“A New Ethnology”: The Legal Expansion of Whiteness under Early Jim Crow

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Scholars of race and law have long agreed that American “courts protected whiteness as any other form of property” by defining it “in ways that increased its value by reinforcing its exclusivity.”¹ This narrative has proved particularly seductive to scholars of the postbellum South, who have emphasized the ways in which Southern jurists and lawmakers guarded their racial prerogatives.² The idea that “the statutory boundaries of whiteness were growing [increasingly] narrow” after the Civil War is so pervasive that one historian marveled at the “unique legal definition of race” proffered by the 1907 Oklahoma Constitution, which “defined the terms ‘colored’ and ‘negro race’ to include ‘all persons of African descent’ and the phrase ‘white race’ to ‘include all other persons,’” Asian Americans and Native Americans among them.³


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Yet there was nothing unique about Oklahoma’s racial definitions in the turn-of-the-century South. As this article will show, the first post-Reconstruction segregation laws classified Asian Americans, Native Americans, and all other people who were not Black—either explicitly or by default—as members of the “white race.” This classification scheme may not have been unique, but it was certainly surprising. It ran counter to social, academic, and political discourses that positioned Asian Americans and a wide range of nationalities and ethnicities as “racially inferior and culturally inassimilable.”4 Indeed, the first Jim Crow laws were enacted during an era when Native Americans were still being massacred and forced from their land, and when members of the “Chinese race” were being driven from Western towns and excluded from the country.5

This article explores the history and significance of Jim Crow’s racial categories by examining early railway segregation statutes and, in particular, the Louisiana Separate Car Act of 1890. These were some of the first segregation laws, and, as such, they offer valuable insight into the legislation of race at a moment when Democrats, only recently restored to power, fought to consolidate White hegemony across the South. Among these laws, the Louisiana Separate Car Act was representative: its language of “equal but separate accommodations for the white and colored races” can be found in identical or near-identical form in the separate coach acts of ten other states.6 And as the statute that was unsuccessfully challenged in *Plessy v. Ferguson*, the 1896 Supreme Court case that gave constitutional approval to the “separate but equal” doctrine, the Separate Car Act affords a unique opportunity to examine how litigators and judges interpreted the racial line-drawing at the heart of Jim Crow.

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6. Act of July 10, 1890, no. 111, § 1, 1890 La. Acts 152, 153. These laws were so similar that one contemporary observer noted that separate coach acts, despite “differing from one another in minor particulars,” were “in general modelled after the Louisiana statute of 1890.” William B. Shaw, “American State Legislation in 1891,” *Review of Reviews* 4 (1891): 409.
In the pages that follow, I argue that the legal expansion of Whiteness under early segregation laws played an important, if paradoxical, role in the consolidation of White power after Reconstruction. Mired in a White supremacist worldview that rejected peaceful coexistence as an anthropological impossibility, revanchist Democrats single-mindedly pursued the social and political subjugation of Black Americans. They did so by disinterring the racial logic of slavery, which had divided the world into two groups: Black people and everyone else. In this context, it was precisely the fact that Asian Americans and Native Americans were not socially viewed as White that gave such pointed meaning to their elevated position in Jim Crow’s hierarchy of race. By saying, in effect, that even these stigmatized groups were racially superior to Black Americans, White legislators sent a clear message that the latter group was to be treated as a distinct racial caste, inferior to and separate from all other races.

Although Jim Crow has generated a voluminous body of scholarship, its surprising racial classification scheme has largely escaped scrutiny for several reasons. First, the language of “white and colored races” sounds ambiguous to modern ears and has led some to incorrectly assume that the laws mandated separate accommodations “for white and nonwhite passengers.”7 In fact, the term “colored” was widely understood to refer exclusively to people with some measure of African ancestry. More often, however, scholars simply failed to move beyond “the dominant paradigm of framing race only through the binary terms of Black and White,” leaving Asian Americans and other non-White peoples “unseen in the story of America’s segregated past.”8

Scholars have only recently begun to complicate this paradigm. Following Leslie Bow’s argument that Asian Americans were “racially interstitial” in the Jim Crow South, historians have described Chinese, Japanese, and Filipino Americans as liminal figures who “were neither colored nor white,” and who, therefore, “did not easily conform to the black–white dyad that defined southern race relations.”9 Similarly, recent studies

9. Bow, Partly Colored, 4; Stephanie Hinnershitz, A Different Shade of Justice: Asian American Civil Rights in the South (Chapel Hill: UNC Press, 2017), 6; and Daniel
have emphasized Native Americans’ “seemingly anomalous position in the South” as “nonwhites” who also were not Black. These social and cultural histories illuminate the complex lived experiences of “other” people of color under segregation, but they overlook the significance of statutory language that left no middle ground between “white” and “colored.” Thus, even Bow, who asks “where . . . the Asian s[a]t on the segregated bus,” incorrectly concludes that “Jim Crow culture’s treatment of Asians, American Indians, or mestizos does not fundamentally alter our historical understanding of segregation; they may simply be positioned as anomalies to the overall functioning of white supremacy in the South.”

This article, in contrast, focuses on the troubled birth and contentious early life of a single segregation law. It analyzes the Louisiana Separate Car Act’s historical antecedents, discursive context, legislative history, and legal challenges, paying close attention to the debate surrounding its racial classification scheme. This more granular and textual focus reveals that non-Black people of color were hardly forgotten anomalies in the logic of White supremacy. On the contrary, legislators debated the place of Asian Americans and other stigmatized groups on Jim Crow trains, intentionally choosing language that assigned them to the “white” coaches.

Separate coach laws offer special insight into the priorities and strategies of White supremacy for a simple yet powerful reason. Segregation was expensive. The creation of separate facilities for two races was already a losing proposition; the creation of separate facilities for three or more races would have been financially disastrous. Consequently, segregationist lawmakers were confronted with a binary choice: They could write laws that assigned non-Black people of color to either “colored” or “white” coaches. Their choice was deeply revealing.

