" employed by Desdunes before the Citizens Committee existed, Harlan continued:

> The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. …
>
> 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.[38]

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. It was designed to place "the brand of servitude and degradation" upon persons of color.

Contrary to any assertions that the Act would promote social harmony and order, Harlan further adopted the Citizens Committee opinion that the Act would result in racial turmoil as

follows: “The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. 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?”[39] Harlan thus asserted that such laws will “render permanent peace impossible.”[40] As expressed many times by the Citizens Committee and by their counsel, Harlan observed that such laws treated African Americans as “inferior and degraded.” Thus, as Tourgée argued, Harlan concluded that, in view of these psycho-social impacts adverse to a class of American citizens, such laws did not provide the equal protection required by the Equal Protection Clause.

NAACP Arguments and *Brown v Board of Education*

For one half of a century after the 1896 *Plessy* decision, opponents of racial segregation gained only a few victories in the Supreme Court.[41] The fundamental principle set forth in *Plessy* that laws that mandated racial segregation did not violate the Equal Protection Clause as long as they called for equal facilities remained untouched. Harlan’s dissent in *Plessy* remained a beacon for civil rights advocates but did not come into play in Supreme Court discourse at all.[42]

However, Charles Hamilton Houston from 1935 to 1940 set the foundation for the NAACP’s eventual attack on the *Plessy* decision. Houston graduated from Harvard Law School in 1922 as the first African American to have been chosen for membership on the prestigious *Harvard Law Review*. Houston soon joined the faculty at Howard Law School in Washington, DC. At Howard, Houston trained a cadre of African-American lawyers dedicated to fighting for equal rights, including Thurgood Marshall, who graduated in 1933.[43] The NAACP hired Houston

in 1935 to coordinate a litigation campaign. With *Plessy*'s sanction of separate but equal facilities standing as established law, Houston fashioned an incremental long-term strategy to defeat it. The NAACP brought lawsuits challenging the equality of segregated facilities that of course tended to be blatantly unequal. These suits when successful required schools, railway companies, and other public service providers to upgrade facilities for African Americans to make them equal to facilities available for White persons. Because these upgrades cost money, this strategy put pressure on the Jim Crow system by making it expensive to maintain.[44]

Some NAACP victories of this type succeeded in chipping away at the *Plessy* precedent during the 1940s. In 1950, the Supreme Court ruled in *Sweatt v. Painter* that the University of Texas Law School had to admit the African-American applicant because Texas could not offer an equal law school education any other way.[45] In the same year, in *McLaurin v. Oklahoma State Regents*, the Court held that the University of Oklahoma must cease segregating – in classrooms, the library, and the cafeteria – the one African-American graduate student that it had admitted to the school.[46] In both cases, the Court issued unanimous decisions that took into account "intangible factors," i.e., more than the equality of only the physical facilities. The Court recognized that equality of education required full membership in the university community.

Encouraged by these decisions and the Supreme Court's increasingly critical view of segregation, the NAACP in 1950 decided that it would no longer seek equal facilities in any of its cases. To pursue equality of facilities in segregated systems would reflect a tacit approval of segregation. Rather, under Thurgood Marshall's leadership, the NAACP dedicated all its resources to challenging the constitutionality of segregation itself. Marshall and his colleagues decided to press again the arguments made by the Citizens Committee and Tourgée and rejected by the *Plessy* court more than fifty years earlier.[47]

Accordingly, in 1950, Supreme Court Justice Robert H. Jackson wrote a private letter to friends informing them that, in the context of equal protection cases that were in play in 1950, he ran across Tourgée's brief filed in *Plessy*. Jackson observed that:

> There is no argument made today that [Tourgée] would not make to the Court. He says, 'Justice is pictured blind and her daughter, the Law, ought at least to be color-blind.' Whether this was original with him, it has been gotten off a number of times since as original wit. Tourgée's brief was filed April 6, 1896 and now, just fifty-four years after, the question is again being argued whether his position will be adopted and what was a defeat for him in '96 be a post-mortem victory.[48]

This comment written by a Supreme Court justice as legal challenges to Jim Crow gathered momentum in 1950 illustrated the lasting power and relevance of the arguments presented by Tourgée on behalf of the Citizens Committee in 1896.

The constitutionality of Jim Crow came to a historic decision point in 1954. The NAACP, under the direction of Marshall, had brought five cases in five different states in which NAACP attorneys had argued that segregated schools violated the Equal Protection Clause. In each case, the NAACP relied on concepts presented by Tourgée in *Plessy* and implemented its strategy of presenting expert testimony of social psychologists concluding that segregated schools inflicted psycho-social harm on African-American students whether or not the tangible facilities were equal. Nevertheless, all of the lower courts upheld the segregated school systems under the *Plessy* precedent. The NAACP appealed each case and the Supreme Court consolidated the appeals into the case known as *Brown v Board of Education*.[49]

Constance Baker Motley belonged to the team of NAACP attorneys that litigated the *Brown* case. Motley gained further distinction as the first African-American woman to serve as a U.S. federal judge after being appointed by President Lyndon Johnson in 1966. In her autobiography, Motley described Harlan's dissent in *Plessy* as "the germination of our twentieth-century legal heritage" and "the basis of our legal arguments to end segregation in education."[50]

According to Motley, the NAACP frequently quoted Harlan's dissent in *Plessy* in its briefs attacking Jim Crow laws.[51] For example, in the *Brown* case, the NAACP argued:

> Justice Harlan knew all too well that the seeds for continuing racial animosities had been planted. … Our constitution, said Justice Harlan, 'is color-blind, and neither knows nor tolerates classes among citizens.' It is the dissenting opinion of Justice Harlan, rather than the majority opinion in *Plessy v Ferguson*, that is in keeping with the scope and meaning of the Fourteenth Amendment as consistently defined by this Court both before and after *Plessy v. Ferguson*.[52]

In the final oral arguments in the *Brown* case, the attorney representing the school boards, John W. Davis, suggested dismissively that the only thing that African-Americans were trying to obtain in the case is "racial prestige." In words that could have been spoken by Louis Martinet, Marshall sharply responded: "Exactly right. Ever since the Emancipation Proclamation, the Negro has been trying to get … the same status as anybody else regardless of race."[53]

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 on behalf of the Citizens Committee and then by Harlan, the court in *Brown* established that the provision by a state law for equality of "tangible" facilities did not by itself meet the equal protection standard. The inequality arose from the psycho-social impact of the racial distinction built into the law. The Court cited seven studies conducted by social psychologists that the NAACP had presented and observed that, with respect to school children of color: "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 Court quoted an opinion from a Kansas court that had nevertheless ruled against the African-American claimants under the *Plessy* precedent as follows:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

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. … Separate educational facilities are inherently unequal." Therefore, the Court held, segregation deprives African Americans of "the equal protection of the laws guaranteed by the Fourteenth Amendment."[54]

In summary of the Constitutional legacy left by the Citizens Committee, as soon as White supremacists proposed the Separate Car Act in 1890, members of the Committee began to formulate and publish Constitutional objections to such laws. At the beginning of the Jim Crow regime, Committee members articulated in the public arena reasons why segregation required by law offended Constitutional principles. The Committee organized the *Plessy* case and engaged Albion Tourgée to argue effectively its vision of color-blind equality to the Supreme Court. Tourgée's profound admiration of the Citizens Committee, and his close friendship with Martinet, must have enhanced Tourgée's appreciation of the humiliation suffered by African Americans under Jim Crow and must have energized Tourgée's advocacy in the case. Although the majority ruled against Plessy, the Committee succeeded in placing its vision in the permanent public record in the form of legal briefs filed on their behalf and, more impactfully, in a dissenting opinion of a Supreme Court justice. The psycho-social damage resulting from Jim Crow formed the key concept that Tourgée argued on behalf of the Citizens Committee in

Plessy. The existence of such damage was rejected by the *Plessy* majority, eloquently embraced by John Harlan in his dissent, argued again with formal evidence by the NAACP in *Brown*, and ultimately accepted by the Supreme Court in *Brown*. In other words, a fairly linear relationship existed between the philosophy and actions of the Citizens Committee, the arguments presented in *Plessy*, the powerful Harlan dissent, the NAACP arguments pressed in the 1950s, and finally the *Brown* decision striking down Jim Crow.

