

THE NEW ORLEANS FREE PEOPLE OF COLOR AND THE PROCESS OF
AMERICANIZATION, 1803-1896

A Thesis

Presented to

The Faculty of the Department of Anthropology
The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of

Master of Arts

by

Camille K. Gourdet

2005

APPROVAL SHEET

This thesis is submitted in partial fulfillment of the requirements for the degree of

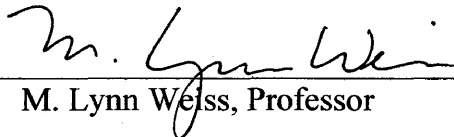
Master of Arts


Camille Kempf Gourdet

Approved by the Committee, May 2005


Audrey Horning Professor, Chair


Kathleen Bragdon, Professor


M. Lynn Weiss, Professor

To my husband Nico, who has always stood firmly by my side.

TABLE OF CONTENTS

	Page
Acknowledgements	vi
Abstract	vii
Chapter I. The New Orleans Free People of Color in Historical Perspective	2
Chapter II. The French and Spanish Colonization of New Orleans	10
Early Population	19
Slavery and the Slave Trade	22
Spanish Rule in Louisiana: 1768-1803	26
Code Noir and Coartación	30
Congo Square and Quadroon Balls	31
Chapter III. The Process of Americanization in the Nineteenth Century	37
Nativism and the Problematic Definition of ‘Creole’	40
The Louisiana Purchase	45
The Antebellum Period	49
The Civil War	55
Reconstruction	58
Post-Reconstruction Leading up to <i>Plessy v. Ferguson</i>	66
Chapter IV. The Context and Impact of <i>Plessy v. Ferguson</i>	70
The Citizens’ Committee	74
Homer Plessy	77
<i>Plessy v. Ferguson’s</i> Journey to the Supreme Court	81
The Role of the Thirteenth and Fourteenth Amendments	86
<i>Plessy v. Ferguson</i>	90
Conclusion	94

	Page
Appendices	
A. Timetable of the Nineteenth Century	99
B. <i>Plessy v. Ferguson</i> case	101
C. Majority Opinion by Justice Henry Billings Brown	103
D. Dissenting Opinion by John Marshall Harlan	111
Bibliography	119
Vita	124

ACKNOWLEDGEMENTS

The writer wishes to express her gratitude to Professor Audrey Horning, whose careful scrutiny and continual support made this work infinitely better. The guidance of Professor Bragdon and Professor Weiss are also greatly appreciated. The author is also grateful to the Anthropology Department, whose four-field approach expanded and deepened her awareness of the discipline's potential.

ABSTRACT

The city of New Orleans in the nineteenth century struggled to find its identity as an ‘American’ city at the same time that the United States was trying to establish its national character. Viewing this simultaneous local and national process of ‘Americanization’ through the lens of the New Orleans Free People of Color provides a fascinating study in the coinciding birth of a nation and southern city.

New Orleans had developed into a bustling urban port city by the end of the eighteenth century, the time period in which the Free People of Color developed into a distinct social stratum. Much of the difficulty this group experienced during the nineteenth century is rooted in the city’s eighteenth-century political, socio-economic and cultural fabric. The contrasting ideologies, social structures, cultural norms/expectations, and economic activities of New Orleanians clashed with the ‘white’ and ‘black’ Americans who would later flock to the city.

The Free People of Color chose to contest the steady erosion of civil, political and social rights after Reconstruction through the legal system. This culminated when they became plaintiffs in the *Plessy v. Ferguson* case, which the Supreme Court ruled on in 1896. How the Free People of Color struggled against their marginality through legislative avenues will be examined in light of the temporal, local and national contexts.

THE NEW ORLEANS FREE PEOPLE OF COLOR AND THE PROCESS OF
AMERICANIZATION, 1803-1896

CHAPTER ONE

THE NEW ORLEANS FREE PEOPLE OF COLOR IN HISTORICAL PERSPECTIVE

“There is no State in the Union, hardly any spot of like size on the globe, where the man of color has lived so intensely, made so much progress, been of such historical importance and yet about whom so comparatively little is known” (Dunbar-Nelson 2000:41).

The landmark 1896 Supreme Court case, *Plessy v. Ferguson*, legalized the constitutionality of racial segregation by declaring that facilities must be ‘separate but equal.’ The impact of this legally-mandated inequality resonates still in 2005, as the fight for social justice and equal rights continues. The narrative of *Plessy v. Ferguson* is not just one of disenfranchisement and discrimination; rather, it is also an important story of resistance, vision, and identity formation. The chronicle of how and why the New Orleans Free People of Color (henceforth ‘FPOC’) staged the arrest of Homer Plessy and initiated the *Plessy v. Ferguson* lawsuit is analyzed in this thesis.

Marginal and liminal individuals and groups help define the mainstream center. The United States’ history is one fraught with exclusion and discrimination. In the eighteenth and nineteenth centuries, regional Indian polities were stripped of land rights, restrictions on Asian and European immigrant groups—if allowed in at all—coincided with assimilation and Americanization programs and policies, and African Americans struggled in a system that once considered them to be only three-fifths of a person. The destabilization of Indians, immigrants and African Americans has a long legislative history. The United States’ first full century consisted of policies, media and an economy that helped define this new state. The key to the *nation’s* development and power rested

upon its citizens, who were carefully selected.¹ Yet, the Civil War and the African American, Indian, women and immigrant's fight for civil, political and social rights demonstrates that governmental policies and those who opposed them shaped the nineteenth century.

The nineteenth century is a fascinating time period because the United States was still finding, defining and molding its boundaries and status quo. The definitive break from the Old World remained a work in progress as this nation of immigrants turned the United States from a post-colonial experiment into a full-fledged nation-state. Slave labor propelled the South's economies until the Civil War and kept many African Americans indentured and economically dependent for the century's remainder. Enslaved and free African Americans in the North and South struggled within and against a socio-economic structure that regarded this 'race' as subordinate and ontologically inferior. However, as scholars of this time period have shown, this system of enslavement colored and characterized *everyone* in the nation, not just African Americans. Slaveholding and non-slave holding whites were defined as being not black. 'Whiteness' became a property, status and identity that further separated them from African descendants (Harris 1993:7). African Americans, whether enslaved or free, by and large had little recourse to protection or opportunity. Institutional systems of power, such as land tenure, governmental representation and involvement, economic independence and legal

¹ Here, 'nation' refers to the abstract commonalities individuals in a nation polity share, such as patriotic symbols (national flag), annual rituals (Fourth of July) and a shared consensus of pride and memory (the idea that the United States is the most exceptional and best nation on earth). Ideas of nationhood and nationalism always carry an agenda. O'Leary correctly states: "Although modern nations claim to be bound together by essential unities and progressively unfolding histories—whether linked to civil or ethnic narratives—what appears as a national consensus is only accomplished through the articulation of basically unstable and often conflicting interests and their suturing into a sense of a unified national identity" (O'Leary 1999:4).

recourse were designed to fall largely outside of their command. The New Orleans Free People of Color were the exception to this rule.

A combination of circumstances and fortitude enabled them to become the largest, wealthiest and most educated group of African descendants in the ante-bellum nation. Their degree of political, social, economic, religious and cultural latitude not only tells a remarkable story but also brings into focus New Orleans' social structure, prevailing attitudes and sites of power. The FPOC's collective wealth and education did not guarantee socio-economic stability, however. Their rights and privileges were subject to pre-emption at any time, and the longevity of their social status remained uncertain. In fact, their growth and enfranchisement in the late eighteenth century would be steadily stripped away a century later, after the failure of Reconstruction. The tension that emerges from this tenuous position formatively shaped this group of people.

The circumstances that permitted the FPOC to grow and develop as a class in-between enslaved Africans and slaveholding/non-slaveholding whites during the Spanish colonial period changed abruptly with the 1803 Louisiana Purchase. The FPOC's most prosperous years coincided with the nation's most formative and intolerant years. The United States' sense of purpose and identity turned out to be antithetical to who the FPOC were and what they represented. No degree of wealth and education could grant them the power and privilege of 'whiteness.' There was little room in the United States' nineteenth-century national fabric for this group to be independent or 'equal' to the white males in power.

The development of New Orleans and its diverse inhabitants during the French and Spanish colonial periods (1718-1803) are examined in Chapter Two. The cultural and

political influences of both regimes on the FPOC's allegiance and customs will explain how and why this city culturally and socially paralleled and diverged from its former British colonial and southern American neighbors. The resistance to American rule in the nineteenth century is Chapter Three's theme, and is best understood within the context of New Orleans' history and social structure in the eighteenth century. The effects of the nineteenth-century's events and political climates on the FPOC, from the ante-bellum period to the Civil War and the Reconstruction and post-Reconstruction time periods is Chapter Three's topic. The FPOC's definition and maintenance of its ethnic group boundaries is foregrounded against the increasingly intolerant and narrow institutional power structure that effectively closes in and shuts out the FPOC (Barth 1969:6). How the FPOC fought back legislatively with the lawsuit that began *Plessy v. Ferguson* is Chapter Four's focus. The FPOC perhaps stood more to lose in the post-Reconstruction period than any other group of African Americans, because they began with the most property, education and status. How they linked their cause and fight to the general plight of African Americans is an important chapter in this country's history of nation-hood, citizenship, race relations and the formation of what the American character is.

The democratic and capitalist Superpower status the United States presently occupies was by no means inevitable. The country's rise to power took place at the expense and exclusion of the marginalized, who represented a different kind of nation. The FPOC is one of these groups. The first full century of the United States' political climate looked very different from the FPOC's perspective, who stood marginally on the brink of power. A corrective history that shifts the historical focus from the privileged to

the marginalized urges a reconsideration of what this group's struggle meant for this country's development.

The simultaneous local and national process of 'Americanization' through the lens of the Free People of Color makes a fascinating study.² Before Louisiana became an American state in 1812, it was a French and colonial territory populated by Canadian settlers, French, German and Swiss immigrants, African slaves, and Indian polities native to the Lower Mississippi Valley region. Many of these individuals came into contact in New Orleans, which had developed into a bustling urban port city by the end of the eighteenth century (Ingersoll 1999:xx).³ Many of the reasons for which the nineteenth-century process of Americanization proved difficult for the FPOC (discussed in Chapter Three) are rooted in the city's eighteenth-century political, socio-economic and cultural fabric. The contrasting ideologies, social structures, cultural norms, expectations and economic activities of New Orleanians clashed with the 'white' and 'black' Americans who would later flock to the city. Fundamental differences in the role of religion, language, gender and racial/ethnic roles, economic opportunities and civil/political rights contributed to the painful process of Americanization for many (if not most) native New Orleanians.

The FPOC began to form a distinct group "within a primarily three-tiered social order, distinct from whites *and* slaves" in the last few decades of the eighteenth century,

² See Trachtenberg's *Shades of Hiawatha* for his paralleled discussion of 'Americanization' processes various immigrants and Indians were put through during the last few decades of the nineteenth century and first few decades of the twentieth. He defines 'Americanization' as "a set of institutional devices and regimes that operated with an a priori notion of what and who an American was supposed to be, an essentialist idea of a presumed cultural nationality" (Trachtenberg 2004:xxii).

³ This region's Indian polities include the Choctaws, Chickasaws, Alibamons, Tallapoosas, Abehkas, Taensas, Natchez, and Tunicas (Usner 1992:28).

under Spanish rule (Hanger 1997:2). It should be noted, however, that their privileged existence was never guaranteed, and was characterized by an ambiguous status that was lower than whites but higher than enslaved people (Hanger 1997:1). This polity (whether considered as a group, class or caste) was not a monolith with identical views on every issue; many FPOC wanted to be treated like, and accepted as, whites, while others wished to remain connected to their African heritage and/or enslaved family (ibid.). One attribute that distinguished the FPOC from enslaved Africans and other contemporaneous free blacks in the United States was education in, and travel to, France, discussed at greater length in Chapter Three.⁴ Many of the well-to-do free people of color who became notable musicians, composers and writers in the late eighteenth and early nineteenth centuries spent their formative education and career years in France. Such strong connections to the metropole may offer insight into why the FPOC did not immediately or wholeheartedly embrace other free(d) African Americans who migrated to the city in the nineteenth century.

With their 'hearts and minds' turned more to France than the surrounding American states and territories, the FPOC's alliance with the common plight of African Americans would be a complicated and enduring process. This is not to say, however, that one's African heritage was viewed as shameful (Barthelemy 2000:273). An allegiance to a major, Old World colonial power contrasted sharply with residents (most of the population were not considered official citizens after the birth of the American nation) whose allegiance was solidly rooted in the New World, as evidenced by the

⁴ See Chapter Seven in Desdunes' work (1973) for an extended look at FPOC who pursued artistic careers in France.

American Revolution. Understanding the FPOC's relationship to what they were fighting for and why will help set the stage for what was at stake in *Plessy v. Ferguson*.

Indeed, the allegiance many FPOC had to France formed the backbone of their identity and ideology. Sybil Kein argues that the FPOC claimed the metropole "as a spiritual home to which they felt they belonged culturally" (Kein 2000:179). Expatriation to France for the purpose of education or career advancement was strongly supported by wealthy white patrons and/or wealthy FPOC families (Kein 2000:181). While impossible to definitively point to such French connections as evidence of a decided loyalty to one country over another, the frequent travel and prosperity talented artistic men and women enjoyed must surely have had some influence.⁵ This practice of patronage and expatriation enabled the pursuit of opportunities not available to the majority of American whites; the 'land of opportunity' existed for some in France, not 'America.'

Though the FPOC did not attain a distinct population or social stratum until the end of the eighteenth century, when Louisiana became a Spanish territory, many cultural elements of the French colonial period survived well into the nineteenth century. These two periods will therefore both be considered. The paucity of serious study and attention scholars have devoted to the economic, political and socio-cultural development of Louisiana in general and New Orleans in particular belies its historical importance (Kein 2000:xiii). If the writing, cataloguing, performance and selective representation of history are deliberate and careful acts, then their absence in written memory reflects their perceived unimportance and threat (Trouillot 1995:26). The New Orleans Free People of Color are an important part of this country's ideological development as a nation. In the

⁵ See Fabre's extensive look at four men of color who benefited from expatriation, including Norbert Rillieux, Camille Thierry, Victor Séjour, and Edmond Dédé in Chapter Eight of Kein's book (2000).

following chapter, the social organization, power loci, political economy and attitudes of/in Louisiana in general and in New Orleans in particular will be examined.

CHAPTER TWO

FRENCH COLONIAL PERIOD: 1718-1762

The French colonization of Canada and Louisiana both began modestly, with “Canada as a trading post and Louisiana as a frontier garrison (Johnson 1992:30).⁶ Before the French made serious attempts to expand down the Mississippi River, they first headed to New France (i.e. much of the territory that makes up present-day Canada). In contrast to the British strategy of segregating native peoples from the colonizers, assimilation was the preferred French strategy in New France. Louis XIV’s finance minister, Jean-Baptiste Colbert, enacted this strategy by launching a ‘one-blood program.’ Its policy actually *encouraged* intermarriage between the native Indians and French colonizers (Johnson 1992:23). This is not to say that the French were necessarily any more humanitarian or ‘caring’ than the British when native resistance conflicted with their colonial plans; when events did not go their way, the French retaliated harshly. Two examples of this are the French massacres of the Iroquois population in New France and much of the Natchez nation in Louisiana (Johnson 1992:25).

Scholars and tourists alike have referred to New Orleans as the ‘most European’ or ‘un-American’ city in the United States. Whether a cliché or not, the truth in this statement lies in the different histories, ideals and legacies the French and British left behind in the United States’ regions they colonized. Unlike other major colonizing European powers at the time—Dutch, Spanish, British, and Portuguese—the French empire was more interested in commercial profit than territorial expansion. The

⁶ Johnson echoes others when he argues that an exhaustive study of the French colonization of Louisiana has yet to be done (Johnson 1992:12).

acceptable ways and means of physical, social and sexual contact with Indians and even African slaves were fundamentally different between the French and British.⁷

Although both colonizing powers considered the various Native American groups they encountered to be ‘savage’ and inferior in some capacity, it was evident that these native North American inhabitants were a collective force with which to be reckoned.⁸ The French chose to ally themselves with the various Native American groups in New France (part of modern-day Canada) and the Mississippi Region, from Louisiana to Mobile, Alabama. The French partnership with Canadian Indians enabled them to survive and profit handsomely from the fur trade. By and large, the Jesuits, *coureurs-de-bois*, and other French colonizers recognized Indians as allies and partners, and did not object to some cultural overlap and integration. In contrast to this French assimilationist ‘impulse,’ British Crown policies favored complete separation from the Indians they encountered (Johnson 1992:15-16, 24). The difference in funding may also have played a key role in the differing purposes and motivations of the colonial ventures.

An in-depth look at the contrasting ways the French and British perceived Indians ontologically is unfortunately beyond the scope of this thesis. There is, however, an argument to be made for disparate values, lifestyles and customs that distinguished the inhabitants of the French territory ‘Louisiane’ from residents of other southern and former British colonies such as South Carolina. Differences along linguistic, religious,

⁷ It should also be noted that the French and British enjoyed thirty years of peace that ended with France’s involvement in the war against Austria in 1744 (Eccles 1998:192). However, for pragmatic and symbiotic reasons, France and England agreed not to take over the other’s territorial holdings in the Caribbean (Eccles 1998:193).

⁸ Dickason argues that this image and notion of savagery enabled colonists to ignore the intricate New World societies they encountered and instead superimpose European culture, religion, language and socioeconomic dominance (Dickason 1984:59).

ideological and cultural lines play a major role in how and why native New Orleans creoles—both white and black—clung to a French ancestry. Specifically *what* they were clinging to will be examined in greater detail in Chapter Three.

Louisiana's population was a polyglot from the very beginning.⁹ The *coureurs-de-bois* (literally, “runners of the woods”), illegal French traders who regularly cohabited with the surrounding Native American populations in Canada, played a major role in the settlement and development of Louisiana (Johnson 1997:30). Many of the Frenchmen who established Louisiana came from French territorial settlements in Canada, which has an unique history of its own. It has been argued that Louisiana, at least initially, “represented an extension of the French experience in Canada” (Johnson 1997:19).

Recognizing the value of the Indians' knowledge and military prowess, brothers Pierre le Moyne d'Iberville and Jean-Baptiste le Moyne de Bienville implemented a version of the one-blood program that viewed Indians as partners and allies. Bienville set a tone of alliance-making. Indeed, the French colonists depended heavily upon the Indian inhabitants of Louisiana for survival; scarce food supplies, disease and an unfamiliar climate left many of the French unable to fend for themselves (Johnson 1992:32). The French abandoned the assimilationist strategy of negotiation with the surrounding Indian nations was abandoned when it was realized in the late 1600's that “Canada's French were turning into Indians both in culture and in blood at a far more rapid rate than

⁹ The culinary metaphor of gumbo is useful here as an example of how various cultures melded to form something new: “The colony's ‘foodways’ also display evidence of cultural *métissage*. New Orleans consumed European wheat flour brought down from the Illinois, corn purchased from local Natives, rice which Africans had been instrumental in introducing to the delta wetlands, green vegetables grown by German settlers, okra favoured by black slaves, and bear grease (for cooking) purveyed by interior Indians” (Greer 2003:108).

the Indians were becoming French” (Johnson 1992:28). Once these undesired effects became apparent, the one-blood program was abandoned, and expansion south of Canada became more seriously considered.

French settlement in Louisiana and New France differed most strikingly in their systems of land tenure. Unlike New France’s heavily bureaucratic system of seigneurial tenure, land was granted directly to planters in Louisiana (Greer 2003:106). A major contrast between French colonial Louisiana and the French West Indian colonies was the practice of slavery. Whereas Saint-Domingue, France’s largest and most prosperous West Indian colony, revolved mostly around the labor slaves produced and social hierarchy slavery reinforced, it never dominated Louisiana’s society (Greer 2003:107).¹⁰ More common than the *grands blancs* estate owners of Saint-Domingue were the small-scale plantation owners who worked side-by-side with their slaves and *engagés* (*ibid.*).

The many national, ethnic and racial groups that made up New Orleans’ population in the eighteenth and nineteenth centuries were far from homogenous. French religious missionary leaders and settlers, and German and Swiss immigrants made up the varied European population of the French colonial period.¹¹ Massive migrations from Saint-Domingue during and after the Haitian Revolution greatly increased the city’s population in the early nineteenth century, particularly the FPOC population. The

¹⁰ Eccles argues that slavery in Louisiana can be seen as “intermediate” in centrality between New France (where slavery existed but in very small numbers and slaves consisted mainly of Indian captives) and Saint-Domingue, where the number of slaves vastly outnumbered the French colonists (Eccles 1998:165).

¹¹ Capuchins and Jesuits comprised the religious leaders in Louisiana (Eccles 1998:189). Their severe disapproval of concubinage, *plaçage*, and intermarriage (not to mention other examples of amorality) was largely to no avail; such practices would continue throughout the French and Spanish colonial period (Eccles 1998:190).

importance of New Orleans' demography is discussed to a greater extent in Chapter Three.

Realizing that the geographically strategic location of Louisiana could potentially slow or halt British and Spanish expansion in the area, the French began heading south in the late 1600's. Control over the Mississippi Region would afford the French an uninterrupted route from Canada to the Gulf of Mexico, and on to the Caribbean islands (Poesch 1997:9). French colonial priorities began to shift from French dominated Canada to British dominated North America, in order to prohibit the Spanish or British from dominating the region. Maintaining a strong French colonial presence in the southern part of North America was important at the turn of the eighteenth century, because it was unclear who would inherit the throne of Charles II of Spain—and thereby Spanish territories in North America (ibid.).

The strategic attempt to connect French territories in present-day Canada, the lower Mississippi Valley Region and the French Antilles “was combined with an improbable plan to induce a fiscally naïve aristocracy enervated by royal absolutism to adapt overnight to a new world of commercial capital” (Ingersoll 1999:6). On April 9, 1682, explorer Robert Cavelier de La Salle claimed ‘Louisiane’ for the king of France Louis XIV (Poesch 1997:3). In 1699, Pierre Lemoyne d’Iberville, one of the primary French colonists in Canada, established with a group of French Canadians a temporary camp on Biloxi Bay (Eccles 1998:178). They had been successful together in leading French colonial efforts throughout New France. In 1701, just two years later, Mobile was settled and became the region’s “administrative center” until this function was moved to New Orleans in 1722 (ibid.).

Both Iberville and Bienville believed in the assimilationist tradition of French colonization, and therefore did not discourage Indian and French relationships, which produced mixed, or ‘creole,’ offspring. French colonists in Louisiana were not well equipped militarily to deal with resentful Indian nations (Eccles 1998:187). Alliances were soon established, however, thanks to Bienville’s skillful ability to negotiate with initially hostile Indians (Eccles 1998:186). Had it not been for the Cherokee, Choctaw and Alibamous Indian allies, the French colonists might have lost Louisiana and the surrounding territories almost immediately (Eccles 1998:187). Indeed, Daniel Usner Jr. premises his seminal book, *Indians, Settlers & Slaves in a Frontier Exchange Economy* (1992) on the life-saving alliance between the Choctaw Indians and French colonists. The Choctaws not only helped the early French colonists survive by providing subsistence, but they also provided military protection against the British-allied Chickasaw Indians.

The colony’s economy finally began to thrive with the key participation of the Choctaws in the deerskin trade. In addition to its strategic location, it was hoped that the new territory would yield enough high-quality tobacco to suspend France’s dependency on the Virginia-grown crop (*ibid.*). The value of Louisiana-grown and produced tobacco and indigo decreased. The quality of tobacco grown in Louisiana’s marshy soils could not compete with Virginia Chesapeake tobacco, and the labor-intensiveness of indigo proved not to be cost-effective (Berlin 1998:342).

The French attained official land grants in the bayous around Mobile in 1708 (Bureau 1968:9). Gaining control over major ports along the Mississippi River would enable the French to effectively bar British westward expansion.

If Louisiana's strategic usefulness was evident, its economic value was a different story entirely; the territory was wholly dependent financially on the less-than-enthusiastic French crown for subsistence.¹² In fact, Louisiana proved to be such an economic drain on French state resources that Louis XIV seriously considering abandoning the territory altogether (Eccles 1998:177). Poor planning was part of the problem, as well as an overly ambitious vision of what this colonial project could become (Ingersoll 1999:3). Except for the Indians native to the area, all of the Canadian, European and African inhabitants were brought, either voluntarily or involuntarily, to the territory. In 1714, the French constructed a military outpost at Natchitoches.¹³

Three years later, John Law received a charter from the Duke of Orléans to develop Louisiana as a French territory (Bureau 1968:9).¹⁴ The colony was placed in his care after private financier Antoine Crozat gave up control in 1717 (Usner 1992:32). It would be "the largest colonial settlement ever undertaken by a European government" (Ingersoll 1999:6). John Law's Company of the Indies, before its ultimate collapse, was the major supporter of French colonists in the New World, sending over 7000 colonists to Louisiana alone between 1717 and 1721 (Sexton 1993:13). John Law's presence, vis-à-vis the Company of the Indies was so prescient that the earliest plantation in Louisiana is

¹² To this effect, Eccles writes that Louisiana "never succeeded in justifying its economic existence" (Eccles 1998:176).