The structure of Jim Crow laws thus illuminates the priorities of White supremacy in the post-Reconstruction South in a way that other areas of law do not. Lawmakers and judges were quick to classify Asian Americans and Native Americans as non-White when economics did not bind them to a racial system with a single line of demarcation: for example, in the contexts of naturalization and miscegenation law. This restrictive


11. Bow, Partly Colored, 1, 4.


view of Whiteness would eventually be imported to Jim Crow, but when the architects of the first segregation laws were forced to choose between White exclusivity and Black subjugation, they uniformly chose the latter.14

Understanding this choice challenges us to reconceptualize how race was legislated during the years when segregation was first enshrined in Southern law.15 Specifically, it shows that the structure of de jure segregation was initially determined by White legislators’ desire to police the legal boundaries of what it meant to be “colored,” not “white.” Far from “reflect[ing] the racial ideology that . . . any forms of integration would destroy the purity of the White race,”16 the first Jim Crow laws ensured that “colored” cars were racially homogenous spaces, while “white” cars were sites of racial integration where passengers of all races but one traveled together.

Segregating Southern Railways

Although Jim Crow would come to be closely associated with the South, it was a Northern invention. By the 1830s, many of the railroads that had sprung up in the Northeast had designated separate and inferior accommodations for Black passengers, often forcing them to ride in partitioned baggage cars. Yet antebellum segregation was a product of policy and custom, not of legislation.17 It was only after the Civil War, when emancipation enabled greater Black mobility, that the lines of racial demarcation began to harden into law south of the Mason-Dixon Line. In 1865, Florida and Mississippi became the first states to segregate their railroads by legislative enactment. A year later, Texas followed suit.18 These post-bellum laws were the exception not the rule, however. Reconstruction governments in a number of states, Louisiana included, passed civil rights laws that prohibited racial discrimination in public accommodations.19

On the federal level, Congress struck a blow against racial discrimination with the 1868 ratification of the Fourteenth Amendment, which guarded

14. See, for example, Rice v. Gong Lum, 104 So. 105, 108 (Miss. 1925) (assigning Chinese American children to Mississippi’s “colored” schools), affirmed in Gong Lum v. Rice, 275 U.S. 78 (1927).
against state violations of due process and equal protection under the law.\textsuperscript{20} Congress next applied the amendment’s broad protections to common carriers and other public accommodations through the Civil Rights Act of 1875, which guaranteed the “full and equal enjoyment” of public accommodations to all Americans, regardless of race.\textsuperscript{21} The Civil Rights Act might well have ended racial segregation had the Supreme Court not intervened in 1883. In five cases consolidated as the \textit{Civil Rights Cases}, the court struck down the act, finding that Congress had exceeded its constitutional authority.\textsuperscript{22}

The \textit{Civil Rights Cases} and the Compromise of 1877, which ended federal military occupation of the South, opened the floodgates to a new wave of segregation laws. Even before the Supreme Court issued its ruling, the Tennessee legislature had enacted an 1881 statute requiring Black passengers to ride in separate train cars. Florida enacted a similar law in 1887, followed by Mississippi in 1888; Texas in 1889; Louisiana in 1890; Alabama, Arkansas, Georgia, and again Tennessee in 1891; Kentucky in 1892; South Carolina in 1898; North Carolina in 1899; Virginia in 1900; Maryland in 1904; and Oklahoma in 1907. All told, fourteen Southern states had enacted Jim Crow laws by the end of the first decade of the new century.

These laws were largely the same in language and effect. Indeed, most of them used strikingly similar phrasing, employing the terms “white” and “colored” to draw the line of racial demarcation. Alabama, Louisiana, Mississippi, North Carolina, and Tennessee all passed statutes requiring “equal but separate accommodations for the white and colored races.”\textsuperscript{23} Six other states—Georgia, Kentucky, Maryland, South Carolina, Texas, and Virginia—used the phrase “white and colored passengers” instead of “white and colored races.”\textsuperscript{24}

\textsuperscript{20} U.S. Const. amend. XIV, § 1.
\textsuperscript{21} Civil Rights Act of 1875 § 1, 18 Stat. 335–337.
\textsuperscript{22} 109 U.S. 3 (1883).
The racial terminology in these laws is significant. First, the term “colored” was widely understood to refer exclusively to people with some measure of African ancestry. As the Louisiana Supreme Court explained in 1910, “The word ‘colored,’ when used to designate the race of a person, is unmistakable, at least in the United States. It means a person of negro blood pure or mixed.”\(^{25}\) Novelist, lawyer, and civil rights activist Charles Chesnutt confirmed this narrow usage in a 1928 essay: “The term ‘colored’ as applied to people partly or entirely of Negro descent is used the world over, and in the United States its meaning is not surrounded by doubt or uncertainty. No one refers to Chinamen or Japanese or Indians as ‘colored.’\(^{26}\)

This restrictive definition of “colored” was codified in the laws of several states. Texas’s separate coach act of 1889 specified that the word “colored” referred to those “commonly known as . . . colored people of African descent.”\(^{27}\) Two years later, the state legislature revised the law and substituted the term “negro.”\(^{28}\) Likewise, an official 1892 publication of Florida’s laws stated that “the terms ‘colored person,’ or ‘person of color,’ or ‘colored’” referred to “every person having one-eighth or more negro blood.”\(^{29}\) Georgia’s legal code offered a similar definition, stating that “[a]ll negroes, mulattoes, mestizos, and their descendants, having one-eighth negro or African blood in their veins, shall be known in this State as persons of color.”\(^{30}\) Lawmakers in at least four other states either used language that underscored the term’s narrow meaning, or simply substituted unambiguous signifiers, such as “African” or “negro.” Arkansas’ separate coach act referred specifically to the “African” race, and Oklahoma’s used the term “negro.”\(^{31}\) The Alabama legislature, whose 1891 statute used racial language identical to that of Louisiana’s law, included the phrase “white and negro races” in an 1897 amendment to the law.\(^{32}\) And the General Assembly of South Carolina described its

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\(^{25}\) State v. Treadaway, 126 La. 300, 305 (La. 1910).


\(^{28}\) Act of Mar. 29, 1891, ch. 41, § 1–2, 1891 Tex. Gen. Laws 44.


\(^{32}\) Ala. Criminal Code ch. 182, art. 11, § 5377 (1897).
separate coach law as mandating “[s]eparate coaches for whites and blacks.”

