Keeping Them Apart:

Plessy v. Ferguson and the Black Experience in Post-reconstruction America

A Unit of Study for Grades 8 –12

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INCLUDING THE COMPLETE FIRST LESSON

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INTRODUCTION

APPROACH AND RATIONALE

Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America is one of over sixty teaching units published by the National Center for History in the Schools that are the fruits of collaborations between history professors and experienced teachers of both United States and World History. The units represent specific issues and dramatic episodes in history from which you and your students can pause to delve into the deeper meanings of these selected landmark events and explore their wider context in the great historical narrative. By studying crucial turningpoints in history, the student becomes aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. We have selected issues and dramatic moments that best bring alive that decision-making process. We hope that through this approach, your students will realize that history in an ongoing, open-ended process, and that the decisions they make today create the conditions of tomorrow's history.

Our teaching units are based on primary sources, taken from government documents, artifacts, journals, diaries, newspapers, magazines, literature, contemporary photographs, paintings, and other art from the period under study. What we hope to achieve using primary source documents in these lessons is to remove the distance that students feel from historical events and to connect them more intimately with the past. In this way we hope to recreate for your students a sense of “being there,” a sense of seeing history through the eyes of the very people who were making decisions. This will help your students develop historical empathy, to realize that history is not an impersonal process divorced from real people like themselves. At the same time, by analyzing primary sources, students will actually practice the historian’s craft, discovering for themselves how to analyze evidence, establish a valid interpretation and construct a coherent narrative in which all the relevant factors play a part.

CONTENT AND ORGANIZATION

Within this unit, you will find: Teaching Background Materials, including Unit Overview, Unit Context, Correlation to the National Standards for History, Unit Objectives, and Introduction to Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America; A Dramatic Moment; and Lesson Plans with Student Resources. This unit, as we have said above, focuses on certain key moments in time and should be used as a supplement to your customary course materials. Although these lessons are recommended for use by grades 8-12, they can be adapted for other grade levels.

The Teacher Background section should provide you with a good overview of the entire unit and with the historical information and context necessary to link the Dramatic Moment to the larger historical narrative. You may consult it for your own use, and you may choose to share it with students if they are of a sufficient grade level to understand the materials.
Introduction

The Lesson Plans include a variety of ideas and approaches for the teacher which can be elaborated upon or cut as you see the need. These lesson plans contain student resources which accompany each lesson. The resources consist of primary source documents, any handouts or student background materials, and a bibliography.

In our series of teaching units, each collection can be taught in several ways. You can teach all of the lessons offered on any given topic, or you can select and adapt the ones that best support your particular course needs. We have not attempted to be comprehensive or prescriptive in our offerings, but rather to give you an array of enticing possibilities for in-depth study, at varying grade levels. We hope that you will find the lesson plans exciting and stimulating for your classes. We also hope that your students will never again see history as a boring sweep of facts and meaningless dates but rather as an endless treasure of real life stories and an exercise in analysis and reconstruction.
Teacher Background

I. Unit Overview

This unit focuses on the African American experience in the critical years after Reconstruction. Using the landmark decision in *Plessy v. Ferguson* in 1896, the unit opens with an examination of conditions in black America during the post-Reconstruction years. Political opportunities or lack thereof; economic and class status; as well as social interaction will be illustrated through documentary material. In the *Plessy* case, the Supreme Court interpreted the Fourteenth Amendment guarantees of due process and equal protection to mean that “separate but equal” facilities could be provided on the basis of race.

By examining the Supreme Court’s reasoning in *Plessy* within the historical context of the period, the student will be able to evaluate the successes and the failures of Reconstruction. Furthermore, by examining the Court’s decision itself, students can investigate the nature of judicial review through an example of constitutional interpretation that stands in sharp contrast to the judicial activist character of the Warren Court’s decision in *Brown v. Board of Education* nearly sixty years later. This unit challenges students to see the relationship between law and society and how prejudice works.