¹³ The French expansion of territory in the lower Mississippi Valley inevitably meant encroachment onto Spanish lands. Resentment of this threat culminated after Louis XIV's death when the French and Spanish briefly went to war, in 1719 (Eccles 1998:185).

¹⁴ Law convinced the Duke of Orléans to establish the first national bank of France and to subsequently "link it with a joint-stock company enjoying a royal monopoly on overseas trade" (Ingersoll 1999:6). This venture was part of a larger scheme to encourage the French elite to invest in commercial enterprises, beginning with the 'Mississippi' stock issued for Louisiana (Ingersoll 1999:7).

credited to the manager of the Company, who commissioned the Natchitoches Plantation to be built in 1732 (Lane 1996:324).¹⁵

The political, economic and social development of Louisiana would officially fall under the guise of the newly formed Compagnie des Indes—or Company of the Indies—a decision that proved to be disastrous (Eccles 1998:182).¹⁶ The Company of the Indies was funded by stocks, and when the “‘Mississippi’ stock bubble of 1720 [burst, it] ruined Louisiana’s reputation,” Louis XV finally took control of the territory, in 1731 (Ingersoll 1999:xxi). Louisiana might well have been abandoned if not for his leadership, because Louisiana had by then acquired a notorious and unfavorable reputation in France that discouraged European immigration.

In 1718, Bienville officially established the city of New Orleans under the Duke of Orléans’ regency (Ingersoll 1999:xxi). Bienville named New Orleans after Philippe, duc d’Orleans (Poesch 1997:14).¹⁷ The original city lies within the boundaries of the Vieux Carré, known today as the French Quarter. With its fortifications, the town looked very much like a colonial outpost; it was also designed to give the appearance of a stately and (visually) important city (Heard 1997:1).¹⁸ Streets were planned a few years later in 1721, according to a street grid designed by Pierre Leblond de la Tour’s assistant, Adrian de Pauger. The grid was common of many fortified towns planned in the late seventeenth

¹⁵ Today, the Natchitoches Plantation area remains important as the home of Creoles who continue to recognize their heritage through festivals, tours, parades, and more.

¹⁶ Ingersoll aptly describes it as “an all-inclusive trade monopoly, the company of all companies, based on publicly traded shares, capitalized at the fabulous level of one hundred million livres” (Ingersoll 1999:7).

¹⁷ Many of the streets in the Nouvelle Orleans were given the prefix “St.” before the name to lend “useful ambiguity between temporal and spiritual authority” (Heard 1997:3). Before much land could be developed, however, the area needed to be cleared of the thick canebrake and forest that covered the land (ibid).

¹⁸ A French military engineer, Pierre Leblond de la Tour designed the city, known today as the French Quarter (Wilson 1974:3).

and early eighteenth centuries (Bureau 1968:9). The city was actually not fortified until 1729, after the Natchez Revolt (Poesch 1997:11).

Bienville was replaced by Étienne de Périer, who served as the second governor of French colonial Louisiana. Unlike Bienville, Périer was not interested in maintaining the relationship the first governor had cultivated and prioritized with the Natchez Indians. He decided to claim large tracts of valuable agricultural land from the Natchez Indians. Périer wanted control over this Natchez-occupied land because the area's fertile soil was ideal for tobacco cultivation. Unhappy with this sudden displacement and seizure of land, the Natchez and a few cooperating African slaves responded by killing 237 soldiers and settlers (Johnson 1992:37). The French colonial government responded fiercely in 1729, and in three years' time, managed to annihilate much of the Natchez nation (ibid.). In reward for their participation in the punishment of Natchez and, at other times, the Chickasaw Indians, Périer freed a small number of enslaved Africans (Ingersoll 1999:77). To make a point to the enslaved Africans who had participated in the revolt, the French colonists effectively stopped their enslavement of Indians, thereby decreasing contact (Usner 1992:58).

With the alliance between the settlers and Indians now destabilized, the Company of the Indies gave up on the colony of Louisiana, and Bienville was reinstated once again as governor (Johnson 1992:38). The Natchez revolt was the consequence of Périer's inability to respect and negotiate with the Natchez Indians, as well as the French authority's reluctance to hand complete colonial control over to the local Louisiana government (Ingersoll 1999:23).

The shortsightedness of the French Crown caused many grave problems for the economy and productivity of Louisiana. Even though the geography and climate was much better suited to sugarcane production than tobacco, the Crown insisted that the colonists grow the latter crop. The frustrated and starving colonists quickly saw the futility of attempting to grow tobacco and tried their hand at indigo instead (Ingersoll 1999:26). Although more successful than tobacco, indigo required much more labor than was available in the territory (Ingersoll 1999:27). The French Crown refused to send a large number of enslaved persons to perform this labor, and the territory's economy limped on for much of the French colonial period.¹⁹ In the wake of a labor shortage, enslaved Africans were trained to perform a wide range of occupations and became quite skilled (Usner 1992:55).

Had the early inhabitants of Louisiana been more familiar with the land and which crops were best suited to it, or if more of the earliest European immigrants in the colony had survived and produced offspring, then perhaps the colonial authorities would have enjoyed greater self-sufficiency. As it was, however, the first half of the French colonial period was characterized by rampant disease, malnutrition and political instability, which contributed to a remarkably high mortality rate.

Early Population

New Orleans was planned such that plantations would stand some distance from the main commons and Vieux Carré areas. Fortifications were initially built by the

¹⁹ Ingersoll observes: "Perhaps the basic problem for Louisiana was the same as in other French colonies: France was a remarkably traditional society with an inelastic work force, which discouraged both industrialization and emigration" (Ingersoll 1999:27). 'Traditional' here means rigidly stratified along class/caste lines.

French, and then later rebuilt several times by the Spanish. The city was never as heavily fortified as Charleston, South Carolina, however. New Orleans was largely designed as a cosmopolitan port city, and was comprised mostly of French males in its earliest days. There was an imbalanced sex ratio of European males to European females in the first few decades. The lopsided ratio of European men to women prompted interracial mixing and a certain power structure between French men and Native American women (Sexton 1993:14). Some Indian women were enslaved and performed both domestic and wifely duties as the matriarchal head of French colonial households. This “problem” was partly alleviated with the immigration of more European women to the colonies after 1717 (Usner 1992:235). Over eighteen hundred engagés came to Louisiana between 1717 and 1720 (Eccles 1998:183). Recruited from the streets and prisons of France, Switzerland and Germany, the lower status of such early settlers “gave Louisiana the foul reputation of a penal colony,” though this was actually a mischaracterization (Eccles 1998:183; Ingersoll 1999:13).²⁰

Ingersoll writes that Louisiana’s negative image was further reinforced in Abbé Prévost’s famed literary work, *Manon Lescaut*, which was set in the derelict society of Louisiana (1999:10).²¹ Louisiana’s social landscape, as described in this narrative, reinforced the moral flexibility and chaos that may have dissuaded continuous European immigration.²² Many of the European immigrants died soon after their arrival in

²⁰ Alice Dunbar-Nelson puts it another way when she writes that Louisiana was “not immoral,” but “unmoral” (Dunbar-Nelson 2000:5).

²¹ Ingersoll continues: “Prévost’s voluptuous Manon came to serve not only as a general eighteenth-century metaphor for the unimproved and degenerative Western Hemisphere but also as a symbol of deprivation, vice, and tyranny in New Orleans” (Ingersoll 1999:10).

²² Parts of New France also suffered from a low European immigration rate, which may reflect a general attitude of suspicion to colonial settlement and the questionable fruitfulness of New World migration.

Louisiana, which may have been a further detractor (1999:13). Ingersoll overemphasizes the stability and coherence of the ‘white’ slaveholding society, but does provide an useful classificatory list of immigrant arrivals during the years of 1718 and 1721: “officers (military and administrative), concessionaires or their agents, company clerks and employees, company laborers (artisans), Indentured (unskilled and skilled), White women, White children, Deportees (farmers and indigents), and soldiers (1999:11).²³ The white population at large barely resembled a social structure reminiscent of the Old World, because there were no immigrants from the richest nobility or poorest peasantry classes (1999:10,12).

Ingersoll’s characterization of the early ‘white’ immigrant population becomes suspect when he writes that the colony was actually *not* made up of French society’s undesirables because “for the actual criminals and ‘libertines’ who arrived in Louisiana, life was short, and ultimately they played a small part in the colony’s history (1999:12). This statement, and others like it, support Ingersoll’s larger description of the white planter class as respectable, competent and coherent. His structural-functionalist look at early French Louisiana is driven by an almost deterministic understanding of slave societies, which he deems this territory to be (1999:xv). One of the difficulties in analyzing Louisiana’s cultural, socio-economic and political history, aside from the need to be linguistically and historically fluent in Spanish and French colonialism (and aware of contemporaneous American developments) is the need to sift through an historiography that is often contradictory.

²³ This list is taken from Table 1, in which Ingersoll provides the number of how many people made up each category. Out of a total of 8,921 people brought to Louisiana in these four years, 1,901 were African slaves. So many ‘white’ immigrants died, however, that African slaves, arguably better able to adjust to Louisiana’s sub-tropical climate, soon outnumbered the ‘white’ population (Ingersoll 1999:11).

Ingersoll's focus on Louisiana's social structure blinds him to the agency and influence of the various groups involved. He is at times overly simplistic and too eager to draw comparisons, as when he writes: "The basic character of society was the same in New Orleans as in Wood's South Carolina, Kulikoff's Prince George's County, or anywhere else where the labor of black slaves was the mainstay of the economy" (Ingersoll 1999:xviii).

Slavery and the Slave Trade

The status of the white planters was directly proportional to how many slaves one owned (Ingersoll 1999:44). The slaveholding planters had much to worry about. There were several incidents of 'slave crimes,' including running away. Called *petit marronage* by the French, it might have been a more common occurrence outside of New Orleans, on the rural Louisiana plantations, than within the town (Ingersoll 1999:85). However, there are few documented instances of slave rebellion after the year 1731, which Ingersoll summarily attributes to the functioning machinery of Louisiana's 'slave society' (1999:95). He attributes the lack of collaboration between non-slaveholding whites and enslaved persons to "the *gemeinschaft* character of the New Orleans community" (1999:103). Portraying the slaveholding and non-slaveholding whites and enslaved Africans each as a kind of monolith allows him to draw such sharp distinctions between groups and predict their behavior, which he implies is socio-economically determined. I would argue that where Ingersoll writes "*gemeinschaft* (or community—individually

focused),” he really means “*gesellschaft* (or society—structurally focused).” Nothing connotes an enslaved person’s status as property to be bought and sold more than the legal side of such transactions. Freeing or buying a slave for a future spouse and/or leaving enslaved persons to one’s children in a will served as the greatest pronouncement of a slaveholder’s status (Ingersoll 1999:97). It reinforced the vast divisions between those who were and were not enslaved. However, analyses of slavery and enslaved persons has moved beyond the simplistic idea that a person’s enslaved or free status is the total sum of that person’s life, culture and behavior. Even under the most oppressive of circumstances, no two people act or think exactly alike. Ingersoll’s behavioral predictions precludes the possibility of variance among enslaved persons, which is an outdated and reductionist conclusion.

The slave trade during the French colonial rule of New Orleans can be understood against the backdrop of the slave trade in the West Indies and the rest of the American South.²⁴ Discussed at much greater length in the section on Spanish colonial rule, the ability for the FPOC to develop as a group rested on the manner, frequency and possibility of manumission and/or self-purchase. Manumission was key to the growth of the FPOC. Since children took on the status of their mother, the freedom of women was usually purchased first (Berlin 1998:334).

The first slave ship to arrive from Africa in Louisiana landed in 1719 (Mosadomi 2000:229). Between the years 1719 and 1731 the Company of the Indies sponsored the landing of sixteen Louisiana-bound ships from Senegal (*ibid.*). Unlike other parts of

²⁴ Slave labor consisted of plantation and artisanal/domestic labor (Greer 2003:107).

North America that received slaves from Africa by way of the Caribbean, the slaves brought to Louisiana during this period knew no other part of the New World .

Ira Berlin, Eugene Genovese, John Blassingame and others have done useful comparative studies between the political economy, social structure and social relations in the Upper South, Lower South and Deep South.²⁵ How slavery and social hierarchy functioned in Louisiana affected the formative identity of the FPOC, and distinguished New Orleans race relations from elsewhere in the South. There are dangers to such comparisons, as exemplified by Ingersoll's interpretation and refutation of the Tannenbaum Thesis. Sociologist Frank Tannenbaum sparked a debate in his 1947 book, *Slave and Citizen*, over the development of race relations and social structures within slave societies. He argued that "a colonizing nation's institutions, laws, and traditions exerted the greatest influence on slave treatment in that nation's American dominions and that this treatment in turn influenced the quality of race relations between free persons and freedpersons" (Hanger 1997:3). Tannenbaum then went on to rank how enslaved persons fared. In this continuum, Spain and Portugal ranked the best, France and Holland fell in the middle, and Britain was ranked the worst (ibid.).

Ingersoll states that New Orleans' history of French, Spanish and American rule, respectively, should serve as a suitable test case in which to try out Tannenbaum's argument. Ingersoll concludes that the argument does not hold up because "laws or religion had little or no influence on either the planter class or the condition of black slaves or free blacks" (Ingersoll 1998:xviii). Hanger's *Bounded Lives, Bounded Places* argues the opposite. Her book is premised on the direct correlation between

²⁵ See Ira Berlin's *Many Thousands Gone* (1998), Eugene Genovese's *The Political Economy of Slavery* (1988), and John W. Blassingame's *Black New Orleans* (1973).

lenient Spanish laws of manumission and self-purchase (known as *coartación*) and the development of the FPOC. As she reports it, the high degree of manumission amongst Spanish colonies played a key role in the ability of the FPOC to develop into a social stratum. The reader must discern the consensus and dissent in the historiography, and decide which ideas are more convincing. Hanger's analysis and interpretation of Tannenbaum's thesis is clearly much more convincing than Ingersoll's; his conclusion takes a more positivistic and objective approach that does not allow for ambiguity.

Another example of a sometimes contradictory historiography is evidenced by the disagreement among scholars as to who exactly made up the African slave populations. Ingersoll states that most of the slaves were "either Senegalese, Guineas, Bambaras, or Ibos" (Ingersoll 1999:69). He argues that it was "relatively easy" to tell where a slave was originally from by their accents and other linguistic markers, or the presence of certain patterns of body scarification (*ibid.*). Hall argues that two-thirds of the African slaves that came to Louisiana were from Senegambia, and that their relative homogeneity helped them 'Africanize' New Orleans (Hall 1992:29).

Whether the enslaved persons in New Orleans developed a distinctly 'African' or 'Creole' culture is beyond the scope of this Thesis. It is important to note, however, that the direct trading of slaves between the African continent and Louisiana basically ended by the year 1729 (Hall 1992:43). Henceforth, slaves came via the Caribbean, through Spanish territories in North America, or from other American states (Kein 2000:168). The slave revolution in Saint-Domingue that culminated in Haitian Independence prompted the wary Spanish colonizers and paranoid French planters to

restrict slave trading in Louisiana (Berlin 1998:340; Hanger 1997:6). The importation of slaves was forbidden by the year 1796 (Berlin 1998:340). Although the slave trade was banned in Louisiana and nation-wide at various times, slavery itself would not come to a screeching halt until the Civil War. One way to get around some of the slave trade restrictions, such as the 1804 United States restriction on foreign-born slaves, was to import slaves through Spanish-ruled territories (Berlin 1998:340-341). By the late eighteenth century, the demand for slave labor and Spanish laws that permitted the slave trade resulted in an increased rate not seen since the 1720s (Berlin 1998:341). The Louisiana population would be predominantly (both enslaved and free) African American well into the nineteenth century (Berlin 1998:342). Enslavement would supersede manumission (Berlin 1998:357).

Spanish Rule in Louisiana: 1768-1803

In 1759, the French colony of Quebec fell to the British. Louisiana governor Louis Billouart de Kerlérec then had more fortifications built, ultimately to no avail. The French and Indian War, or Seven Years' War struck a fatal blow to French colonial ambitions and in effect ended French colonial rule in Canada and Louisiana. With its military and food resources completely drained, 'Louisiane' was surrendered to Spain, where it became 'Luisiana' (Sexton 1993:16). At the same time, French Canadian territories were falling to the British. Thousands of French settlers who had established themselves in Acadia were forced out. Many found their way to Louisiana after 1765 and

formed what is today known as the Cajun culture (Domínguez 1997:101; Usner 1992:109).²⁶

The French Crown was forced to give the British all of their territories east of the Mississippi River (except New Orleans) that included such important holdings as Baton Rouge, Louisiana, Natchez, Mississippi, and Mobile, Alabama. The French lost New Orleans as well in 1768, when it surrendered the city to Spain (Bureau 1968:11). ‘Surrender’ may not be the proper descriptive term here, since Louisiana had been nothing but an economic drain on the French crown (Hanger 1997:7). The transfer of Louisiana to Spanish rule was accomplished with the signing of the 1762 Treaty of Fontainebleau and the 1763 Treaty of Paris that ended the Seven Years’ War (ibid.). The Spanish empire in North America continued to expand; the Spanish had claimed Pensacola, all of western Florida and Natchez (Mississippi), and Mobile (Alabama) by the year 1783 (Berlin 1998:327).

The transfer of Louisiana from French to Spanish rule was intentionally done in secret. Most New Orleans residents did not even realize the change in power until several years after the fact.²⁷ French and Spanish concerns about the population’s reaction and potential rebellion motivated discretion. The first Spanish Governor of Louisiana, Antonio de Ulloa y de la Torre Guiral was driven out of the colony only two and a half years after he took over by the frustrated French planter class and other non-slave holding whites (Hanger 1997:8). The Spanish authorities reacted swiftly, sending General

²⁶ For a brief overview of Acadian history and culture, see chapter 6 in Greer 2003, entitled “Beyond Canada.”

²⁷ Hanger lists the official dates of Spanish rule as 1763-1803 and the actual dates of control as 1769-1803 (Hanger 1997:1). Usner states that Spanish took over Louisiana in 1762 (Usner 1992:105). Hall and Ingersoll both comment that Spain ‘actually ruled’ Louisiana during the years of 1769 and 1803 (Hall 1992:276; Ingersoll 1999:148).

Alejandro O'Reilly in with troops to quell the rebellion and establish order (ibid.). In fact, once some of the legislative effects of Spanish colonial rule were felt, citizens began to rebel. The rebellion was quickly put down, with Spanish rule being firmly and officially established in 1768 (Bureau 1968:11). The Cabildo, located in the heart of the Vieux Carré, became the seat of the Spanish Government. The Spanish did not alter the city plan to any great extent, but did in 1788 extend New Orleans' fortifications away from the Vieux Carré into the Faubourg St. Marie, later known as the American Sector.

As the Spanish assumed control of Louisiana, they found it much easier to enforce the *de facto* and *de jure* rules the French had already set in place. Not everything remained the same, however. Two landowning classes were created under Spanish rule: the peasants or small farmers—who would become “the ‘poor whites’ of the antebellum and postbellum South—and estate owners (Domínguez 1997:103). The “Spanish laws legitimated the differentiation of rights to land in the New World by identifying meritocracies and creating aristocracies” (Domínguez 1997:104).

Spain also recognized and documented distinctions between enslaved and free African Americans, as well as *pardo* (or light-skinned) and *moreno* (or dark-skinned) black persons (Hanger 1997:12). The Spanish separated the Free Black militia into *pardo* and *Moreno* units. These units were very active, serving in each military effort during the period of Spanish rule (Hanger 1997:109). Free Black militiamen were accorded status, as well as wages. According to Hanger, this institution was most responsible for bringing about a common identity and purpose among the FPOC (or the ‘*libres*,’ as she calls this group) (Hanger 1997:134). The Free Black militia became an important avenue of freedom, as enslaved people were able to use their military wages to purchase their own,

or someone else's, freedom. Once free, however, the effects of changes brought about by freedom could take more than one generation to become manifest (Hanger 1997:17).

Spain recognized the importance of immigration in this new territory to offset the power of the antagonistic French, develop the economy and enlarge the military (Hanger 1997:8). In contrast to their intended goal of bringing Spaniards to the territory, Spanish authorities actually attracted Anglo-American immigrants (*ibid.*). Louisiana began to prosper more and more steadily in the last few decades of the eighteenth century; although it took nearly three-quarters of a century, the colony finally began to live up to its economic potential (Hanger 1997:10).²⁸ The Spanish legalized the slave trade; many enslaved persons came from Saint-Domingue, Cuba, the Bight of Benin, the Bight of Biafra and Central Africa (*ibid.*). The revolt in Saint Domingue that began in the 1790s prompted the Spanish governor François-Louis Hector, baron de Carondelet et Noyelles (known as 'Carondelet') closed off the importation of slaves from this revolution-stricken colony (Hanger 1997:11). The continuation of the Haitian Revolution prompted Carondelet to put a ban on slave imports from outside of North America until the year 1800 (*ibid.*).

All of the various groups populating New Orleans grew tremendously during Spanish rule; Hanger estimates that the population of all white residents almost doubled in size; the slave population grew to be more than two and half times its previous number, and the FPOC population grew 'sixteenfold' (Hanger 1997:21, 23). While the FPOC population grew significantly during this period, its numerical, social, political and economic dominance was nowhere near that of the Saint-Domingue *gens de couleur libre*

²⁸ Hanger writes: "During the years of Spanish rule New Orleans became less of a frontier town and more of a cosmopolitan commercial city" (Hanger 1997:23).

elite (Hanger 1997:55). One commonality between the Saint-Domingue and New Orleans FPOC was the desire “to reform, not revolutionize, a system that condemned them outright for being nonwhites” (Hanger 1997:136).

Code Noir and Coartación

Louisiana’s first French colonial governor, Bienville, introduced the Louisiana Code Noir, or Black Code, in 1724 as a guideline for how to take care of slaves (Dunbar-Nelson 2000:6). Modeled after the 1685 French Code Noir first implemented in colonial Saint-Domingue, it outlined the allowed severity of punishment and stated the provisions slaveowners were required by law to provide for the survival of their slaves. The legislated treatment of enslaved Africans shows the role law played early on in shaping and/or reinforcing interaction between certain groups. As with all laws, its guidelines and rules were locally interpreted and enacted (Ingersoll 1999:104). In a comment almost counter to his argument of rigid social divisions in accordance with the local social structure, Ingersoll states: “...the natural propensity of human beings to socialize was a strong challenge to the regime of the slaveholding class... This is why the code was aimed at whites and blacks, not at masters and slaves. The rules of race subordination had to be inculcated in ordinary white people to counter natural human tendencies” (Ingersoll 1999:105). The Louisiana Black Code directly attempted to enforce what the 1685 Code Noir only hinted at, namely the minimizing of a free black population and incidents of miscegenation (Ingersoll 1999:139).

Spanish laws drew on the Louisiana 1724 Black Code, as well as guidelines in *Las Sietes Partidas* and the *Recopilación de leyes de los reinos de las Indias* (or

Compilation of the Laws of the Kingdoms of the Indies) (Hanger 1997:24). A provision in the Louisiana Black Code gave freed blacks all of the legal rights of citizenship (Hanger 1997:25). Although legal rights did not always correspond directly with the local enforcement of them, the growth of the FPOC gave the laws new meaning. A Spanish law that began in Cuba and operated in full force in Louisiana was *coartación*, or a slave's right to self-purchase (*ibid.*). As with other social divisions that followed a color line designating greater privilege to lighter-skinned blacks, manumission—required by law to be initiated by a third-party, which in most cases was the master or a relative who was free—occurred most often among the *pardos*. Self-purchase was more common among *morenos*. Slaves were sometimes also freed in the slaveholder's will (Hanger 1997:34). Manumissions were more often granted to females than to males (Hanger 1997:31).

Congo Square and Quadroon Balls

Congo Square, a “century-long market and performance area,” is touted as evidence of the strong African influences slaves and freed blacks brought to, and continued in, New Orleans (Gehman 2000:210). As with the practice of Voodoo/Hoodoo, the events and exact functions of Congo Square are shrouded in myth and mystery. Still, it is known that the slaves used the gathering space to dance, play music, cook, socialize and engage in market buying and selling. Among the best known dances are the Bamboula and Calinda (Kein 2000:125). Approximately eighty songs have survived, some of which may have been played at Congo Square (*ibid.*).

Although Congo Square was designated by the local authorities as a permissible space for slaves to publicly congregate (and therefore be ‘supervised’) on Sunday, their one day off, its infectious music and reportedly lively scene drew other New Orleans residents. The tradition began in the 1740s and continued into the nineteenth century. As a public space created and inhabited primarily by slaves and a private, exclusive social event designed to present the upper echelon of light-skinned free women to potential white suitors, Congo Square and quadroon balls represent two ends of the African American continuum (Benfey 1997:36). The fluidity and/or rigid separation between the various individuals involved in such events as Congo Square Sunday gatherings and quadroon balls is a central research question that will be explored throughout this work, because it demonstrates how emphatically divisions of enslaved and free African Americans were enforced or overlooked.