But how was the “white race” defined? Is it possible that segregation laws narrowly defined “white” as well as “colored,” simply leaving non-Black people of color unaccounted for? Arkansas, Oklahoma, and Texas spelled out what the other states left implicit: that the “white race,” contrary to contemporary usage, operated as a catch-all for everyone who was not Black. Arkansas’s separate coach law explained that “[p]ersons in whom there is a visible and distinct admixture of African blood shall, for the purposes of this act, be deemed to belong to the African race; all others shall be deemed to belong to the white race.”

The Oklahoma Constitution, adopted the same year as its separate coach law, offered similar racial definitions: “Wherever in this Constitution and laws of this State, the word or words, ‘colored’ or ‘colored race,’ ‘negro’ or ‘negro race,’ are used, the same shall be construed to mean or apply to all persons of African descent. The term ‘white race’ shall include all other persons.”

An 1879 Texas miscegenation law likewise explaining that “[t]he term ‘negro’ . . . includes also a person of mixed blood descended from negro ancestry to the third generation inclusive. . . . All persons not included in the definition of ‘negro’ shall be deemed a white person . . .”

Writing in 1909, Circuit Judge Francis Cabot Lowell observed that such citations “could be multiplied indefinitely.” Surveying state separate coach laws and other sources, Lowell concluded that “the word ‘white’” was frequently used as a “catch-all word” to “designate persons not otherwise classified.” This conclusion is borne out by Jim Crow laws. Not one of the fourteen states’ separate coach acts defined the “white race” more narrowly as, for example, Caucasians or people of European descent.

Segregation’s opponents and apologists alike deployed this aspect of the new race legislation as argumentative fodder, albeit to different ends. An 1891 column in the Railway and Corporation Law Journal quoted the perverse argument of a “Texas paper” that Black passengers, not Whites, “derive[d] the benefit from the separate coach law.” The paper explained, “The negro occupies his coach alone, while the whites are wrestling with the 40 horse power stench which arises from half a carload of the great unwashed in charge of an immigration agent. On the Southern Pacific Sunday afternoon there were two Chinamen in the white car; there were

none with the negroes. On another train there were three Mexicans in the
white car; there were none with the negroes.”

The *Hondo Herald* of Texas echoed this argument. “There is no reason why the negroes in this
portion of the state should kick,” the paper insisted, since “the white
man’s cars” contained “a mixed crowd of Caucasians, Mexicans and
Chinamen, all in a common state of perspiration,” whereas the car reserved
for Black passengers remained nearly empty.

Northern newspapers critical of segregation painted similar pictures of
Jim Crow trains. An 1891 story in the *Indianapolis Journal* began by car-
icaturing the “average Texas Democrat” as a man “strong in horsemanship,
a good pistol-shot, [and] a reckless consumer of bad whisky.” Bereft of
“what the world calls refinement,” “he feels the necessity of some adven-
titious aid in asserting his social superiority” and therefore views the state’s
separate coach law as “an official certificate under the great seal of the state
that he belongs to a superior race.” The joke was on him, however, for
“[t]he same law which separates the negroes from the whites also gives
the former a car exclusively to themselves, while the whites are still
obliger to share theirs with other nationalities,” including “Mexicans,
Indians, half-breeds, and some Chinamen. In drawing the color line against
negroes,” the paper concluded, “all these classes fall among the whites.”
Dripping with satire, the article suggested that the law’s division of races
thwarted its White supremacist objective of “elevat[ing] and purify[ing]
the white people of Texas” by enforcing their social exclusivity.

Although both sides of the segregation debate invoked the image of a
diverse group of travelers jammed into “white” coaches, the reality is
that Jim Crow laws were likely applied inconsistently to non-Black people
of color. A *St. Louis Globe-Democrat* article on the Texas statute, repub-
lished in the *Crittenden Press* of Kentucky, reflected this reality when it
stated that “Chinamen, Mexicans and Indians are not classed. They ride
where they please.” The article acknowledged that “[p]robably a very strict
and liberal [sic] construction of the law would throw all but the African on
the white side of the coach dead line, but the railroads only observe the
forms to the degree that will protect them from prosecution.”

This ambiguity did not extend to the statutes themselves, however, and
railroad employees who enforced the letter of the new laws understood that
they targeted Black passengers—and Black passengers alone—for

discriminatory treatment. This is what a group of Black delegates to an education convention in Nashville discovered during an 1892 train ride. The *Washington Post* described the delegates’ outrage when, after being forced to move into Jim Crow cars at the Tennessee border, they watched two Chinese American passengers being ushered into the “white” car: “[T]wo Chinamen boarded the train and were about to enter the ‘colored car’ when the brakeman directed them to the ‘white car.’ A delegate asked the brakeman if the Chinese were white people in the spirit of the law. He replied that he really did not know, but as they were not negroes he ‘must put them in the white coach.’”

Both the Black delegates’ surprise and the Chinese passengers’ confusion reflect the deep incongruity of a racial classification scheme that upended prevailing social norms.

But that was precisely the point. In emphasizing the strange reality that these laws made “white” coaches racially heterogeneous spaces, anti-segregationist newspapers missed the mark. The first separate coach laws were not designed to promote White comfort or exclusivity, and the anger and humiliation of Black passengers was not a negative externality of the new laws. It was the point all along. To achieve that goal, White supremacist legislators were more than willing to strategically integrate “white” accommodations.

**A One-Sided Race War**

The separate coach acts’ capacious definition of Whiteness was particularly noteworthy at a time when racial discourses, fueled by xenophobia and legitimized by the racial sciences of eugenics and anthropology, divided the world into increasingly elaborate hierarchies. Eugenics, in particular, gave politicians, academics, and public figures “the language . . . to portray entire nations as different races. Not only the Chinese and Japanese but also southern Italians, ‘Mediterraneans,’ Jews, and other southern Europeans were viewed as dark and inassimilable peoples who could destroy ‘the Aryan race.’”