II. Unit Context

This unit should be the concluding chapter of the story of Reconstruction to show the effects of the abandonment of federal Reconstruction. It could be used as a direct linking unit to the “Gilded Age” or “Progressivism,” or as a background and introduction to the civil rights movement of the 1940s and 1950s.

III. Unit Objectives

1. To evaluate the conditions of African Americans in the North and South between 1875 and 1900 using documentary and statistical evidence.

2. To analyze successes and failures of Reconstruction for freedmen.

3. To identify *Plessy v. Ferguson* as an organized resistance by African American leaders to segregation laws in the South.

4. To examine the Supreme Court’s reasoning in its decision and contrast it with Justice Harlan’s minority opinion.

5. To identify and discuss the concept of judicial review and its importance in American constitutional government.
IV. Correlation to National History Standards

**Keeping Them Apart: Plessy v. Ferguson and the Black Experience in Post-Reconstruction America** provides teaching materials to support the National Standards for History, Basic Edition (National Center for History in Schools, 1996), **Era 6**, "The Development of the Industrial United States (1870–1900)." Lessons within this unit assist students in attaining **Standard 2B** by analyzing the role of new laws and the federal judiciary in instituting racial inequity.

This unit likewise integrates a number of Historical Thinking Standards. Students are challenged to examine a variety of evidence and reconstruct the literal meaning of a historical passage; to draw comparisons across time in order to define enduring issues; to explain historical continuity and change; to obtain historical data from a variety of sources and uncover the social, political, and economic context in which it was created; and to evaluate the implementation of a decision by analyzing the interests it served and assessing the effects of the decision from a variety of perspectives.

V. Introduction to **Keeping Them Apart: Plessy v. Ferguson and The Black Experience In Post-Reconstruction America**

Congressional Reconstruction of the southern states after the Civil War was undertaken by Congress when the former slaveowners appeared unwilling and unable to give up slavery. Northerners were angry when southern whites passed “black codes” in 1865 designed to maintain African Americans in a regulated laboring class based on color. The Radical Republicans then used the Freedmen’s Bureau and the United States Army to suppress the codes and the Ku Klux Klan. After the southern states fulfilled requirements set by Congress to regain full rights in the republic, whites once again passed many laws by the 1890s that submitted African Americans to the racial regime of “Jim Crow.”

Southern Democrats, who had taken control of state governments following Reconstruction, presented constant pressures on African American voters in the South. Despite attempts to reduce the political influence of African Americans, many African Americans voted and some held high office in southern states through the 1890s. The National Republican Party under its northern leaders stopped safeguarding African American voters. At the same time, conservative Southerners were deeply worried that white Populists were actively surmounting their heritage of racism and appealing to African Americans. The conservatives raised the cry of “Negro domination” and pollution of the white race. These men succeeded in passing highly restrictive literacy requirements for the right to register to vote. The laws were designed to allow many poor and illiterate whites to vote but not African Americans. Southern unions excluded African Americans. The lynching of African Americans became a serious problem again, as it had been immediately after the Civil War. African American schools were poorly funded. ‘Jim Crow’s’ became even more extensive than the laws on the books suggest.

The Supreme Court declared its unwillingness to protect the civil rights of African Americans. In 1883, it nullified the main provisions of the last legislative act of the Reconstruction era, the Civil Rights Act of 1875, which had given equal rights to the use of inns, public transportation, theaters,
and other public facilities. This was only one of many similar decisions that permitted the construction of a deeply discriminatory regime.

In 1890, when the railroad act was passed, sixteen African American Congressmen remained in the Louisiana legislature. Once the Plessy decision was upheld by the Supreme Court, the number of registered African American voters in Louisiana plummeted from 130,334 in 1896 to 1,342 in 1904. African Americans no longer voted or held office anywhere in the South. Thus, they were unable to fight Jim Crow through the legal process.

