Plessy v *Ferguson*: the Court's Social Darwinist Motives and the Repercussions

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Abstract:

Plessy vs Ferguson is one of the first steps to establish a tradition of struggle for the reversal of a discriminatory legislation based on race. The argument of both the majority and the minority opinions of the Supreme Court devised Social Darwinist notions. What seems also relevant, however, is that they were used to interpret the Constitution as well as to further and to secure political, social, and economic advantages of the contemporary status quo. I will show how, despite the fact that Social Darwinist thinking is detectable in the Supreme Court's argumentation in this decision, the case reflects concrete political and economic endeavors. Furthermore, I intend to show how this 1896 act of the Supreme Court affected African American thinking in terms of appropriation and resistance.

Keywords: Jim Crow, Social Darwinism, segregation, *Plessy vs Ferguson*

Plessy vs Ferguson is considered a milestone in American racial history. It served as a legal cover for the Jim Crow decades (see Cose 36), and it also legitimized and, thus, stimulated further *de jure* and *de facto* exercises of segregation (*Race* 142), strongly reflecting Social Darwinist thinking. Not surprisingly, Social Darwinism is also detectable in the Supreme Court's argumentation in this decision, while the case reflects concrete political and economic motives of the white status quo. Furthermore, the act of the Supreme Court of 1896 significantly contributed to the shaping of African American thinking in terms of appropriation and resistance.

Plessy vs Ferguson (1896)

Homer Plessy, whose father was a seven-eighths light-skinned African American man, was arrested by a private detective in 1892, who claimed that Plessy had violated Section 2 of Act III of 1890 by riding the white section of the East Louisiana train (Medley 105). His non-compliance with the state law is regarded by many as an act of civil disobedience, especially as it was concerted by the Comite des Citoyens, which comprised of black journalists, lawyers, and Republicans (Medley 105) as well as other community leaders and even musicians and writers (O'Neill 13). First Plessy was released on bond, and in 1892 the local judge, John H. Ferguson, upheld the constitutionality of the law, a decision confirmed

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by the State Supreme Court. The federal Supreme Court did the same thing in 1896 denying Plessy's claim that the Louisiana legislation violated the Fourteenth Amendment enacted in 1868. According to the amendment, "the citizen of a state was simultaneously a citizen of the United States and [. . .] no state could abridge the immunities of a citizen of the United States; each state, moreover, was to guarantee to its citizens the equal protection of its laws" (O'Neill 14). However plausible Plessy's claim would appear today in the light of this amendment, he lost his case and had to pay $25, and the constitutionality of the Louisiana act of 1890 was repeatedly upheld.

During the process Justice Harlan, "the lone dissenter in Plessy" (qtd. in Rossum 786), who had to endure harsh criticism and slander for his stand (Cooper 8), opposed the majority opinion of the court (8:1). He argued that the contemporary legislation violated both the Thirteenth and Fourteenth Amendments, but even the voters' rights decreed by the Fifteenth Amendment. In his view, the Louisiana legislation of 1890 violated "universal civil freedom" as well as "the privileges or immunities of citizens" (*Plessy* 163 U. S. 544). He also pointed out inconsistencies in the court's approach: if race matters, why only African Americans were discriminated against; and if race matters, why only a segment of public facilities, that is railway, was considered, and not public facilities as such. In conclusion, Harlan attacked race as a legal category:

> [. . .] in 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. (163 U. S. 560)

On the other hand, Harlan remained true to his age, when he idealized the "white race," thereby stressing the Social Darwinist notion of a ladder of races:

> The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be

> for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. (163 U. S. 560)

It was Justice Brown who delivered the majority opinion of the court. The court stated that the Louisiana act of 1890 violated neither the Thirteenth, nor the Fourteenth Amendment of the Constitution by requiring separate coaches for the white and black races. Since the act regulated “purely a local line”(163 U. S. 549)—as it was state legislature having jurisdiction in determining local transport—and so interstate commerce was not violated, the Supreme Court had no right to veto it. The court stated that such separation of the two races was “within the competency of the state legislatures in the exercise of their police power” (163 U. S. 545), without stigmatizing either race with inferiority, and that it was lawful to deny retribution for the damage Plessy suffered. In his argument Brown concluded:

> 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. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals. (163 U. S. 552)