Though the French language and many other French colonial customs carried over during the Spanish colonial reign, the Spanish left their architectural mark after two devastating fires (1788, 1794) created the need for much rebuilding.²⁹ Architectural Spanish additions such as courtyards and the Cabildo, Presbytere and St. Louis Cathedral buildings added further grandeur and importance.³⁰ The transition to American rule was made much harder for New Orleans residents who saw few radical changes

²⁹ In fact, until the major fires of 1788 and 1794, during which over 900 buildings burned down, French and Spanish buildings looked relatively similar (Poesch 1997: 14). Because so much of the city had been burned down—four-fifths of the populated city—due mainly to the use of non-fireproof materials, new regulations were instated that required buildings to be made of brick (Poesch 1997: 37,43).

³⁰ Important buildings such as the St. Louis Cathedral were rebuilt after the previous Spanish church burnt down in the first fire (Lane 1996: 333). The St. Louis Cathedral, Presbytere and Cabildo were designed by Father Gilbert Guillemard (Lane 1996: 334). His designs reflected the neoclassicist style popular in both Spain and France in the second half of the eighteenth century.

under Spanish rule. The Spaniards did not, for example, insist that the population learn Spanish or stop speaking French, as the Americans did with their insistence on English as the only official language.

The FPOC developed into a fully-fledged, albeit numerically small, group under Spanish rule. Berlin writes that for the free blacks, “the Spanish Crown had been their most reliable patron, that they owed their freedom to Spanish law, and that the only thing standing between them and the slave-hungry French planter class was the good will of Spanish imperial bureaucrats” (Berlin 1998:351). Their population grew significantly and achieved some political clout (Johnson 1997:52; Berlin 1998:325). The Spanish benefited from the FPOC’s military abilities to help secure the colony. The FPOC stood to gain even more, because wages earned from militia service enabled them to purchase many enslaved people’s freedom (Johnson 1997:54). Carondelet endeared himself to the FPOC by expanding the free black militia (Berlin 1998:351).

The population of New Orleans increased dramatically during the Spanish Colonial period, quickly outgrowing its original city plan (Sexton 1993:18). To solve the problem of land space, exacerbated by the constant flooding of the river and the lack of technology in the eighteenth century to drain the levees, plantations were moved upriver (in what would become the American Sector).³¹ The area downriver became divided up into residential Faubourgs, or suburbs, two of which would become known as the Creole

³¹ The city’s biggest topographical challenge was the need to drain excess water that continually threatened to overtake land. The introduction of levees did much to help alleviate this, and was the eighteenth and nineteenth century answer to too much water. But it was not until technology was invented in the late nineteenth and twentieth centuries that enabled the city streets to actually be drained of water that flooding was brought under control (Sexton 1993:7).

sectors. Various technologies made Louisiana's land more suitable for crop cultivation on plantations.

Berlin summarizes succinctly the influence of foodways on the colony's economy. Cotton remained the major crop in northern Louisiana and the land west of the Mississippi (Berlin 1998:343). Slave labor provided many of the key commodities and foodstuffs during this period (1998:344). Areas of Louisiana where sugar was produced "generated numerous opportunities for skilled workers" (1998:347). Carondelet acted as a kind of protector for the slaves (1998:352). While slaves dreamed of their freedom, French planters under Spanish rule dreamed of more autonomy (1998:351).

At the turn of the nineteenth century, Louisiana's economy shifted from one based on trade with newly-formed American states, to one driven by a rising 'merchant class' (Johnson 1997:56). In 1778, the Spanish Governor Bernardo Gálvez altered some of the terms of New Orleans trade, allowing United States merchants, including Bostonians, to trade freely (Sexton 1993:18).

Spanish laws did not discourage a distinct tri-partite society that included white planters and estate owners, free people of color and slaves (Domínguez 1997:24). Relationships between whites and FPOC were discouraged, although enabling quadroon balls and such arrangements as *plaçage* expanded and flourished (*ibid.*). Intermixture among various groups continued, therefore, without much legislative interference. *Plaçage*, known also as 'left-handed marriages,' were contractual arrangements between white men and light-skinned, elite free women of color (Martin 2000:68). Many free women of color became quite wealthy through property left in white male spouses and heirs left to their *placée* in wills (*ibid.*).

The quadroom balls that began in the 1790s were the main venue through which these young women were presented, courted and controlled (Bryan 2000:51).³² They were a way of showing off available females of color to interested white men. Highly formal and selective, they often resulted in *plaçage*, in which the white man became the patron of the woman (or '*placée*'). As an institution, *plaçage* endured between the years 1780 and 1850 (Bryan 2000:52). Here, gender played a striking role. Female women of color had little social mobility, political clout, economic freedom or legal rights. *Plaçage* provided social and economic security and ensured the possibility and continuation of a certain lifestyle for the *placée* and any future children.

Laws restricting inheritance/paternity rights and interracial relationships would not be enforced until Louisiana came under American leadership. As the New Orleans society became more stratified, physical differences between slaves and FPOC also became more distinct. Put simply: "It was no accident that the slaves grew darker as the free blacks grew lighter" (Berlin 1998:349). Berlin further describes the FPOC population as "urban, female, and light skinned" (Berlin 1998:334). The FPOC in New Orleans owned more slaves than their free black American 'counterparts' anywhere else in the nation (Sullivan 2000:74). Unlike in other slave regions, enslaved workers in colonial Louisiana were allowed, indeed 'encouraged,' to do contract work in addition to their regular duties (Gehman 2000:210).

³² One of the most important balls was the *Bal de Cordon Bleu* or '*Society Ball*' (Martin 2000:65). The *Bal de Cordon Bleu* was thrown by the upper-crest elite FPOC whose wealthy families became known as the *cordons bleus* (*ibid.*). This ball was much more exclusive and slightly different in function than quadroom balls (*ibid.*).

The various groups that made up the New Orleans social structure and society had been put into place by the end of the eighteenth century. The FPOC had become a sizable group: Hanger calculates that in 1771 FPOC were 3.1% of the total population (3,127 individuals); in 1791 they were 17.1% (5,037 individuals); by 1805, they made up 19.0% of the total population (8,222 people) (Hanger 1997:18). New Orleans had an agriculturally-based economy and was developing into a bustling and thriving port. From the perspective of the FPOC, the relatively smooth transition from French to Spanish power in no way prepared them for the abrupt process of Americanization that began in 1803. The socio-cultural identities of the FPOC and French planter class had become firmly established, though unequally protected, by the end of the Spanish rule. What happened over the next century was a reflection of the nation's growing pains experienced across the country. The struggle over who would control New Orleans, and the destiny of the country, had only just begun.

CHAPTER THREE

THE PROCESS OF AMERICANIZATION IN THE NINETEENTH CENTURY

Fredrik Barth's introductory chapter to his edited work, *Ethnic Groups and Boundaries: the Social Organization of Culture Difference* focuses on the creation, shifting and maintenance of ethnic boundaries. In the preface, he emphasizes three key points that frame his argument about what ethnicity is and how it functions: ethnicity is essentially "the social organization of culture difference"; "ethnic identity is a matter of self-ascription and ascription by others in interaction"; and "the cultural features of greatest import are boundary-connected" (Barth 1969:6). According to such categorical attributes, the New Orleans Free People of Color (henceforth 'FPOC) were an ethnic group. This particular group of individuals formed an exclusive and distinct culture that adhered to certain values, loyalties and milieux.

Individuals born in Saint-Domingue, New Orleans and elsewhere made up the FPOC, proving Barth's first point about ethnicity as organized cultural difference. Some were born as slaves and acquired freedom through self-purchase and manumission (made all the more accessible thru coartación), while others had never known slavery. Though much united the FPOC, they were by no means a monolithic group. Barth's second point about ethnicity as both 'self-ascription and ascription' is key to understanding and historically situating them. While the FPOC took care to erect and enforce their own group boundaries, they were also seen from the outside as the non-white 'other.'³³ The

³³ For discussions of this, see Dominguez's *White by Definition* and Hirsch and Logsdon's *Creole New Orleans* for lengthy discussions of how and why the FPOC were 'othered' at various points in the

systemic process of manumission that enabled their population growth in the late eighteenth century, generations of property inheritance and wealth transmission, quadroon balls, French-language newspapers and exclusive societies all served the needs and reinforced the bounded interests of this group. Over the course of the nineteenth century, American legislators and authorities would see the FPOC not as equals or near equals, but as a group standing on the wrong side of the racial dividing line. The one-drop rule, Jim Crow segregation and white supremacy all served to ascribe a second-class status to the FPOC that placed them on equally unprivileged footing with other ‘Negroes.’ The more American racial dichotomies took hold of Louisiana custom and law, the more this group faced displacement and were disadvantaged.

Barth’s third point that “cultural features of greatest import are boundary-connected” gives meaning to what was at stake in the *Plessy v. Ferguson* case (Barth 1969:6). The ability for this group to continue existing as such had been steadily challenged throughout the century. An erosion of rights and protections in the post-Reconstruction era sealed their fate. As external pressures and the country’s *Zeitgeist* continued to change and shift, the alliances and shared commonalities of FPOC with other people of color also changed. The end of slavery softened the demarcation between freedom and enslavement, and several decades of Americanization brought closer together black Anglophone Americans and Francophone FPOC.³⁴ By the end of the nineteenth century, the fight for Homer Plessy’s right to travel on a first-class railway car

eighteenth and nineteenth centuries. Both books also serve as excellent historiographical references that easily point the interested reader in the right direction for further reading.

³⁴ Logsdon and Bell argue that the fight for quality education, a stronger connection to other people of African descent through political organizations, and social gatherings brought the FPOC and other African descendant peoples together in the second half of the nineteenth century (Logsdon and Bell 1992:242-245). The authors describe this process as ‘creolization’ (Logsdon and Bell 1992:244).

within the state of Louisiana represented the mobility and freedom of all people of color, who shared the burden of racism and systemic discrimination. The isolation of the FPOC separate and apart from other blacks at the time became less sensible and feasible as the threat of absorption or dissolution became real.

This chapter examines how the FPOC embodied the definition of an ethnic group based on Barth's criteria: "largely biologically self-perpetuating"; "shares fundamental cultural values, realized in overt unity in cultural forms"; "makes up a field of communication and interaction"; and has a membership which identifies itself, and is identified by others, as constituting a category distinguishable from other categories of the same order" (Barth 1969:10-11). The parameters of Barth's theoretical grounding of what ethnic groups are and how they function is useful, as is his emphasis on agency.³⁵ He explicitly writes against a positivistic, ecologically determined evolution that views the perpetuation and extinction of some cultures as inevitable. The struggle over power and control in New Orleans was shaped in part by events and ideologies elsewhere in the United States. The responses of various groups to different struggles and challenges happened phenomenologically, or on the ground. Put simply, this chapter looks at how "the agents of change" reaffirmed, defined, strengthened and solidified the identity and relevance of the FPOC during the nineteenth century (Barth 1969:33).

³⁵ For an application of Barth's theories of ethnicity with regard to New Orleans white and black Creoles, see Virginia Domínguez's seminal book *White by Definition*. She premises her look at creole identities on the contradictory idea that white creoles and creoles of color (or free people of color) by the very definition of each group's boundaries can not accept the existence of the other. Each group's desire to hold onto a history that is largely shared (though experienced differently) is ironic, problematic and difficult for any scholar to understand. She uses Fredrik Barth's notions of ethnicity as a starting point for understanding racial/ethnic categorization and classification in New Orleans. Domínguez successfully shows how individual relationships and structural entities interlock to exclude and include, and what this means for the rights and opportunities of the various groups involved.

The FPOC's activities, aspirations, struggles and identity formation will be examined in accordance with the chronology of the nineteenth century. The century's major time periods that will guide this discussion are the ante-bellum period, the Civil War, Reconstruction, and Post-Reconstruction. More generally, the FPOC's rights and opportunities before and after the Civil War serve as a marker of comparison. The rights and status of all people of color dramatically changed during and after the Civil War, beginning with the Emancipation Proclamation and Thirteenth, Fourteenth and Fifteenth Amendments, and continuing with other legislative and judicial laws passed through the Reconstruction era. The FPOC suddenly had to cast their lot with other people of African descent, whether they liked it or not. The group's self-preservation shifted from a strong focus on French ancestry and heritage to the retention and protection of the rights and freedoms they had enjoyed until the Civil War. In short, external circumstances and events of the nineteenth century dramatically changed the position and status of the FPOC. A look into how this history is remembered among Creoles today would nicely complement this thesis, but is beyond the text's scope.

In Chapter Four, the ways in which the FPOC directly responded to the erosion of their rights with a legislative challenge of *Plessy v. Ferguson* will be described. Their significance and historical impact will be contextualized and examined through their deliberate actions and initiations. As Barth states: "...people's categories are for acting, and are significantly affected by interaction rather than contemplation" (Barth 1969:29).

Nativism and the Problematic Definition of 'Creole'

The question of nativism and who deserves to have citizenship rights are central problems that play out on the nineteenth-century American stage. The question of

who is an American and what characteristics define one as such became a locus of struggle. In New Orleans, the native-born New Orleanians fought diligently to retain the customs and realms of power with which they were acquainted. This fight to define oneself ethnically, racially and politically was also taking place at the national level, where restrictions on immigration were signaling who was deemed fit to join this new nation.³⁶

The term ‘Creole,’ as it refers to a person native to Louisiana, was written in lowercase letters in the eighteenth century, but began to be capitalized in the nineteenth century (Domínguez 1997:96-97).³⁷ In New Orleans, ‘Creole’ has had an amazingly complex history.³⁸ After the Civil War, when New Orleans began to be more divided along racial lines, white Creoles claimed that they held reign over the term. ‘Creole,’ when referring to a white New Orleans native was a noun, and became an adjective when used by, or in reference to a person of color.³⁹ Domínguez’s book looks in detail at how and why white Creoles do not acknowledge that there *is* any such group as Creoles of

³⁶ To the larger historical question of who was excluded and included in American citizenship, Trachtenberg writes: “We must begin with the paradox of saying ‘native’ in a nation of immigrants. For the least disputable statement one can make about the United States of America is that it has always been and always will be a nation of immigrants of all hues. All Americans, whether of the United States or of any country in the hemisphere, derive in historical time from elsewhere—all, that is, except for the natives whom Columbus misnamed Indians... That exception makes the name ‘American’ an exceptionally rich, multiple signifier with a diffuse ambiguity that affects all aspects of the story that unfolds in the pages that follow” (Trachtenberg 2004:7).

³⁷ There are three different ‘ideological theories’ of the ethnogenesis of the Louisiana Creole: an exclusively French origin, ‘hybrid’ origin and African origin (Gehman 2000:230).

³⁸ Domínguez finds seven categorical uses of ‘Creole’ in Louisiana. She asks if this is just the resulting confusion of the same term being claimed and recycled by different people who then lend a different meaning to the term, or if this multi-varied/multi-meaning word is the product of “conceptual, institutional, and individual manipulation?” (Domínguez 1997:15).

³⁹ ‘Creole’ as a singular noun referred in the early nineteenth century to a native of the state, whether black or white, free or enslaved. During this same time period, as a plural noun, ‘Creole’ designated white creoles as l’ancienne population, or the group of white creoles native to the state (Tregle 1992:140).

color (i.e., who are not white).⁴⁰ Similarly, Creoles of color do not recognize that anyone who says they are a New Orleans Creole is also white; even if someone ‘looks white,’ the Creoles of color community believe them to fair-skinned, but still a person of color.

From 1720 until the Civil War, being ‘creole’ simply meant being native to New Orleans (Martin 2000:58). The New Orleans Creoles were made up of both white (slaveholding/non-slave-holding) and black (enslaved and free) residents born in Louisiana who spoke French as their native tongue, practiced Catholicism and were visibly proud of their French heritage (which may or may not have also included Spanish descent). These cultural elements clashed vividly with those of the white and black American migrants who were English speaking and largely Protestant. This is connected with these groups’ different histories of colonization that led to different value systems.

A particular point of contention was over differences in how the city of New Orleans and the United States South (indeed, arguably, the United States at large) practiced and viewed racial categorization. Elsewhere in the South, and especially in states that were previously British colonies, people were largely categorized (and differentially treated) based on whether they were black or white. A group of mixed-race people did not fit into this binary under which European and Caribbean/African-descended immigrants were subsumed. They did, however, in New Orleans, and held a substantial amount of economic, social and political power (although not necessarily legal protection).⁴¹ Most importantly, the FPOC owned property throughout New

⁴⁰ The term ‘Creole of color’ first came into use during the nineteenth century (Hanger 1997:177).

⁴¹ Domínguez argues that throughout Louisiana’s history (and, one can argue all over the nation) legislative law—and not biological genes—has determined racial boundaries, and thereby influenced the political, social, economic and legal ramifications of what someone ‘is’ based on what they look like (Domínguez 1997:56).

Orleans in the Creole Sectors.⁴² As Theresa Singleton points out, communities of free people of color arose in every ‘slave society throughout the Americas,’ but differed widely in terms of how much political, economic, and social agency individuals within this group had (Singleton 2001:196).

The FPOC were often threatening to slave-holding and non slave-holding whites alike; the former because of a potential alliance with slaves that could lead to insurrections against slave-holders and the latter because of the competition they presented for entry-level jobs (ibid). Singleton argues that archaeologists have often catalogued site reports dealing with free blacks as ‘gray literature,’ when this group is addressed at all; often, questions of identity, agency and responses/reactions to racism have been left unasked by archaeologists, and therefore remain unanswered (Singleton 2001:198).

If it is true, as Singleton argues, that identity is closely tied to agency, then it is indeed very important to understand the ways in which free people of color negotiated their own racial identities, with regard to their social positioning and sense of self (Singleton 2001:197). To what extent was it necessary for a free person of color to distance himself/herself from contact with slaves, if at all?

Although there were groups of free people of color living throughout the South in cities such as Charleston, South Carolina and parts of the coastal Chesapeake, the

⁴² The thrust of Domínguez’s book, *White by Definition* is her look at how Louisiana legislature, and at times national law, has influenced, shaped, protected, undermined and/or presented how New Orleanians themselves racially conceive of their culture. Though much has been written about how socially tolerant New Orleans has been with regard to interracial and mixed marriages, a long history of anti-miscegenation law in the state suggests that the law has not always coincided with social realities of the time. Against the wishes of the Spanish government, the Catholic Church sanctioned inter-marriage.

difference was that in New Orleans they were tolerated⁴³ (or at least not persecuted). It was not just the fact that free people of color held certain positions of political and economic power, but that they were not actively prevented from doing so, because of their African heritage. Hall argues that New Orleans slaves created “arguably the most Africanized slave culture in the United States”⁴⁴ (Hall 1992:65). The black population grew through natural increase and became remarkably cohesive during the early part of the French colonial period. At the same time that the white population decreased through out-migration, mortality and the lack of immigrants (Hall 1992:66). Additionally, the FPOC in New Orleans were the largest, wealthiest and most educated group of free blacks in the entire country. They alone enjoyed certain rights, such as being able to testify against whites in the court of law and to travel freely (Foner 1988:47). The FPOC were quite simply remarkable in their standing and accomplishments in comparison to other free blacks in the South and North (ibid.).

When New Orleans became an American city, it inherited among other things the assimilationist, melting-pot doctrine that defined who was and who was not ‘American’ (Johnson 1997:57).⁴⁵ Governor W.C.C. Claiborne became the first American governor of Louisiana in 1803, an office he would hold until 1816 (Dunbar-Nelson 2000:18). Almost immediately, he began curbing (although cautiously at first) the rights of enslaved and

⁴³ To my knowledge, free people of color outside of New Orleans were not referred to, nor did they refer to themselves as, Creoles, except for a part of California where many settled together. One reason may be that this group’s history is not considered an intrinsic part of national memory, and so historical categorizations remain locally, and not nationally, significant.

⁴⁴ ‘Americanize’ is meant here as a derogatory term, which was first used in England to refer to early nineteenth century journalism that was not taken seriously (Trachtenberg 2004:42).

⁴⁵ Fear of immigration strengthened this nationalist exclusion of those deemed ‘unfit’ to be Americans. See Trachtenberg’s second chapter, “Conceivable Aliens,” for further detail on the American government’s policies that included some and excluded others.

free people of color. Legislation passed in 1806 put various limitations into law, including the ability to ‘initiate manumission,’ carry firearms and testify against whites in court (Berlin 1998:356). In the early years of Louisiana’s American status, distinctions were drawn more readily across nativity than race and class. It was not until *after* the Louisiana Purchase that native-born New Orleanians began using such references as ‘Creole’ to separate themselves from non-native New Orleanians who migrated from elsewhere (Kein 2000:xiii). ‘Creole’ included whites and the FPOC who shared a common language (French), the Catholic faith and the residue of French-inspired cultural customs.

Within the FPOC were three distinct ‘subclasses,’ which included: “a small upper class made up of professionals and proprietors, a middle class composed of artisans such as shoemakers, tailors, cabinet makers and cigar makers...and a lower class of unskilled laborers, mostly blacks who had only recently obtained their freedom” (Ochs 2000:61).

The Louisiana Purchase

When Napoleon first came to power, he envisioned Louisiana as grand and profitable as Saint-Domingue had once been (Bureau 1968:14). But, the Haitian Revolution and the impending independence from France in 1804 meant that Louisiana was no longer of much use to Napoleon’s France. Although at one time Saint-Domingue had been the most profitable colony in the New World, by 1803 the land was ravaged and stripped from over a decade of revolutionary fighting. With the loss of Haiti, it no longer made sense to hold onto Louisiana. By that point, Napoleon’s strength in the region had been severely enervated. Napoleon figured the money he would gain from Louisiana’s

sale would help finance France's looming war with England by enabling more maritime power (Bureau 1968:13). The Louisiana Purchase of 1803 secured the transfer of Louisiana to the American government as a territory, until it became a state in 1812. Louisiana was sold for a total of fifteen million dollars, or four cents/acre (Sexton 1993: 19). The financial gain from the Louisiana Purchase would affect how the native New Orleans population viewed the flood of American newcomers (Domínguez 1997:110).

The transition of Louisiana from French colonial rule to American statehood (the Spanish briefly transferred New Orleans back to the French, who were only able to hold on to the colony for a couple months before selling it to the United States) was abrupt and sharp. The sudden change in leadership was felt almost immediately. Claiborne had little tolerance or patience for pluralism. One of the first things he did was to remove Spanish colonial fortifications that bordered the Vieux Carré, and open up the streets that would become Canal, Rampart, and Esplanade (Bureau 1968:14). With the severance of French and Spanish colonialism came a loosening of state ties to French Canada and the colonial Caribbean, and a stronger relationship to major international trade partners such as Canada and Mexico (ibid.). Louisiana officially became an American state in 1812. Governor Claiborne prolonged Louisiana's status as an official American state by invoking the stereotype of the native population as uneducated and ignorant (LaChance 1992:122).⁴⁶

Claiborne was bound and determined to quickly make New Orleans into an American city. His policies were unfriendly to the FPOC and slaves, in comparison to those enforced under French and Spanish colonial rule. Upon taking office as governor,

⁴⁶ Such rationale has a twinge of irony considering that Claiborne himself married into a native, 'white creole' family (Tregle 1992:162).

he tried to “retain but not enlarge” the free black militia, although subsequent legislature greatly enervated the military group (Hanger 1997:164). His primary motivation for reducing the size and strength of the free black militia, which took away an important avenue from wage labor to their freedom, was his suspicion of the group’s loyalty (ibid.).⁴⁷ The various challenges he faced showed just how ‘foreign’ New Orleans really was when the United States purchased it. The use of legislation to restrict, limit and enervate the rights of the FPOC first came into real use under Claiborne (Hanger 1997:164). He was less than sympathetic to the painful adjustments of native New Orleanians who found this new American leadership very different and strange. The free black militia fought back with a petition that articulated their loyalty to the United States and their desire to continue serving as successfully as in the past (Hanger 1997:165). Their status remained tenuous, however, which reflected the general uncertainty of the FPOC’s position in this new American city.

Reminiscent in both name and intent, the 1806 Black Codes sought to legislate the actions and movement of enslaved persons and the FPOC (ibid.). The new law ruled that the FPOC and other freed persons must carry identification with them that stated their status (ibid.). It restricted manumission to individuals over thirty years of age, and prevented the immigration of free black persons from anywhere outside the city, especially the West Indian islands (ibid.). As would be expected, the Black Codes were explicit in regulating the most threatening of interactions, interracial unions. Enslaved

⁴⁷ Hanger’s exact words are worth recounting: “Like most local whites, Claiborne suspected the loyalty of trained, well-equipped free blacks who might very readily join with rebellious slaves and Spanish conspirators to challenge Louisiana’s planter-merchant-bureaucrat elite” (Hanger 1997:164).

persons were forbidden from marrying freed persons of color, and no white person could marry a person of color, whether enslaved or free (ibid.).