V. Lesson Plans

1. The Case of Homer Plessy
2. De Jure and De Facto Discrimination
3. A Courtroom Simulation
Dramatic Moment

In 1887 Florida passed the first Jim Crow law separating the races on railroad cars. Other southern states followed suit. Despite protests by the African American community in New Orleans, the state legislature passed a similar law in 1890, the Louisiana Railway Accommodations Act. The following year, African Americans in New Orleans formed a Citizens’ Committee to raise funds to test the constitutionality of the law. In a test case an African American, Daniel Desdunes, purchased a ticket in New Orleans on the Louisville & Nashville Railroad for passage to Mobile, Alabama. The Louisiana Supreme Court ruled that the separate but equal law was unconstitutional when applied to travelers on interstate carriers but upheld the state of Louisiana’s right to segregate railroad cars on intrastate trains.

In another test case Homer Plessy bought a first-class ticket on an intrastate carrier, the East Louisiana Railroad, and was arrested when he refused to leave the “white only” car. Plessy was tried before Judge John Ferguson in criminal court in New Orleans. Plessy’s attorney, Albion Tourgée, argued that the Louisiana law:

... establishes an insidious distinction and discrimination between citizens of the United States, based on race, which is obnoxious to the fundamental principles of national citizenship, perpetuates involuntary servitude, as regards citizens of the colored race, under the merest pretense of promoting the comfort of passengers on railway trains, and in further respects abridges the privileges and immunities of the citizens of the United State, and the rights secured by the thirteenth and fourteenth amendments to the federal constitution.

Judge Ferguson rejected Tourgée’s arguments and found Plessy guilty and imposed a twenty-five-dollar fine.

Tourgée appealed the decision to the State Supreme Court. Francis Nicholls, the Chief Justice of the Louisiana Court, two years earlier had signed the separate but equal law as governor of the state. The Court upheld the conviction but agreed to Tourgée’s request for a writ of error thus opening the way for an appeal to the U.S. Supreme Court.

On May 18, 1896, the Court ruled against Homer Plessy in a 7-1 decision. Writing the majority opinion of the Court, Justice Henry Billings Brown stated:

... The information filed in the criminal District Court charged in substance that Plessy, being a passenger between two stations with the State of Louisiana, was assigned by officers of the company to the coach used for the race to which he belonged, but he insisted upon going into a coach used by the race to which he did not belong. Neither in the information nor plea was his particular race or color averred.

1 Justice John Marshall Harlan dissented; Justice David Josiah Brewer did not participate.
The petition for the writ of prohibition averred that petitioner was seven eights Caucasian and one eight African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every right, privilege and immunity secured to citizens of the United States of the white race; and that, upon such theory, he took possession of a vacant seat in a coach where passengers of the white race were accommodated, and was ordered by the conductor to vacate said coach and take a seat in another assigned to persons of the colored race, and having refused to comply with such demand he was forcibly ejected with the aid of a police officer, and imprisoned in the parish jail to answer a charge of having violated the . . . act [Railway Accommodation Act of 1890].

. . . A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races. . . .

. . . We consider the underlying fallacy of the plaintiff’s argument to consist 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. . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. In the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. . . .

Lesson One
The Case of Homer Plessy

A. Objectives
♦ To construct initial judgments about the society in which Homer Plessy lived and to appreciate the human dimension of a major historical event.
♦ To provide practice in using documentary analysis and interpretation.
♦ To discuss and evaluate the position of African Americans in post-Reconstruction southern society.

B. Lesson Activities
(One Day)

1. Read to the students the Dramatic Moment. This story summarizes the case of Homer Plessy who will later be the defendant in the landmark legal decision of Plessy v. Ferguson. Ask the students to speculate on what might happen to Homer Plessy given what they know of post-Reconstruction southern society. Make sure that they understand that this was an organized and purposeful legal and political effort by African Americans to resist laws they considered to be unjust.

2. Distribute and have the students read Document A, “Protest of the American Citizens’ Equal Rights Association of Louisiana Against Class Legislation.”

3. Discuss with the entire class why primary source research is important. Some of the responses you may get might include:
   a. It is firsthand information.
   b. Allows them to investigate a problem for themselves.
   c. Makes the students “a part of the problem” and “a part of the solution.”
   d. Allows students and teachers to challenge one another regarding the meaning of the material.