INSPIRATIONAL LEGACY

Model of Legal Resistance to Jim Crow

The members of the Citizens Committee lived at the time that southern state legislatures enacted the first tranche of the Jim Crow laws that applied to transportation. While these laws offended many African Americans and some White persons, no other group managed to organize a case to test the constitutionality of these laws. Utilizing its exceptional economic and intellectual resources, the Citizens Committee seized the initiative and prosecuted the case over a period of four years. It presented to the Supreme Court the soundest and strongest arguments to strike down Jim Crow that could have been constructed at that time. The Committee did *not* act out of any calculation that it would win the case. Rather, its members proceeded on the basis of their undying conviction that Jim Crow was unjust and that they had the duty as American citizens to resist injustice. The Citizens Committee's actions created a model of legal resistance at the very beginning of the Jim Crow era that informed and inspired later activists.

In *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (2004), Constitutional historian Michael J. Klarman provided a thorough analysis of the question how much the Supreme Court's civil rights decisions have resulted in change in actual social conditions. Klarman's review extended from *Plessy* to *Brown.* He argued that, if the Supreme

Court had struck down Jim Crow laws in *Plessy*, the decision would have been utterly disregarded in the South and the federal government at that time had neither the will nor the resources to enforce it. The decision would have mattered little.[55] However, Klarman acknowledged that "litigation can also have consequences that are independent of those that result from Court decisions. …Whether or not it succeeded in securing Court victories, litigation may have had educational, organizational, and motivational consequences for the civil rights movement."[56] Shawn Alexander and Susan D. Carle, in their works reviewing civil rights activists of the nadir period, strongly agreed with Klarman on the specific point that civil rights activism, including litigation, helped to lay the foundation for later success, whether or not the activism achieved any tangible success in the short term.[57]

In the South in the 1890s, with the frequency of lynching skyrocketing tragically, African Americans had no method of protest available without bearing a substantial risk of serious physical violence or economic retaliation. Litigation offered the least dangerous method because it occurred within the order of a courthouse rather than in the streets. However, in most southern communities, even litigation would subject the claimants to significant risk of retaliation. Due to its uniquely tolerant racial environment, New Orleans may have been the only city in the South, especially the deep South, where claimants stood a good chance of avoiding serious retaliation from White supremacists.[58]

Although Klarman persuasively demonstrated that court decisions often have little immediate effect on social conditions, Klarman did not place sufficient weight on the powerful moral impact of a Supreme Court decision. The road to eventual desegregation would have been much shorter had the *Plessy* court declared Jim Crow unconstitutional. However, Klarman articulated the important point for this thesis that litigation can produce psychological benefits for

a movement even if the activists lose the case. The Citizens Committee's creation of itself and successful execution of a plan to bring a legal case testing the constitutionality of Jim Crow laws to the Supreme Court resulted in three meaningful benefits for the civil rights movement: education, organization, and inspiration.

First, the *Plessy* suit educated both African-American and White citizens – from all parts of the nation – about the oppressive Jim Crow laws that were emerging in the South and the legal weapons to attack these laws resting in the language of the Fourteenth Amendment. Newspapers throughout the nation provided coverage for Supreme Court decisions. So the *Plessy* suit helped to bring to the attention of the public in the North the oppressive conditions that were descending on African Americans in the South. In addition, the forceful articulation by the Citizens Committee's legal team of the reasons that such laws violated the principles of equality set forth in the Constitution sharpened the understanding of African Americans about their rights. Likewise, the legal process required that the Supreme Court address these arguments in a reasoned writing and subjected the Court's reasoning to public scrutiny. Political scientist, diplomat, and civil rights leader Ralph Bunch observed in 1973: "Court decisions, favorable or unfavorable, serve to dramatize the plight of the race more effectively than any other recourse: their propaganda and educative value is great."[59] This concept likely is what Tourgée had in mind when he wrote that, even if he did not succeed in having Jim Crow legislation stuck down, he hoped to "at least give it a very black eye."[60] Moreover, the Citizens Committee modeled the effective use of a newspaper – the *Crusader* – to educate and motivate the community.

Second, the Citizens Committee created a blueprint for oppressed communities to organize to contest an unjust law. The power and influence of the concerted action of a community in most cases outweighs the action of any individual. Thus the Citizens Committee identified the

methodology of the test case before this methodology had become established. The Committee achieved broad-based funding of the *Plessy* suit explicitly as a "a proof of public sentiment and determination."[61] In addition to engaging skilled and dedicated attorneys to represent their cause in court, the Committee through Louis Martinet fulfilled the critical and undervalued role of managing all the logistics and details of the case "on the ground." These steps required substantial resources, social status, and the will to resist that the Citizens Committee uniquely possessed in the 1890s. These actions showed African-American communities how to organize lawsuits effectively over the succeeding sixty years. The Citizens Committee thus set a precedent for effective, concerted legal action by a community victimized by unjust laws.

Third, the determined legal resistance shown by the Citizens Committee to Jim Crow laws in the face of a nation and a Supreme Court that had not shown any receptiveness to their vision of color-blind equality surely must have inspired activists in the late 1940s and 1950s when the political environment had changed somewhat in their favor.[62] NAACP lead attorney Charles Hamilton Houston declared in 1934 that one purpose of litigation should be to "arouse and strengthen the will of local communities to demand and fight for their rights."[63] NAACP leaders such as Houston and Thurgood Marshall must have appreciated the courage of the Citizens Committee to contest Jim Crow during the daunting early Jim Crow era. In retrospect, given the incremental approach they adopted in the 1930s and 1940s, NAACP attorneys may have regarded the *Plessy* suit as strategically unsound. However, they surely must have been inspired by the show of resistance on principle despite its low odds of success.

The members of the Citizens Committee apparently understood, or at least hoped, that their efforts would inspire and motivate later activists. Martinet likely had this hope in mind when he wrote to Tourgée while the case was pending: "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."[64] The adverse *Plessy* decision did not appear to chasten the Citizens Committee members in the least. In its final statement after the decision, the Committee proudly proclaimed "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."[65] In *Our People and our History: Fifty Creole Portraits* written in 1911 (English translation published in 1973), Rodolphe Desdunes considered the efforts of the Citizens Committee to have achieved success despite its defeat in Court in that "not one of its plans went awry." He explained that "our people had the satisfaction of pushing the American government to the wall."[66]

Impact of Harlan Dissent on National Activism

The Citizens Committee's efforts would have resulted in these extra-legal psychological benefits for the African-American community even if John Harlan had agreed with the majority and it had suffered a total 8-0 defeat. But they did not suffer a total defeat. Harlan stood apart and wrote into Constitutional history a powerful dissenting exposition that captured the convictions of the Citizens Committee concerning the promises of equality embodied in the Declaration of Independence and in the Fourteenth Amendment. Harlan's powerful dissenting opinion has inspired civil rights activists for more than a century.

Prior to *Plessy*, Harlan had issued a dissenting opinion in *The Civil Rights Cases* wherein he argued for a broad construction of the Fourteenth Amendment under which the Civil Rights Act of 1875 would be upheld. Frederick Douglass bitterly criticized the majority opinion. But, with reference to Harlan's dissent, Douglass urged African Americans to be consoled by the "transcendental idea, that one man with God is a majority; that if such a man does not represent what is, he does represent what ought to be, and what ultimately will be."[67] Douglass' hopeful and

prophetic perspective on Harlan's dissent in the *Civil Rights Cases* would apply with even more force to the justice's dissent in the even more impactful *Plessy* case. Peter S. Canellos, Harlan's biographer, assessed the impact of his lone dissent in *Plessy* on generations of civil rights activists as follows: "The difference between one and none was that between hope and no hope, light and darkness."[68] In 1911, Charles Waddell Chesnutt, African-American novelist, civil rights advocate, and lawyer, delivered the following tribute: "All honor to Justice Harlan. There is no more inspiring spectacle than this grand old man, ever steadfast to right and justice, fighting unwearingly, never yielding, and almost always defeated, for the principles which were so dearly bought by the Civil War.[69]

Harlan wrote his bold dissent only because the equally bold actions of the Citizens Committee forced the Supreme Court to confront the issue. Harlan's words directly inspired Thurgood Marshall and his NAACP colleagues in their long-term successful campaign to overturn *Plessy*. Marshall died in 1993 after serving as the first African-American Supreme Court justice. Constance Baker Motley, Marshall's close colleague at the NAACP, spoke at a memorial gathering for Marshall shortly after his death. Motley included the following remarkable tribute to John Harlan:

> Marshall had a 'bible' to which I believe he must have turned during his most depressed episodes. The 'bible' would be known in the legal profession as the first Mr. Justice Harlan's dissent in *Plessy v. Ferguson*. I do not know of any opinion on which Marshall relied more in his pre-*Brown* days than the Harlan dissent, which has since become the law of the land. Even the most conservative justice would not say in 1993 that Mr. Justice Harlan was wrong. I remember the pre-*Brown* days when Marshall's legal staff would gather around him at a table in his office to discuss possible new theories for attacking segregation. Marshall would read aloud passages from Harlan's amazing dissent. I do not believe we ever filed a brief in the pre-*Brown* days in which a portion of that opinion was not quoted. Marshall's favorite quotation was 'Our constitution is color blind.' It became our basic legal creed.[70]