Judicial decisions and legislative enactments reflected these racial ideologies by narrowly circumscribing the boundaries of Whiteness. Until racial restrictions were lifted in 1952, for example, only “free white persons”—and, after 1870, people of African nativity and descent—were eligible to naturalize as citizens. “Applicants from Hawaii, China, Japan, Burma, etc. are ineligible.”
and the Philippines, as well as all mixed-race applicants,” failed to establish their Whiteness in federal naturalizations courts.\textsuperscript{45} Laws regulating inter-racial marriage typically evinced a similar view of race. As Peggy Pascoe notes, “miscegenation law was clearly a project of white supremacy rooted in notions of white purity. . . . The structure of the laws was an attempt to place all non-Whites in structurally similar subordination to Whites . . . .”\textsuperscript{46} This was true more broadly of legislation from the Western states, where Asian Americans made up a greater proportion of the population and were subjected to heightened discrimination.\textsuperscript{47}

The situation was different in the former slaveholding states of the South, however. In Louisiana and other Southern states, Black Americans were targeted for discriminatory treatment in part because they had more political power than other stigmatized groups, and because they were associated with the Republican Party of Abraham Lincoln and Reconstruction. Universal male suffrage—a constitutional right after the ratification of the Fifteenth Amendment in 1870—gave Black male citizens an unprecedented role in governing the very states where they had once been enslaved. There were no Chinese American members of the Louisiana legislature in 1890, but there were Black representatives and senators, and all of them were Republicans. Living in one of three Southern states where the “colored [population] exceed[ed] the white,” a state that had recently seen the nation’s first Black governor, many White Louisianans feared losing their political and social hegemony.\textsuperscript{48}

In the years leading up to the Separate Car Act, Louisiana’s unapologetically White supremacist Democratic press stoked fears of impending “negro supremacy” and the “horrors of negro domination.”\textsuperscript{49} The \textit{Daily Picayune} of New Orleans published a seemingly endless stream of editorials and letters to the editor that presented the cases for Democratic governance and Black subjugation as inextricably linked questions of White existential survival. The Republican Party was “the party justly abhorred by the friends of Caucasian civilization throughout the South,”

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  \item \textsuperscript{45} Haney López, \textit{White by Law}, 1.
  \item \textsuperscript{46} Pascoe, \textit{What Comes Naturally}, 8.
  \item \textsuperscript{47} See generally Lew-Williams, \textit{The Chinese Must Go}.
  \item \textsuperscript{49} “Harmonizing the Democracy,” \textit{Daily Picayune}, April 1, 1888, 6; and “A Great Danger Threatens,” \textit{Daily Picayune}, November 5, 1888, 3.
\end{itemize}
whereas Reconstruction and the continued efforts of Republicans to “foist [Black citizens] into intimate social relations with the whites” was nothing less than “a great movement to subordinate the whites to their former slaves.”

White politicians in Louisiana and across the South justified their racial chauvinism with a malignant mix of pseudo-anthropology and bad history. In 1889, *The Louisiana Democrat* approvingly reprinted an article about a Kansas senator whose “study of history ha[d] convinced him that it is not possible for two distinct races not homogenous to exist upon terms of practical equality under the same government.” The argument was a common one. An editorialist for the Democratic *Lake Charles Echo* similarly argued that the South’s “race conflict springs from a deeper source, as old as civilization, as deep rooted as human nature.” Jumping from the “aborigines of western Europe” to “the Aztec” and “the Indian,” the writer concluded that “history teaches us that two races never did and never can jointly, equally, with equal social and political rights, equally asserted and exercised, govern and dwell in one and the same country, forming one and the same homogenous community.” The editorial veered between predictions that equality would lead to violent “strife” and, at the opposite extreme, to “extinction of both races . . . by miscegenation.” But whatever the problem, the solution was clear. The “race trouble” would continue until one of the races recognized and submitted to “the superior power and intelligence of the other.”

This blood-drenched view of human nature rejected equality and peaceful coexistence as a priori impossibilities. A long editorial in the November 11, 1888, edition of the *Daily Picayune*, for example, warned White readers that “in each of [nine southern] States the two races are almost evenly divided as to numerical strength, or nearly enough so to make the situation, in the event of a serious conflict of races, formidable in the extreme.” Only by maintaining racial supremacy, the article argued, could Whites preserve a fragile “equilibrium” that favored their interests. Yet this state of affairs was threatened by “a horde of pestilent, fanatical agitators” who “demand[ed] the last extreme of social equality for the two races” through “indiscriminate social commingling.” The consequences of such agitation, the article warned, could be “only evil, seriously and dangerously evil.”

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The threat of race war was quite real in postbellum Louisiana, but it was a distinctly one-sided threat. In 1874, more than 10,000 White Louisianans joined new paramilitary groups known as White Leagues, which “armed themselves, held daylight rallies, and forced or intimidated scores of black and white Republicans out of political office.”\textsuperscript{54} The violence was so widespread that President Ulysses S. Grant sent his close ally General Phillip Sheridan to Louisiana to investigate. Writing to the secretary of war on January 10, 1875, the general painted a grim picture: “Since the year 1866,” he reported, “nearly thirty-five hundred persons, a great majority of whom were colored men, have been killed and wounded in this State.”\textsuperscript{55} President Grant, addressing the Senate later that year, was forced to conclude that, although it might not be wholly fair to say that “the murder of a negro or a white republican is not considered a crime in Louisiana,” it was certainly true that “as to them, the spirit of hatred and violence is stronger than law.”\textsuperscript{56} Such reports continued to circulate well into the late 1880s, leading Northern senators to decry the “continuing system” of “intimidation, violence, and murder” to suppress the Black and Republican vote in Louisiana.\textsuperscript{57} So bloody and sustained was the campaign of violence that one historian concluded that the state had “descended into another, albeit different kind, of civil war.”\textsuperscript{58}

As Democrats resorted to terrorism on the ground, they publicly advocated policy solutions to the “race problem” that were only slightly less draconian. In 1889, the \textit{Daily Picayune} published a series of articles that advanced proposals to strip Black Americans of citizenship and deport them en masse to semi-autonomous “colonies” that would be established in “the thinly settled regions of New Mexico, Arizona, California, and Old Mexico.” The newspaper grimly explained, “Either the whites or the negroes must migrate from the regions where the negroes are now in great numbers.”\textsuperscript{59} Various versions of this proposal, complete with accompanying calls for the necessary constitutional amendments, were debated from the summer of 1889 through the end of the year, eventually making


\textsuperscript{58}. Hogue, \textit{Uncivil War}, 3.

their way onto the floor of the United States Senate. In December 1889, the *New Orleans Times-Democrat* proudly reported that “no less than three bills . . . were offered in Congress the other day, by Southern Senators” that “aimed at getting rid of the negroes in the South, or at least the surplus negroes in this section.”