Then discuss with the class why one must be careful with documents. Answers might include:
   a. They are a product of the person who has selected the documents.
   b. They are subject to the interpretative process of the student.
   c. The document may reflect the experiences and needs of the person who wrote it.
Lesson One

4. Divide the class into groups of 3-5 students. Pass out Worksheet 1, giving them a specific amount of time (about 10 minutes) to review the documents. Have them complete the worksheet based on Document A. Discuss with the class their findings and analyses, acknowledging and responding to legitimate differences. Ask the students if they agree or disagree with the following statement:

“The authors of this document should have used a different approach in stating their position.”

Make sure that they support their answers and identify weaknesses in the arguments presented in the document.

5. Homework Assignment:

a. Distribute Document B.

b. Have the students complete a Document Analysis for the reading (use Worksheet 1 again).

C. Evaluating the Lesson

1. Discuss the following questions in class to check for understanding:

a. On what basis does Booker T. Washington criticize the railroad segregation laws? Do you believe this is the most convincing way he might have approached this issue? Why or why not?

b. Why does Booker T. Washington believe that “National legislation and other outside attempts fail”? What arguments might you make in response?

c. Does Washington espouse segregation? Why or why not?

d. How does Washington’s response differ in tone and content to that of the African American leaders of the American Citizens’ Equal Rights Association of Louisiana? Which arguments are the most persuasive? Why?
Protest of the American Citizens' Equal Rights Association of Louisiana
Against Class Legislation
(Primary Source)

To the General Assembly:

We, the undersigned American citizens, and citizens of the State of Louisiana, do most respectfully but earnestly protest against the passage of any class legislation now pending before the honorable body, for the following reasons:

That such legislation is unconstitutional, un-American, unjust, dangerous and against sound public policy.

There is no warrant in this Constitution of the State of Louisiana for the passage of any law establishing discrimination per se against any class of American citizens, while, on the contrary, that instrument, in letter and spirit, seems to protect, with a jealous care, all the essentials of equality.

The boast of the American people is that this 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; we are rather inclined to the belief that any measure lacking the essential of justice is an unfortunate blow at those high conceptions which adorn the preambles of the Federal and State Constitutions and the Immortal Declaration of Independence.

We ground our protest further upon the high moral precept, that men should not do unto others what they do not wish should be done unto them.

We say that it is unjust, unchristian, to inflict upon any portion of the people the gratuitous indignities which take their motive and their bitterness from the dictates of an unreasonable prejudice. The people against whom such legislation is directed are respectable, useful and law-abiding; they represent, it should be remembered, a considerable percentage of the capital and almost all the labor of the State; they share the burdens of a common responsibility with their fellow-citizens and contribute by their special qualities and temperament to the honor, peace and dignity of the commonwealth. Will it be seriously contended that such a problematical proposition as the ethnical origin of color is a sufficient cause for a deliberate interference with settled rights? We do not think that citizens of a darker hue should be treated by law on different lines than those of a lighter complexion. Citizenship is national and has no color. We hold that any attempt to abridge it on account of color is simply a surrender of wisdom to the appeals of passion.

It strikes us that the immediate effects of such legislation would be a free license to the evilly-disposed that they might with impunity insult, humiliate and otherwise maltreat inoffensive persons, and espe-
cially women and children who should happen to have a dark skin. Will our legislators, in view of such probable consequences, make themselves purposely guilty of an act that would bring them on?

Besides, we believe that the colored people will be greatly disturbed when they see that in addition to their many other grievances is to be enacted that legal degradation which is to make of them passive objects of a system as unjustifiable as it would be unmerited.

Under such circumstances the promotion of good will among inhabitants of the same State would be almost impossible. And while we thus complain of class legislation in general, there are two bills in particular against which our objections are specially formulated. These bills provide for separate cars for the accommodation of white and colored people.