Significantly, the NAACP attorneys who achieved a reversal of *Plessy* drew their "basic legal creed" from Harlan's language referring to the "color blind" Constitution. That language had appeared in the brief filed in *Plessy* on behalf of the Citizens Committee.[71]

Motley concluded poignantly that "Marshall admired the courage of Harlan more than any justice who has ever sat on the Supreme Court. Even Chief Justice Earl Warren's forthright and moving decision for the Court in *Brown* …did not affect Marshall in the same way. Earl Warren was writing for a unanimous Supreme Court. Harlan was a solitary and lonely figure writing for posterity."[72]

Rebirth of the Citizens Committee in New Orleans

Motley furnished evidence that the Citizens Committee indirectly – through Harlan's dissent – inspired profoundly the attorneys at the very center of the national civil rights movement. Similarly, the Citizens Committee directly inspired civil rights activism in New Orleans that eventually succeeded in thwarting Jim Crow. Alexander P. Tureaud, a New Orleans attorney, led those efforts in coordination with the NAACP from the 1930s through the 1960s. At the height of the civil rights movement, a New Orleans organization that named itself the "Citizens Committee" formed to pressure the White New Orleans establishment into peaceful desegregation.

Alexander P. Tureaud grew up in the early twentieth century in a New Orleans family with deep Afro-Creole roots. At extended family gatherings, Tureaud frequently heard about courageous Afro-Creole leaders who had challenged the Jim Crow laws that continued to isolate and oppress their community. Louis Martinet and Rodolphe Desdunes headed the list of his family's heroes. According to Tureaud's biographers, "when he grew up, Alex recognized the

breadth of their contributions and developed an abiding respect for their courageous persistence and sacrifice."[73]

Jim Crow society did not offer much opportunity for African Americans during Tureaud's youth. This bleak outlook remarkably caused four of his five sisters to "pass" into White society. Each of these departures felt something like a death in the family.[74] Because New Orleans did not offer public high school education to African Americans, and he saw few appealing employment options, Tureaud left New Orleans as a teen-ager to find opportunities that matched his intelligence and ambition. He ended up in Washington, DC, earned a high school degree, and then earned a law degree at Howard University in 1925 (while Charles Hamilton Houston taught there and five years before Thurgood Marshall began to study law there).[75]

Tureaud's studies at Howard again exposed him to discussions of the heroic efforts of the Citizens Committee, including Martinet and Desdunes. Tureaud's biographers explained: "As a Creole, Tureaud felt connected to both men, and they became his role models. As a lawyer, he felt compelled to follow in their footsteps and to satisfy a yearning to 'right the wrongs.'" Tureaud returned to New Orleans to start his legal career and managed to meet one of his role models, Rodolphe Desdunes, before Desdunes' death in 1928. Although Desdunes was fifty years older than Tureaud, they shared a deep commitment to the tradition of principled Afro-Creole legal resistance. Tureaud especially appreciated the prolific efforts of Desdunes and other Citizens Committee members to disseminate their egalitarian vision through articles in the *Crusader*. Tureaud identified with this approach, and, as an attorney, used the press to advocate for civil rights.[76]

Tureaud's profound admiration of his Afro-Creole predecessors must have motivated his relentless civil rights activism. In 1936, only five African-American attorneys practiced law in Louisiana. Perceiving the need for mutual support, Tureaud organized them into a group and named it the Louis A. Martinet Society. In 1953, Tureaud recreated an association of African-American attorneys in Louisiana, again under the name the Louis A. Martinet Society.[77] Although creating an organization exclusively for members of a particular race arguably ran counter to the principles of a multi-racial society held dear by both Martinet and Tureaud, Tureaud nonetheless justified this action as follows: "Negroes had nothing to fight with. They didn't have any of the materials of war. They only had their physical being and whatever persuasion they could bring to bear by group activity or something like that. We in Louisiana had to depend upon our own resources for whatever we could achieve or whatever gains we could make."[78]

Tureaud stood out as the leading civil rights activist in Louisiana from the 1930s through the 1960s. Both he and Thurgood Marshall believed fervently that African-American attorneys should represent their cause in court to show the world that they possessed skills and qualities equal to White attorneys. Reminiscent of the self-confidence of Louis Martinet, Tureaud bitterly denounced the "inferiority complexes" that he claimed caused local African-American NAACP officials to favor White attorneys over African-American attorneys. Eventually the national NAACP and Marshall designated Tureaud to handle its New Orleans cases and worked closely with him. Tureaud's first notable success came in 1941 when he represented African-American teachers in *McKelpin v. Orleans Parish School Board*. Consistent with the overall NAACP strategy at that time of demanding equal treatment under *Plessy*'s interpretation of the Fourteenth Amendment, Tureaud sought pay for 1,200 African-American teachers that equaled pay for

White teachers in New Orleans. The parties settled the case with the approval of Marshall when the School Board agreed to equalize pay over a two-year period. Even more significantly, the Louisiana judge, in approving the settlement, stated that the unequal pay violated the Fourteenth Amendment.[79]

By 1950, the NAACP had shifted its strategy from seeking equal facilities under a segregated Jim Crow regime to attacking the constitutionality of racial segregation itself. Accordingly, in 1952, Tureaud initiated a suit, *Bush v. Orleans Parish School Board*, that challenged segregation in the New Orleans school system. Tureaud positioned the case so that it could be appealed to the United States Supreme Court as the test case for the constitutionality of segregated schools. However, the proceedings in *Bush* trailed the proceedings in the other five NAACP cases that the Supreme Court consolidated into the momentous *Brown* case.[80] After the *Brown* decision declaring that schools must be desegregated, Tureaud sought to enforce the ruling in New Orleans through litigation. But White citizens in New Orleans, as in the rest of the South, bitterly resisted court-ordered desegregation. The New Orleans school board filed numerous appeals and employed other delay tactics. Segregationists initiated a legal attack against some of the NAACP practices that greatly interfered with the NAACP's ability to function. During the five years when Tureaud sought to have the *Brown* decision enforced in New Orleans, segregationists launched a steady stream of threats to the life and health of Tureaud and his family. These caused great anxiety and stress for his family.[81]

Tureaud and his colleagues fought and eventually overcame the most aggressive legal and political delay tactics imaginable. In 1960, U.S. Fifth Circuit Court of Appeals Judge J. Skelly Wright finally compelled Orleans Parish School Board officials to admit four African-American girls, age six, to two formerly all-White elementary schools. Federal marshals escorted

the students to and from school to protect them from a storm of bitter protests, threats, and harassment from White segregationists. Until the end of the 1960s, Tureaud and the NAACP fought unrelenting legal battles to end the racial segregation in New Orleans schools that they first had contested in *Bush* in 1952 and that the Supreme Court had declared unconstitutional in 1954.[82] One must wonder how often during these exhausting and discouraging conflicts Tureaud had to reflect on the determination of the Citizens Committee of the 1890s to marshal the energy to carry on.

As in other cities during the civil rights movement, activists in New Orleans sought to desegregate all aspects of public life. In 1957, Marcus Christian, a New Orleans poet, suggested that "a new Citizens' Committee come forward to wipe out the long, stinging defeat suffered in the case of *Plessy v. Ferguson*." In the midst of the turmoil caused by the school desegregation effort, various civil rights groups in New Orleans did unite. Significantly, they referred to the coalition of groups as the "Citizens Committee." The new Citizens Committee had a broader base than the one that operated in the 1890s. It included leaders from the Interdenominational Ministerial Alliance, the Urban League, the NAACP, the Consumers' League, and the newer and more aggressive Congress of Racial Equality (CORE). The Citizens Committee of the late 1950s comprised older, more conservative, light-skinned, Afro-Creole members as well as many younger, more radical non-Creole African-American members. In contrast to many of the Afro-Creole leaders who stuck to the vision of a color-blind society promoted by the 1890s Citizens Committee, CORE leaders emphasized "pride in their blackness and African origins" and regarded some of the "light-skinned members" as "bourgeois conservatives." The Committee's primary spokesperson, attorney Lolis Elie, later described the coalition as "tenuous."[83]