Incorporating Louisiana into the United States proved to be a challenge. Many Creoles did not speak or understand English, while few Americans (white or black) understood or spoke any French. The Protestant ethic that colored how many Americans understood history—and their place in it—shared little with a French Catholic ethos that viewed social connections as more important than labor and wage earning. Claiborne's strategy of bringing some semblance of order to New Orleans was to play various groups off of one another, usually to the disadvantage of the FPOC. For example, the FPOC became an economic 'counterweight,' direct competition, to the French planter class (Berlin 1998:355). Soon, they would begin losing ground against the 'planter-dominated legislature' (Berlin 1998:356). In addition to economic rivalries, manumission and self-purchase were made much more difficult, and therefore severely decreased, after the Louisiana Purchase (Berlin 1998:333). The diminished capacity of the free black militia was a key loss for free men of color, who as black soldiers fought in exchange for wages that could be used for self-purchase or manumission (Hanger 1997:164). This became less possible as Claiborne reduced the size and strength of the free black militia (Berlin 1998:356). The leniency of certain French and Spanish colonial policies and laws affecting slave and free blacks eroded over time under American leadership. Indeed, the "collapse of free people's struggle for equality cleared the way for the expansion of slavery" (Berlin 1998:357).

The Antebellum Period

The fight over who would control New Orleans began almost immediately after the Louisiana Purchase. This period is one of the most fascinating in all of New Orleans history. Nativity preceded racial divisions and superiority, as native-born Creoles fought for their city.⁴⁸ The future direction of New Orleans was at stake. In the end, perhaps both sides won to an extent. The Protestant-inspired American work ethic never quite caught on, and the French language slowly died (though perhaps not entirely).

The influx of ‘white’ and ‘black’ Americans and immigrants from various countries into New Orleans, especially from the 1830s on, heightened the Creole-American rivalry (‘Creole’ in this sense is used in reference to nativity). LaChance dubs this period “the linguistic turning point for the white population of New Orleans” (LaChance 1992:119). In one corner stood native-born, French speaking, Catholic New Orleanians who were (to grossly oversimplify) happy with the way things were and did not appreciate someone new coming in and changing things. In the other corner were the largely Protestant, English speaking Americans who came to New Orleans looking for prosperity and a chance to have a hand in transforming this former colony into an American city-state.⁴⁹ Added into this mix were ‘white’ immigrants from various European countries (particularly Germany and Ireland) and ‘black’ immigrants from Saint-Domingue/Haiti and France (Hirsch and Logsdon 1992:96). Great numbers of Irish

⁴⁸ “Antebellum New Orleans struck contemporaries and continues to strike historians as *sui generis* in the ethnic composition of its population. It had a full-fledged three-caste racial system: whites, free persons of color, and slaves” (LaChance 1992:101).

⁴⁹ See Axtell’s *The Invasion Within* for a comparative look at the role Catholic and Protestant religious conversion played in New World colonial endeavors (Axtell 1985:278). Eccles articulates what must have been perceived as an American invasion of sorts to the New Orleanians: “...the Louisiana Creoles were soon swamped by the hordes of Americans who swarmed across the Mississippi and set about the final onslaught on the Indian nations” (Eccles 1998:270).

and German immigrants helped raise the white population from 20,110 to 61,131 in the span of a decade (LaChance 1992:119; Tregle 1992:164). Tregle argues that by the year 1850, ‘foreign-born residents’ comprised fifty-one percent of the ‘white population;’ thirty-percent were born in the United States and the remaining nineteen percent were born in Louisiana (Tregle 1992:164). Yet, wherever they came from, in the initial decades of the nineteenth century, the Irish and German immigrants rather quickly found their seats on the ‘white’ side of the Creole-American divide. Local county governments (called ‘parishes’) were established in 1805 and parish jurisdictions were put into place in 1807. Each group would make good use of their local power. These European immigrants largely displaced jobs FPOC had performed, including that of “free black waiters, hotel workers, peddlers, cabbies, draymen, stevedores, and steamboat roustabouts” (Bell 1997:80). Economic competition also extended into the property ownership game, from which the FPOC emerged as the losers (*ibid.*).

When the population doubled between 1805 and 1810, the Creole-American opposition became apparent in the physical separation of Creole and American residential and business areas (Domínguez 1997:118). Black Americans and FPOC did not live in the same neighborhoods. By 1850 many FPOC lived in the Creole sections of town, downriver from Canal Street (Logsdon and Bell 1992:207). Settlement patterns reveal completely different ways of living and organizing work and residential spaces and continued well into the twentieth century.⁵⁰

⁵⁰ The large lawns and elaborate mansions that still line St. Charles and other streets in the Garden District characterized the American’s value of space and privacy. Work and home functions were kept distinctly separate. The Creoles, meanwhile, settled downriver. Many of their homes were also elaborate and stately, but houses were often much narrower (like many buildings in the French Quarter). Business and home lives

Hirsch and Logsdon rightly state that “the long contrast between the creoles and the Americans proved a major force in shaping the unusual character of New Orleans (Hirsch and Logsdon 1992:91). At any rate, the influx of Americans into this French creole town was a direct challenge to the culture that had developed, prospered and dominated here throughout the nineteenth century. For a couple of decades, it looked as though the white Creoles and FPOC might be able to retain a large amount of power.

In reaction to the many divisive, even discriminatory, mutual sentiments and acts between the two ethnic groups, New Orleans was carved into three municipalities in 1836. Business and residences were separated according to the Creole and American divisions, reflecting the hostility that had flared up between the two contingents. Soon after, the FPOC and white creoles began to lose the political, social and economic domination they had fought so hard to retain during the first three decades of the nineteenth century.⁵¹ Many factors contributed to this, one of the most obvious perhaps being the tremendous waves of Irish and German immigrants into the city between 1830 and 1860 (Tregle 1992:164). The division marked the beginning of the end for the Creoles (especially the white Creoles’ interests); by the 1890s, creole society was “already an anachronism in the city where once it had been the vital present” (Tregle 1992:184).

The role of various immigrants into the city also played a key role in factional alliances and divisions. The retention of the French language was a direct result of the

often intersected in the same building, with a bottom floor serving as a store or business and the top (usually 2nd) floor as living space. Canal Street was the neutral zone which belonged exclusively to no one.

⁵¹ Divisions sometimes carried on in death as in life; with the founding of the St. Louis Cemetery No. 2 came segregated areas in Catholic cemeteries for FPOC and slaves (Ochs 2000:52).

Saint-Dominguan and French immigrants who helped create and maintain French-language newspapers, theater and conversation. Irish and German immigrants, eager to fit into American society and start a new life were absorbed by the white American population. Nation-wide backlash against the arrival of hundreds of thousands of Irish Catholics “stirred the first outbreak of nativist reaction” (Trachtenberg 2004:98).

European Frenchmen also migrated to New Orleans (LaChance 1992:113).⁵² Between 1832 and the start of the Civil War, the third largest group of immigrants into New Orleans, after the Irish and Germans were the French (LaChance 1997:112). New Orleans served as a sort of refuge for ‘French political exiles (LaChance 1997:114).⁵³ This constant flow of French speakers into the city helped to maintain French as the city’s un-official spoken language for much of the ante-bellum period. In fact, the majority of New Orleans’ white residents were French-speaking until around 1830 (LaChance 1992:117).

The Haitian Revolution and subsequent independence had a large impact on New Orleans. Many of the migrants who began fleeing in 1791 when the Saint-Domingue Revolution began, eventually found their way to New Orleans. Some initially traveled to Spanish colonial Cuba, which was closer in proximity than New Orleans (LaChance 1992:103). They were forced to leave in 1809; Napoleon had angered Spanish officials in Cuba with his “deposition of Ferdinand from the Spanish throne” (Berlin 1998:333). These Saint-Dominguan refugees were also a liability because of their proximity to the

⁵² Some were political exiles from the French Revolution (LaChance 1992:113-114). Others fled France after the fall of Napoleon Bonaparte (ibid.).

⁵³ This may also have helped reinforce the FPOC’s cultural connection to France that spurred the former to imbibe the “intellectual and political currents associated with both the 1789 and 1848 revolutions in France” (Ochs 2000:56).

Haitian Revolution and for what it stood. Slaveholders throughout the Caribbean and southern United States feared these émigrés who were thought to carry ideas of abolition, independence and revolt with them (Dunbar-Nelson 2000:18). Between May of 1809 and January of 1811, 9059 refugees from Saint-Domingue came into New Orleans from Cuba, upon expulsion from the Spanish-governed island. The Cuban government feared that the French black refugees were “carriers of revolution” (LaChance 1992:106). The largest wave of refugees was in the year 1809 (Hall 1997:86).⁵⁴

Former Saint-Dominguans made important cultural, economic, political and social contributions to the city. Many of the refugees chose Louisiana because of a common language, relatively close proximity and the reputation New Orleans had acquired as a most ‘Un-American’ city. It was considered one of the few places where people of color, whether formerly enslaved or not, would not immediately be enslaved upon stepping foot into the city.

Some have even argued that the tri-partite caste/class systems of Saint-Domingue and colonial Louisiana were similar enough to be almost parallel, or at least comparable.⁵⁵ Pragmatically speaking, New Orleans may have also been the safest refuge

⁵⁴ White, black and *gens de couleur libre* refugees each came in this last and largest wave from war-torn Haiti. LaChance lists the following figures: 2731 whites, 3102 *gens de couleur*, 3226 slaves (LaChance 1992:105).

⁵⁵ “The effect of caste on the moral integrity of the Negro race in America has thus been widely disastrous; servility and fawning; gross flattery of white folk and lying to appease and cajole them; failure to achieve dignity and self-respect and moral self-assertion, personal cowardliness and submission to insult and aggression; exaggerated and despicable humility; lack of faith of Negroes in themselves and in other Negroes and in all colored folk: wealth and arrogance, cunning, dishonesty and assumptions of superiority; the exaltation of laziness and indifference as just as successful as the industry and striving which invites taxation and oppression; dull apathy and cynicism; faith in no future and the habit of moving and wandering in search of justice; a religion of prayer and submission to replace determination and effort.” (Du Bois 1992:702). See the parallel Eccles draws between Saint-Dominguan *petits blancs* and Canadian *habitants* (Eccles 1998:174).

in North America for these migrants because the various laws and ‘attitudes’ regarding FPOC were more forgiving, or ‘lenient’ than elsewhere (Duggal 2000:163). This would soon change under American governance. Yet, since Louisiana did not become part of the United States until the better part of the Haitian Revolution was over and Haitian Independence was just on the horizon, migratory conditions for those emigrating during the last decade of the eighteenth century and first decade of the nineteenth century were little affected.

The Saint-Dominguan/Haitian immigrants’, or *gens de couleur libre*— knowledge of sugar plantation technology enabled sugar production to become lucrative and widespread. States Dunbar-Nelson: “Imagination refuses to picture what would have been the case but for the refugees from San Domingo” (Dunbar-Nelson 2000:16). Those refugees who had been planters in Saint-Domingue brought with them their expertise on how to cultivate sugarcane and transformed Louisiana once again into a thriving plantation economy (Berlin 1998:342; Dunbar-Nelson 2000:15). Mendez and Solis built sugar machines and Etienne de Boré “made sugar granulate” (Dunbar-Nelson 2000:16). Sugar production in New Orleans not only benefited from the expertise of former Saint-Domingue sugar planters, but from also not having to compete with its war-torn West Indian cousin. In just a few years, “sugar became king in lower Louisiana (Berlin 1998:343).⁵⁶

Not everyone welcomed the European and Haitian immigrants, however. In the 1850s, New Orleans received more immigrants—or “foreign-born newcomers”—than

⁵⁶ Sugarcane was brought to the United States by Christopher Columbus on his 1493 (and second) voyage from the Canary Islands (Mintz 1985:32). In the New World, sugarcane was first grown in Spanish-ruled Santo Domingo (ibid.).

any other city except for New York City (Ochs 2000:48-49). Unwelcome political response came in the form of the short-lived Know-Nothing Party (Ochs 2000:49). At the eve of the Civil War, the FPOC were a prosperous, property holding group. According to Du Bois' calculations, their combined property value was \$15 million dollars in 1860 (Du Bois 1992:154). They were an educated group whose accomplishments in various fields was impressive by any standards. Literary success is one such example. In 1845, they published the first collection of poetry written exclusively by persons of color, entitled *Les Cenelles* (ibid.).⁵⁷ By the 1850s, though, the population growth of the FPOC had stagnated (Ochs 2000:60).

Civil War

Black soldiers fought on both sides of the Civil War, proving through their military contribution their worth and status (Foner 1988:8).⁵⁸ The military offered many black men, several of whom had been slaves, the opportunity to become literate and access the power that came with it (ibid.). Louisiana black soldiers participated in great numbers in the Civil War. The New Orleans fighting men of color represented the "only organized body of Negro soldiery on the Confederate side during the Civil War" (Dunbar-Nelson 2000:31). Louisiana also contributed more troops to the Confederate cause than any other state (Dunbar-Nelson 2000:32).

The implications of their service to a side that supported the continuation of slavery and white supremacy raises interesting questions about the doors military service was

⁵⁷ This anthology's editor and publisher was Armand Lanusse, who was also the principal of a premier, private Catholic School, *L'Institution Catholique des Orphelins dans l'Indigence* (Ochs 2000:54).

⁵⁸ There were in all about one hundred black officers who fought in the War (Ochs 2000:207).

seen to potentially open. This military service also created alliances across color and socio-economic lines. Military participation provided a viable way for some black male soldiers to earn wages and heroism. The New Orleans men of color who fought on the Confederacy side during the Civil War were the only organized black militia to do so (all others fought on Union side)⁵⁹. Color hierarchies existed within the ranks.

The 1st Louisiana Native Guard was the first official unit of black soldiers to serve in the Union army, of which André Cailloux became a leader (Ochs 2000:77). Cailloux, who died in the line of fire at Port Hudson, became “the first nationally publicized black warrior-hero of the Civil War” (Ochs 2000:156). His heroic death became a symbol of unity and determination uniting FPOC and Anglophone blacks to fight against injustice and inequality (Ochs 2000:185). Military service was upheld as proof of loyalty.

New Orleans was captured quickly and easily in 1862. Shortly thereafter, General Butler left Virginia to take over the latest city to fall to the Confederacy (Du Bois 1992:67). Taking advantage of the many ‘fugitive slaves’ being held in New Orleans, Butler “organized colonies of fugitives, and regulated employment” as the Confiscation Act allowed and War Department permitted (Du Bois 1992:68). In one of the Civil War’s many ironies, the FPOC made Butler’s stay in New Orleans much more comfortable through their entertainment and hospitality (ibid.). In return, Butler kept the Free Black militia (in particular the officers) intact and active (ibid.). Slaves who had escaped their masters to New Orleans were received and put to work, first by General Butler and then by his replacement, General Banks (ibid.).

⁵⁹ Ingersoll describes it this way: New Orleans was “terribly scarred by the Civil War and Reconstruction: it was occupied by an army larger than any community in the history of the country, a violent inter-regnum that confirmed a chaotic image of the place” (Ingersoll 1999:36).

As Foner states, the Civil War “permanently redrew the economic and political map of the white South” (Foner 1988:17). Years of war that left the South on the losing side had devastating consequences on the economic health and vitality of this region (ibid.). Yeoman who lived off of the land in the southern upcountry were particularly hard hit, and the “planter class” subsequently split apart (ibid.).

The FPOC played a central role in the realm of black suffrage. They were able to do what neither Radical Republicans, Sea Island blacks or Unionists could do, which was to force Lincoln’s hand through a petition drive (Foner 1988:62; Ochs 2000:189).⁶⁰ Their political influence demanded that black suffrage be politically dealt with immediately and fairly (ibid.). Efforts to exert change at the state level had proven nary. For example, Louisiana state legislature shot down a bill Governor Banks even supported, the Quadroon Bill, which gave free men of color who had “three quarters white blood” the right to vote (ibid.). *L’Union*, the political predecessor to the *Tribune*, had been publishing its support of suffrage for free men of color from 1862-1864 (Foner 1988:63).⁶¹ The FPOC fought for voting rights for free men of color on the basis of ‘treaty rights,’ which granted citizenship rights and privileges to Louisiana’s “*ancienne population*”(Ochs 2000:186).⁶² The FPOC clearly fit this bill, having lived in the area for well over a century.

What some have called the ‘Afro-Creole radicals’ campaigned long and hard the entire second half of the nineteenth century for equal rights and privileges. They formed in 1862 a Freedmen’s Aid Association, or the *Comité Central des Natifs* (Ochs

⁶⁰ The petition intentionally did not include the signatures of recently freed slaves. Only FPOC and white supporters of the cause (Ochs 2000:189).

⁶¹ *L’Union* was the first ‘black newspaper’ to come from the South (Foner 1988:63).

⁶² This was stated in the Louisiana Purchase Treaty, Article III (Ochs 2000:186).

2000:187). The Thirty-Eighth Congress did not immediately reach consensus over how to go about implementing and directing Reconstruction (Foner 1998:66). The Senate did, however, approve the Thirteenth Amendment in 1864, which then passed in the House in 1865 and subsequently sent to the States for ratification (ibid.).

Large, looming questions remained over how to restructure the economy with the abolishment of slavery and in the wake of war's consequences. One of the most pressing issues was over land tenure. The *Tribune's* proposal of instituting 'self-help banks' in place of compulsory labor contracts was refuted by General Bank's successor, Stephen A. Hurlbut (Foner 1988:65). His proposals for "compulsory yearly contracts, fixed wages, a pass system" stood in stark opposition to ideas laid out by the *Tribune* and supported by the New Orleans black community (Foner 1988:65).

The Civil War had profound effects on New Orleans socially, politically and economically.⁶³ The freeing of slaves and subsequent changes in the country's postbellum industrial age changed the FPOC's socioeconomic positioning. Organizations like the Freedmen's Bureau helped deal with "the postemancipation crisis of health among the former slaves" (Foner 1988:151).

Reconstruction

"The nation's post-Civil War obsession with racial marking placed the Creole of

⁶³ Foner eloquently writes: "Like a massive earthquake, the Civil War and the destruction of slavery permanently altered the landscape of Southern life, exposing and widening fault lines that had lain barely visible, just beneath the surface. White society was transformed no less fully than black, as traditional animosities grew more acute, long-standing conflicts acquired altered meanings, and new groups emerged into political consciousness (Foner 1988: 11).

color in a position of life or death” (Senter 2000:289). This was especially true in the shifted power away from the FPOC. During this time period directly after the Civil War white creole loyalty permanently shifted from that of other native-born creole New Orleanians to other white Americans. It was no longer American against Creole, but an Americanized version of white against black. The Louisiana Unification Movement, an interracial coalition of white Louisiana residents and FPOC, proved to be an exception to the increasingly segregated and racist political divisions to come after Reconstruction ended.⁶⁴ Frederick Nash Ogden, a vigorous opponent of Unification created the Crescent City White League in 1874 (Benfey 1997:184-185).⁶⁵ This white supremacy terrorist organization was “openly dedicated to the violent restoration of white supremacy” and had military backup to encourage the implementation of its aims (Foner 1984:550; Benfey 1997:186).⁶⁶

In conjunction with the Democratic Party, the White League mounted several intimidating campaigns of violence and terror, including the placement of certain Republican leaders on a hit list, interruption of court proceedings, and tactics to drive

⁶⁴ See the article “An Appeal to the Unification of the People of Louisiana,” quoted in Olsen 1967:36-39.

⁶⁵ Unification involved putting in the current Republican administration’s place ‘interracial conservation coalitions’ (Foner 1984:547). On a state level, the Louisiana Unification Movement of 1873 was intended to be “a political alignment independent of the two existing parties that promised to restore racial harmony, economic prosperity, and social peace to the state” (ibid.). Such far-reaching goals included land tenure for freedmen, equal accommodation in public spaces and education (ibid.). As part of the Unification Movement, Aristide Mary, who would later help form the Citizens’ Committee that would bring the *Plessy v. Ferguson* case, actively protested the re-segregation of schools (Medley 2003:31).

⁶⁶ Military reinforcements included the First Louisiana Regiment and many of its own members (Benfey 1997:186).

away newly enfranchised black voters (Foner 1984:550). Their activity culminated in the 1876 gubernatorial race when the White League tried to force candidate John McEnery, who had been defeated in the 1872 election, into office (Foner 1984:550-551). Thirty-five hundred White Leaguers overtook the statehouse, arsenal and city hall, and only left when federal troops showed up (Foner 1984:551). The White League declared the occasion a success, dubbing it ‘the Battle of Liberty Place; however, the event was reported in the ‘black press’ as ‘the Metropolitan Police Riot.’ (Gehman 1994:100). Amazingly, some white supporters of civil rights and Unification supported or had some connection to the White League, including George Washington Cable and Kate Chopin (Benfey 1997:17).

In order for the White League’s goal of (re)instituting white supremacy to manifest itself, the tri-partite or ternary system of racial classification had to be reduced to the Americanized binary (Domínguez 1997:138). Domínguez’s exact words are worth recounting: “the mulattoes or *métis* had to be downgraded in personal worth and social value; mulattoes had to be denied social and legal status as a separate *race*; and absolute purity of white blood had to be demanded of all those in the white category” (ibid.). The French-language white creole newspaper, *Le Carillon*, documented and promoted the White League’s message and agenda (ibid.). The rise of such organizations as the White League, the Ku Klux Klan, Knights of the White Camellia and literary vehicles such as *Le Carillon* and later, *L’Abeille*, indicated the alliance and unification of white creoles with white Americans (Bryan 2000:56; Domínguez 1997:136).

On July 30, 1866 riots in New Orleans precipitated by whites opposed to the politics and aims of Reconstruction (Foner 1988:262). Tensions came to a head between

policemen and activists supporting black voting rights (Logsdon and Bell 1992:241). The Riots had the unfortunate effect of bringing into question the effectiveness and goals of Presidential Reconstruction (Foner 1988:263).

One major problem in the political transition to Reconstruction from the bloody Civil War years was the lack of an accompanying shift in how to talk and think about this period: “At the outset of Reconstruction most Republicans still adhered to a political vocabulary inherited from the antebellum era, which distinguished sharply between natural, civil, political, and social rights” (Foner 1988:231). The question of what was a right versus a privilege, and how to grant it if at all posed tremendous political challenges. Where the domain of the national government and/or the state government to exercise authority began, ended or overlapped would lie at the heart of post-Reconstruction policies, ideals and protests around the country. What to do with the States that had tried to secede? Had they, in effect usurped their own rights to the national government? Indeed, President Johnson used such logic to force southern states to ratify the Thirteenth Amendment. However, as time would tell, even Constitutional Amendments could be ignored (Foner 1988:243).

Though their rights were being slowly eroded amidst the dust that had barely settled from the Civil War, the FPOC continued to make use of the literary, social, political and economic tools they had been developing for several decades. The uncertainty of Reconstruction would give way to devastation for all people of color in the decades to follow, but for now, the FPOC and others held on. Carpetbagger Henry Clay Warmoth represented a type of ally and foe with whom the FPOC had to contend. An Union officer, Warmoth moved to Louisiana in 1865 (Du Bois 1992:461). He became part of the

newly formed Union Republican Party of Louisiana, which in September of 1865 held a convention calling on Congress to make Louisiana a territory and give complete equal rights, both politically and legally, to persons of color (Foner 1988:111). Two months later, the Republicans sponsored a “voluntary election” that brought black voters to the polls in droves (ibid.). With the majority of black votes in his favor, Warmoth became the “Territorial Delegate” to Congress on behalf of Louisiana (Foner 1998:111; Du Bois 1992:463). Warmoth won the nomination for governor over the *Tribune*’s favored candidate, Francis E. Dumas. The paper’s refusal to support Warmoth cost it dearly; it was forced to stop publication upon losing its “state and federal printing contracts (Foner 1998:331-2).⁶⁷ Warmoth would eventually become the first Republican governor of Louisiana (Foner 1988:295).

Never content to simply sit back and react to external changes and shifts in power relations and hierarchy, the FPOC fought back with their own organizations, newspapers and literature. The *Tribune de la Nouvelle-Orléans*, *L’Union*, the *Crusader*, the *New Orleans Republican* and the *Daily Crusader* insured a textual space in which to combat and make sense of their positioning, needs, goals and identity (Bryan 2000:56). The *Tribune* was their most important newspaper. Publisher Dr. Louis Charles Roudanez and initial editor Paul Trévigne saw its purpose “as an embodiment of and advocate for the imagined nation” (Senter 2000:279). Jean-Charles Houzeau, a Belgian-born astronomer and journalist whose story is as fascinating as any during this period, soon took over as

⁶⁷ Foner reflects: “The *Tribune*’s demise deprived the South of an eloquent advocate of Radicalism just as Republican rule, which it had done so much to bring about, commenced” (Foner 1988:332).

editor⁶⁸. Though originally published only in French, an English-language version soon appeared (ibid.). The paper was published daily during the year of 1865, though its circulation became weekly in its subsequent circulation years, giving it the distinction of being the “first Negro daily in America” (Du Bois 1992:456). The *Tribune* forcefully engaged in contemporary debates over voting rights, equality among races, disadvantageous labor laws, and the state of the nation from a distinctively FPOC point of view (Senter 2000:277; Du Bois 1992:456).