With all due respect, we must express our strongest condemnation against those two measures whose principle is vicious and a breeder of discord.

It cannot be said that such enactments are useful to the community, while they may be regarded as dangerous experiments in the line of legal abuses. We beg leave to observe that such measures becoming the law of the land would place the most innocent and the most defenseless at the mercy of the most brutal. The probable extent of such anticipated mischief must arouse in the breast of the persecuted a feeling of distrust.

It is hardly necessary to remark that such legislation is against good public policy, as it is in direct contradiction with the well recognized principle that every act of the government must rest upon the authority that it is intended for the common good.

We further beg leave to remind the General Assembly that the best people of the South are not in favor of such legislation.

It was but the other day that the Legislature of the historic State of South Carolina—one of the original thirteen—voted down a bill similar to the two above mentioned and now pending before your honorable body.

We point to the further fact that the Legislature of the empire state of the South, Texas, a few months ago, declined to enact a law on the subject matter of said bills.

And with pride do we recall that our own cherished Louisiana, the mother of us all, through her Constitutional Convention of 1879, in which body grandly figured her ablest sons, rejected all propositions establishing distinction among her citizens, and by the adoption of a uniform and exemplary bill of rights emphatically fixed the status of all on the basis of the quality of rights.

In the name of God and the constitution, Federal and State, in the name of justice, reason and equity, in the name of peace, in the name of an enlightened and Christian civilization, we humbly trust that
our protest may be heeded by the loyal hearts of our legislators, and that the chalice of political bitterness may be snatched from the grasp of intolerant persecution and made to melt into the sacred fires of patriotic mercy!

P. B. S. Pinchback, James Lewis,
A. E. P. Albert, Laurent Auguste,
A. S. Jackson, R. L. Desdunes,
S. T. Clanton, L. A. Martinet,
T. A. Wilson, J. F. Marshall,
E. Lyon, W. S. Wilson,
J. T. Newman, J. L. Minor
I. E. Mullon,
T. B. Stamps, Committee A. C. E. R. A.
Paul Trevigne, New Orleans, May 24, 1890

Source: Memorial, Official Journal of the House of Representatives of the State of Louisiana, 1890.
Document Analysis

I. Type of Document: (Check one)

_____ Newspaper  _____ Map  _____ Advertisement
_____ Letter  _____ Telegram  _____ Congressional Record
_____ Memorandum  _____ Report  _____ Other

II. Date(s) of document:

III. Author (or creator) of the document:

Position (Title):

IV. For what audience was the document written?

V. Document information: (There are many possible ways to answer A-E.)

A. List three things the author said that you think are important:

1. 

2. 

3. 

B. Why do you think this document was written?

C. What evidence in the document helped you to know why it was written? Quote from the document.

D. List two things the document tells you about life in the United States at the time it was written.

E. Write a question to the author which is left unanswered by the document.
Tuskegee, Ala., April 24, 1885

Editor Advertiser: Judging from some of your past utterances that you are in favor of justice being shown the colored man on railroads, I am encouraged to write the following for insertion in your paper. Having to some extent noticed the position of many of the county papers relative to the subject, I am glad to know that they, too, are outspoken in condemnation of the wrong which colored railroad passengers are made to suffer. In fact, I have not conversed with a single intelligent, progressive white man who has not shown the right spirit in the matter.

I wish to say a few words from a purely business standpoint. It is not a subject with which to mix social equality or anything bordering on it. To the negro it is a matter of dollars and cents. I claim that the railroads in Alabama do not provide as good accommodations for the colored passengers as those furnished white passengers for the same money and that the fare is not first class as claimed on the face of the ticket.