These proposals reflect a view of race relations as nothing less than a war of survival. Invoking the specter of “negro supremacy,” Democrats presented “social equality for the two races” as both a cause and effect of Black political power. As Blair L. M. Kelley has written, “White advocates of racial segregation viewed integrated trains and streetcars as a symbol of ‘Negro rule’ and the legacy of federal Reconstruction that had to be undone.” That the causal connection between social equality and Black dominance made little sense was beside the point. For many White Democrats, they were inseparably linked.

**Redrawing the Color Line in Louisiana’s Separate Car Act**

The legislative history of the Louisiana Separate Car Act reflects tensions between the national trend toward racializing an ever-increasing number of peoples and the regional desire to target Black people alone for discriminatory treatment. The law itself, which required railway companies to “provide equal but separate accommodations for the white and colored races,” was ambiguous on its face as applied to non-Black people of color. Its legislative history, however, reveals that state lawmakers wrangled over competing definitions of “white” and “colored,” debating how to classify Asian Americans. Finally, it shows that the Democratic majority that voted the act into law intentionally chose language that would place Asian Americans on the “white” side of the color line.

Introduced by a Democratic representative, the segregation bill was taken up for amendment by the state House of Representatives on June 2, 1890. Amid the flurry of proposed amendments, two are notable.

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60. See, for example, “Project to Colonize the Negroes,” *Daily Picayune*, October 9, 1889, 4; Wm. P. Calhoun, “Negro Colonization,” *Daily Picayune*, October 9, 1889, 6; “Moving Southward,” *Daily Picayune*, October 12, 1889, 4; and “Colonizing the Negroes,” *Daily Picayune*, October 19, 1889, 4.


64. Act of July 10, 1890, no. 111, 1890 La. Laws 152.
First, Representative Euclid Borland, a Democrat and former Confederate soldier, introduced an amendment specifying that “[t]he words ‘colored races’ used in this bill shall be held to mean and include negroe’s [sic], mongolians, and malays.” The amendment shows that Borland understood that the unmodified word “colored” referred exclusively to Black people, and that he recognized and objected to the bill’s extension of the legal privileges of Whiteness to Asian Americans. Borland quickly withdrew the amendment without published explanation, however. Immediately upon its withdrawal, Representative Théophile T. Allain, a prominent Black Republican, introduced a countervailing amendment that would have clarified “[t]hat the Mongolian, or races other than colored, shall ride in white passenger cars, and shall be subject to all of the provisions of this act.” Allain moved for the adoption of the amendment, but the Democratic majority voted it down.

It is difficult to reconstruct the intentions behind these competing amendments from the distance of 130 years, but all available evidence suggests that Allain’s proposal was not a sincere attempt to single out Black passengers for discriminatory treatment. Rather, it appears to have been a last-ditch effort to derail the proceedings by forcing the Democratic majority to explicitly codify an aspect of the bill that they preferred to leave unspoken. As will be discussed in greater detail, segregationists sought to justify Jim Crow legislation by claiming that it promoted White purity and separation, whereas anti-segregationists identified its true purpose as the subjugation and isolation of Black Americans. Allain’s amendment would have forced Democrats to acknowledge the latter reality in the text of the law itself.

Allain’s opposition to the bill was a matter of public record, and it seems clear that no change to its racial definitions would have altered his vote. He served as a spokesperson for the local chapter of the American Citizens’ Equal Rights Association (ACERA), presenting their objections to the proposed legislation to his fellow lawmakers. The document identified the bill as “caste legislation” and argued that its immediate effect would be to give “a free license to the evilly-disposed that they might with impunity insult, humiliate, and otherwise maltreat” Black travelers. Allain ultimately

65. The terms “Mongolians” and “Malays” referred to people from different regions of Asia. Chinese Americans were grouped among the “Mongolian race.”


voted against the bill, and the *Southwestern Christian Advocate*, an influential Black newspaper from New Orleans, praised him and the other “colored representatives” for “acquitt[ing] themselves very manfully in opposing this class legislation.”

Whatever the precise motives of the competing amendments, it would be a mistake to assume that their defeat placed Asian Americans and other racialized groups beyond the law’s racial categories. State lawmakers were well aware that members of these groups were exempted from the law’s stigmatizing classification as “colored.” Democratic Representative W. C. Harris, despite voting for the law, stated that he could “not approve of some of the provisions of the bill, and especially those which refer to Chinamen and Dagoes, which classes I consider not as desirable citizens as the colored people.”

Harris’s statement is notable for what it takes for granted. Chinese and Italian Americans were nowhere mentioned in the bill, but Harris’s understanding that the law elevated them above “colored people” shows that lawmakers were well aware that the phrase “white and colored races” would, by default, place all non-Black passengers on the “white” side of the color line. Indeed, Harris’s criticism was amplified in the state Senate. Senator Charles T. Soniat, one of the few Democratic lawmakers to vote against the bill, argued that if it were truly “intended to provide for the comfort of the decent white people of this State, it falls short of that purpose, as it fails to exclude low white people of the worst possible stamp, and the Chinese, both more obnoxious than most colored persons.”

Hardly paens to racial equality, these protests by White Democrats register their discomfort at what they recognized as the bill’s extension of the legal privileges of Whiteness.

Legislative histories from other Southern states reveal similarly unsuccessful efforts to amend separate coach bills to move Asian Americans and other stigmatized groups to the “colored” side of the racial divide. In the Arkansas House of Representatives, Democrats defeated an amendment to group “the Mongolian, Malay and Indian races” with the “African races” in Jim Crow cars. The Democratic Texas legislature likewise voted down an amendment that would have relegated members of the

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“Mongolian” race to “colored” coaches.72 This legislative history shows Southern lawmakers in the process of considering and rejecting the possibility of classifying Asian Americans and Native Americans among the “colored” passengers on segregated trains.