Equal protection is not thus violated since separation is not just recognized “generally, if not universally” (163 U. S. 545) in the practice of states, but it is, in the first place, socially accepted and that in favor of African Americans as in the case of all black schools, where “the political rights of the colored race have been longest and most earnestly enforced” (163 U. S. 545). Brown’s reasoning also entails explanation of the nature of the police power of states: “every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion for the public good, and not for the annoyance or oppression of a particular class” (163 U. S. 551). Order can then be maintained if it reflects social reality and derives from long-standing customs and practices. In this way, customs shape legislation and not vice versa: “In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort and the

preservation of the public peace and good order" (163 U. S. 551). Brown is explicit about this when he asserts:

> 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. If 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. (163 U. S. 552)

Brown employed Social Darwinist argumentation in delivering his opinion, which also reverberated in Harlan's opinion. Legislative maneuvers in his view are forced measures derailing societal evolution. It is also obvious, nevertheless that the real motivator is not racial, in the first place, but politico-economic.

After the decision the concept of *separate-and-equal* was not realized. Facilities such as integrated public transportation and schools disappeared as well as African Americans in legislatures and voters in general, signifying a tendency that was felt, according to Michael J. Klarman, in four main areas: segregation, disenfranchisement, black jury service, and separate-and-unequal education (384). Keith Weldon Medley's observation that there were no high schools for African Americans in Louisiana until 1917 shows indeed the disregard of the *equal* concept and that the *Plessy* decision was thus only the beginning, or rather, a significant marker of a societal tendency.

The Context

After the Civil War and during Reconstruction African Americans experienced relative social and political upheaval. Up to *Plessy* they could vote, fill offices including representatives and congressmen, and even intermarry. In response to black code laws passed by Southern states to maintain white supremacy and to protect landowners' interests, the Congress passed and the Civil Rights Act in 1866, which secured citizenship and equal rights for African Americans. In 1870 Fifteenth Amendment was passed giving voting rights to all male citizens including African Americans, and in 1875 the Civil Rights Bill was passed, which provided African Americans with equality in public facilities, only to be overturned by the Supreme Court in 1883 (Brace 190).

After 1877, when the Reconstruction period ended, the deconstruction of Reconstruction followed. *Plessy* was not the first and neither was it the last court decision of segregation. The Plessy era, as Klarman names it, contained a rich number of other disenfranchisement cases as well. These cases allowed segregation to deepen either by the court's approval of segregation as it did, for example, in the area of education (*Berea v Kentucky* [1908], *Cumming v Richmond County Board of Education* [1899]), or by providing ineffective legislation disallowing disenfranchisement. In this way, the Court was unable to control the exclusion of African Americans, for instance, from voting (*Giles v Harris* [1903]) and from juries (*Strauder v West Virginia* [1879]) (303-4).

Klarman offers three reasons enabling the advent of Jim Crow. First, judges could not break away from their time—also marked by American imperialism (313)—, which is also echoed by Keith Weldon Medley and John O. McGinnis. Accordingly, *Plessy* should not be considered as the beginning of an era, nor the peak of it, but rather it mirrors a national consciousness and this *de jure* event parallels—and not triggers—*de facto* events.

Secondly, Klarman suggests class dynamics at work, since with the emancipation of African Americans after the Civil War, a minority group, yet with significant potential economic and political power, entered the national labor market. This phenomenon was also accompanied by the political revival of poor white farmers (311) whose interests contradicted those of the African American population. In Klarman's interpretation vis-à-vis American Populism, upper class whites wanted "to invoke the theme of 'negro domination' for disrupting prospective economic and political alliances between lower class blacks and whites" (311). He in fact concludes in connection with *Plessy*: "Railroad segregation laws can be seen as a product of the rising political power of lower-class whites, for whom the subordination of blacks was important to elevating their own social status. More affluent, higher-status whites tended to be preoccupied more with class than racial differentiation" (323).

Thirdly, a significant reason is the need for national reconciliation (314), and the desire to eliminate sectarianism. The urge for reconciliation can be traced back to the presidential elections, which effected the end of Reconstruction in 1877. The Plessy era can well be said to date back to 1877 since after this point the North pulled back and yielded control to Southern whites.