Nevertheless, all of these diverse groups composing the "new" Citizens Committee agreed on one all-important tenet of the old Citizens Committee: that Jim Crow laws and practices had no legitimate place in America and must be eliminated. Thus, under the banner of the "new" Citizens Committee, the African-American community succeeded in negotiating slow but significant change with groups that represented the White community. For example, in 1962, New Orleans Canal Street merchants agreed to desegregate their lunch counters. In 1963, they and the city of New Orleans agreed to end certain racially discriminatory hiring practices and remove signs that restricted access of African Americans to public places.[84]

One can distinguish the civil rights movement in New Orleans in the 1960s from the movement in other major cities in one important respect. It made progress through negotiation without violent protest. New Orleans stood out as the only major city in the United States that never experienced a major riot during the 1960s.[85] The "new" Citizens Committee represented the entire African-American community. Thus, it persuaded its more aggressive factions such as CORE to refrain from engaging in street violence while the Committee negotiated changes with representatives of the White community. At the same time, some of the groups that belonged to the Citizens Committee continued to apply pressure by filing anti-discrimination lawsuits. And the Citizens Committee negotiators understood that the threat of violence that had erupted in many other cities motivated the representatives of the White power structure to agree to end Jim Crow practices in order to avoid disruptive street protests and riots in New Orleans.[86] In addition, linking to the principled philosophy of legal resistance utilized by the Citizens Committee of the 1890s, civil rights historian Adam Fairclough explained the avoidance of destructive violence in New Orleans in the 1960s as follows: "Members of the oldest urban black community in

America," i.e., the free people of color, "they had a sense of belonging."[87] Thus Fairclough described the movement in Louisiana as "moderate, legalistic, incremental."[88]

Ernest ("Dutch") Morial perhaps was the most prominent twentieth-century beneficiary of the legacy of legal challenge to Jim Crow established by the Citizens Committee of the 1890s. A light-skinned Afro-Creole thirty years younger than Alexander Tureaud, Morial became the first African American to graduate from Louisiana State University's law school in 1954. Morial then joined Tureaud's law practice and benefited from the veteran civil rights attorney's mentorship. After working with Tureaud to make his name as a young activist attorney during the civil rights movement, Morial in 1967 gained distinction as the first African American since Reconstruction to be elected to the Louisiana legislature. He also was the first African American in Louisiana to serve as a U.S. assistant attorney, a juvenile court judge, and a Louisiana appellate court judge. Morial's color-barrier shattering career culminated in his election in 1977 as New Orleans' first African-American mayor.[89]

Like Tureaud and many members of the first Citizens Committee, Morial probably could have "passed" into White America, but he identified with the African-American community. Morial's vision aligned with that of the Citizens Committee of the 1890s: a multi-racial color-blind society – in his words "more of a moral and human rights thing that affects all people." Morial insisted on focusing on merit and competence instead of color in his administration of the mayor's office.[90] Historian Arnold R. Hirsch argued that Dutch Morial embodied the principles of "creole radicalism" asserted by the first Citizens Committee. Hirsch asserted that Morial fell squarely into the camp of "Latin" instead of "Anglo-Saxon" African American using the distinctions that Rodolphe Desdunes had described in 1907. In Hirsch's view, Morial conducted himself like Desdunes' "moral" African American who sought to be "respected rather than

protected" and who made "every effort to acquire merits" while the "practical" Anglo-Saxon African American tried "to gain advantages."[91]

Morial's principled positions theoretically could appeal to all citizens. However, a White columnist wrote in 1977 that "Dutch Morial's problem is that he's too white for the blacks, and too black for the whites."[92] In a society limited by racial dualism, this observation probably was accurate politically. Morial struggled to make his egalitarian "creole radicalism" work. Nearly a century after the Citizens Committee fought for equality and a multi-racial color-blind society, their New Orleans Afro-Creole legatee, Dutch Morial, had to continue the fight.

In summary of the legacy of inspiration left by the Citizens Committee: its bold and effective organization of the *Plessy* suit in Jim Crow's infancy established a model of legal resistance to racial injustice. The Committee's actions resulted in educational, organizational, and inspirational benefits for subsequent civil rights activists. The *Plessy* case resulted in the ringing Harlan dissent that directly furnished hope and inspiration to Thurgood Marshall and the other NAACP attorneys who succeeded in reversing the *Plessy* decision. Moreover, the leading twentieth-century civil rights attorney in New Orleans, Alexander Tureaud, structured his entire career on the model of valiant legal resistance established by the Citizens Committee. The 1890s Citizens Committee had made such a lasting impression in New Orleans that the coalition of activist groups that achieved desegregation in New Orleans in the 1960s through principled resistance named their organization the Citizens Committee.

END NOTES

[1] U.S. Const. amend. XIV, sec. 1.

[2] Charles A. Lofgren, *The Plessy Case, A Legal-Historical Interpretation* (New York: Oxford University Press, 1987), 78-80. Otto H. Olsen argued that fear of rampant populism in the 1890s drove the conservative Supreme Court to issue the *Plessy* decision to maintain social order and stability. See Otto H. Olsen, "Reflections on *Plessy v. Ferguson* Decision of 1896," in *Louisiana's Legal Heritage*, ed. Edward F. Haas (Pensacola: Perdido Bay Press, 1986), 180-83.

[3] Doug McAdam, *Political Process and the Development of Black Insurgency, 1930-1970* (Chicago: University of Chicago Press, 1982), 17.

[4] *Civil Rights Cases*, 109 U.S. 3 at 25.

[5] Steve Luxenberg, *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation* (New York: W.W. Norton & Company, 2019), 351-55; Brook Thomas, ed., *Plessy v. Ferguson: A Brief History with Documents* (Boston: Bedford Books, 1997), 24-26.

[6] *Civil Rights Cases*, 109 U.S. 3 at 26.

[7] Luxenberg, *Separate*, 356.

[8] "Protest of the American Citizens' Equal Rights Association of Louisiana Against Class Legislation," May 24, 1890, Albion W. Tourgée Papers, Chautauqua County Historical Society, Westfield, New York.

[9] "Report of Proceedings of the Citizens Committee," 1891, Box 1, Folder 13, Charles B. Roussève Papers, Amistad Research Center, Tulane University.

[10] Rodolphe L. Desdunes, "To Be or Not to Be," *Crusader,* July 4, 1891, Box 1, Folder 8, Roussève Papers.

[11] Rodolphe L. Desdunes, "Legislation and Legislators," *Crusader*, June 11, 1892, New Orleans *Crusader* Newspaper Collection (1889-1896), Xavier University of Louisiana, New Orleans.

[12] Albion W. Tourgée and James C. Walker, "Brief of Plaintiff in Error. In the Supreme Court of the United States," 3, Tourgée Papers.

[13] Ibid., 11-13.

[14] Ibid., 17.

[15] Ibid., 19.

[16]"Argument of A.W. Tourgée," 16, Tourgée Papers.

[17] Tourgée and Walker, "Brief of Plaintiff in Error," 10.

[18] Ibid., 3.

[19] Ibid., 26.

[20] Ibid., 19.

[21] Ibid., 31.

[22] Mark Elliott, *Color-Blind Justice: Albion Tourgée and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson* (New York: Oxford University Press, 2006), 249.

[23] Carolyn L. Karcher, "Albion W. Tourgée and Louis A. Martinet: The Cross-Racial Friendship behind *Plessy v. Ferguson*," *Multi-Ethnic Literature of the United States* 38, no. 1 (Spring 2013): 21.

[24] Ibid., 22.

[25] Ibid., 20-21; Martinet to Tourgée, July 4, 1892, 12-14, Tourgée Papers.

[26] Karcher, "Albion W. Tourgée and Louis A. Martinet," 18.

[27] Tourgée to William E. Chandler, January 30, 1896, Tourgée Papers.

[28] Martinet to Tourgée, May 30, 1983, 2, Tourgée Papers.

[29] *Plessy v. Ferguson,* 163 U.S. 537 at 544 (1896).

[30] Five of the nine southern states that had enacted railway segregation laws expressly provided for "equal" facilities in an apparent effort to plant a defense against a claim that the law violated the Equal Protection Clause. Lofgren, *The Plessy Case*, 26.

[31] *Plessy v. Ferguson,* 163 U.S. 537 at 551 (1896).

[32] Keith Weldon Medley, *We as Freemen: Plessy v. Ferguson* (Gretna, LA.: Pelican Publishing Company, 2003), 194.

[33] Luxenberg, *Separate,* 198-99, 202, 211; Loren P. Beth, *John Marshall Harlan: The Last Whig Justice* (Lexington: University Press of Kentucky, 1992), 69, 74-75.

[34] Beth, *John Marshall Harlan,* 89, 92-93.