For an American audience, the paper’s international scope must have been a bit unusual. Published articles, editorials and poems drew on French history and philosophy, the Haitian Revolution and events around the globe (ibid.). During its years of circulation from 1864 to 1868, “these writers specifically linked the dream of Reconstruction to Creole history” (Senter 2000:278). Much hope and promise lay in the immediate aftermath of the Civil War, and the *Tribune* editors dreamed about the direction they wanted the country to go in, particularly in the domain of race relations: “a new nation...philosophically, one based on human rights, and culturally, Anglo-American, and they were willing to negotiate with the latter in order to achieve the former” (Senter 2000:282).

The political *Comité des Citoyens* or Citizens Committee spearheaded the legislative challenge to segregation and discrimination. The elite *Société d’Economie* represented the class interests of upper-crust FPOC, while the unpretentious *Société des Artisans* catered to professional FPOC less concerned with exclusivity (Hirsch and Logsdon

⁶⁸ Houzeau’s political beliefs had been influenced by both the Enlightenment and the philosophy behind the French Revolution (Foner 1988:63). The paper’s outlook reflected this.

1992:193).⁶⁹ Logsdon and Bell argue that “the organizational structure of black creole society was largely intact” by the year 1867 (Logsdon and Bell 1992:235). The 1845 publication of poetry written by FPOC, *Les Cenelles*, proved the literary prowess and capability of this group (Kein 2000:131).⁷⁰

White creoles enjoined their agenda with that of white Americans as non-Creole black Americans linked their allegiance to northern, Protestant African Americans (Senter 2000:293). The largely Catholic FPOC did not see religiously eye to eye with the mostly Protestant black American community. Divisions had as much to do with the different ways these denominations viewed moral and spiritual custom and duty, as it did with the role of the Protestant and Catholic churches in the New Orleans community. Both white and black Protestants had little use for “the city’s deeply rooted Afro-Latin way of life that offended their Anglo-Protestant sensibilities” (Logsdon and Bell 1992:236). The rowdiness of regular social gatherings and open lasciviousness of Mardi Gras probably bewildered ordinary Protestants not used to this kind of socializing, and such activities were put down by Protestant ministers (*ibid.*).

All except one of the Catholic clergy were foreign-born and trained, until the 1860s (Logsdon and Bell 1992:233). The Catholic Church’s open support of slavery and the Confederacy caused many FPOC to turn away in disgust to Masonic lodges and

⁶⁹ If it so desired, this organization could boast of its most famous member, acclaimed playwright Victor Séjour (Desdunes 1973:29).

⁷⁰ This collection was also the nation’s first body of poetry written entirely by African-Americans (even though the FPOC may not have made this connection in quite the same way as present-day scholars who in hindsight often lump all persons of color together) (Kein 2000:131). The collected poems were written entirely in French, with one poem in the New Orleans Creole language (*ibid.*).

spiritualist societies⁷¹ (Logsdon and Bell 234). Some Catholics remained members of Masonic lodges and Catholic churches⁷² (Ochs 2000:64). French Freemasonry was particularly attractive around the time of the 1848 Revolution in France; it espoused tolerance, fraternity and anti-elitist ideals that appealed to the FPOC (ibid.). Catholic religious communities flourished amongst the FPOC, as evidenced in church records and registers. By most standards, Catholics of color likely experienced less racism than in the New Orleans Catholic churches than elsewhere (Ochs 2000:51).

The most important difference between Protestantism and Catholicism revolved around views of race.⁷³ While Catholic FPOC saw integration among the races as integral and essential, black Protestants who had cultivated the institution of the ‘black church’ were loath to integrate (Logsdon and Bell 1992:236-237). Black Protestants interpreted the FPOC’s hesitation to join their church community as evidence of elitism (ibid.). Aware of the deep rift among the FPOC and black Americans in New Orleans, the *Tribune* put forth an extra effort to bridge the gap between the groups (ibid.).⁷⁴ A white Catholic priest, Claude Paschal Maistre, sharply criticized the Catholic Church for its racist policies and sympathies for the Confederacy (Ochs 2000:6).⁷⁵

⁷¹ Freemasonry had a membership in New Orleans stretching back to the eighteenth century (Ochs 2000:63). The Spiritualist Movement taught that humans could themselves communicate with the spirit world, and explicitly rejected the church as an institution (Ochs 2000:65).

⁷² See Chapter Five in Caryn Cossé Bell’s *Revolution, Romanticism, and the Afro-Creole Protest Tradition* (1997) for an extensive look at the FPOC and Freemasonry.

⁷³ Catholicism’s influence reaches back to provisions for slave baptisms in the French Code Noir and Spain’s recognition/adherence to conversion during its rule (Ochs 2000:21).

⁷⁴ By contrast, the Black Republican newspaper deliberately provoked already existing antagonisms between FPOC and black Americans in its pages (Logsdon and Bell 1992:239).

⁷⁵ Maistre practiced a kind of ‘protest Catholicism’ that converged Unionist political tendencies with Catholic morality, serving as an important leader during the Civil War (Ochs 2000:200).

More than half of the Louisiana state legislature in 1868 was composed of FPOC (Dunbar-Nelson 2000:38).⁷⁶ Ratification of the fourteenth amendment which granted citizenship rights to all African Americans was one of the top priorities during Reconstruction . The FPOC's long entrenchment in New Orleans politics and society gave them some leverage during this period when the pendulum was still, at least to some degree, in their favor.

Revolutionary Republicanism spread throughout North America at the end of the nineteenth (Berlin 1998:350). Renowned French painter Edgar Degas noted during his brief stay in New Orleans that it was “a city with one foot in the eighteenth century and one foot firmly in the nineteenth” (Benfey:1998:84). Much has been written about this period in history, including George Washington Cable's well-known and controversial work, *The Grandissimes*.⁷⁷ The political unraveling of rights for FPOC, newly emancipated slaves and free blacks across the nation began with the anticipated failure (by some) of Reconstruction. The “War of Reconstruction in Louisiana” was set into motion in the 1864 Constitutional Convention (Dunbar-Nelson 2000:35).

Post-Reconstruction up to *Plessy v. Ferguson*

The end of the Reconstruction marked some of the worst and most difficult years for

⁷⁶ Du Bois lists the following non-white Louisiana officials, from 1874-1876: Congressman Charles E. Nash, Lieutenant Governor and then Governor P.B.S. Pinchback, Lt. Governor Oscar J. Dunn, Lt. Governor C.C. Antoine, Secretary of State P.G. Deslonde, State Treasurer Antoine Dubuclet, and Superintendent of Public Education W.G. Brown (Du Bois 1992:470).

⁷⁷ As Benfey states, it is an “allegory of Reconstruction, an elaborate portrait of New Orleans after the Louisiana Purchase” (Benfey 1997:201).

the FPOC (Anthony 2000:301). Legal segregation in the form of Jim Crow laws and discrimination emerged in the 1880s, enduring into the first half of the twentieth century (Lofgren 1987:9). The refusal of African Americans to automatically demur and defer to whites in myriad situations provoked an outcry (especially) among southern whites who called for retribution (Lofgren 1987:25). The desire to keep African Americans ‘in their place’ drove much of the passage and enforcement of Jim Crow legislation (ibid.). Legal protections and rights steadily eroded during this time. Yet, this group’s amount of wealth, property holdings, skilled trades, literacy, advanced education, political appointments/offices and social organizations helped enable them to struggle valiantly against increasing oppression (Senter 2000:294).

The Civil Rights Bill granted citizenship to everyone born in the United States, with the exception of Native Americans (Foner 1988:243). This bill was spearheaded by Senator Lyman Trumbull, who chaired the Judiciary Committee and was a moderate (ibid.). The Civil Rights Bill “represented the first attempt to give meaning to the Thirteenth Amendment, to define in legislative terms the essence of freedom” (Foner 1988:244). Debates raged amongst moderate and Radical factions of the party who disagreed over which rights were fundamental enough to be insured by law (ibid.). Voting rights were considered by some to be rights that automatically came with citizenship, while others considered suffrage to be a privilege restricted to a minority (Foner 1988:245). The Civil Rights Bill was aimed first and foremost at incidents of injustice that took place within the public sphere (ibid.). As with any piece of legislation,

some interpreted the scope and intent of the Bill narrowly, while others saw its purpose as broad in scope (ibid.).

In a surprising turn of events, President Johnson vetoed the Civil Rights Bill, just as he had the Freedmen's Bureau Bill (Foner 1988:250). His rejection of the Civil Rights Bill was grounded in the racist principle that giving blacks citizenship rights in effect discriminated against whites (ibid.). Such rhetoric echoes cries of reverse discrimination and opponents to affirmative action who claim that racial preferences disadvantage whites.

President Johnson's vetoes prompted the Republican party to put into the Constitution rights the North had fought for and won during the Civil War (Foner 1998:251). Constitutional Amendments fall outside of Presidential discretion. The challenge of reconfiguring voter representation after the War was a pressing problem; Southern slaves who before had counted as three-fifths of a man would now be counted as an entire person, dramatically increasing Southern representation in both the Electoral College and the House of Representatives (Foner 1998:252). The Fourteenth Amendment was dreamed up as a compromise that still denied women, aliens and illiterate people the right to vote. What would become the Fourteenth Amendment stated "that when a state denied any citizen the right to vote because of race, all members of that race would be excluded from enumeration" (ibid.).

In the post-Reconstruction period, neither major political party protected the rights the FPOC had previously enjoyed, or fought for a greater extension of privileges and opportunities. It was time for an alternative, and the Unification Movement of 1873 proved a welcome change (Foner 1988:547). Recognizing that Carpetbaggers were no

more prone to look out for the FPOC's interests than former Confederates, this Movement promoted racial harmony and integration under the tutelage of like-minded whites and FPOC (ibid.). It was not to last long, though, since many FPOC were unable to completely trust the motives of whites in favor of Unification (ibid.).

CHAPTER FOUR

THE CONTEXT AND IMPACT OF *PLESSY V. FERGUSON*

A high number of non Anglo-Saxon and non Protestant people from eastern and southern Europe immigrated into the United States during the 1890s, the same decade in which the Citizens Committee to Test the Constitutionality of the Separate Car Law brought forth the *Plessy v. Ferguson* lawsuit (Trachtenberg 2004:98)⁷⁸. The question of where and if these newly arrived people fit into a country that unequally distributed power and privilege among a select few provoked backlash and fear among many white Americans. A related fear of black Americans attaining the same degree of power as whites prompted a series of restrictive and racialized (if not racist) laws and attitudes. The need to regulate and control the rights, movement and protection of people of color that began in Louisiana with the 1724 Black Codes continued a century and a half later after Reconstruction ended (Medley 2003:67).

The 1896 Supreme Court case *Plessy v. Ferguson* challenged the 1890 Separate Car Act that legalized and mandated segregated railway travel. The Free People of Color carefully prepared plaintiff Homer Plessy's arrest when he purchased a first-class ticket and proceeded to sit in the whites-only, first class car. The FPOC were trying to accomplish several things with this test case, which they thought they might lose. The first goal was to expose the arbitrariness of skin color as a marker of one's 'race.' As a man with one-eighth of African American blood heritage, this light-skinned man could 'pass' for white if he so chose. Plessy was a shoemaker and part of the FPOC middle

⁷⁸ The same year the Supreme Court decided *Plessy v. Ferguson*, 1896, more people came to the United States from Italy, Poland, Russia and Hungary than (the preferred origin countries of) Scandinavia, England, France and Germany (Trachtenberg 2004:98).

class. He was representative of the FPOC, who had long straddled the divisions between ‘white’ and ‘black.’ As we have seen from the previous chapters, the FPOC did not fit into any neat race/class dichotomy. Although Plessy was not ‘purely’ white, his well-dressed appearance and manner reflected his social standing as an established member of the New Orleans community. For all intents and purposes, his image and behavior reflected that of an upstanding, ‘white’ citizen who was fit to sit in a first-class car. By making such a person the plaintiff, the Citizens’ Committee hoped to point out the fallacy of skin color, the ‘one-drop rule,’ and the essentialist conflation of ‘whiteness’ and success. It is not fair or accurate to pre-judge someone solely on the basis of skin color, a point the Committee wanted to drive home. The lawsuit also attempted to get rid of discriminatory legislation such as the Separate Car Act, which stripped all people of color of their civil and social rights in the public sphere.

Through the Citizens’ Committee, the FPOC fought for their rights, and the rights of all African Americans who had borne the brunt of prejudicial laws, policies and attitudes. The end of Reconstruction marked the beginning of a dark period for equal rights and protection for African Americans. Fighting back through the very legal system that had consistently penalized people of color demonstrated a degree of political acumen. It also stated for the record that racism and discriminatory practices would not endure without a fight. Expressing their views in Louis A. Martinet’s FPOC newspaper, *Crusader*, the Committee had been vocal locally about their vehement opposition to the Separate Car Act (Medley 2003:103).⁷⁹ The FPOC had the social and political

⁷⁹ As with the prior *L’Union* and the *Tribune* newspapers, the *Crusader* proved an important vehicle through which to communicate the social, political and economic opportunities, grievances, and struggles of the day (Medley 2003:104).

connections, economic resources and a serious stake in the outcome to bring forth a case that would go all the way to the Supreme Court: *Plessy v. Ferguson*.

In *Plessy v. Ferguson*, Plaintiff Homer Plessy was fighting for more than his right to travel on a first-class train within Louisiana's state borders; he was fighting for the retention of his reputation as a man 'white' enough to sit in the train's first class cabin.⁸⁰ Medley succinctly sums up what was at stake: "[The Committee's] six-year quest through America's political and legal system traversed many crucial issues in American jurisprudence: states' rights, federal authority, individual liberties, rights of association, racial classification, the regulation of interstate and intrastate commerce, and the central question of the Supreme Court's role in defending the individual rights of American citizens" (Medley 2003:14).⁸¹

In her seminal article, "Whiteness as Property," legal scholar Cheryl A. Harris probes the relationship between property and racial identity (Harris 1993:1). As an identity, status and property, 'whiteness' in a United States context evokes power and privilege dependent upon the subordination and exclusion of others (Harris 1993:7). The historical legacy of slavery and discrimination is reflected on myriad levels, but is cast most starkly in the legal trail of precedents, opinions and court decisions that have upheld white privilege and denied equal opportunity. In the nineteenth century, it was possible to be

⁸⁰ "Over 20,000 passengers annually traveled the East Louisiana Railroad. Only Plessy had cause to wonder what the Supreme Court might think about his trip" (Medley 2003:14).

⁸¹ *Plessy v. Ferguson* raised many key questions: "Could states regulate people based on race? Didn't the Fourteenth Amendment's equality clauses prohibit such discrimination? Who was qualified to assign racial categories? Could states intrude into such intimate decisions as marriage and relationships because of the races of the betrothed? *Were people of color citizens, slaves, or something in between?* Were they less than human? Did the United States Constitution guarantee them any rights at all?" (my emphasis, Medley 2003:15).

socially, but not legally white (Harris 1993:11). Yet, social definitions of who was considered 'white' and who was not varied from place to place.

For a group such as the New Orleans Free People of Color, who had in their history enjoyed many of the privileges reserved for whites in most parts of the country, their objective was to reclaim part of their previous power. Nation-wide, the last few decades of the nineteenth century proved how quickly and systematically prior realms of influence and power could be taken away. In Louisiana, people of color did not lose all of their rights or all at once; the Louisiana legislature in 1888 included eighteen people of color (Medley 2003:91). Locally-based New Orleans social and political organizations such as the American Citizens' Equal Rights Association, the Unification Movement and the Citizens' Committee fought against discriminatory laws and policies (Medley 2003:92). Despite active resistance and a degree of influence and participation in the economic, political and social spheres of New Orleans, the 1890s proved to be a terrible time for people of color. In 1891, eighteen prominent men of color organized into what became known as the Citizens Committee (Lofgren 1987:29).⁸²

Among the possible avenues of protest and resistance they chose to challenge the legal system; the law could ensure the best protection against racist politicians and local authorities who preferred to keep all people of color in the position of second-class citizenry. Socio-economic and political stratification intensified during the course of the nineteenth century, creating the need for a more organized and diligent resistance. The degree of protection in favor of African descendant people reached its peak during

⁸² The gendered division of the Citizens' Committee, which excluded females, reflected the sharp separation of men and women in economic, political and social spheres. Free women of color worked mostly as seamstresses or ran boarding houses (Medley 2003:23).

Reconstruction, and nadir during post-Reconstruction. The authority shift from federal enforcement of the Fourteenth Amendment and similar measures to states' narrow interpretations and policies proved disastrous for the FPOC and others.

Using the law to determine one's racial status and ancestry began well before the Citizens Committee orchestrated Plessy's arrest⁸³. With the support of some in the New Orleans court system, people of color in New Orleans won numerous local and state lawsuits against discrimination (Lofgren 1987:20).

What came to be known as Jim Crow laws in the South had precedents in antebellum northern laws (Thomas 1997:2). The passage and upholding of Jim Crow laws were only feasible because of Reconstruction's failure (Thomas 1997:5). As discussed in Chapter Three, the Post-Reconstruction era unraveled one civil, political and/or legal right after another. In the 1880s, four states put into place laws instituting segregation, with more prohibitive and discriminatory state legislation to come (Thomas 1997:3; Lobel 2003:100). The end of Reconstruction not only meant the discontinuance of policies to bring together the South and North, but an end to northern abolitionist involvement/interference in southern race dynamics and interaction (Lobel 2003:101).

The Citizens' Committee

During Reconstruction, Louisiana pushed the envelope of integration and equality on behalf of African Americans more than any other southern state; the 1868 Louisiana

⁸³ In what became known as the Toucoucou Affair, one child sued another for being called a 'Negro' (Desdunes 1973:61). The offended child went to court to prove her 'whiteness' (ibid.). Though the child lost the case after proof was presented of her African ancestry, the issue of 'passing' for white remained a debated, complicated and multi-faceted one in Louisiana (ibid.).

Constitution even “outlawed racial segregation in public schools and public accommodations, secured to blacks the right to vote and hold office, and required all state officeholders to take an oath accepting the civil and political equality of all men” (Lobel 2003:101). In the span of five years, nine states passed Jim Crow laws directed at railway transportation (Lofgren 1987:21).⁸⁴ In general, steamboats and streetcars were the most and least segregated forms of transportation, respectively (Lofgren 1987:9). The official wording of the laws at the time was “equal but separate” (Lofgren 1987:26). By contrast, in Louisiana railway transportation companies were loath to enforce segregation among rail cars because it usually cost more; separating races within a single car was easier and less expensive (Lofgren 1987:14).⁸⁵ Its prime location as a port city made New Orleans the final destination for many of the top railway companies, and represented a cornerstone of New Orleans’ economy (Medley 2003:134). If the railway business had had any say in the passage or enforcement of the Separate Car Act purely on business economic grounds, it likely would not have passed. Segregating cars meant physically adding more railway cars, which the companies saw as an unnecessary expense (ibid.). Lofgren suggests that the difficulty the Committee had in setting up a test case to challenge the 1890 Separate Car Act illustrates the variable degree to which Jim Crow laws were in effect (Lofgren 1987:17).

⁸⁴ The location and date of Jim Crow laws passed in the South reads as follows: 1887 in Florida, 1888 in Mississippi, 1889 and 1891 in Texas, 1890 and 1894 in Louisiana, 1891 in Alabama, Georgia and Tennessee, 1891 and 1893 in Arkansas, 1892 in Kentucky (Lofgren 1987:22).

⁸⁵ When African descendant people were segregated by car, persons of color—except for black wet-nurses in some instances who could sit in the nicer cars with a white companion—had to sit closest to the engine. The unhealthy combination of soot, engine smoke and cigarette smoke proclaimed this unfortunate area the ‘smoking car’ (Lofgren 1987:10).

The Citizens' Committee formed in September of 1891 to fight discrimination and overturn the Separate Car Act, passed by the Louisiana legislature—section 2 of Act 111—that mandated “separate but equal accommodations for the white and colored races” (Thomas 1997:3)⁸⁶. Each of the Committee's (exclusively male) members were distinguished and accomplished in their own right. Vice-president C.C. Antoine had served as Lt. Governor of Louisiana; ‘Haitian-born’ Arthur Estèves owned New Orleans’ premier ‘sailmaking company’; and Rodolphe Desdunes, who had been a law classmate of Louis Martinet, brought wide attention to the FPOC through his book *Nos Hommes et Notre Histoire* (Lobel 2003:104). They represented a sort of southern ‘talented tenth’ (Medley 2003:125). Besides opening the door for equality and equal rights through a potential legal win, the Committee believed that the Supreme Court should have to explicate how Jim Crow laws could be allowed in the first place; why could segregation exist coterminously with the Fourteenth Amendment? (Lobel 2003:105).

The FPOC found segregated travel an egregious example of unfair discrimination. The political and social climate of the early 1890s was not favorable to what the Committee was fighting for, but they believed that it was important to contest the laws anyway (Lobel 2003:100).⁸⁷ Once they established legal counsel and raised the

⁸⁶ Aristide Mary officially came up with the idea to form such a committee; Louis Martinet, a physician and accomplished man of many talents served as the *de facto* leader (Lobel 2003:104). Desdunes, himself a member of the Committee, lists the members: “Arthur Estèves, President; C. Antoine, vice-president; Firmin Christophe, secretary; G.G. Johnson, undersecretary; Paul Bonseigneur, treasurer; Laurent Auguste, R.L. Desdunes (author of text from which this list was taken), Alcée Labat, Pierre Chevalier, N.E. Mansion, A.B. Kennedy, R.B. Baqué, A.J. Guirenovich, L.A. Martinet, L.J. Joubert, M.J. Piron, Eugène Luscly, E.A. Williams (Desdunes 1973:141).

⁸⁷ Lobel quotes Louis Martinet, a New Orleans attorney, free man of color and Committee member as saying: “the fight we are making is an uphill one” (Lobel 2003:100). He goes on to comment: “For Martinet and his compatriots, the decision to resist was not calculated the way a tort lawyer weighs the chance of success before undertaking a negligence suit but sprang from an internal predisposition to fight injustice” (Lobel 2003:105).

appropriate amount of funding, the Citizens Committee began staging their first arrest to test the consequences of blatantly breaking the law. Daniel Desdunes, son of prominent FPOC leader, Rodolphe Lucien Desdunes, first challenged the segregated interstate law (Thomas 1997:6).⁸⁸ Albion W. Tourgée acted as official lead counsel, while local attorney James Walker did much of the actual strategizing and leg work for this first test case (Lobel 2003:109). It is no accident that the main leaders in the Committee’s test case involving Homer Plessy, including Tourgée, Walker, and dissenting Supreme Court Justice John Marshall Harlan, were heavily involved in Radical Reconstruction politics (Olsen 1967:18).

Homer Plessy

Litigation was seen as one avenue towards dismantling segregation and recovering previous rights (Lobel 2003:104). After successfully challenging segregated seating on interstate travel, the Committee wanted to carefully select someone who could test the intrastate travel law. They chose thirty-four year old shoemaker Homer Plessy—whose full name was Homere Adolphe Plessy (Lobel 2003:104; Medley 2003:18). A literate man who also worked as “clerk, laborer and collector for a black-owned insurance company,” Plessy came from a family of free people (Medley 2003:16).⁸⁹ Plessy’s range

⁸⁸ Abolitionists had long been using the legal system to fight for rights and equality. The FPOC were no stranger to the domain either; Committee membership itself included several attorneys (Lobel 2003:103). Lobel rightly argues that although the American legal system is set up to be winner-take-all, losing cases such as *Plessy v. Ferguson* are still vitally important (Lobel 2003:7). He makes the point that the cause of “abolitionists, woman suffragists and advocates of equality for freedmen” alike relied on “test case litigation” (Lobel 2003:48).

⁸⁹ His parents, Adolphe Plessy and Rosa Debergue were both FPOC (Medley 2003:20). His father’s father, a white Frenchman named Germain Plessy, came to New Orleans via revolution-stricken Saint-Domingue in the early nineteenth century (Medley 2003:21). Germain Plessy married Catherina Mathieu, a free

of occupations reflected the main occupations of free men of color, including that of carpenter, laborer, cigar maker, shoemaker, and draymen (Medley 2003:23). His primary profession of shoemaker possibly reflected the influence of his natural father's line of carpenters and his mother's job as seamstress (Medley 2003:28).⁹⁰

Plessy's young adult years coincided with the shift from Radical power during Reconstruction to Democrat power after Reconstruction ended, a power change that had dramatic consequences for all people of color (Medley 2003:30). New Orleans schools that had previously been integrated and of high quality, were re-segregated in 1877, soon after the Hayes-Tilden compromise (Medley 2003:31). Plessy became involved in the fight against re-segregation, serving as Vice-President in the Justice, Protective, Educational and Social Club (Medley 2003:31).

In 1888, a twenty-five year old Homer Plessy married nineteen-year old Louise Bordenave (Medley 2003:32). The young couple moved to the socially vibrant Faubourg Tremé area, an area where many FPOC lived (*ibid.*). Tremé neighbored other vibrant and historically notable areas, such as Congo Square, St. Louis Cemetery #1, and Storyville, known simultaneously as the birthplace of Jazz and the "nation's first red-light district" (Medley 2003:34). In 1890, the Louisiana legislative body passed the Separate Car Act, which legally restricted movement and rights to a degree Plessy had not yet endured in his lifetime.

woman of color, and produced eight children (*ibid.*). Not as much is known about Homer's maternal family, though his mother, Rosa, was born into the FPOC class (Medley 2003:22).