**Litigating Race in *Plessy v. Ferguson***

In Louisiana, the response to the Separate Car Act was swift. The *New Orleans Crusader*, a Black, Republican newspaper founded by ACERA member Louis Martinet, vowed that the civil rights organization would challenge the law through “a test case . . . before the Federal Courts.”73 ACERA’s efforts faltered, however, and in 1891, several of its leading members defected and formed the Citizens’ Committee to Test the Constitutionality of the Separate Car Law. The Committee secured the services of two White lawyers: James Campbell Walker, a former Confederate soldier and member of the local criminal bar, and, as lead counsel, Albion Winegar Tourgée, a Union Army veteran, attorney, and novelist with a national reputation as a civil rights crusader.74

The legal team, at Tourgée’s urging, sought a defendant who would be light-skinned enough to “pass” for White. As Tourgée’s biographer, Mark Elliott, explains, the lawyer believed that such a defendant would allow him to “exploit the Louisiana legislature’s failure to define race and to introduce the inconclusiveness of scientific evidence on racial categories and definitions into evidence.”75 In taking this approach, Tourgée and Walker were not, however, suggesting that the term “colored” encompassed racial groups other than Black people. Instead, they focused their attack on blood quantum laws that categorized someone of even one-eighth African descent as “colored,” even if the person was to all appearances “as white as the average white Southerner.”76

This was how the *Crusader* described Homer Plessy, the light-skinned, Afro-Creole shoemaker the Committee selected as its defendant. After a

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72. *Journal of the Senate of Texas* (Austin: Smiths, Hicks & Jones, 1889), 111.
first attempt to challenge the law ended in dismissal, the Committee engineered Plessy’s arrest for violating the Separate Car Act in the summer of 1892, and the test case began its journey through the state court system. The Louisiana Supreme Court ruled against Plessy in December of that year, and Tourgée and Walker successfully petitioned the United States Supreme Court for a writ of certiorari.  

In multiple parts of their Supreme Court brief, Tourgée and Walker—each composing different sections—focused the justices’ attention on the Separate Car Act’s failure to define the term “colored.” Arguing that “[t]he statute . . . leaves uncertain and indefinite who are included among those classed as persons of the ‘colored race,’” Walker noted that “[n]either the statute, nor the laws of the state of Louisiana, nor the decisions of its courts have defined the terms ‘colored race’ and ‘persons of color’.” Such ambiguity could have important legal implications. The law’s failure to define its racial terms would inevitably lead to violations of the Fourteenth Amendment’s guarantees of due process and equal protection, the lawyers argued. Absent clear statutory definitions of the races, the law “delegated to conductors of railway trains the right to make such classification and made penal a refusal to submit to their decision.” This feature of the law effectively placed railroad employees in the roles of judge and jury. It forced them first to supply legal definitions of “white” and “colored,” and then to make impossibly difficult factual determinations about each passenger’s race.

This extra-judicial determination of race arguably violated the Fourteenth Amendment’s guarantee of due process, because both liberty and property were at stake. In a bold argument that recognized the material realities of White supremacy, Tourgée argued that the law deprived passengers wrongly identified as “colored” of the property right associated with “the reputation of belonging to the dominant race” in a country where “[s]ix-sevenths of the population are white” but “[n]inety-nine hundredths of the business opportunities are in the control of white people.” More immediately, if a passenger refused to accept a conductor’s mistaken racial classification, his ejection from the train would deprive him of the property of his ticket and the liberty of being in “a place where he has a right to

77. Luxenberg, Separate, 431–32; Kelley, Right to Ride, 74, 79.
78. Brief for Plaintiff in Error at *37–38, Plessy v. Ferguson, 163 U.S. 537 (1896) (No. 210), 1893 WL 10660 (hereafter “Plessy Brief [Tourgée],” “Plessy Brief [Walker],” or “Plessy Brief [Tourgée/Walker]”). The lawyers’ sections of the brief, along with a co-authored section, are published together.
81. Plessy Brief (Tourgée), *8–9.
The statute’s ambiguous racial language, the lawyers insisted, made such mistaken classifications inevitable.

This argument rested on a central assumption, however. Even if the terms “white” and “colored” lacked statutory definitions, Plessy’s counsel would have to show that there was no general consensus as to their meaning. Because the lawyers focused their attack on blood quantum laws, they homed in on the word “colored.” Walker began by informing the court “that there are almost as many definitions of the terms, ‘colored persons’ and ‘persons of color,’ as there are lexicographers and courts of the highest resort in the several states of the Union.”

To demonstrate the term’s ambiguity, Walker surveyed a range of legal sources, including a North Carolina case defining a “negro [a]s a person having in his veins one-sixteenth or more of African blood,” a Virginia case holding that the terms “negro” and “colored person” referred to “a person with one-fourth or more of negro blood,” and a Michigan case finding that “[p]ersons are white . . . who have less than one-fourth of African blood.”

In light of these conflicting definitions, what race was someone like Homer Plessey, who was of one-eighth African and seven-eighths European descent? In North Carolina he would be a “negro,” but in Virginia and Michigan he would be White. With such widespread disagreement, railroad employees would be forced to impose their own arbitrary racial classifications.

Only one line of the brief raised the possibility that “colored” might have a more expansive meaning. “There are Africans, Malays, Chinese, [and] Polynesians,” Walker wrote. “But which of all these is the colored race the statute speaks of?” The possibility that people with no African ancestry could be “colored” was left as a rhetorical question, however, and the brief makes clear that Tourgée and Walker recognized that the term had a narrow definition. Tourgée’s notes for his Supreme Court oral argument reflect his clear understanding that the word “colored” designated Black people exclusively. “What is the purpose of the act?” Tourgée asked.

Evidently to assort passengers on the railroads of the state according to color. They are called “races,” it is true, but the only racial distinctions recognized by the act are “white” and “colored.” The statute does not use the ordinary scientific terms, Caucasian, Mongolian, Indian, Negro, &c. Why? Evidently, because the legislature recognized the fact that by this act they were imposing a greatly added expense on the railroad companies of the state in requiring them to provide separate accommodations for each race.
So, in the first place, they reduce the whole human family to two grand divisions which they term “races,” the “white race” and the “colored race.” It is a new ethnology but prejudice based on the lessons of slavery, does not stop at trifles.86

From the perspectives of academic and social understandings of race, this “new ethnology” was nothing short of a radical departure from prevailing ideas. But in the South, it was a return to a more familiar vision of race. As Tourgée recognized, it resurrected the racial logic of slavery.