[35] Peter S. Canellos, *The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero* (New York: Simon & Schuster, 2021), 228.

[36] *Plessy v. Ferguson*, 163 U.S. 537 at 559 (1896).

[37] Ibid., 557

[38] Ibid., 562.

[39] Ibid., 560.

[40] Ibid., 561.

[41] For example, in *Buchanan v. Warley*, 245 U.S. 60 (1917), the Court struck down a Louisville, Kentucky ordinance that prohibited White persons from selling property to African-Americans in certain areas. But the Court based its ruling on property rights and not on the right of equal protection. For another example, in *Missouri ex. rel. Gaines v. Canada*, 245 U.S. 60 (1938), the Court held that a Missouri law that provided funding for African-Americans to attend graduate schools in other states did not meet the *Plessy* requirement of providing equal facilities.

[42] Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 61-170.

[43] Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1994), 6-7.

[44] Ibid., 12-13.

[45] *Sweatt v. Painter,* 339 U.S. 629 (1950).

[46] *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

[47] Tushnet, *Making Civil Rights Law*, 146-47, 155.

[48]Robert H. Jackson to Ernest Cawcroft and Walter H. Edson, April 4, 1950, quoted in Otto H. Olsen, *Carpetbagger's Crusade: The Life of Albion Winegar Tourgée* (Baltimore: The Johns Hopkins University Press, 1965), 354.

[49] Harvey Fireside, *Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism* (New York: Carroll & Graf Publishers, 2004), 283-93.

[50] Constance Baker Motley, *Equal Justice Under Law: An Autobiography* (New York: Macmillan, 1965), 91, 102.

[51] Constance Baker Motley, "Remembering Thurgood Marshall," in Canellos, *The Great Dissenter,* 495; https://www.c-span.org/video/?52457-1/memorial-thurgood-marshall.

[52] Canellos, *The Great Dissenter*, 468.

[53] Tushnet, *Making Civil Rights Law,* 207.

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

[55] Klarman, *From Jim Crow to Civil Rights*, 47-50.

[56] Ibid., 7.

[57] Shawn Leigh Alexander, *An Army of Lions: The Civil Rights Struggle Before the NAACP* (Philadelphia: University of Pennsylvania Press, 2012), xii-xiv; Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (New York: Oxford University Press, 2013), 3.

[58] Klarman, *From Jim Crow to Civil Rights*, 49-50.

[59] Ibid., 166.

[60] Tourgée to William E. Chandler, January 30, 1896, Tourgée Papers.

[61] "Report of Proceedings of the Citizens Committee," 1891, Box 1, Folder 13, Roussève Papers.

[62] See Klarman, *From Jim Crow to Civil Rights,* 173-190, for an analysis of the long-term forces for racial change in the United States that the Second World War magnified.

[63] Klarman, *From Jim Crow to Civil Rights*, 165.

[64] Martinet to Tourgée, May 30, 1983, 3, Tourgée Papers.

[65] "Report of Proceedings of the Citizens Committee," 1891, Box 1, Folder 13, Roussève Papers.

[66] Desdunes, *Our People and our History*, 148.

[67] Canellos, *The Great Dissenter,* 32.

[68] Ibid., 7.

[69] Thomas, *Plessy v. Ferguson*, 159.

[70] Constance Baker Motley, "Remembering Thurgood Marshall," in Canellos, *The Great Dissenter,* 494-95; https://www.c-span.org/video/?52457-1/memorial-thurgood-marshall.

[71] While Thurgood Marshall deeply admired Justice Harlan's advocacy for a color-blind Constitution in 1896, Marshall just as deeply disagreed with those who argued in the 1970s that the principle of color-blindness should render affirmative action programs unconstitutional. In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), the majority of the U.S.

Supreme Court held in violation of the Equal Protection Clause a requirement at the University of California at Davis Medical School that at least sixteen of 100 students admitted be members of a racial minority. Marshall, then a Supreme Court justice, dissented and explained his rationale as follows:

> [h]ad the Court been willing in 1896, in *Plessy* v. *Ferguson,* to hold that the Equal Protection Clause forbids differences in treatment based on race, we would not be faced with this dilemma in 1978. We must remember, however, that the principle that the "Constitution is color-blind" appeared only in the opinion of the lone dissenter. The majority of the Court rejected the principle of color blindness, and for the next 60 years, from *Plessy* to *Brown* v. *Board of Education,* ours was a Nation where, *by law,* an individual could be given "special" treatment based on the color of his skin.
>
> It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. … I do not believe that anyone can truly look into America's past and still find that a remedy for the effects of that past is impermissible. *Regents of the University of California v. Bakke*, 438 U.S. 265, at 401-02 (1978).

See Thomas, *Plessy v. Ferguson*, 172-176, for analysis of the "paradox" that lies at the heart of the argument for affirmation action. See Peter C. Myers "The Origins of Color-Blindness: Lessons from the Political Thought of Albion Tourgée," *American Political Thought* 5, no. 4 (Fall 2016): 567-603 that suggests that Tourgée's advocacy for color-blindness did not and would not apply to distinctions based on race designed to remedy historical inequality.

[72] Ibid.

[73] Rachel L. Emanuel and Alexander P Tureaud Jr., *A More Noble Cause: A. P. Tureaud and the Struggle for Civil Rights in Louisiana* (Baton Rouge: Louisiana State University Press, 2011), 19.

[74] Ibid., 52.

[75] Donald E. DeVore, *Defying Jim Crow: African American Community Development and the Struggle for Racial Equality in New Orleans, 1900–1960* (Baton Rouge: Louisiana State University Press, 2015), 60-61.

[76] Emanuel, *A More Noble Cause*, 53-55.

[77] Tureaud to Nils R. Douglas, October 24, 1966, Box 1, Folder 7, 27, Nils R. Douglas Papers, Amistad Research Center, Tulane University.

[78] Emanuel, *A More Noble Cause*, 244-45.

[79] Devore, *Defying Jim Crow*, 196-99. Arnold R. Hirsch, "Simply a Matter of Black and White: The Transformation of Race and Politics in Twentieth-Century New Orleans," in *Creole New Orleans: Race and Americanization,* ed. Arnold R. Hirsch and Joseph Logsdon (Baton Rouge: Louisiana State University Press, 1992), 269-70. Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972* (Athens: University of Georgia Press, 1995), 71.

[80] Emanuel, *A More Noble Cause*, 156-57.

[81] Ibid., 195-98.

[82] Ibid., 205-11.

[83] Hirsch, "Simply a Matter of Black and White," 284-86; Kim Lacy Rogers, *Righteous Lives: Narratives of the New Orleans Civil Rights Movement* (New York: New York University Press, 1995), 77; Kim Lacy Rogers, "Humanity and Desire: Civil Rights Leaders and the Desegregation of New Orleans, 1954-1966" (PhD diss., University of Minnesota, 1982), 307-22.

[84] Hirsch, "Simply a Matter of Black and White," 286; Rogers, *Righteous Lives*, 75-77.

[85] Fairclough, *Race and Democracy*, 427.

[86] Rogers, "Humanity and Desire," 307-22.

[87] Fairclough, *Race and Democracy,* 427.

[88] Ibid., xix.

[89] Rogers, "Humanity and Desire," 5.

[90] Hirsch, "Simply a Matter of Black and White," 292, 313-14.

[91] Ibid., 306.

[92] Ibid., 317.

CHAPTER FIVE: UNHERALDED ACTIVISTS

The Citizens Committee of the 1890s inserted into Supreme Court discourse Constitutional concepts of color-blind equality, produced a historically impactful dissenting opinion authored by Justice Harlan, and established a model of resolute legal resistance to Jim Crow that educated and inspired future activists. After having demonstrated in the preceding chapter this important legacy left by the Citizens Committee for the civil rights movement in the mid-twentieth century, this final chapter will return to the 1890s. Although historians have paid more attention to other civil rights groups in this era, this chapter will argue that the Citizens Committee contributed more directly to the later successes of the civil rights movement than any other activist group of the 1890s.

The two historians who have published monographs in the last decade analyzing the contributions of civil rights groups in this era have overlooked completely the Citizens Committee. Shawn Leigh Alexander in *An Army of Lions: The Civil Rights Struggle Before the NAACP* (2012), and Susan D. Carle in *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (2013), offered significant historiographical contributions in that they argued persuasively the value of very early civil rights activism for later generations. Alexander covered the Afro-American League (AAL), the National Afro-American Council (AAC), the Constitution League, the Committee of Twelve, and the Niagara Movement as the organizations that "laid the institutional, ideological, and political groundwork" for the establishment of the NAACP in 1909.[1] Carle studied the AAL, the AAC, the National Association of Colored Women, and the Niagara Movement as the critical groups that preceded the National Urban League and the NAACP.[2] Both scholars viewed the AAL founded by T. Thomas Fortune as the first noteworthy civil rights group

after Reconstruction and the most important civil rights group active in the 1890s at the time the Citizens Committee operated.