⁹⁰ Plessy's father Adolphe Plessy, died in 1869, when Homer was just five years old (Medley 2003:24). His mother remarried another free man of color in 1871, Victor M. Dupart (Medley 2003:25). The Dupart family's active role in social and political organizations may have heavily influenced Homer's decision to get politically involved (Medley 2003:26).

Plessy decided to do something about this, and other, infringements upon rights and legal protections. A comparatively young Committee member when he joined at thirty-years of age, Plessy volunteered to be the agitator in the Committee's test case to challenge segregated intrastate travel (Medley 2003:17). A legal challenge required involving the legal system through an arrest, which the Committee planned in detail. Plessy purchased a first-class passenger ticket on the East Louisiana Railway (which never left Louisiana) traveling between New Orleans and Covington, Louisiana. On June 7, 1892, he would commit "a crime of ethnicity" (Medley 2003:17, 141; Lobel 2003:104).

His arrest and booking were staged; indeed, had he not informed the conductor checking tickets of his status as a 'colored' man, he might not have been arrested at all! This was precisely the Committee's point. It was their hope that positing Plessy as the plaintiff would point out the "arbitrariness of racial laws" (Lobel 2003:110). In a 1891 letter Louis Martinet wrote to Albion Tourgée shortly after the latter agreed to serve as the Committee's official counsel, Martinet describes why the idea of "a lady too nearly white" might not make for a good plaintiff (Olsen 1967:56-57). Once it was decided to challenge the restricted Louisiana law on intrastate travel, the Committee agreed that it would be best to have a light-skinned free man of color, i.e. someone who could 'pass' for white, break the law (Thomas 1997:4). There is indeed something ironic, as Lobel points out, in a man who could pass for white serving as a test case to locate the boundaries between 'black and white' (ibid.).

The Committee wanted the best legal representation possible. Albion Winegar Tourgée turned out to be the man for the job. He was "a former Reconstruction-era

carpetbagger and America's most vocal, militant, persistent, and widely heard white advocate of racial equality during the last two decades of the nineteenth century" (Lobel 2003:105). A descendant of the Huguenots, Tourgée was leader of the North Carolina Radical Republicans, an acclaimed author, and deep believer in justice (Medley 2003:54).⁹¹ His career included a series of legal fights on behalf of rights for people of color that earned him the title/nickname of 'Apostle of Agitation' (Lobel 2003:108).⁹²

After some negotiation, he agreed to become the Committee's official attorney, *pro bono* (Thomas 1997:4). He remained in New York during the early stages of the Committee's fight. A reliance on long-distance correspondence perhaps slowed down the process a bit, but enabled Tourgée to work from his northern office without too much disruption.

The Committee believed they also needed local counsel experienced in New Orleans politics and legislature. James C. Walker, who had plenty of experience with local Republican politics, fit the bill.⁹³ He in effect took the legal helm, until *Plessy v. Ferguson* became a Supreme Court case.⁹⁴ Walker and Tourgée began formally communicating and working together on January 2, 1892 (Lofgren 1987:32). The trust

⁹¹ His book, *A Fool's Errand*, became a bestseller when it was published in 1879 (Lobel 2003:106). In the original text, Tourgée does not list his name as author, instead citing that the writer was 'One of the Fools' (ibid.). The book's philosophical and psychological examination of what separates fools from martyrs and prophets underlines Tourgée's own beliefs about the difference between those who remain woefully and willingly ignorant and passive, versus those who act wisely and actively to enact change (Lobel 2003:106-7).

⁹² Olsen argues that with the exception of Tourgée, no prominent white leaders were "resolutely promoting Negro equality during the 1890s" (Olsen 1967:23).

⁹³ Walker served as a Confederate private in the Civil War, and Tourgée served as an Union officer (Medley 2003:199).

⁹⁴ The case became known as *Plessy v. Ferguson* once Tourgée and Walker appealed Judge Ferguson's 1892 state Supreme Court ruling upholding the Separate Car Act's constitutionality (Olsen 1967:14).

between the two attorneys strengthened a great deal as Walker's suggestions on how to proceed yielded results.

Plessy v. Ferguson's Journey to the Supreme Court

Before Homer Plessy challenged the law pertaining to intrastate travel, the Committee staged Daniel F. Desdunes' arrest on interstate railway travel. Twenty-one years of age and the octroon son of author and Committee member, Rodolphe Lucien Desdunes, Daniel Desdunes' arrest was planned for February 24, 1892. As Homer Plessy would do four months later, Desdunes bought a first-class ticket. The supposed trip was between New Orleans and Mobile, Alabama on the L & N Railway company (Lofgren 1987:33). Desdunes' arrest only marked the beginning of the fight; in order for the test case to be effective, it needed to be solidly grounded legally. Tourgée and Walker decided to contest the Separate Car Act on the constitutional grounds of the Fourteenth Amendment, which supposedly recognized and protected Desdunes as a United States citizen (Lofgren 1987:35). Desdunes' arrest could also be challenged on state legal grounds, though Tourgée argued against this (Lofgren 1987:36). The division of federal and state authority remained a central issue in this case and the various stages of Plessy's suit; if a state ruled against Desdunes, it was not clear whether a federal judge would interpret that decision as immutable or not (Lofgren 1987:37). The interpretation of the Constitution's Tenth Amendment, which guaranteed states' rights, came into play⁹⁵.

⁹⁵ The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people" (See Bill of Rights).

Much of the strategizing to appeal and challenge Desdunes' arrest proved to be moot; the Criminal District Court for the Parish of Orleans arraigned him on March 18, 1892 and dismissed the case on July 13 (Lofgren 1987:39, 41). The preparation and events of the Desdunes test case increased the Committee's determination to press forward. Arrangements for a second test case, this time to challenge the legality of intrastate segregated travel, were made. Thirty-four year old shoemaker Homer A. Plessy became the plaintiff. Like Desdunes, Plessy was an octoroon and considered 'light-skinned' enough to 'pass' for white.

For the sake of Plessy's safety and the legitimacy of the Committee's case, his arrest needed to take place before the train actually left the New Orleans station. Ironically, his light complexion and nicely tailored clothes and appearance meant that he might not be arrested unless he made it clear that he was non-white. Plessy therefore approached the conductor and said "I have to tell you that, according to Louisiana law, I am a colored man" (Fireside 2004:1). Conductor J.J. Dowling of this East Louisiana Railroad Company hesitated to arrest Plessy and in the process held up the train's departure (Fireside 2004:2). Well-prepared by the Committee, Plessy asked to go with Private Detective Chris Cain, who took him to the Fifth Precinct Station and jailed him in Orleans Parish (ibid.).

Waiving his right to a hearing, Plessy found a bondsman who released him on bail and sent him home (Fireside 2004:3). Tourgée and Walker worked furiously to make a strong case for why the Separate Car Act was unconstitutional. As with Desdunes' case, the lawyers invoked Plessy's citizenship rights as stated under the Fourteenth Amendment. Walker and Tourgée filed a fourteen-point plea that Judge Ferguson

overruled when he heard Plessy's case on November 18, 1892 (Fireside 2004:6). Walker then decided to shift Plessy's plea from 'not guilty' to habeas corpus, followed by an immediate petition to the Louisiana State Court (Lofgren 1987:42). *Ex parte Plessy* became the name of the case heard before the Louisiana State Supreme Court (ibid.). The state of Louisiana stood by its decision that the Separate Car Act did not in fact undermine or conflict with the Thirteenth or Fourteenth Amendments (Lofgren 1987:43). Failing to overturn this law at the state level, Walker and Tourgée next turned their attention to the federal court level, shifting their focus from New Orleans to Washington, D.C. (ibid.).

Walker and Tourgée submitted an 'assignment of errors' to the United States Supreme Court, which listed what the attorneys perceived to be mistakes the Louisiana state court had made in their interpretation of Plessy's case (Lofgren 1987:44).⁹⁶ This document is important because it laid out the framework for the attorneys' argument and revealed their logic and focus. Tourgée and Walker argued that the Separate Car Act did in fact violate Plessy's rights under both the Thirteenth and Fourteenth Amendments because it linked him, as a man of color, to the legacy of slavery viz. a 'badge of servitude' (Lofgren 1987:46). The law's violation of Plessy's Fourteenth Amendment protections was key; the attorneys argued that the Act "constituted both a denial of equal protection and a punishment without due process" (ibid.). Another important document is Tourgée's brief to the Supreme Court, filed in 1895. It contains in detail the prosecution's

⁹⁶ See the document in Olsen 1967:74-77.

main arguments and logic, some of which can be found in Justice Harlan's dissenting opinion.⁹⁷

Judge Ferguson countered the due process argument by stating that the only right denied to Plessy was the right to do as he wished (Lofgren 1987:48).⁹⁸ The law said that as a member of the African American race, Plessy could not sit with whites; whether he had a first-class ticket or not, Plessy's racial standing precluded his personal wishes (ibid.). Ferguson dismissed other arguments Plessy's attorneys made, the first of which was that the Separate Car Act was null and void: "it was not a valid police measure because it established a classification that, as a matter of law, violated (1) the Thirteenth Amendment's ban on badges of servitude, (2) the Fourteenth Amendment's establishment of national citizenship, and (3) the latter Amendment's guarantee against state abridgement of privileges or immunities" (Lofgren 1987:49). Ferguson responded by arguing that the Separate Car Act in fact did exist as a valid police measure and sidestepped the degree to which the Thirteenth and Fourteenth Amendments protected Plessy (ibid.). It is worth looking in greater detail at what these two landmark Amendments stated and how they related to both sides of the *Plessy v. Ferguson* case.

As a northern transplant in New Orleans, the cultural and historical milieu of Ferguson's Massachusetts background contrasted with what he found in the 'Big Easy.' Massachusetts' English and Puritan legacies little resembled the French and Spanish-influenced New Orleans' social life that included drinking, prostitution and gambling

⁹⁷ See pages 80-103 in Olsen 1967.

⁹⁸ Judge John Howard Ferguson originally hailed from a state native residents considered "the birthplace of freedom," Massachusetts (Medley 2003:42). After finishing law school in Boston in the 1860s, he decided to pursue the carpetbagger's dream of making it big in the newly defeated South (Medley 2003:45). Ferguson married into an abolitionist Unionist family when he married the daughter of outspoken anti-Confederate Thomas J. Earhart, Virginia Earhart (ibid.).

(Medley 2003:46). The strong Protestantism that characterized Boston clashed with the strong Catholic constituency in New Orleans (ibid.). Finally, the legacy of freedom that rejected the practice of slavery in Massachusetts diverged widely from the institution's ongoing practice in Louisiana until the Civil War (ibid.). A number of people contributed to his strict interpretation of law, notably Benjamin Hallett, Thomas Earhart and Francis Nicholls, who were mentors and prominent lawyers (Medley 2003:49). In the beginning of his career Ferguson did not publicly proclaim his opinions on race, though he did take a strong stand against the practice of gambling in New Orleans (Medley 2003:51).⁹⁹

His stringent views on which protections and rights did and did not extend to African Americans played a decisive role in Plessy's case making its way to the Supreme Court. In fact, the Citizens' Committee wanted the case to go to the Supreme Court, because the federal courts had the authority to overturn Louisiana's—and by extension other southern states'—discriminatory laws (Medley 2003:126).

This case did not spark a windfall of media attention, perhaps because numerous acts of civil disobedience took place in the year 1892 (Medley 2003:147). Conflict between “militant labor unions and intransigent capitalists locked horns in their own bloody guerre a mort” (Medley 2003:147). Presidential politics came again into the fore with that year's Democratic and Republican and—for the first time, third party Populist—conventions (ibid.). Thirty years after the Union army freed New Orleans and Lincoln composed the Emancipation Proclamation, 1892 also marked the highest number

⁹⁹ Medley comments that, quite ironically, “Plessy and Ferguson had the same skin color” (Medley 2003:162).

of lynchings ever recorded (ibid.).¹⁰⁰ The pendulum's swing away from Reconstruction-era politics towards white supremacy and the regulation of people of color was also a factor in the little media attention and outcry the Supreme Court's decision in *Plessy v. Ferguson* provoked.

The role of the Thirteenth and Fourteenth Amendments

A particular interpretation of the Thirteenth and Fourteenth Amendments is essential to understanding *Plessy v. Ferguson*. The Thirteenth Amendment's primary purpose was to outlaw slavery (Thomas 1997:11). Although this may seem simple and clear-cut, it in fact is not, because those who passed this Amendment did not foresee the (necessity of the) passage of the Fourteenth and Fifteenth Amendments (ibid.). There was no consensus on how wide the Thirteenth Amendment's net should be cast, and what it should specifically encompass (Thomas 1997:12). Some, like President Johnson who opposed many of the legislative measures to enfranchise African Americans, viewed the Thirteenth Amendment's purpose solely as ending slavery (ibid.). Others, like Senator Trumbull who was instrumental in the Freedman's Bureau Bill and the Civil Rights Act, thought the Thirteenth Amendment should effectively ban all discrimination (ibid.). As it turned out, strict interpretations in cases invoking the Thirteenth Amendment only addressed the abolition of slavery; had the Amendment been more broadly interpreted, it could have perhaps offered protection against all forms of discrimination, and precluded the need for the next two amendments (Thomas 1997:22). In parallel reasoning, Justice

¹⁰⁰ Glenn estimates that 2,585 lynchings occurred between 1885 and 1903 throughout the South (Glenn 2002:109).

Field said that if the Fourteenth Amendment had protected and ensured political and civil rights, then the Fifteenth Amendment would have been unnecessary (Thomas 1997:23).

The 1866 Civil Rights Act much more explicitly banned racial discrimination (ibid.). Here, an important distinction should be made between civil, social and political rights. Thomas insightfully sets up political rights on a vertical axis, and social rights on a horizontal axis, with civil rights falling somewhere in between (ibid.). Political rights come directly from a governmental body and are regulated by law; voting is an example of a political right (ibid.). A civil right, such as being able to walk down the street without being harassed or discriminated against, is less cut and dry and more circumstantial. The 1866 Civil Rights Act argued that the right to not be discriminated against is a civil right that ought to be legally protected (Thomas 1997:13).

The issue of whether the state or federal government enforces and protects one's civil rights strikes at the heart of the power struggle among the then still-divided South and North (Thomas 1997:14). States were not allowed to become part of the Union unless they ratified the Fourteenth Amendment, which is much more complex than either the Thirteenth or Fifteenth Amendments (ibid.). The Fourteenth Amendment is directed at United States citizens, but citizenship was never defined in the Constitution. In addition to the struggle between various states and the federal government was the fight over who should be allowed to become a citizen (ibid.). Should the granting of citizenship fall within the states' domain, or be issued from the federal level? This question was resolved in sentence two of the Fourteenth Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..." (Thomas 1997:14).

Sentence one of the Fourteenth Amendment overturned the ruling in the 1857 *Dred Scott* case that denied citizenship to all African Americans: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside (ibid.).¹⁰¹ Another key element, the ‘due process clause’ protects all people, not just citizens: “nor shall any State deprive any *person* of life, liberty, or property, without due process of law...” (emphasis added, ibid.).¹⁰²

Several cases tested the Thirteenth and Fourteenth Amendments more than two decades before *Plessy v. Ferguson* case (Thomas 1997:18). The first cases to do so were *The Slaughter-House Cases* of 1873. The defendants were white butchers from New Orleans who argued that the state restriction (or monopoly) of slaughterhouses to only two companies violated the butchers’ livelihood and property rights (ibid.). Though the butchers lost in the case, the scope of the Fourteenth Amendment had been tested. To the ultimate detriment of African Americans, it was interpreted narrowly and favored state over federal authority (ibid.). States were given the final right to appeal cases that would make them uphold or enact legislation they did not care to, such as banning racial discrimination (Thomas 1997:22). For those African Americans living in the South, this was a treacherous decision. How narrowly or broadly, specifically or generally judges interpreted the application of legislation directly impacted how those affected laws would be enforced in the future. One ruling that did recognize African American’s rights was

¹⁰¹ The second half of this sentence did not apply to American-born African Americans but had great consequences for various immigrant groups, who could be denied citizenship based on their country of origin and its relationship with the United States (Thomas 1997:16).

¹⁰² The addition of these two words, ‘any State’ makes this clause different from what is stated in the Fifth Amendment (Thomas 1997:16).

the 1880 *Strauder v. West Virginia* case that struck down West Virginia's law banning African Americans from serving on juries (Olsen 1967:7).

However, most case rulings clearly favored corporate business interests. One particularly influential example of this is the 1886 *Santa Clara County v. Southern Pacific Railroad Company* case. In it, protections granted by the Fourteenth Amendment were extended to corporations. Corporations were essentially given the same protective rights as individuals (Thomas 1997:20).¹⁰³ The power of corporations was greatly expanded by an interpretation in this case that legally recognized corporations as “artificial legal ‘persons.’ It followed that corporations would be protected under the due process and equal protection clauses of the Fourteenth Amendment” (ibid.). Corporations today continue to benefit from the enormous power granted to them from this precedent.

The 1875 Civil Rights Bill, spearheaded by long-time advocate of African American rights, Charles Sumner, passed in Congress after his death in 1874 (Thomas 1997:23). This bill guaranteed the ability of all people to use the same public facilities and enjoy the same public accommodations (ibid.). Five cases contesting this bill had landed in the Supreme Court's docket by 1883 (ibid.). Heard and decided together in the *Civil Rights Cases*, the ruling found most of the 1875 Civil Rights Bill unconstitutional (Thomas 1997:24). One of the Justices who ruled in the majority, Justice Bradley, stated his discomfort with the vast umbrella of protections the Bill covered (ibid.). Making the distinction between social and civil rights, he iterated that the majority of individual

¹⁰³ Olsen analyzes such court opinions this way: “In pursuit of this end, the same court that so thoroughly minimized the intended equalitarian promise of the Fourteenth Amendment, shockingly stretched its meaning in behalf of the privileged few. In what has been pronounced ‘a calamitous, indeed a well-nigh ruinous, form of judicial displacement of majority will,’ the Supreme Court erected a bulwark in defense of property rights by atrociously attaching and by freely utilizing the equal protection clause of the Fourteenth Amendment in behalf of railroads, corporations, and public land and land holders” (Olsen 1967:19).

rights should be social rights, outside of the direct jurisdiction of law (ibid.). The 1875 Civil Rights Bill's federal ban on discrimination against individual persons in public places was deemed unconstitutional because it fell outside of the Fourteenth Amendment's domain, which only protected from "state-imposed discrimination" (Lobel 2003:282). Bradley understood the Fourteenth Amendment to protect the rights of states, and not individuals (Thomas 1997:24).

Dissenter Justice Harlan, who would be the only judge to dissent—and the only Supreme Court judge from the South!—in the *Plessy v. Ferguson* ruling, argued for a broad interpretation/application of the Thirteenth Amendment (Thomas 1997:25, 165).¹⁰⁴ He also said that the "new national citizenship" provided for in the Fourteenth Amendment carried the right to not be discriminated against. Harlan upheld that the 1875 Civil Rights Bill was in fact constitutional because "it enforced the affirmative rights implied by the new national citizenship created by that sentence" (ibid.).

Plessy v. Ferguson

It did not take long for the case against Judge John Howard Ferguson's ruling to move up through the Louisiana state courts; the case landed before the Supreme Court in 1893 (Lobel 2003:110). Meanwhile, in February of 1893 Plessy's case came before the United States Supreme Court, where it stayed without action (Medley 2003:173). While the case stalled, the Citizens' Committee directed their efforts and cause to the fighting

¹⁰⁴ Harlan dissented from the Court's majority opinion a total of 119 times during his tenure on the Court (Medley 2003:197).

pages of the *Crusader*. They voiced opposition to places that became segregated, such as Catholic churches and biased juries comprised only of white men (Medley 2003:189).

Though Tourgée and Walker felt that their chances of actually winning this Supreme Court case were slim, two arguments did carry the potential of winning the Court's favor. Guaranteed as a citizen by the Fourteenth Amendment, Plessy should be able to retain his property rights as an individual, which include the retention of his nearly 'white' appearance and conduct as a form of property. The reader will recall Cheryl Harris' argument that 'whiteness' has historically and legally been regarded as a form of property ownership, along the same lines as homeownership or business ownership (Harris 1993:1). Plessy's legal team thought the Court might be sympathetic to segregation as a violation of his property rights as a citizen (Medley 2003:200). The second potential winning argument concerned business sense and basic economics; the railway companies saw the necessity of having to add additional cars for the purpose of enforcing segregated travel as an expensive and unnecessary burden (Medley 2003:200).

Although the discourse of Plessy's property rights and the railway companies' economic success were convincing arguments, for the FPOC this case represented much deeper ethical concerns. Discriminatory legislation—i.e. Jim Crow laws—defied the spirit and intent of the Thirteenth, Fourteenth, and Fifteenth Amendments, which as a whole guaranteed and protected the citizenship rights of African Americans (ibid.). Would a country that had abolished slavery more than four decades prior stand for legislated discrimination? Would African Americans be forever proscribed as second-class citizens?

Tourgée's brief to the Supreme Court placed the issue of national citizenship at the heart of the issue over civil and social rights (Lobel 2003:110). Tourgée asked the Court to consider what the Amendment actually did allow and guarantee (ibid.). The Fourteenth Amendment's phrase 'new national citizenship' should mean a correspondingly new, all-encompassing definition of 'equality' (Lobel 2003:111).

Ultimately, the Supreme Court ruled 7-1 in favor of Judge Ferguson to uphold the Louisiana Separate Car Act. In effect, the country's highest court stated that segregation was not only acceptable, but the law. The Citizens' Committee suffered a bad defeat, but did not entirely lose. Aside from forcing the judicial system to take a stand on Jim Crow laws and defend it on the record, Judge Harlan's dissent "became a beacon for future civil-rights lawyers who would later challenge segregation" (Medley 2003:205). The Supreme Court's majority upheld in law the reputation, power and reality of whiteness as property.

Lofgren correctly states that this landmark case was "a compound of bad logic, bad history, bad sociology, and bad constitutional law" (Lofgren 1987:4). As a relatively uncontroversial verdict, *Plessy v. Ferguson* serves as one measurement of the country's late nineteenth-century judicial, political, moral, social and cultural temperature. The eugenics movement and scientific racism that completely eclipsed the ideals and laws of Reconstruction and the fight for equality shifted things from bad to worse. Racist ideology and discriminatory practices moved from the realm of socio-economic justifications for slavery, and later indentured servitude, sharecropping and other economically dependent labor systems to the sphere of scientific doctrine. Coercive labor was legally justified and socio-economically legitimated long after Lincoln signed the

Emancipation Proclamation into law.¹⁰⁵ In 1895, the same year that the prominent African American leader Frederick Douglass passed away, Booker T. Washington emerged as the pre-eminent black leader. Touting accommodation to whites as a way for African Americans to fit into society, his views “undercut and outshined” the very equality the FPOC struggled for (Medley 2003:192). Washington’s perspective of what African Americans could do and where they fit in American society diverged sharply with the Committee’s (ibid.). Washington’s message appealed to many moderate whites in the North and South, who viewed it as a compromise with which they could live (Thomas 1997:120). Washington’s famed ‘Atlanta Exposition Address’ of September 18, 1895 brought him, and his accommodationist ideals, into the spotlight (Thomas 1997:119). Even President Cleveland praised Washington (Thomas 1997:120). His famous metaphor of one united hand made up of five separate fingers was quite passive, in contrast to the Committee’s active methods and goals (Thomas 1997:122).¹⁰⁶

¹⁰⁵ See Glenn’s chapter “Blacks and Whites in the South” for an historicized look at how racialized labor practices, and what she terms “legal peonage” severely disadvantaged African Americans well into the twentieth century (Glenn 2002:102).

¹⁰⁶ In his address, Washington stated: “Casting down your bucket among my people, helping and encouraging them as you are doing on these grounds, and to education of head, hand, and heart, you will find that they will buy your surplus land, make blossom the waste places in your fields, and run your factories. While doing this, you can be sure in the future, as in the past, that you and your families will be surrounded by the most patient, faithful, law-abiding, and unresentful people that the world has seen...we shall stand by you with a devotion that no foreigner can approach, ready to lay down our lives, if need be, in defence (sic) of yours, interlacing our industrial, commercial, civil, and religious life with yours in a way that shall make the interests of both races one. In all things that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress” (Thomas 1997:122).

Conclusion

Returning to Cheryl Harris' argument that 'whiteness' signals property ownership, status and identity, the forced economic dependence of many African Americans practically spelled continued enslavement, and represented the opposite of citizenship. The inability to climb out of debt to completely own one's property rendered these individuals, families, and communities less powerful and autonomous. Ideals of freedom, self-sufficiency and economic independence have always been linked in the American conceptualization of citizenship (Glenn 2002:59). This has often meant defining oneself in opposition to what they are not, namely African Americans: "It is no accident and no mistake that immigrant populations (and much immigrant literature) understood their Americanness as an opposition to the resident black population. Race in fact now functions as a metaphor so necessary to the construction of American-ness that it rivals the old pseudo-scientific and class-informed racisms whose dynamics we are more used to deciphering" (Harris 1993:41).