Demographic issues provide further reasons for *Plessy*. Northward migration of African Americans started in the second half of the nineteenth century, which broadened in the early twentieth century and especially during and after the First World War. This fact alone would have been enough to decrease Northern support (312), but this tendency was complemented by the fear of disruption of the racial status quo evoked by intense European immigration (313).

The above-mentioned reasons explain that social Darwinist views are rather to be considered an ideological coat over social, political, and economic determinants that embody the real agents in the reaction. Social Darwinism, much as it seems to have penetrated contemporary societal consciousness and constructed an ethnocentric belief system, was used in practical areas as a device for self-assertion, and as a substitute for real semantics at work. Brown's speech reverberates mainstream "paternalistic and accommodationist racism" (Love 10), which instead of equality thinks in terms of "a permanent and allegedly benevolent domestic colonialism" (Frederickson 311); or as McGinnis explains in connection with other contemporary cases as well: "the Justices employed a style of decision making that had more in common with formulating a political platform or policy position paper than with interpreting a legal text understood as a system of rules" (541).

The African American Response

Generally, the Plessy era can be described on the basis of "the problem of racial equality [. . .] [which] is essentially the story of struggle to divide a privilege or a right whose indivisibility would become more and more apparent" (*Racial Equality* 79). Initially, however, in the period of growing disenfranchisement and violence marked by lynching that culminated in the 1890s (Klarman 309), the mainstream response of African Americans was an attempt at economic development and the establishment of education for blacks rather than political rights. In this way, under the ideological leadership of Booker T. Washington, for example, the Tuskegee institute was established, as "it was thought preferable to 'adopt a policy of self-effacement' than to incite white violence" (310).

African Americans had to wait several decades until the *Brown* decision in 1954 to experience a major breakthrough in civil rights. In the interval, that is, between *Plessy*, the Washingtonian creed, and *Brown*, a certain interregnum evolved that was understood by

many as the crisis of Negro leadership (Cruse 372). This started with the Washington-DuBois debate, which resulted in a shift toward W. E. DuBois' noneconomic liberalism at the expense of "the procapitalist, free-market ideals of the Booker T. Washington school in favor of constitutional legalism" (Cruse 372). The National Association for the Advancement of Colored People (NAACP founded in 1908), which was associated with DuBois, together with the National Urban League, however, proved ineffective until the 1930s. Quite understandably, since national affairs, especially the First World War, and the legal setting fossilized by *Plessy* did not allow sufficient mobility for advance. Much as phenomena not ultimately integrationist, such as Marcus Garvey's black nationalism, or the black artistic revival, the Harlem Renaissance, foreshadowed a new phase of protest starting with the 1930s, the crisis was further deepened by the disagreement over integration within the African American leadership, which led to DuBois' break with the NAACP in 1934 (Cruse 50).

The Great Depression marked in this way a new phase of African American response to the Plessy era. Du Bois exerted this explicitly:

> the basic policies and ideals of the [*NAACP*] must be modified and changed; that in a world where economic dislocation has become as great as in ours, a mere appeal based on the old liberalism, a mere appeal to justice and further effort at legal decision, was missing the essential need; that the essential need was to guard and better the chances of Negroes, educated and ignorant, to earn a living, safeguard their income, and raise the level of employment, I did not believe that a further prolongation of looking for salvation from the whites was feasible [. . .] we must seek to increase the power and particularly the economic organization among Negroes to meet this new situation [. . .]. (Bennett 106)

As Lerone Bennett explains this meant that African Americans were to organize using their political, economic, and cultural strength to fight segregation (106). This new phase pointed clearly in the direction of the Civil Rights Movement of the 1950s marked by direct action protests. Yet until then in the first half of the twentieth century African Americans were not able to go against the flow released, or rather, hallmarked by the *Plessy* decision, although they made significant steps toward the possibility of starting the overt protest in terms of organization and ideology.

Conclusion

The significance of the *Plessy* decision lies in "set[ting] the target for mid-twentieth-century civil rights activism, in the courts, if not the streets" (Rae 417). In this sense, *Plessy* can be seen as one of the first steps to establish a tradition of struggle for the reversal of a discriminatory legislation based on race. The Social Darwinist arguments of both the majority and the minority opinions of the Supreme Court prove that much as the opinions serve to further and to secure political, social, and economic advantages of the contemporary white status quo; the desire for discrimination based on race represents a natural social condition for the white mainstream at the time—a fact that leaves the African American community without effective tools for almost a century.

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