My reasons for the above assertions are (a) that in most cases the smoking car and that in which colored people are put are the same; (b) when not put directly into the smoking car they are crammed into one end of a smoking car with a door between that is as much open as closed, making little difference between this and the smoking car; (c) on some of the roads the colored passengers are carried in one end of the baggage car, there being a partition between them and the baggage or express; (d) only a half coach is given to the colored people and this one is almost invariably an old one with a low ceiling and it soon becomes crowded almost to suffocation and is misery to one knowing the effects of impure air. The seats in the coach given to colored people are always greatly inferior to those given the whites. The car is usually very filthy. There is no carpet as in the first class coach. White men are permitted in the car for colored people. When ever a poorly dressed, slovenly white man boards the train he is shown into the colored half coach. When a white man gets drunk or wants to lounge around in an indecent position he finds his way into the colored department.

Plainly this treatment is not equivalent for value received. Why should the railroads be allowed to make a discrimination that no other business man or business corporation makes? I enter a dry goods store in Tuskegee, buy a yard of calico, I am shown to just as good a counter, am treated just as politely by the clerk and for the same money, receive just as good (though a separate) piece of calico as the white man. I subscribe for the Advertiser. For the same money you send me a paper printed just as nicely, done up as well and that costs you just as much in every way as the one sent a white subscriber. A lawyer is engaged to take a case for me. For the same money he seats me in his office, talks to me just as pleasantly and works for me just as hard before the courts as for a white client. Why should the railroads be an exception to these rules?

This unjust practice toward the negro cuts off thousands of dollars worth of negro travel every year, while just treatment of the negro would stop no white travel. There are ten times when I would take my wife or a lady friend on the railroad that I only do so once, and then am compelled to, because I shudder at the mere thought of the accommodations. Numbers of other colored men have expressed the same feeling. The mere thought of a trip on a railroad brings to me a feeling of intense dread and I never enter a railroad coach unless compelled to do so. On account of these discriminations the New Orleans Exposition has lost many dollars. Since
the Exposition opened I have asked many colored people in Northern States if they were going to attend, but in almost every case the answer came that they would like to do so, but feared the railroads.

If the railroad officials do not want to let us enter the first-class car occupied by white passengers, let them give us a separate one just as good in every particular and just as exclusive, and there will be no complaint. We have no desire to mix. Even in Philadelphia and other Northern cities where there are no social barriers, the colored people have their own churches, schools, hotels, &c., showing that there is no disposition on the part of the colored to obtrude themselves on the whites when they can receive equal, separate accommodations. I have in mind the railroad running between Selma & Marion, which furnishes a coach of the same length and height and just as good in every detail as that furnished the whites. Running in one direction the whites use one of the coaches and running in the opposite direction the colored passengers use the one previously used by the whites. There is never any discrimination on this road. A party of colored people recently traveling over it were so well pleased with this feature, and the gentlemanly bearing of the conductor, that they passed a resolution of thanks to be sent to the controllers of the road. There are a few other roads in the South whose treatment of colored passengers can be commended.

If the railroads will not give us first class accommodations, let them sell us tickets at reduced rates. This will be somewhat in keeping with the laws of honest trade.

The railroad officers make the mistake of supposing because many of the colored people are untidy, careless of their habits and contented to ride in a car with chain gang convicts that all are to be thus classed.

The writer is in favor of assortment and discrimination, for there are many colored people with whom he does not care to ride, but let assortment be made on the grounds of dress and behavior.

In Virginia, where colored people are not prohibited from riding in a first-class car, I have always noticed that colored passengers when not well dressed, voluntarily take the second class car.

I have written thus plainly because I love the South, had rather live here than in the North, and expect to remain here. My faith is that the influences which are going to permanently right such wrongs are going to come from within the South and from southern people. National legislation and outside attempts fail.

I appreciate the fact that customs that were years in forming cannot be blotted out in a day, and I am willing to exercise a wise patience, but on this subject I believe that southern public opinion is ripe for the righting of this wrong.

Regardless of the opinions of wild theorists, the negro and the white man are to remain in the South side by side. Under God I believe we can do so without these jars in our business relations. We can be as separate as the fingers, yet one as the hand for maintaining the right.

B. T. Washington
Montgomery Advertiser, Apr. 30, 1885.

Booker T. Washington
ca. 1890
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http://nchs.ucla.edu/catalog.html

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