The intentional and systemic denial of citizenship rights and privileges to African Americans, immigrant groups and Native Americans reveals an American past shrouded in exclusionary practices that bespeaks the opposite of universalistic and inclusive ideals. One way to judge this is by the most recent commemoration of the fiftieth anniversary of *Brown v. the Board of Education* last year (2004), which generated commentary on how

much ‘progress’ schools have made. Pedro Noguera and Robert Cohen responded with this sentiment: “Sadly, on *Brown’s* fiftieth anniversary the only deliberate speed we see is toward resegregation; today less than a third of African-American students attend racially integrated schools” (Noguera and Cohen 2004:18). They attribute the lack of high quality schools for students of color to “white flight and legal barriers” (ibid.). Patricia Sullivan goes even further: “In 2004 the profile of educational opportunity for a significant segment of African-American children mirrors the pre-*Brown* era. Predominantly black and minority schools are most often housed in crumbling facilities, suffer from starved budgets and lack essential resources” (Sullivan 2004:20,22).

Certainly more non-white students have more educational opportunities nationwide today than during the 1890s, when *Plessy v. Ferguson* was being decided. Yet, just because legal inequality is no longer mandated in the court of law does not mean that equal rights have been achieved. As we have seen, the Thirteenth Amendment effectively ended the institution of slavery. However, a narrow/strict state and federal interpretation of what that actually meant allowed the ‘badge of servitude’ to continue in the form of discriminatory laws, policies, and attitudes long after the Thirteenth Amendment and Emancipation Proclamation. Sullivan continues: “The persistence of racial inequality—as measured by income, joblessness and underemployment, and rates of incarceration—is closely linked to an educational system that barely functions for a large number of black children and fails to address the needs of many more” (Sullivan 2004:22). Writing about *Brown v. Board’s* “mixed legacy,” Cheryl Harris states: “*Brown* held that the Constitution would not countenance legalized racial separation, but *Brown* did not address the government’s responsibility to eradicate inequalities in resource allocation

either in public education or other public services...*Brown* modified *Plessy*'s interpretation of the Equal Protection Clause and accommodated both Blacks' claims for 'equality under law' and the global interests of white ruling elites" (Harris 1993:16). Harris drives her point home and correctly portrays the state of affairs today: "What remained consistent was the perpetuation of institutional privilege under a standard of legal equality. In the foreground was the change of formal societal rules; in the background was the 'natural' fact of white privilege that dictated the pace and course of any moderating change. What remained in revised and reconstituted form was whiteness as property" (ibid.).

Harris goes on to argue that 'whiteness as property' is legally protected and publicly justified through a doctrine of colorblindness, which is "the assertion that race is color and color does not matter" (Harris 1993:19). The retraction of affirmative action programs is just one recent example of equal rights being stripped away. Affirmative action programs are meant to 'level the playing field,' so that historically under-represented groups can enter a wide array of schools and professions to which members of their group were previously denied access. In some cases, such as *Regents of the University of California v. Bakke*, affirmative action was discontinued while 'legacy' and other programs that increase a prospective student's admission chances were retained (ibid.). Such is the direction of our nation's present-day politics.

The country's intolerance of diversity and multiculturalism in the nineteenth century, combined with a rigid exclusionary ideology of who actually represented American citizenship, would only accelerate over the next few decades. Under President Theodore Roosevelt's rule, various immigrant groups were subjected to Americanization

programs that forced individuals to completely renounce their country of origin and replace their customs with American traditions (Trachtenberg 2004:xxi).

Nativism and racism gained speed and became more violent. African Americans were particularly vulnerable from the 1890s through the First World War. The FPOC gradually lost their distinctiveness in New Orleans as Jim Crow laws eclipsed their historical uniqueness. Those who were not already significantly wealthy or somehow economically independent became just as vulnerable to the period's virulent racism as other non-FPOC persons. Judith Shklar describes voting and earning as the "two great emblems of public standing" (Shklar 1991:3). The systemic lack of access to these two institutional avenues of power kept many in bondage, until the 1960's Civil Rights Movement reinstated and newly created legal protections and policies.

The FPOC's struggle against the political tide of exclusionary practices and laws is an important story of resistance. As an ethnic group, the FPOC saw themselves differently from how others considered and categorized them. Their story is exceptional, not just because of the degree of power and wealth they had secured by the ante-bellum period that was later used to fight against their eroding rights, but because their history is largely buried. The right to define oneself and autonomously create spheres of power and opportunity in the face of racialized and gendered ideologies and practices is an example of why national, regional and ethnic identities matter. What was at stake for the FPOC when the Citizens Committee challenged the legal constitutionality of state and federal legislation was the ability to fulfill the ideals of the Republic through self-sufficiency, property ownership and economic independence. Their marginality as persons of color was very much a product of the nineteenth-century period. Its ramifications are, however,

very much in existence today. Olsen writes: “This shameful Plessy decision, together with the pervasive segregation it encouraged, clearly contributed to the intensified oppression of the Negro. The racial disenfranchisement, exploitation, intimidation, and violence that characterized succeeding years are in part attributable to that decision, as is the strength of an awesome heritage of prejudice that continues to afflict this nation and the world today” (Olsen 1967:17). Olsen’s words, written almost forty years ago, ring just as true in 2005.

The continuous state and federal disenfranchisement of African American voters (not least seen in the most recent 2000 and 2004 Presidential races in the states of Ohio and Florida) and institutional racism that make ‘diversity’ the exception rather than the rule are just two examples of racialized policies and practices that preclude the idea of equal opportunity. The ‘American Dream’ is not attainable for everyone. Understanding the historical connections between political ideals and temporal realities can help motivate resistance and change. There is nothing inevitable about discriminatory practices and attitudes, but change must start with awareness of those who have previously struggled. The ways in which the FPOC fought against the odds provide a starting place for what is possible.

APPENDICES

APPENDIX A: TIMETABLE OF NINETEENTH-CENTURY AND TWENTIETH-CENTURY EVENTS RELATED TO *PLESSY V. FERGUSON*

- 1857: *Dred Scott v. Sanford* Supreme Court decision denies citizenship rights to African Americans
- 1861: Civil War begins
- 1862: Homer A. Plessy is born a free person of color in New Orleans
- 1863: The Emancipation Proclamation frees enslaved persons in much of the South (over 3 million)
- 1865: Civil War ends when Confederate Leader Robert E. Lee surrenders to Union leader Ulysses S. Grant; Thirteenth Amendment is ratified in the House of Representatives; the Ku Klux Klan is established in Tennessee; southern states enact Black Codes into law that “re-impose the caste division of the slave system” (Fireside 2004: xiii); President Lincoln is assassinated; Andrew Johnson is sworn in as President
- 1866: Civil Rights Act makes citizenship for African Americans implicit
- 1867: Reconstruction Acts militarily control the South; former Confederate states are allowed back into the Union *if* they ratify the Fourteenth Amendment
- 1868: Fourteenth Amendment ratified; Congress starts the process of impeachment for outgoing President Johnson; Ulysses S. Grant elected President
- 1870: Fifteenth Amendment ratified
- 1872: President Grant is re-elected
- 1873: The Supreme Court strictly interprets the protections and rights issued forth by the Thirteenth and Fourteenth Amendments in the *Slaughter-House Cases*
- 1876: Rutherford B. Hayes elected president after promising southern voters he would not enforce the Fifteenth Amendment
- 1877: Presidential Reconstruction ends
- 1880: James A. Garfield, known prior in Congress as an African American civil rights advocate is elected President
- 1881: President Garfield is shot in July, passes away in September; Chester A. Arthur is sworn in as President
- 1884: Grover Cleveland, the first Democratic President since the Civil War, is elected
- 1886: The Supreme Court rules that corporations have the same protections as persons and is thus granted protection under the Fourteenth Amendment in *Santa Clara County v. Southern Pacific Railroad Company*
- 1888: Homer Plessy marries Louise Bourdenave
- 1890: Louisiana legislature passes Act No. 111 of the Separate Car Act, mandating segregated travel on railway cars
- 1891: The Citizens’ Committee to Test the Constitutionality of the Law is formed; Albion Tourgée becomes the Committee’s official lead counsel

1892: In February, the Citizens' Committee stages Daniel F. Desdunes' arrest in their first test case; Homer Plessy's arrest is staged in June; Louisiana state supreme court rules that the Separate Car Act is constitutional; President Cleveland is re-elected

1893: The Louisiana Supreme Court upholds Judge Ferguson's ruling in *Ex parte Plessy*

1895: Frederick Douglass dies; Booker T. Washington gives his famed 'Atlanta Exposition address'

1896: The Supreme Court rules in favor of Judge John Ferguson in the *Plessy v. Ferguson* case, ushering in a period of 'separate but equal' Jim Crow laws

1905: W.E.B. Du Bois establishes the Niagara Movement, which later becomes the NAACP

1909: The NAACP, or National Association for the Advancement of Colored People is formed

1925: Homer Plessy dies in New Orleans

1951: Federal court upholds segregation schooling in *Brown v. Board of Education of Topeka*

1954: Rosa Parks breaks the law when she does not yield her seat to a white passenger on a Montgomery bus; the Supreme Court rules in *Brown v. Board of Education* that segregated schools are unconstitutional because they violate the Fifth and Fourteenth Amendments

1955: In *Brown II*, the Supreme Court orders the desegregation of schools 'with all deliberate speed'

1960: A lunch counter sit-in at a Greensboro, North Carolina Woolworth's department store sparks similar acts of resistance throughout the South

1961: President John F. Kennedy signs the first affirmative action law that decrees non-discriminatory hiring practices

1962: U.S. Department of Justice officially bans all segregated interstate travel after two years of 'freedom rides' put together by the Congress of Racial Equality

1964: The Civil Rights Act is passed

1965: President Lyndon B. Johnson spearheads the Voting Rights Act

1965: A Mississippi federal jury convicts for the first time seven white men responsible for murdering three civil rights workers

1977: The Supreme Court orders that Allan Bakke, a white student denied admission to the University of California at Davis medical school who sued on claims of 'reverse discrimination', be admitted

2003: In similar lawsuits concerning admissions criteria and affirmative action, the Supreme Court rules the University of Michigan's point quota system unconstitutional, while holding up the University of Michigan Law School's admissions criteria that takes a prospective student's race into account

2005: In a Republican-controlled Congress, the Republican Senate threatens to dismantle the filibuster to block judicial nominations

APPENDIX B

PLESSY V. FERGUSON: 163 U.S. 537:
(<http://caselaw.lp.findlaw.com/scripts/>)

May 18, 1896. [163 U.S. 537, 538] This was a petition for writs of prohibition and certiorari originally filed in the supreme court of the state by Plessy, the plaintiff in error, against the Hon. John H. Ferguson, judge of the criminal district court for the parish of Orleans, and setting forth, in substance, the following facts:

That petitioner was a citizen of the United States and a resident of the state of Louisiana, of mixed descent, in the proportion of seven-eighths Caucasian and one-eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every recognition, right, privilege, and immunity secured to the citizens of the United States of the white race by its constitution and laws; that on June 7, 1892, he engaged and paid for a first-class passage on the East Louisiana Railway, from New Orleans to Covington, in the same state, and thereupon entered a passenger train, and took possession of a vacant seat in a coach where passengers of the white race were accommodated; that such railroad company was incorporated by the laws of Louisiana as a common carrier, and was not authorized to distinguish between citizens according to their race, but, notwithstanding this, petitioner was required by the conductor, under penalty of ejection from said train and imprisonment, to vacate said coach, and occupy another seat, in a coach assigned by said company for persons not of the white race, and for no other reason than that petitioner was of the colored race; that, upon petitioner's refusal to comply with such order, he was, with the aid of a police officer, forcibly ejected from said coach, and hurried off to, and imprisoned in, the parish jail of [163 U.S. 537, 539] New Orleans, and there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the general assembly of the state, approved July 10, 1890, in such case made and provided.

The petitioner was subsequently brought before the recorder of the city for preliminary examination, and committed for trial to the criminal district court for the parish of Orleans, where an information was filed against him in the matter above set forth, for a violation of the above act, which act the petitioner affirmed to be null and void, because in conflict with the constitution of the United States; that petitioner interposed a plea to such information, based upon the unconstitutionality of the act of the general assembly, to which the district attorney, on behalf of the state, filed a demurrer; that, upon issue being joined upon such demurrer and plea, the court sustained the demurrer, overruled the plea, and ordered petitioner to plead over to the facts set forth in the information, and that, unless the judge of the said court be enjoined by a writ of prohibition from further

proceeding in such case, the court will proceed to fine and sentence petitioner to imprisonment, and thus deprive him of his constitutional rights set forth in his said plea, notwithstanding the unconstitutionality of the act under which he was being prosecuted; that no appeal lay from such sentence, and petitioner was without relief or remedy except by writs of prohibition and certiorari. Copies of the information and other proceedings in the criminal district court were annexed to the petition as an exhibit.

Upon the filing of this petition, an order was issued upon the respondent to show cause why a writ of prohibition should not issue, and be made perpetual, and a further order that the record of the proceedings had in the criminal cause be certified and transmitted to the supreme court.

To this order the respondent made answer, transmitting a certified copy of the proceedings, asserting the constitutionality of the law, and averring that, instead of pleading or admitting that he belonged to the colored race, the said Plessy declined and refused, either by pleading or otherwise, to admit [163 U.S. 537, 540] that he was in any sense or in any proportion a colored man.

The case coming on for hearing before the supreme court, that court was of opinion that the law under which the prosecution was had was constitutional and denied the relief prayed for by the petitioner (*Ex parte Plessy*, 45 La. Ann. 80, 11 South. 948); whereupon petitioner prayed for a writ of error from this court, which was allowed by the chief justice of the supreme court of Louisiana.

APPENDIX C

MAJORITY OPINION BY JUSTICE HENRY BILLINGS BROWN
(<http://caselaw.lp.findlaw.com/scripts/>)

Mr. Justice BROWN, after stating the facts in the foregoing language, delivered the opinion of the court.

This case turns upon the constitutionality of an act of the general assembly of the state of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. Acts 1890, No. 111, p. 152.

The first section of the statute enacts 'that all railway companies carrying passengers in their coaches in this state, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: provided, that this section shall not be construed to apply to street railroads. No person or persons shall be permitted to occupy seats in coaches, other than the ones assigned to them, on account of the race they belong to.'

By the second section it was enacted 'that the officers of such passenger trains shall have power and are hereby required [163 U.S. 537, 541] to assign each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison, and any officer of any railroad insisting on assigning a passenger to a coach or compartment other than the one set aside for the race to which said passenger belongs, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this state.'

The third section provides penalties for the refusal or neglect of the officers, directors, conductors, and employees of railway companies to comply with the act, with a proviso that 'nothing in this act shall be construed as applying to nurses attending children of the other race.' The fourth section is immaterial.

The information filed in the criminal district court charged, in substance, that Plessy,

being a passenger between two stations within 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.

The petition for the writ of prohibition averred that petitioner was seven-eighths Caucasian and one-eighth 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 [163 U.S. 537, 542] 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 above act.

The constitutionality of this act is attacked upon the ground that it conflicts both with the thirteenth amendment of the constitution, abolishing slavery, and the fourteenth amendment, which prohibits certain restrictive legislation on the part of the states.

1. That it does not conflict with the thirteenth amendment, which abolished slavery and involuntary servitude, except a punishment for crime, is too clear for argument. Slavery implies involuntary servitude,-a state of bondage; the ownership of mankind as a chattel, or, at least, the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. This amendment was said in the Slaughter-House Cases, 16 Wall. 36, to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude, and that the use of the word 'servitude' was intended to prohibit the use of all forms of involuntary slavery, of whatever class or name. It was intimated, however, in that case, that this amendment was regarded by the statesmen of that day as insufficient to protect the colored race from certain laws which had been enacted in the Southern states, imposing upon the colored race onerous disabilities and burdens, and curtailing their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value; and that the fourteenth amendment was devised to meet this exigency.

So, too, in the Civil Rights Cases, 109 U.S. 3, 3 Sup. Ct. 18, it was said that the act of a mere individual, the owner of an inn, a public conveyance or place of amusement, refusing accommodations to colored people, cannot be justly regarded as imposing any badge of slavery or servitude upon the applicant, but [163 U.S. 537, 543] only as involving an ordinary civil injury, properly cognizable by the laws of the state, and presumably subject to redress by those laws until the contrary appears. 'It would be running the slavery question into the ground,' said Mr. Justice Bradley, 'to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theater, or deal with in other matters of intercourse or business.'

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, or re-establish a state of involuntary servitude. Indeed, we do not understand that the thirteenth amendment is strenuously relied upon by the plaintiff in error in this connection.

2. By the fourteenth amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the state wherein they reside; and the states are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty, or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws.

The proper construction of this amendment was first called to the attention of this court in the Slaughter-House Cases, 16 Wall. 36, which involved, however, not a question of race, but one of exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the negro, to give definitions of citizenship of the United States and of the states, and to protect from the hostile legislation of the states the privileges and immunities of citizens of the United States, as distinguished from those of citizens of the states. [163 U.S. 537, 544] The object of the 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. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

One of the earliest of these cases is that of *Roberts v. City of Boston*, 5 Cush. 198, in which the supreme judicial court of Massachusetts held that the general school committee of Boston had power to make provision for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. 'The great principle,' said Chief Justice Shaw, 'advanced by the learned and eloquent advocate for the plaintiff [Mr. Charles Sumner], is that, by the constitution and laws of Massachusetts, all persons, without distinction of age or sex, birth or color, origin or condition, are equal before the law. ... But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject

to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security.' It was held that the powers of the committee extended to the establishment [163 U.S. 537, 545] of separate schools for children of different ages, sexes and colors, and that they might also establish special schools for poor and neglected children, who have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools. Similar laws have been enacted by congress under its general power of legislation over the District of Columbia (sections 281- 283, 310, 319, Rev. St. D. C.), as well as by the legislatures of many of the states, and have been generally, if not uniformly, sustained by the courts. *State v. McCann*, 21 Ohio St. 210; *Lehew v. Brummell* (Mo. Sup.) 15 S. W. 765; *Ward v. Flood*, 48 Cal. 36; *Bertonneau v. Directors of City Schools*, 3 Woods, 177, Fed. Cas. No. 1,361; *People v. Gallagher*, 93 N. Y. 438; *Cory v. Carter*, 48 Ind. 337; *Dawson v. Lee*, 83 Ky. 49.

Laws forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the state. *State v. Gibson*, 36 Ind. 389.

The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theaters, and railway carriages has been frequently drawn by this court. Thus, in *Strauder v. West Virginia*, 100 U.S. 303 , it was held that a law of West Virginia limiting to white male persons 21 years of age, and citizens of the state, the right to sit upon juries, was a discrimination which implied a legal inferiority in civil society, which lessened the security of the right of the colored race, and was a step towards reducing them to a condition of servility. Indeed, the right of a colored man that, in the selection of jurors to pass upon his life, liberty, and property, there shall be no exclusion of his race, and no discrimination against them because of color, has been asserted in a number of cases. *Virginia v. Rivers*, 100 U.S. 313 ; *Neal v. Delaware*, 103 U.S. 370 ; *Cush v. Com.*, 107 U.S. 110 , 1 Sup. Ct. 625; *Gibson v. Mississippi*, 162 U.S. 565 , 16 Sup. Ct. 904. So, where the laws of a particular locality or the charter of a particular railway corporation has provided that no person shall be excluded from the cars on account of [163 U.S. 537, 546] color, we have held that this meant that persons of color should travel in the same car as white ones, and that the enactment was not satisfied by the company providing cars assigned exclusively to people of color, though they were as good as those which they assigned exclusively to white persons. *Railroad Co. v. Brown*, 17 Wall. 445.

Upon the other hand, where a statute of Louisiana required those engaged in the transportation of passengers among the states to give to all persons traveling within that state, upon vessels employed in that business, equal rights and privileges in all parts of the vessel, without distinction on account of race or color, and subjected to an action for damages the owner of such a vessel who excluded colored passengers on account of their color from the cabin set aside by him for the use of whites, it was held to be, so far as it applied to interstate commerce, unconstitutional and void. *Hall v. De Cuir*, 95 U.S. 485 . The court in this case, however, expressly disclaimed that it had anything whatever to do

with the statute as a regulation of internal commerce, or affecting anything else than commerce among the states.

In the Civil Rights Cases, 109 U.S. 3 , 3 Sup. Ct. 18, it was held that an act of congress entitling all persons within the jurisdiction of the United States to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theaters, and other places of public amusement, and made applicable to citizens of every race and color, regardless of any previous condition of servitude, was unconstitutional and void, upon the ground that the fourteenth amendment was prohibitory upon the states only, and the legislation authorized to be adopted by congress for enforcing it was not direct legislation on matters respecting which the states were prohibited from making or enforcing certain laws, or doing certain acts, but was corrective legislation, such as might be necessary or proper for counter-acting and redressing the effect of such laws or acts. In delivering the opinion of the court, Mr. Justice Bradley observed that the fourteenth amendment 'does not invest congress with power to legislate upon subjects that are within the [163 U.S. 537, 547] domain of state legislation, but to provide modes of relief against state legislation or state action of the kind referred to. It does not authorize congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges, and by power given to congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings, and be directed to the correction of their operation and effect.'

Much nearer, and, indeed, almost directly in point, is the case of the Louisville, N. O. & T. Ry. Co. v. State, 133 U.S. 587 , 10 Sup. Ct. 348, wherein the railway company was indicted for a violation of a statute of Mississippi, enacting that all railroads carrying passengers should provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition, so as to secure separate accommodations. The case was presented in a different aspect from the one under consideration, inasmuch as it was an indictment against the railway company for failing to provide the separate accommodations, but the question considered was the constitutionality of the law. In that case, the supreme court of Mississippi (66 Miss. 662, 6 South. 203) had held that the statute applied solely to commerce within the state, and, that being the construction of the state statute by its highest court, was accepted as conclusive. 'If it be a matter,' said the court (page 591, 133 U. S., and page 348, 10 Sup. Ct.), 'respecting commerce wholly within a state, and not interfering with commerce between the states, then, obviously, there is no violation of the commerce clause of the federal constitution. ... No question arises under this section as to the power of the state to separate in different compartments interstate passengers [163 U.S. 537, 548] or affect, in any manner, the privileges and rights of such passengers. All that we can consider is whether the state has the power to require that railroad trains within her limits shall have separate accommodations for the

two races. That affecting only commerce within the state is no invasion of the power given to congress by the commerce clause.'

A like course of reasoning applies to the case under consideration, since the supreme court of Louisiana, in the case of *State v. Judge*, 44 La. Ann. 770, 11 South. 74, held that the statute in question did not apply to interstate passengers, but was confined in its application to passengers traveling exclusively within the borders of the state. The case was decided largely upon the authority of *Louisville, N. O. & T. Ry. Co. v. State*, 66 Miss. 662, 6 South, 203, and affirmed by this court in 133 U.S. 587, 10 Sup. Ct. 348. In the present case no question of interference with interstate commerce can possibly arise, since the East Louisiana Railway appears to have been purely a local line, with both its termini within the state of Louisiana. Similar statutes for the separation of the two races upon public conveyances were held to be constitutional in *Railroad v. Miles*, 55 Pa. St. 209; *Day v. Owen* 5 Mich. 520; *Railway Co. v. Williams*, 55 Ill. 185; *Railroad Co. v. Wells*, 85 Tenn. 613; 4 S. W. 5; *Railroad Co. v. Benson*, 85 Tenn. 627, 4 S. W. 5; *The Sue*, 22 Fed. 843; *Logwood v. Railroad Co.*, 23 Fed. 318; *McGuinn v. Forbes*, 37 Fed. 639; *People v. King* (N. Y. App.) 18 N. E. 245; *Houck v. Railway Co.*, 38 Fed. 226; *Heard v. Railroad Co.*, 3 Inter St. Commerce Com. R. 111, 1 Inter St. Commerce Com. R. 428.

While we think the enforced separation of the races, as applied to the internal commerce of the state, neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws, within the meaning of the fourteenth amendment, we are not prepared to say that the conductor, in assigning passengers to the coaches according to their race, does not act at his peril, or that the provision of the second section of the act that denies to the passenger compensation [163 U.S. 537, 549] in damages for a refusal to receive him into the coach in which he properly belongs is a valid exercise of the legislative power. Indeed, we understand it to be conceded by the state's attorney that such part of the act as exempts from liability the railway company and its officers is unconstitutional. The power to assign to a particular coach obviously implies the power to determine to which race the passenger belongs, as well as the power to determine who, under the laws of the particular state, is to be deemed a white, and who a colored, person. This question, though indicated in the brief of the plaintiff in error, does not properly arise upon the record in this case, since the only issue made is as to the unconstitutionality of the act, so far as it requires the railway to provide separate accommodations, and the conductor to assign passengers according to their race.