A second brief, submitted by two new members of Plessy’s legal team, former United States Solicitor General Samuel Phillips and his law partner, Frederick McKenney, emphasized this prong of the argument, framing it as a Thirteenth Amendment violation.87 “Inasmuch as the policy of the statute appears to be only to separate White and Colored persons,” the lawyers observed, “it will make no difference whether . . . all persons who are not Colored (i.e., in the American definition of that word) are Whites; or are either Whites, or statutory non-descripts, outside of the policy of the statute.” Regardless, the lawyers recognized that it was “quite certain that the discrimination in question is along the line of the late institution of slavery, and is a distinct disparagement” of Black passengers.88 The conclusion was inescapable. The legislature’s decision to categorize all who were not Black as “white”—or, alternatively, to leave them beyond the statute’s reach—could only be explained by the desire to restore the racial order that had existed before abolition and Reconstruction.89

The reply brief submitted by Louisiana’s counsel quickly dismissed the charge of statutory vagueness. “The term color in the sense employed in the statute presents none of the scientific and legal difficulties contemplated by counsel,” the state’s lawyers insisted. “There is no difference between its usual and its technical significance.” The brief then quoted from two dictionaries:

“Color (C) specifically, in the United States, belonging wholly or partly to the African race.” *Century Dictionary*, page 1111.

The phrase “persons of color” embraces, universally, not only “all persons descended wholly from African ancestors, but also those who have

86. Argument of A. W. Tourgée, 1896, item 6472, Albion Winegar Tourgée Collection, Chautauqua County Historical Society.

87. In the *Civil Rights Cases*, the Supreme Court found that the Thirteenth Amendment, which banned slavery and involuntary servitude, also gave Congress the power to enact legislation to prevent the “badges and incidents of slavery.” 109 U.S. 3, 20 (1883); U.S. Const. amend. XIII, § 1–2.


89. Ibid., *13.
descended in part only from such ancestors, and have a distinct admixture of African blood.” Anderson’s Dictionary of Law, p. 195.90

By advancing a narrow definition of the “colored” race, the state tacitly acknowledged that the Separate Car Act had reinstated the racial divisions of slavery. Nevertheless, the state’s lawyers argued that the Thirteenth Amendment claim could “be at once eliminated,” because the Amendment “relate[d] only to slavery and involuntary servitude” in the most literal sense of the terms.91 Louisiana’s lawyers left unaddressed the argument that any law that classified someone who looked like Homer Plessy as “colored” was unenforceable in practice. As Mark Golub has observed, that argument “suggested that no method of racial classification could be sufficiently non-arbitrary as to make segregation constitutionally valid.”92 If segregation were to be upheld, the fiction that race was socially and scientifically knowable would have to be preserved as well.

In preserving this fiction, Louisiana would have the full-throated support of the United States Supreme Court. In 1896, 4 years after Plessy’s arrest, the court voted 7–1 to uphold the law and, with it, the constitutionality of segregation. The justices’ reasoning and conclusions of law are among the best known in American jurisprudence, so I will not revisit them here. What is significant is that the majority accepted Louisiana’s narrow construction of “colored” without comment. Writing for the court, Justice Henry Billings Brown simply repeated the binary that Tourgée had lampooned as a “new ethnology” founded on “two grand divisions of humanity.” His opinion altogether ignored the issue of other racialized groups and punt[ed on what “proportion of colored blood [was] necessary to constitute a colored person,” finding this to be a question of state law to be determined by the legislatures and courts of each state.93

If the majority refused to acknowledge that laws such as Louisiana’s Separate Car Act created a de facto definition of the “white race” that encompassed everyone who was not Black, the justices were nonetheless aware of this reality. John Marshall Harlan, the lone dissenting justice, ensured that it could not be overlooked. Using the xenophobic language of the day, Harlan decried a racial classification scheme that singled out Black Americans for discriminatory treatment. “There is a race so different from our own,” he wrote, “that we do not permit those belonging to it to

91. Ibid., *45.
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 . . . are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.”

Harlan’s carefully staged contrast between Black Americans and the “Chinese race” reflected the court’s clear understanding that Plessy did not, as some scholars have assumed, make the evils of “segregation . . . a reality for nonwhite people” more broadly. Under the new separate coach acts, those evils would be reserved for Black travelers alone.

“Singled Out from among the Multiplicity of Races”

There were few non-Black people of color in late-nineteenth-century Louisiana, but the legislative history reveals that Louisiana lawmakers were actively concerned about the racial classification of Asian Americans under the Separate Car Act. In fact, the same year that the Separate Car Act became law, a Democratic state representative introduced a miscegenation bill that would have “forbid[den] the intermarriage or living in a state of concubinage of the white, negro and mongolian races.” The bill was voted down, but it nevertheless confirms Daniel Bronstein’s assessment that Asian Americans “did not fit the popular and scientific understanding of whiteness in the South.”

That the same lawmakers who had considered proscribing intermarriage between Whites and Asian Americans intentionally extended the privileges of Whiteness to all non-Black travelers speaks volumes about their priorities. Clearly, White purity and separation were not chief among them. Segregation was already common on American railroads long before it made its way into state legal codes. Separate coach acts segregated second-class smoking cars and made segregation mandatory and, at least in theory, uniform. But the codification of already-common practices was in many

94. Plessy, 561 (Harlan, J., dissenting).
ways a symbolic gesture. So too was the laws’ purported separation of the races. Not only did separate coach acts mandate that White passengers share accommodations with other racialized groups, they “did not truly separate the races,” as Blair L. M. Kelley has observed. “[B]lack male workers could be found in nearly every part of the train,” and most separate coach laws, Louisiana’s included, allowed Black nurses to travel with their White charges. Perversely, then, Jim Crow laws were designed to ensure that “colored” cars were racially homogenous spaces, while “white” cars were racially integrated.