In response to the rising tide of White supremacy in the late 1880s, Fortune led the formation of the AAL at a convention in January 1890 in Chicago. One hundred forty-one African-American men, mostly middle-class, attended the founding convention.[3] Martinet and most of his New Orleans friends joined some other African-American leaders in declining to participate in the AAL because its name implicitly excluded White persons from joining. Martinet and many of the other New Orleans leaders instead participated in the formation of the American Citizens Equal Rights Association just a few weeks after the formation of the AAL.[4]

The constitution of the AAL provided for the formation of a politically nonpartisan body with an objective to protest, investigate, and create an impartial report on lynching and other outrages perpetrated against African Americans. The AAL cited as a second major purpose the testing of the constitutionality of the growing Jim Crow system. The founders designed the AAL to be a continuous, institutionalized convention in the form of a national association to challenge effectively and systematically the rise of segregation, to protest lynch law and mob violence, and to limit the spread of disfranchisement. After the Chicago convention in 1890, AAL members formed local civil rights groups in many cities that supported the AAL goals and were associated with the AAL.[5]

The push to focus the AAL on test case litigation appears to have come first from Joseph Davis. The Baltimore lawyer and activist urged the AAL to give high priority to removing statutes that "should be declared unconstitutional and void." Such test litigation, Davis had argued in 1887, either must lead the Constitution to "assert itself or it must confess its weakness and receive the contempt it may merit from the honest men of all nationalities." Davis spelled

out the elements necessary for test case litigation to work. It would be necessary to "follow such cases as are suitable from the station house to the Supreme Court," and it would require "the best legal talent attainable." To support this plan, Davis envisioned an organization that would have the "sum[s] of money needed in the legitimate prosecution of its [objectives]."[6] Thus the AAL under Fortune's leadership set forth laudable goals and established the concept of a national organization not tied to any political parties that would pursue long-term strategies to achieve racial justice. Carle argued that the NAACP adopted and put into practice Fortune's "vision" of such an organization several decades later.[7]

Turning from vision to tangible actions, Alexander summarized the accomplishments of the AAL as follows: "The group did not challenge the growing de jure segregation of the South head-on; instead it concentrated its efforts on the de facto discrimination in the North. Among other incidents, the League tested discrimination in restaurants in Minnesota and in New York. It also successfully opposed attempts to segregate schools in Ohio and discriminatory insurance rates in New York. In its lone southern case, the League initiated a suit against the separate coach laws in Tennessee."[8] So the AAL understandably concentrated its activities almost exclusively in the less homicidal North. The group never initiated and prosecuted many lawsuits.

Two cases pursued by the AAL constitute its most notable, although quite limited, successes. First, on June 4, 1890, Fortune ordered a beer in the bar at the Trainer Hotel in New York City. When the bartender told him that they did not serve African Americans, Fortune replied that he would remain sitting there until served. The proprietor summoned the police who arrested Fortune and charged him with disturbing the peace, disorderly conduct, and intoxication. T. McCants Stewart, an African-American civil rights attorney, represented Fortune and succeeded in getting the criminal charges dropped quickly. Fortune then decided to file a civil

suit against the proprietor and manager of the Trainer Hotel. He hoped that the suit would serve as a test case to challenge the legality of racially discriminatory practices in New York and perhaps would set a national precedent for using the courts to seek redress for acts of racial injustice.[9] In November 1891, at a trial before the New York Supreme Court, Stewart argued persuasively to an all-White jury that the refusal of the Trainer Hotel to serve African Americans violated New York civil rights law. The jury returned a verdict in favor of Fortune and awarded him $1,016 in damages. The New York Supreme Court upheld this verdict. This successful result naturally generated exuberance among civil rights advocates and caused some leaders to point to the courts as a possible solution to racial discrimination and segregation.[10]

Alexander described the suit against the Trainer Hotel as "the most significant activity of the AAL." He wrote:

> Fortune's case against the Trainer Hotel can be seen as the origin of the legal strategy employed by a national civil rights organization to arouse national sentiment around a local case that could create precedent to challenge de facto and de jure discrimination throughout the country—one later popularized by the NAACP. The Afro-American League's attempt to use this sort of strategy is the genesis of the tactics other civil rights organizations that formed in its wake would continue to employ. In many respects, it could be argued that the origin of *Brown v. Board of Education* has its roots in Fortune's case and this struggle.[11]

But it must be noted that Fortune's suit merely sought to enforce a provision of the *New York* state constitution. While persuading an all-White jury to award substantial damages for this violation surely should be viewed as a notable accomplishment, it had no impact on Jim Crow laws. The suit set no legal precedents outside of New York. It had nothing to do with the constitutionality under the U.S. Constitution of Jim Crow laws. Because it involved a New York law, it probably had no impact whatsoever on the attitudes of southerners towards racial discrimination.

A second case that Alexander and Carle regard as an AAL victory involved William H. Heard, an AAL member and minister from Philadelphia. The AAL held its second annual convention in July 1891 in Knoxville, Tennessee. A few months earlier, Tennessee had joined the growing list of southern states that had enacted a law requiring separate railcars based on the race of the passengers. In Tennessee, on his way home from the convention, Heard had been forced to ride in a segregated car despite his purchase of a first-class ticket. The AAL filed a suit in the name of Heard against the Pullman Company and the Nashville, Chattanooga and St. Louis Railway. In August 1891, to settle the case, Pullman agreed to pay $250 in damages and to discharge the conductor who had assigned Heard to the segregated car. But the case established no legal precedent. The settlement had no effect on the validity of the Tennessee separate car act and Pullman made no promise to change any of its practices. Moreover, although the AAL wished to prosecute the suit against the Nashville, Chattanooga and St. Louis Railway because that defendant did not agree to any settlement, the AAL could not raise sufficient funds to do so and the court dismissed the case.[12]

While 141 delegates attended the first AAL convention in Chicago, only thirty-two delegates attended the second one in Knoxville. Some AAL members cited the indignity of having to ride in a segregated railcar as their reason for not attending. Not surprisingly, the subject of the enactment of the offensive separate car acts throughout the South occupied a large portion of the conventions's agenda. Frederick McGhee of Minnesota called for the creation of a legal fund to challenge the constitutionality of the separate car laws. John Lynch had represented Mississippi as a member of Congress from 1873 to 1877. He had advocated for the 1875 Civil Rights Act and had remained a prominent African-American Republican. Lynch sent a letter to the Knoxville convention urging the organization to declare that any political party that failed to

favor repeal of all separate car acts would receive no support from African Americans. The delegates wholeheartedly agreed. They closed the second convention by singing "John Brown's Body" and by promising to use their influence, power, and vote "to do away with this outrageous, disgraceful, offensive and inhuman class legislation."[13]

Although, at the 1891 Knoxville convention, the AAL identified the separate car laws that were infesting the South as the target, they failed to fire any shots. Thus Ida B. Wells, the fearless journalist who had delivered a rousing speech in Knoxville, observed this failure in her biting report on the convention: "A handful of men, with no report of work accomplished, no one in the field to spread it, no plan of work laid out— no intelligent direction— meet and by their child's play illustrate in their own doings the truth of the saying that Negroes have no capacity for organization." At the same time, "a whole race is lynched, proscribed, intimidated, deprived of its political and civil rights, herded into boxes (by courtesy called separate cars) which bring the blush of humiliation to every self-respecting man's cheek – and we sit tamely by without using the only means – that of thorough organization and earnest work to prevent it." William Anderson, secretary of the AAL, concurred with Wells, proclaiming that "indignation over the separate car law is rampant, and any movement on the part of the League looking toward testing its constitutionality in the United States Supreme Court, would be rapturously hailed and aided."[14] Admittedly, Wells levelled this criticism before the AAL filed the Heard suit that resulted in the settlement with the Pullman Company. But, given that this litigation resulted in no changes in law or practice and was not fully pursued due to lack of money, the AAL's filing of the Heard suit did not significantly undermine Wells' broad point that the AAL had not taken any effective action. It should be kept in mind that the Citizens Committee formed in September

1891 - two months after the AAL Knoxville convention – and promptly began to take actions to effectuate the *Plessy* suit.