It is claimed by the plaintiff in error that, in an mixed community, the reputation of belonging to the dominant race, in this instance the white race, is 'property,' in the same sense that a right of action or of inheritance is property. Conceding this to be so, for the purposes of this case, we are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man, and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called 'property.' Upon the other hand, if he be a colored man, and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a

white man.

In this connection, it is also suggested by the learned counsel for the plaintiff in error that the same argument that will justify the state legislature in requiring railways to provide separate accommodations for the two races will also authorize them to require separate cars to be provided for people whose hair is of a certain color, or who are aliens, or who belong to certain nationalities, or to enact laws requiring colored people to walk upon one side of the street, and white people upon the other, or requiring white men's houses to be painted white, and colored men's black, or their vehicles or business signs to be of different colors, upon the theory that one side [163 U.S. 537, 550] of the street is as good as the other, or that a house or vehicle of one color is as good as one of another color. The reply to all this is that every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class. Thus, in *Yick Wo v. Hopkins*, 118 U.S. 356, 6 Sup. Ct. 1064, it was held by this court that a municipal ordinance of the city of San Francisco, to regulate the carrying on of public laundries within the limits of the municipality, violated the provisions of the constitution of the United States, if it conferred upon the municipal authorities arbitrary power, at their own will, and without regard to discretion, in the legal sense of the term, to give or withhold consent as to persons or places, without regard to the competency of the persons applying or the propriety of the places selected for the carrying on of the business. It was held to be a covert attempt on the part of the municipality to make an arbitrary and unjust discrimination against the Chinese race. While this was the case of a municipal ordinance, a like principle has been held to apply to acts of a state legislature passed in the exercise of the police power. *Railroad Co. v. Husen*, 95 U.S. 465; *Louisville & N. R. Co. v. Kentucky*, 161 U.S. 677, 16 Sup. Ct. 714, and cases cited on page 700, 161 U. S., and page 714, 16 Sup. Ct.; *Daggett v. Hudson*, 43 Ohio St. 548, 3 N. E. 538; *Capen v. Foster*, 12 Pick. 485; *State v. Baker*, 38 Wis. 71; *Monroe v. Collins*, 17 Ohio St. 665; *Hulseman v. Rems*, 41 Pa. St. 396; *Osman v. Riley*, 15 Cal. 48.

So far, then, as a conflict with the fourteenth amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. 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. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances [163 U.S. 537, 551] is unreasonable, or more obnoxious to the fourteenth amendment than the acts of congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

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 necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. 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. As was said by the court of appeals of New York in *People v. Gallagher*, 93 N. Y. 438, 448: 'This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed.' 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 [163 U.S. 537, 552] or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.

It is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different states; some holding that any visible admixture of black blood stamps the person as belonging to the colored race (*State v. Chavers*, 5 Jones [N. C.] 1); others, that it depends upon the preponderance of blood (*Gray v. State*, 4 Ohio, 354; *Monroe v. Collins*, 17 Ohio St. 665); and still others, that the predominance of white blood must only be in the proportion of three-fourths (*People v. Dean*, 14 Mich. 406; *Jones v. Com.*, 80 Va. 544). But these are questions to be determined under the laws of each state, and are not properly put in issue in this case. Under the allegations of his petition, it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race.

The judgment of the court below is therefore affirmed

APPENDIX D

DISSENTING OPINION BY JUSTICE JOHN MARSHALL HARLAN

Mr. Justice HARLAN dissenting. (<http://caselaw.lp.findlaw.com/scripts/>)

By the Louisiana statute the validity of which is here involved, all railway companies (other than street-railroad companies) carry passengers in that state are required to have separate but equal accommodations for white and colored persons, 'by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations.' Under this statute, no colored person is permitted to occupy a seat in a coach assigned to white persons; nor any white person to occupy a seat in a coach assigned to colored persons. The managers of the railroad are not allowed to exercise any discretion in the premises, but are required to assign each passenger to some coach or compartment set apart for the exclusive use of its race. If a passenger insists upon going into a coach or compartment not set apart for persons of his race, [163 U.S. 537, 553] he is subject to be fined, or to be imprisoned in the parish jail. Penalties are prescribed for the refusal or neglect of the officers, directors, conductors, and employees of railroad companies to comply with the provisions of the act.

Only 'nurses attending children of the other race' are excepted from the operation of the statute. No exception is made of colored attendants traveling with adults. A white man is not permitted to have his colored servant with him in the same coach, even if his condition of health requires the constant personal assistance of such servant. If a colored maid insists upon riding in the same coach with a white woman whom she has been employed to serve, and who may need her personal attention while traveling, she is subject to be fined or imprisoned for such an exhibition of zeal in the discharge of duty.

While there may be in Louisiana persons of different races who are not citizens of the United States, the words in the act 'white and colored races' necessarily include all citizens of the United States of both races residing in that state. So that we have before us a state enactment that compels, under penalties, the separation of the two races in railroad passenger coaches, and makes it a crime for a citizen of either race to enter a coach that has been assigned to citizens of the other race.

Thus, the state regulates the use of a public highway by citizens of the United States solely upon the basis of race.

However apparent the injustice of such legislation may be, we have only to consider whether it is consistent with the constitution of the United States.

That a railroad is a public highway, and that the corporation which owns or operates it is in the exercise of public functions, is not, at this day, to be disputed. Mr. Justice Nelson, speaking for this court in *New Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 344, 382, said that a common carrier was in the exercise 'of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned.' Mr. Justice Strong, delivering the judgment of [163 U.S. 537, 554] this court in *Olcott v. Supervisors*, 16 Wall. 678, 694, said: 'That railroads, though constructed by private corporations, and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early the question arose whether a state's right of eminent domain could be exercised by a private corporation created for the purpose of constructing a railroad. Clearly, it could not, unless taking land for such a purpose by such an agency is taking land for public use. The right of eminent domain nowhere justifies taking property for a private use. Yet it is a doctrine universally accepted that a state legislature may authorize a private corporation to take land for the construction of such a road, making compensation to the owner. What else does this doctrine mean if not that building a railroad, though it be built by a private corporation, is an act done for a public use?' So, in *Township of Pine Grove v. Talcott*, 19 Wall. 666, 676: 'Though the corporation [a railroad company] was private, its work was public, as much so as if it were to be constructed by the state.' So, in *Inhabitants of Worcester v. Western R. Corp.*, 4 Metc. (Mass.) 564: 'The establishment of that great thoroughfare is regarded as a public work, established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes, therefore, like a canal, turnpike, or highway, a public easement.' 'It is true that the real and personal property, necessary to the establishment and management of the railroad, is vested in the corporation; but it is in trust for the public.'

In respect of civil rights, common to all citizens, the constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the [163 U.S. 537, 555] race of citizens when the civil rights of those citizens are involved. Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by every one within the United States.

The thirteenth amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. This court has so adjudged. But, that amendment having been

found inadequate to the protection of the rights of those who had been in slavery, it was followed by the fourteenth amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty, by declaring that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside,' and that 'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. Finally, and to the end that no citizen should be denied, on account of his race, the privilege of participating in the political control of his country, it was declared by the fifteenth amendment that 'the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.'

These notable additions to the fundamental law were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems. They had, as this court has said, a common purpose, namely, to secure 'to a race recently emancipated, a race that through [163 U.S. 537, 556] many generations have been held in slavery, all the civil rights that the superior race enjoy.' They declared, in legal effect, this court has further said, 'that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states; and in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.' We also said: 'The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity or right, most valuable to the colored race,-the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy; and discriminations which are steps towards reducing them to the condition of a subject race.' It was, consequently, adjudged that a state law that excluded citizens of the colored race from juries, because of their race, however well qualified in other respects to discharge the duties of jurymen, was repugnant to the fourteenth amendment. *Strauder v. West Virginia*, 100 U.S. 303, 306, 307 S.; *Virginia v. Rives*, Id. 313; *Ex parte Virginia*, Id. 339; *Neal v. Delaware*, 103 U.S. 370, 386; *Bush v. Com.*, 107 U.S. 110, 116, 1 S. Sup. Ct. 625. At the present term, referring to the previous adjudications, this court declared that 'underlying all of those decisions is the principle that the constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the general government or the states against any citizen because of his race. All citizens are equal before the law.' *Gibson v. State*, 162 U.S. 565, 16 Sup. Ct. 904.

The decisions referred to show the scope of the recent amendments of the constitution. They also show that it is not within the power of a state to prohibit colored citizens, because of their race, from participating as jurors in the administration of justice.

It was said in argument that the statute of Louisiana does [163 U.S. 537, 557] not discriminate against either race, but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Every one 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. Railroad corporations of Louisiana did not make discrimination among whites in the matter of accommodation for travelers. The thing to accomplish was, under the guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while traveling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. The fundamental objection, therefore, to the statute, is that it interferes with the personal freedom of citizens. 'Personal liberty,' it has been well said, 'consists in the power of locomotion, of changing situation, or removing one's person to whatsoever places one's own inclination may direct, without imprisonment or restraint, unless by due course of law.' 1 Bl. Comm. *134. If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so; and no government, proceeding alone on grounds of race, can prevent it without infringing the personal liberty of each.

It is one thing for railroad carriers to furnish, or to be required by law to furnish, equal accommodations for all whom they are under a legal duty to carry. It is quite another thing for government to forbid citizens of the white and black races from traveling in the same public conveyance, and to punish officers of railroad companies for permitting persons of the two races to occupy the same passenger coach. If a state can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why may it not so regulate the use of the streets of its cities and towns as to compel white citizens to keep on one side of a street, and black citizens to keep on the other? Why may it not, upon like grounds, punish whites and blacks who ride together in street cars or in open vehicles on a public road [163 U.S. 537, 558] or street? Why may it not require sheriffs to assign whites to one side of a court room, and blacks to the other? And why may it not also prohibit the commingling of the two races in the galleries of legislative halls or in public assemblages convened for the consideration of the political questions of the day? Further, if this statute of Louisiana is consistent with the personal liberty of citizens, why may not the state require the separation in railroad coaches of native and naturalized citizens of the United States, or of Protestants and Roman Catholics?

The answer given at the argument to these questions was that regulations of the kind they suggest would be unreasonable, and could not, therefore, stand before the law. Is it meant that the determination of questions of legislative power depends upon the inquiry whether the statute whose validity is questioned is, in the judgment of the courts, a reasonable one, taking all the circumstances into consideration? A statute may be unreasonable merely because a sound public policy forbade its enactment. But I do not understand that the courts have anything to do with the policy or expediency of legislation. A statute may be valid, and yet, upon grounds of public policy, may well be characterized as

unreasonable. Mr. Sedgwick correctly states the rule when he says that, the legislative intention being clearly ascertained, 'the courts have no other duty to perform than to execute the legislative will, without any regard to their views as to the wisdom or justice of the particular enactment.' Sedg. St. & Const. Law, 324. There is a dangerous tendency in these latter days to enlarge the functions of the courts, by means of judicial interference with the will of the people as expressed by the legislature. Our institutions have the distinguishing characteristic that the three departments of government are co-ordinate and separate. Each must keep within the limits defined by the constitution. And the courts best discharge their duty by executing the will of the law-making power, constitutionally expressed, leaving the results of legislation to be dealt with by the people through their representatives. Statutes must always have a reasonable construction. Sometimes they are to be construed strictly, sometimes literally, in order to carry out the legislative [163 U.S. 537, 559] will. But, however construed, the intent of the legislature is to be respected if the particular statute in question is valid, although the courts, looking at the public interests, may conceive the statute to be both unreasonable and impolitic. If the power exists to enact a statute, that ends the matter so far as the courts are concerned. The adjudged cases in which statutes have been held to be void, because unreasonable, are those in which the means employed by the legislature were not at all germane to the end to which the legislature was competent.

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. But 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. 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.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott Case.

It was adjudged in that case that the descendants of Africans who were imported into this country, and sold as slaves, were not included nor intended to be included under the word 'citizens' in the constitution, and could not claim any of the rights and privileges which that instrument provided for and secured to citizens of the United States; that, at time of the adoption of the constitution, they were 'considered as a subordinate and inferior class of beings, who had been subjugated by the dominant [163 U.S. 537, 560] race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.' 17 How. 393, 404. The recent amendments of the constitution, it was

supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the states, a dominant race,-a superior class of citizens,-which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the constitution, by one of which the blacks of this country were made citizens of the United States and of the states in which they respectively reside, and whose privileges and immunities, as citizens, the states are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. 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? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.

The sure guaranty of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, national and state, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States, without regard to race. State enactments regulating the enjoyment of civil rights upon the basis of race, and cunningly devised to defeat legitimate results of the [163 U.S. 537, 561] war, under the pretense of recognizing equality of rights, can have no other result than to render permanent peace impossible, and to keep alive a conflict of races, the continuance of which must do harm to all concerned. This question is not met by the suggestion that social equality cannot exist between the white and black races in this country. That argument, if it can be properly regarded as one, is scarcely worthy of consideration; for social equality no more exists between two races when traveling in a passenger coach or a public highway than when members of the same races sit by each other in a street car or in the jury box, or stand or sit with each other in a political assembly, or when they use in common the streets of a city or town, or when they are in the same room for the purpose of having their names placed on the registry of voters, or when they approach the ballot box in order to exercise the high privilege of voting.

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But, by the statute in question, a Chinaman can ride in the same passenger coach with white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the state and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they

ride in a public coach occupied by citizens of the white race. It is scarcely just to say that a colored citizen should not object to occupying a public coach assigned to his own race. He does not object, nor, perhaps, would he object to separate coaches for his race if his rights under the law were recognized. But he does object, and he ought never to cease objecting, that citizens of the white and black races can be adjudged criminals because they sit, or claim the right to sit, in the same public coach on a public highway. [163 U.S. 537, 562] 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. It cannot be justified upon any legal grounds.

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. 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.

The result of the whole matter is that while this court has frequently adjudged, and at the present term has recognized the doctrine, that a state cannot, consistently with the constitution of the United States, prevent white and black citizens, having the required qualifications for jury service, from sitting in the same jury box, it is now solemnly held that a state may prohibit white and black citizens from sitting in the same passenger coach on a public highway, or may require that they be separated by a 'partition' when in the same passenger coach. May it not now be reasonably expected that astute men of the dominant race, who affect to be disturbed at the possibility that the integrity of the white race may be corrupted, or that its supremacy will be imperiled, by contact on public highways with black people, will endeavor to procure statutes requiring white and black jurors to be separated in the jury box by a 'partition,' and that, upon retiring from the court room to consult as to their verdict, such partition, if it be a movable one, shall be taken to their consultation room, and set up in such way as to prevent black jurors from coming too close to their brother jurors of the white race. If the 'partition' used in the court room happens to be stationary, provision could be made for screens with openings through [163 U.S. 537, 563] which jurors of the two races could confer as to their verdict without coming into personal contact with each other. I cannot see but that, according to the principles this day announced, such state legislation, although conceived in hostility to, and enacted for the purpose of humiliating, citizens of the United States of a particular race, would be held to be consistent with the constitution.

I do not deem it necessary to review the decisions of state courts to which reference was made in argument. Some, and the most important, of them, are wholly inapplicable, because rendered prior to the adoption of the last amendments of the constitution, when colored people had very few rights which the dominant race felt obliged to respect. Others were made at a time when public opinion, in many localities, was dominated by

the institution of slavery; when it would not have been safe to do justice to the black man; and when, so far as the rights of blacks were concerned, race prejudice was, practically, the supreme law of the land. Those decisions cannot be guides in the era introduced by the recent amendments of the supreme law, which established universal civil freedom, gave citizenship to all born or naturalized in the United States, and residing here, obliterated the race line from our systems of governments, national and state, and placed our free institutions upon the broad and sure foundation of the equality of all men before the law.

I am of opinion that the state of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that state, and hostile to both the spirit and letter of the constitution of the United States. If laws of like character should be enacted in the several states of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law, would, it is true, have disappeared from our country; but there would remain a power in the states, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom, to regulate civil rights, common to all citizens, upon the basis of race, and to place in a condition of legal inferiority a large body of American citizens, now constituting a part of the political community, called the [163 U.S. 537, 564] 'People of the United States,' for whom, and by whom through representatives, our government is administered. Such a system is inconsistent with the guaranty given by the constitution to each state of a republican form of government, and may be stricken down by congressional action, or by the courts in the discharge of their solemn duty to maintain the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding.

For the reason stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

BIBLIOGRAPHY

- Anthony, Arthé A. "“Lost Boundaries:’ Racial Passing and Poverty in Segregated New Orleans.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Axtell, James. The Invasion Within. New York: Oxford University Press, 1985.
- Barth, Fredrik, ed. Ethnic Groups and Boundaries: The Social Organization of Culture Difference. Prospect Heights, IL: Waveland Press, 1969.
- Barthelemy, Anthony G. “Light, Bright, Damn *Near* White: Race, the Politics of Genealogy, and the Strange Case of Susie Guillory.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Bell, Caryn Cossé. Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868. Baton Rouge: Louisiana State University Press, 1997.
- Benfey, Christopher. Degas in New Orleans: Encounters in the Creole World of Kate Chopin and George Washington Cable. New York: Knopf, 1997.
- Berlin, Ira. Many Thousands Gone: The First Two Centuries of Slavery in North America. Cambridge, MA: Harvard University Press, 1998.
- Blassingame, John W. Black New Orleans, 1860-1880. Chicago: University of Chicago Press, 1973.
- Thomas, Brook (ed.). Plessy v. Ferguson: A Brief History with Documents. Boston: Bedford Books, 1997.
- Bryan, Violet Harrington. “Marcus Christian’s Treatment of Les Gens de Couleur Libre.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Bureau of Governmental Research. Plan and Program for the Preservation of the Vieux Carre: Historic District Demonstration Study. New Orleans: Bureau of Governmental Research, 1968.
- Desdunes, Rodolphe Lucien. Our People and Our History: Fifty Creole Portraits, edited and translated by Sister Dorothea Olga McCants. Baton Rouge: Louisiana State University Press, 1973.

- Dickason, Olivia. The Myth of the Savage and the Beginnings of French Colonialism in the Americas. Edmonton.: University of Alberta Press, 1984.
- Domínguez, Virginia. White by Definition: Social Classification in Creole Louisiana. New Brunswick, NJ: Rutgers University Press, 1997.
- Duggal, Barbara Rosendale. “Marie Laveau: The Voodoo Queen Repossessed.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Dunbar-Nelson, Alice Moore. “People of Color in Louisiana.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Eccles, W.J. The French in North America: 1500-1783. Ontario: Fitzhenry & Whiteside, 1998.
- Fireside, Harvey. Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism. New York: Carroll & Graf Publishers, 2004.
- Foner, Eric. Reconstruction: America’s Unfinished Revolution, 1863-1877. New York: HarperCollins Publishers, 1988.
- Gehman, Mary. “Visible Means of Support: Businesses, Professions, and Trades of Free People of Color.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- . The Free People of color of New Orleans: An Introduction. New Orleans: Margaret Media, Inc., 1994.
- Greer, Allan. The People of New France. Toronto: University of Toronto Press, 2003.
- Hall, Gwendolyn Midlo. “The Formation of Afro-Creole Culture.” Creole New Orleans: Race and Americanization, edited by Arnold Hirsch and Joseph Logsdon. Baton Rouge: Louisiana State University Press, 1992.
- Hanger, Kimberly S. Bounded Lives, Bounded Places: Free Black Society in Colonial New Orleans, 1769-1803. Durham, NC: Duke University Press, 1996.
- Harris, Cheryl A. (1993). Whiteness as Property. *Harvard Law Review*. 106 (1707), 1-60.
- Heard, Malcolm. French Quarter Manual: An Architectural Guide to New Orleans’ Vieux Carré. New Orleans: Tulane School of Architecture, 1997.
- Hirsch, Arnold R. “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, edited by Arnold Hirsch and Joseph Logsdon. Baton Rouge: Louisiana State University Press, 1992.
- Hirsch, Arnold and Logsdon, Joseph (eds). Creole New Orleans: Race and Americanization. Baton Rouge: Louisiana State University Press, 1992.
- Ingersoll, Thomas N. Mammon and Manon in Early New Orleans: The First Slave Society in the Deep South, 1718-1819. Knoxville: The University of Tennessee Press, 1999.
- Ingersoll, Thomas N. (1991). Free Blacks in a Slave Society: New Orleans, 1718-1812. *The William and Mary Quarterly*, 48 (2). 173-200.
- Johnson, Jerah. “Colonial New Orleans: A Fragment of the Eighteenth-Century French Ethos.” In Creole New Orleans: Race and Americanization, edited by Arnold Hirsch and Joseph Logsdon. Baton Rouge: Louisiana State University Press, 1992.
- Kein, Sybil (ed.). Creole: The History and Legacy of Louisiana’s Free People of Color. Baton Rouge: Louisiana State University Press, 2000.
- LaChance, Paul F. “The Foreign French.” In Creole New Orleans: Race and Americanization, edited by Arnold Hirsch and Joseph Logsdon. Baton Rouge: Louisiana State University Press, 1992.
- Lane, Mills. Architecture of the Old South, Colonial and Federal. Savannah, GA: Beehive Press, 1996.
- Lofgren, Charles A. The Plessy Case: A Legal-Historical Interpretation. New York: Oxford University Press, 1987.
- Logsdon, Joseph and Caryn Cossé Bell. “The Americanization of Black New Orleans, 1850-1900.” In Creole New Orleans: Race and Americanization, edited by Arnold Hirsch and Joseph Logsdon. Baton Rouge: Louisiana State University Press, 1992.
- Martin, Joan M. “Plaçage and the Louisiana Gens de Couleur Libre: How Race and Sex Defined the Lifestyles of Free Women of Color.” In Creole: The History and Legacy of Louisiana’s Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Medley, Keith Weldon. We as Freemen: Plessy v. Ferguson. Gretna, LA: Pelican Publishing Company, 2003.
- Mintz, Sidney. Sweetness and Power: The Place of Sugar in Modern History. New

- York: Penguin Books, 1985.
- Mosadomi, Fehintola. "The Origin of Louisiana Creole." In Creole: The History and Legacy of Louisiana's Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Noguera, Pedro and Robert Cohen (2004). Beyond Black, White and *Brown*. *The Nation*. 278 (17), 18.
- Ochs, Stephen J. A Black Patriot and a White Priest: Andre Cailloux and Claude Paschal Maistre in Civil War New Orleans. Baton Rouge: Louisiana University State Press, 2000.
- O'Leary, Cecilia Elizabeth. To Die For: The Paradox of American Patriotism. Princeton, NJ: Princeton University Press, 1999.
- Poesch, Jessie and Barbara SoRelle Bacot. Louisiana Buildings, 1720-1940: The Historic American Buildings Survey. Baton Rouge: Louisiana State University Press, 1997.
- Senter, Caroline. "Creole Poets on the Verge of a Nation." In Creole: The History and Legacy of Louisiana's Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Sexton, Richard. New Orleans: Elegance and Decadence. San Francisco: Chronicle Books, 1993.
- Shklar, Judith N. American Citizenship: The Quest for Inclusion. Cambridge, MA: Harvard University Press, 1991.
- Singleton, Theresa. "Class Race and identity among Free Blacks in the Antebellum South." In Race and the Archaeology of Identity, edited by Charles Orser. Salt Lake City: Univ. of Utah Press, 2001.
- Sullivan, Patricia (2004). Beyond Black, White and *Brown*. *The Nation*. 278 (27), 20-22.
- Sullivan. "Composers of Color of Nineteenth-Century New Orleans: The History Behind the Music." In Creole: The History and Legacy of Louisiana's Free People of Color, edited by Sybil Kein. Baton Rouge: Louisiana State Press, 2000.
- Trachtenberg, Alan. Shades of Hiawatha: Staging Indians, Making Americans, 1880-1930. New York: Hill and Wang, 2004.
- Tregle, Jr., Joseph G. "Creoles and Americans." In Creole New Orleans: Race and

Americanization, edited by Arnold Hirsch and Joseph Logsdon. Baton Rouge: Louisiana State University Press, 1992.

Trouillot, Michel-Rolph. Silencing the Past: Power and the Production of History. Boston: Beacon Press, 1995.

Usner, Jr., Daniel. Indians, Settlers, & Slaves in a Frontier Exchange Economy: The Lower Mississippi Valley Before 1783. Chapel Hill: University of North Carolina Press, 1992.

Wilson, Samuel. New Orleans Architecture: The Creole Fauborgs Vol. IV. Gretna, LA: Pelican Publishing Company, 1974.

VITA

Camille Kempf Gourdet

Camille Kempf Gourdet was born in Columbus, Georgia on April 9, 1978. She graduated from Carmel High School (Indiana) in June of 1992. In 1996, Camille Gourdet received a B.A. in Anthropology from Mount Holyoke College (Massachusetts). She is completing this Thesis as part of the M.A. requirement for Anthropology at the College of William and Mary. Camille Gourdet entered the M.A/Ph.D student in August of 2003 as a graduate assistant. She worked for Professors King, Hamada, and Richard and Sally Price. She hopes someday to be a social justice advocate.