The laws’ proponents could not acknowledge this reality. Calls for racial separation and purity were mainstream strands of the public discourse in late-nineteenth-century America and, as such, were considered a defensible if controversial rationale for Jim Crow legislation. There was nothing wrong with looking out for your own race’s well-being, the argument went, as long as you meant no harm to other races. And the separate coach laws were “not intended to be unfriendly to the negro or to work any hardship to him,” the White, Democratic press insisted; they merely honored Whites’ “desire to be thrown with [Black travelers] as little as possible.” By accepting that segregationists truly believed that “any forms of integration would destroy the purity of the White race,” we perpetuate one of the founding myths of Jim Crow. In contrast, early critics of segregation laws understood that their primary purpose was to subjugate and humiliate Black Americans through a constant reminder of slavery.

This motive was apparent to the lawmakers who voted on the Louisiana Separate Car Act, to Black civic leaders, and to Black travelers. State Representative C. F. Brown, protesting the act’s passage in the Louisiana House of Representatives, argued that “this bill, if it should become a law, will humiliate and make [colored citizens] appear before the world a treacherous and a dangerous class of people.” Representative Victor Rochon likewise described the bill as “cast[ing] the odium of pariahism upon the colored people of this State.” Addressing the Democratic speaker of the House, Rochon emphasized the provision that would allow Black nurses to travel in “white” carriages: “Mr. Speaker, the idea that you and family would not be offended in traveling hundreds of miles with a dozen or perhaps more negro servants. But would be insulted to travel any distance with me and family on account of our color. The logic of

this proposition is beyond my understanding.”

The logic was clear, however. Segregation was already a blow to racial equality, but the selective integration of “white” accommodations telegraphed a clear message of Black inferiority.

It was the symbolism that mattered. And that symbolism was painfully legible. At least a year before Louisiana enacted its own separate coach act, the Southwestern Christian Advocate began publishing editorials that discussed the disparate treatment of Black passengers and other passengers of color under the new segregation laws. In May 1889, the paper published a dispatch from the front lines of Jim Crow by the Reverend Isaiah Benjamin Scott of Texas. “It ought to be evident to all,” Scott wrote, “why the Negro dislikes the idea of being singled out from among the multiplicity of races that people our immense State, to be herded in a corner like so many lepers or common criminals.” The reverend particularly objected to the law’s positioning of Black passengers as social inferiors to “the highly favored Mexican ‘greasers,’ Indian, [and] unnaturalized foreigner.”

Similarly, when Arkansas passed its own separate coach act in 1891, Wilberforce University professor William Sanders Scarborough decried the law for “proscrib[ing] only the negro,” but not the “Indian, Chinaman, Dago, [or] any other but a man colored with negro blood . . .”

Objections like Scarborough’s and Scott’s continued well into the twentieth century. In 1921, columnist and novelist George Schuyler observed that Japanese immigrants could enjoy all the public amenities reserved for Whites, “while the Christian Negro is huddled in a crowded jim crow half-coach and dare not ask for accommodations due a citizen and which he is willing and able to pay for.” A generation earlier, in his 1901 novel The Marrow of Tradition, Charles Chesnutt used the figure of a Black doctor on a segregated train to illustrate the social and psychological effects of Jim Crow’s color line. From his seat in the “colored” coach, the doctor watches as “a colored nurse . . . with her mistress” and “a Chinaman, of the ordinary laundry type, boarded the train, and took [their] seat[s] in the white car without objection.” Chesnutt implicitly contrasts the cosmopolitan doctor with the working-class “colored nurse” and “Chinaman” to illustrate that Jim Crow was designed to remind Black passengers of their social inferiority, not to shield Whites from the company of

104. Ibid., 202–3.
other races. As a servant, the doctor reflects, the “negro . . . is welcomed; as 
an equal, he is repudiated.”108 The relative positions of the doctor, the 
Chinese American laborer, and the Black nurse map the social hierarchy 
onto the space of the train.

Jim Crow’s racial line of demarcation was designed to have the same 
effect in real life. It made it abundantly clear that White purity and sepa-
ration were the pretext, not the purpose, of the first post-Reconstruction 
wave of segregation laws. As the Black minister and publisher Richard 
Henry Boyd recognized in 1909, “the fourteen states of the Union that 
have passed separate or ‘Jim Crow’ car laws” did so “for the purpose of 
humiliating and degrading the Negro race in the eye of all the civilized 
world.”109

Conclusion

Southern lawmakers lacked the constitutional authority to engineer the forced 
relocation of a group of citizens, but they could separate and isolate them in 
public spaces. Separate coach laws thus enacted in microcosm the desire for 
Black isolation that lay beneath contemporaneous proposals for Black depor-
tation and resettlement. Indeed, they created a legal regime that was so 
degrading and burdensome that it all but compelled Black migration. And 
that was, in fact, what happened, as systematic discrimination—accompanied 
by a steady drumbeat of violence—forced many Black Southerners to move 
north in the Great Migration.110

Although segregation as a custom and norm predated Jim Crow laws, 
Democratic legislators used separate coach acts to draw a formal line of 
demarcation that would place the stamp of “pariahism” on Black 
Americans.111 The decision to extend the legal privileges of Whiteness 
to all non-Black people of color was an important part of this strategy of 
isoation and humiliation. These laws did not make Asian Americans 
and other racial minorities White in the eyes of the public, nor did they 
shield them from “the xenophobia that was rampant in southern racism.”112

Rather, they sent a clear message that “equal but separate” was nothing

109. R. H. Boyd, The Separate or “Jim Crow” Car Laws or Legislative Enactments of 
112. Hinnershitz, Different Shade of Justice, 5.
more than a fiction for the courts. As Black civic leaders recognized, these laws were “caste legislation” that kept the racial divisions of slavery alive.113

Understanding the racial categories at the heart of the separate coach acts thus provides vital insight into the logic of segregation in late-nineteenth-century America. It illuminates a key strategy of White power consolidation and shows that White exclusivity and separation were far less important to the architects of Jim Crow than were Black subjugation and isolation. Indeed, the separate coach acts ensured that “white” train cars would be racially integrated, while “colored” coaches remained racially homogenous. Courts would begin to narrow the legal definition of Whiteness once segregation was firmly entrenched in American law. But in the first years of de jure segregation, Southern Democrats strategically crafted what remains, even today, a radically expansive definition of Whiteness.