The AAL leaders fully realized that their organization needed to do what the Citizens Committee did, i.e., convert its heartfelt proclamations outside the courtroom into sharp Constitutional arguments inside the courtroom. However, its inability – given its dispersed local organizations – to collect sufficient funding and then concentrate it effectively on the right cases prevented the AAL from doing so. John Mercer Langston, the founding dean of Howard University School of Law in 1868, and the first African American elected to Congress from Virginia in 1888, thus argued that the race needed lawyers more than preachers, and asserted that, if African Americans truly wanted their rights, they would provide enough money to the AAL to fund a lawsuit to contest the constitutionality of the Tennessee separate car act. Fortune constantly plead with AAL members for more financial contributions. He exclaimed: "we need money, and plenty of it, and the local leagues must furnish it." Fortune observed that "talk is cheap and law is expensive."[15]

Alexander's and Carle's respective accounts of the AAL's unsuccessful efforts to organize litigation effectively during its short three-year life-span are replete with examples of uncoordinated funding and miscommunication between the national AAL and its various local branches. For example, in 1891 the AAL St. Paul branch inexplicably created a local organization named the Minnesota Civil Rights Commission that was not associated with the AAL to prosecute a challenge to separate car acts in the name of Samuel Hardy. This fragmentation undermined the national AAL, and Alexander even suggested that the St. Paul branch's bypassing of the national AAL in connection with the Hardy suit "could very well have sounded the death knell" for the AAL.[16] Moreover, the AAL suffered from competition for

scarce funds with groups who pursued very similar goals. It had to vie with ACERA and with a new organization, the National Citizens' Rights Association, founded in 1891 by none other than Albion Tourgée.[17] By 1892, the national AAL's operations effectively ended for lack of money. It did not hold a national convention that year and in 1893 Fortune announced the end of the AAL.[18]

After the national AAL faded away, some of its local organizations continued to exist. But the mid-1890s marked the start of the influence of Booker T. Washington's philosophy of accommodation and an interregnum in the struggle for civil rights.[19] The *Plessy* decision issued in 1896 must have contributed to the demoralization of activists. However, in December 1898, activists came together to form the National Afro-American Council (AAC). This new organization set many of the same objectives declared by the AAL, including bringing legal challenges to the constitutionality of separate car laws and other Jim Crow laws in the South.[20] At its 1905 national meeting, the AAC reconfirmed its focus on Constitutional test case litigation, declaring that the meeting's central purpose was "to put in motion the forces that will bring to a test in the highest courts of the nation the constitutionality of every law that aims to oppress and restrict the rights and privileges of the Afro-American citizen." The group further urged African Americans to contribute to testing in court all state laws that denied equality of government protection as guaranteed by the federal Constitution and called for the end of the time in which African Americans would be the object of "class legislation" that they had no part in passing because of laws disqualifying them from voting.[21] Again, in 1906, AAC leader Alexander Walters, a bishop in the African Methodist Episcopal Zion Church, urged African Americans to "go into the courts and fight it out."[22] However, like the AAL, the AAC lacked resources to pay salaries to AAC leaders who could make strategic decisions about which cases

to litigate and then manage them on a full-time basis. This absence of direction and coordination left the fragmented litigation efforts of the AAC perennially underfunded and ineffective. Carle made the significant point that civil rights leaders learned from these failures and the NAACP organized itself years later in a manner that addressed these systemic defects.[23]

Both Alexander and Carle argued that the legal test case strategy of the AAL, AAC, and other groups that preceded the NAACP constituted the most significant legacy of these groups. Alexander concluded: "What became central to this multifaceted approach however was litigation— a test case strategy. The nation's judicial system became the primary venue and the courtrooms turned into the fundamental location for their ambitious struggle to get the nation to uphold and stand by the Fourteenth and Fifteenth Amendments and bring about an end to racial violence. The utilization of this legal strategy is the most enduring and significant legacy that carried forward to the NAACP."[24] Carle similarly identified "a commitment to test case litigation" as a key principle that the AAL and its successors transmitted to the NAACP.[25]

However, notwithstanding the primary objective first expressed by the AAL and then reiterated by the AAC to bring legal cases to challenge Jim Crow laws, especially separate car acts, these groups failed at execution. The AAL and AAC never achieved significant accomplishments in the courtroom. Because the U.S. Supreme Court has the final authority on the interpretation of the U.S. Constitution, a case must reach the Supreme Court to achieve a binding decision on questions of Constitutional law that will apply throughout the nation. Therefore, achievement of the stated objectives of the AAL and AAC to challenge the constitutionality of separate car laws required that they follow the path of the Citizens Committee in *Plessy*. The AAL and AAC needed to sustain a methodical, expensive, and multi-year legal effort that would include setting up an arrest and charge of violating the law,

defending in state court with a Constitutional argument, appealing the case through the state court system, and then appealing to the U.S. Supreme Court. With the exception of *Plessy*, during the entire nadir period, only two cases reached the U.S. Supreme Court that involved challenges to segregation laws. Neither the AAL nor the AAC participated in initiating either case.[26]

In contrast, the Citizens Committee could not have executed its plan more effectively. It pursued one goal: to contest the Louisiana Separate Car Act before the Supreme Court. It collected $3,000 in a community funding campaign before it set up the legal challenge. The Committee through Martinet engaged highly committed and skilled attorneys willing to see the case through for the funds that had been raised. Then Tourgée and Martinet meticulously set up a case that they prosecuted through the state court system and then appealed to the U.S. Supreme Court. The Committee of course benefitted from the wealthy and cohesive New Orleans Afro-Creole community that supported all these efforts.

Most importantly, the Committee brought to the Supreme Court a direct challenge to the constitutionality of Jim Crow laws. While all the of the AAL efforts, except for the Heard case, took place in the North, the Citizens Committee brought its case in the deep South. Moreover, the AAL cases, again except for Heard, dealt with state laws. The Committee argued its case under the U.S. Constitution so that any decision would apply throughout the nation. While AAL leaders identified Jim Crows laws as their target, and zealously advocated for Constitutional attacks, the Citizens Committee actually executed such an attack.

Turning back to Alexander's arguments, he contended that Fortune's civil suit against the Trainer Hotel laid the groundwork for the NAACP's successful challenge to Jim Crow in *Brown*. Again, the suit against the Trainer Hotel had no relationship to the constitutionality of Jim Crow

laws. On the other hand, a direct connection existed between the *Plessy* suit and the *Brown* decision. The *Plessy* suit directly challenged a Jim Crow law in the South. It placed in motion the Constitutional arguments against Jim Crow and resulted in a powerful opinion of a Supreme Court justice that Jim Crow laws violated the Constitution. The *Brown* court later adopted the arguments passionately set forth in this dissenting opinion. If one had to select one case from the 1890s in which "the origin of *Brown v. Board of Education*" had its "roots," – using Alexander's words - one would select *Plessy*.

Professor Alexander of course meant that the Trainer Hotel case carried significance because it effectuated the concept of a test case and the NAACP employed this strategy to eventual success in *Brown*. However, the Citizens Committee also explicitly employed a test case strategy. Only nine days after the Louisiana Separate Car Act came into effect, Martinet called on ACERA to bring a "test case."[27] Fortune brought his civil suit against the Trainer Hotel in June 1890. Martinet's declaration that ACERA must bring a test case occurred only a month later on July 19, 1890. Fortune's successful trial against the Trainer Hotel took place in November 1891 – after the Citizens Committee had been formed and had begun to implement its plan. Given this timing, Fortune and the AAL can hardly be credited with pioneering the test case strategy.

Admittedly, the AAL sought to establish an association with a national scope while the Citizens Committee formed to attack one law in one state. Creating an effective national association presented greater organizational challenges and required more resources than creating an entity with a very focused purpose. The NAACP obviously had a national scope so, in that sense, the NAACP differed from the Citizens Committee. However, that difference does

not negate the significant dual legacy left by the Citizens Committee as demonstrated in this thesis.

Furthermore, the Citizens Committee and the NAACP members shared socio-economic and philosophical commonalities. Both groups benefitted from the support of middle-class professionals and businesspersons. Just as some characterized the Citizens Committee as elitist, some more aggressive civil rights groups viewed the NAACP as too conservative, referring to it derisively as the "black bourgeois club."[28] Neither organization could be considered revolutionary. Both committed their energies to legal resistance, protesting in the courthouses rather than in the streets. Neither group sought to change the American system of government. In fact, both the Citizens Committee and the NAACP fought zealously – although methodically – for the patriotic cause of enforcing the egalitarian principles set forth in the Declaration of Independence and in the U.S. Constitution.

