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Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation

Daniel W. Crofts
The College of New Jersey, crofts@tcnj.edu

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Review

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Luxenberg, Steve. *Separate: The Story of* Plessy v. Ferguson*, and America's Journey from Slavery to Segregation*. New York: W. W. Norton & Company, 2019. xix, 600 pp. Hardcover. $35.00. ISBN: 978-0-393-23937-9.

At first glance, *Separate* appears to offer a history of the Supreme Court's infamous *Plessy v. Ferguson* decision in 1896, which validated for many decades to come the doctrine of "separate but equal." The final hundred-plus pages of this elegantly-written volume do indeed bring *Plessy* into full focus. But Steve Luxenberg also addresses an even more weighty topic—how and why a nation that rewrote its Constitution to embrace the principle of equality defaulted on that commitment. The shameful story that unfolds here does much to explain the impasse reached by the United States in the tension-filled summer of 2020.

Three persons dominate this epic narrative. The first is Albion Tourgée, a Union army veteran who moved to the South after the war. His best-selling autobiographical novel, *A Fool's Errand*, published in 1879, vividly depicted the violent repression inflicted on black and white Unionists in North Carolina during Reconstruction. By the 1880s Tourgée was "arguably, the best-known white advocate for civil rights in the country." (380) The other plausible contender for this distinction was Supreme Court Justice John Marshall Harlan, a Union army officer from Kentucky and the scion of a comfortable slaveholding family, who remade himself into a rare white Southern champion of equal rights. His eloquent dissent in the *Civil Rights Cases* (1883) held that the Thirteenth and Fourteenth Amendments, if properly understood, barred discrimination "against freemen and citizens because of their race, color, or previous condition of servitude." (109 U.S. 3) Over and against these two egalitarians, Luxenberg places the disappointingly conventional Supreme Court justice, Henry Billings Brown, who wrote the majority decision in *Plessy*. Brown reflected ascendant late nineteenth century white racial assumptions—that separation was natural, sensible, and legal. Unlike Tourgée and Harlan,

Brown had been an indifferent spectator during the harsh struggle to create a transformed Union; he paid a wartime substitute rather than be drafted.

Luxenberg, for thirty years a senior editor at the *Washington Post*, traces the origins of the *Plessy* case to antebellum New Orleans. There a quasi-aristocratic group, *les gens de couleur libre* or free people of color, attempted to maintain their intermediate racial category in a country that demanded a binary in which one must be either black or white. Their numbers were modest, but the *gens de couleur* were jealous of their rights. When slavery ended, they recognized that all persons of African descent must combine their "numbers and strength" to secure equal rights. (263) But Reconstruction only raised false hopes. By 1890 the state of Louisiana, having been violently "redeemed" by white supremacists, instigated a "Separate Car Act" to require racial segregation on railroad trains.

Louis Martinet, editor of the *New Orleans Crusader*, created a "Citizens Committee" to challenge the new law. He eagerly accepted Tourgée's offer to head the legal team. Tourgée, whose widely-read weekly column in the *Chicago Inter Ocean* highlighted the ghastly spread of lynching and Jim Crow across the South, threw himself into the fight with characteristic energy. Martinet candidly explained to him why life in the segregated South was so suffocating: "you may imagine it, but you have never experienced it." (448) Young Homer Plessy, like Martinet a *gens de couleur*, submitted to arrest in June 1892 to test the new law. In 1896 the case finally reached the US Supreme Court.

Tourgée and Harlan both knew the cards were stacked against them. Hindsight told Tourgée that the Southern states had been too speedily readmitted to the Union. Most Southern whites, whose outlook was formed during slavery, expected African Americans to remain submissive underlings. Tourgée clung to the forlorn hope that a national system of public education might improve matters. Harlan wanted his fellow white Southerners to accept, as he had, that the slave system was gone and that the new constitutional order demanded racial equity. But white Democrats, who pushed for racial retrogression, had overwhelmed his efforts to build a biracial Republican Party in Kentucky. Perhaps most ominously, Tourgée and Harlan confronted increasing evidence that white Northerners viewed equal rights as a naïve delusion.

Tourgée told the Supreme Court that Louisiana's separate car law flagrantly violated the Thirteenth and Fourteenth Amendments. It "was intended to 'humiliate and degrade' people of

color, and to 'perpetuate caste distinctions on which slavery rested.'" (471) But Brown demurred, and he was joined by all but one of the other justices; there was no way "to eradicate racial instincts or to abolish distinctions based upon physical differences." (482) It was left to Harlan, who had "a clear-eyed vision of a sinister future," to write the lone dissent. He condemned placing "the brand of servitude and degradation upon a large class of our fellow citizens," and he predicted that the majority's judgment would "prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case*." (483-84)

Both *Plessy* and the steps later taken to repair its damage masked symptoms of a deeper problem. Legalized segregation in the latter nineteenth century was only one facet of the retreat from Reconstruction. The Civil Rights Act of 1964 sought to supersede *Plessy* and reopen public accommodations to all citizens, but its provisions regarding employment, education, and voting fell short. So did subsequent legislation that attempted to address housing discrimination and inequitable policing. Perhaps more might have been said here about the bedrock imperative of political rights, the essential (but by no means sufficient) foundation for a more just social order. Readers of this volume learn little about the ugly history of voter suppression in the late nineteenth century, and they might not see why the Voting Rights Act of 1965 (grievously weakened during the past decade) was the most consequential achievement of the Civil Rights Movement.

Luxenberg sets a high standard. He relentlessly pursues original sources and improves upon earlier biographies of Tourgée and Harlan. He decided to write this book after finding the existing literature on *Plessy* narrowly legal and constitutional, obscuring a case that "sprawls and snakes through almost a century of American history." (xviii) Luxenberg could have expanded that time frame: the evil consequences of *Plessy* still are with us.

Daniel W. Crofts, who taught at The College of New Jersey before his 2014 retirement, is the author of *Lincoln and the Politics of Slavery: The Other Thirteenth Amendment and the Struggle to Save the Union* (University of North Carolina Press, 2016), which was awarded the Nau Prize from the University of Virginia. Learn more at http://www.danielwcrofts.com