This thesis does not intend to denigrate the efforts of T. Thomas Fortune and the AAL or the work of Shawn Alexander or Susan Carle in bringing to light the valuable contributions of this group. The AAL members acted honorably and bravely in a daunting environment and without sufficient resources. As demonstrated by Alexander and Carle, the AAL and successor organizations should be respected as cohorts of the Citizens Committee in establishing a model of principled resistance in the early years of Jim Crow. However, the Citizens Committee arose from a cohesive, prosperous community that armed it with the resources to wage a long-term legal battle. It collected the funding and engaged highly committed and skilled legal talent necessary to prosecute effectively its case to its conclusion. Although *Plessy* set a damaging legal precedent, the Citizens Committee actually accomplished what the AAL also had set out to

accomplish but could not: it forced the U.S. Supreme Court to rule on the constitutionality of Jim Crow laws.

END NOTES

[1] Shawn Leigh Alexander, *An Army of Lions: The Civil Rights Struggle Before the NAACP* (Philadelphia: University of Pennsylvania Press, 2012), xii.

[2] Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (New York: Oxford University Press, 2013), 30.

[3] Alexander, *An Army of Lions*, 25-29.

[4] Martinet to Tourgée, October 5, 1891, Albion W. Tourgée Papers, Chautauqua County Historical Society, Westfield, New York; Alexander, *An Army of Lions*, 18, 34.

[5] Ibid., 28-30.

[6] Carle, *Defining the Struggle,* 56.

[7] Ibid., 32.

[8] Ibid, 24.

[9] Ibid., 39-40.

[10] Ibid., 52-53.

[11] Ibid., 40.

[12] Ibid., 49-50, 62-63.

[13] Alexander, *An Army of Lions*, 45-46.

[14] Ibid., 47-48.

[15] Ibid., 48-50.

[16] Ibid., 52.

[17] Tourgée created the National Citizens' Rights Association in 1891, notwithstanding the recent births of the AAL and ACERA, because he believed that its two-pronged strategy of attacking

segregation through the judicial system and also through the mobilization of public opinion would generate more meaningful results than the existing organizations could generate. Ibid., 54-55; Mark Elliott, "Race, Color Blindness, and the Democratic Public: Albion W. Tourgée's Radical Principles in *Plessy v. Ferguson*," *Journal of Southern History* 67, no. 2 (May 2001), 290.

[18] Alexander, *An Army of Lions*, 60; Carle, *Defining the Struggle,* 69-70.

[19] Alexander, *An Army of Lions*, 70.

[20] Ibid., 91-96.

[21] Carle, *Defining the Struggle*, 117.

[22] Alexander, *An Army of Lions*, xvii, 299.

[23] Carle, *Defining the Struggle*, 138-40.

[24] Alexander, *An Army of Lions*, 299.

[25] Carle, *Defining the Struggle*, 6.

[26] Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 9, 23, 45. These cases were *Cumming v. Richmond County Board of Education* (1899) and *Berea College v. Kentucky* (1908). Both cases involved segregation in education and the U.S. Supreme Court upheld the discriminatory laws or practices in both cases.

[27] "The Separate Car Bill," *Crusader,* July 19, 1890.

[28] Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed. (Chicago: University of Chicago Press, 2008), 147-49.

CONCLUSION

In 1890, the Louisiana legislature passed the Separate Car Act that required that White and African-American passengers ride in separate railcars. Viewing this law as "a slap in the face of every member of the black race," the New Orleans Afro-Creole community formed the Citizens Committee to organize a legal case to test the constitutionality of Jim Crows laws such as the Act. The Afro-Creole community in Louisiana had been known as the free people of color for more than a century prior to the Civil War. This group had benefitted from prosperity, education, and status in New Orleans' racial hierarchy that far exceeded any other community of African Americans in the South. The Afro-Creole community used these exceptional economic and intellectual resources to organize the Citizens Committee and to fund and plan the test case named *Plessy v. Ferguson*. Louis Martinet collaborated with Albion Tourgée and the East Louisiana Railroad to orchestrate meticulously the arrest of volunteer defendant Homer Plessy for violating the Act.

In addition to possessing exceptional material resources, the Citizens Committee members espoused radical egalitarian ideologies and attitudes of resistance to Jim Crow necessary to generate the collective will to fight a multi-year legal battle through the Louisiana court system and then in the U.S. Supreme Court. After Reconstruction, White supremacists had assumed control of the Democratic party and the Republican party had abandoned the cause of civil rights in the South. The Citizens Committee nevertheless envisioned and strove for a color-blind, integrated, and multi-cultural society. Between 1889 and 1896, members of the Committee owned and operated the New Orleans *Crusader*. In numerous *Crusader* articles, Rodolphe Desdunes and Louis Martinet forcefully articulated their vision of equal rights for all men consistent with the

principles found in the Declaration of Independence and the Constitutional amendments enacted after the Civil War.

The mixed-race members of the Citizens Committee had to cope with a complex racial identity in a racially binary America. While the Committee proudly recognized its mixed culture that distinguished it somewhat from the non-Creole African-American community in the 1890s, the Committee truly represented the interests of all African Americans in the *Plessy* case and in other racial justice matters. In the relative safety of New Orleans, and having high expectations arising from generations of freedom and prosperity, the Citizens Committee fiercely held to the conviction that all oppressed citizens had a duty to challenge unjust laws through the legal process, that such citizens could rely only on themselves, and that it did not matter that the courts likely would rule against them. Desdunes described the effort to defeat Jim Crow laws as based on "forlorn hope," but that battles, even defeats, based on forlorn hopes marked the "beginning of all the great principles which now bless…the free and progressive nations." This principled philosophy fueled the determination of the Citizens Committee to fight the legal battle against segregation against all odds.

In 1896, the Supreme Court rejected the Citizens Committee's vision of an egalitarian America and the decision in *Plessy v. Ferguson* stood for fifty-eight years as a bulwark against racial desegregation efforts. But the passionate resistance of the Committee was not wasted. At the beginning of the Jim Crow regime, Committee members had articulated in the public arena reasons why segregation required by law offended Constitutional principles. The Committee organized the *Plessy* case and engaged Albion Tourgée to argue its vision of color-blind equality to the Supreme Court. Although the Court majority ruled against Plessy, the Committee succeeded in placing its vision in the permanent public record in the form of legal briefs filed on

their behalf and, more impactfully, in the lone dissenting opinion of Justice John Harlan. The psycho-social damage resulting from Jim Crow argued on behalf of the Committee in *Plessy* and eloquently embraced by Harlan in his dissent formed the basis of the NAACP's Fourteenth Amendment arguments asserted in *Brown v. Board of Education* that persuaded the Supreme Court to reverse *Plessy* and strike down Jim Crow laws in 1954. The Citizens Committee, although suffering a crushing defeat in *Plessy*, planted the seeds in Fourteenth Amendment discourse that germinated fifty-eight years later in *Brown*.

The Citizens Committee also left a legacy of inspiration for the twentieth-century civil rights movement. Its effective organization and initiation of the test case in the very early years of Jim Crow established a model of legal resistance to racial injustice. The *Plessy* case provided the forum for Harlan's ringing dissent that directly furnished hope and inspiration to Thurgood Marshall and the other NAACP attorneys who succeeded in reversing the *Plessy* decision. Moreover, Alexander Tureaud expressly emulated Martinet and Desdunes to become the leading twentieth-century civil rights attorney in New Orleans. The 1890s Citizens Committee had made such a lasting impression in New Orleans that the activist groups that achieved desegregation in New Orleans in the 1960s through non-violent resistance named their coalition the Citizens Committee.

Historians Shawn Leigh Alexander and Susan D. Carle have held up the Afro-American League as the civil rights group of the 1890s that set the precedent for the later civil rights movement. While this group had as its stated goal bringing test cases to challenge Jim Crow in court, it understandably lacked the funding and organization to do so. On the other hand, the relatively unheralded Citizens Committee actually prosecuted a test case in the deep South all the way to the Supreme Court. Its actions forced the Supreme Court to articulate in print its weak

rationale for upholding laws mandating racial segregation. In the words of Desdunes, the Committee pushed "the American government to the wall." At the same time, *Plessy* provided a forum for Justice Harlan to depict the assurance of equal accommodations in Jim Crow laws as "a thin disguise" for the true purpose that was to formalize a racial caste system. The *Plessy* case thus framed a choice for future generations of Americans as to whether a racial case system can be considered constitutional or tolerable. The historical lesson that one can draw from the story of Martinet, Desdunes, and the New Orleans Citizens Committee is that earnest, resolute resistance, even if defeated, can lay the foundation for others in the future to achieve meaningful progress towards a more just society.

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