

Michigan Lawyers in History

Henry Billings Brown

By Carrie Sharlow



The state of Michigan was built by the lumber and auto industries, agriculture, and the lawyers who lived, studied, and practiced here. The articles in this occasional series highlight some of those lawyers and judges and their continuing influence on this great state.

On May 18, 1896, the United States Supreme Court decided the case of *Plessy v. Ferguson*.¹ Justice Henry Billings Brown—a Michigan judge who had been appointed to the Court in 1890—wrote and delivered the opinion, which said that the statute of the State of Louisiana “providing for separate railway carriages for the white and colored races” was not in conflict with the U.S. Constitution.² The “enforced separation of the races” did not abridge on the “privileges or immunities of the colored man.”³ Justice Harlan disagreed and dissented from the unanimous verdict, noting that “the present decision...[would] only stimulate aggressions...upon the admitted rights of colored citizens” and the constitution itself was color blind.⁴

Henry Billings Brown had trouble with his eyesight. This isn't a metaphor of any sort; when he was very young, an eye infection limited his sight and he worried constantly about straining his eyesight to the point of blindness.⁵ It is ironic that in his later years, when he had the opportunity to see that the Constitution was indeed color blind, he was essentially blind.

Henry was born in Massachusetts on March 2, 1836, to Billings and Mary (Tyler) Brown,⁶ who descended from New England Puritan settlers. He was the third of four children and the only to survive his parents. Billings Brown owned at least one

mill, and the family, if not wealthy, at least lived comfortably.

Henry attended the local schools in Stockbridge and, when the family later moved, Ellington, Connecticut. His interest in learning would be a mainstay in his life, along with frequent troubles with his eyesight. His father, noting his educational success, suggested Henry become a lawyer⁷ and sent him to a prep academy in Monson, Massachusetts.⁸

The 1850s brought tragedy to the home front. In the space of four years, Henry lost all the members of his immediate family except his father. His sister died in May 1851 and two months later, his older brother died. Two years after that, his mother died. By 1855, Henry's father had married a much younger widow with three children of her own.

Although grief over his mother's passing briefly derailed his education,⁹ Henry Brown graduated in 1856. His father offered him a yearlong trip to Europe as a graduation present, something he greatly treasured; in his memoir, the description of his travels covers four pages compared to two pages about his family lineage and nine pages about his elementary and secondary education.

Upon returning to New England, Brown studied law at an Ellington office before attending Harvard Law School for six months. After Harvard, he traveled to Michigan and initially stayed with his mother's relatives.

He later moved to Detroit, though he didn't like the city at first; it took almost a year for him to decide to stay in Michigan. He studied law in the office of Walker & Russell and was admitted to the Michigan bar in the summer of 1860.

Once he decided to remain in Detroit, Brown briefly set up practice before being appointed a district marshal under Charles Dickey¹⁰ and, shortly after that, an assistant U.S. district attorney. He argued before the Michigan Supreme Court and built a reputation as an expert in admiralty law, something of great use given Michigan's waterways and Detroit's shipping businesses.¹¹

When Brown married Caroline Pitts, he joined one of Detroit's most esteemed families. Caroline's father, Samuel Pitts, had studied law at Harvard and ran a successful lumber business. Her sister had married into the Duffield family, a prominent legal family in Detroit, and another Pitts son-in-law was an attorney in Chicago.

With the Pitts' financial support, Brown was able to hire a substitute in the Civil War draft. When Samuel Pitts died unexpectedly four years after Caroline's marriage to Henry, she was left with an inheritance that offered her husband the security to pursue greater legal opportunities.

Brown's career advanced in ways it might not have if he had been worried about a regular paycheck.¹² He resigned his position as assistant district attorney and was

appointed to the Wayne County Circuit Court. Although he didn't win the subsequent election to that seat, the appointment gave him "a taste for judicial life which had much to do in fixing [his] permanent career."¹³

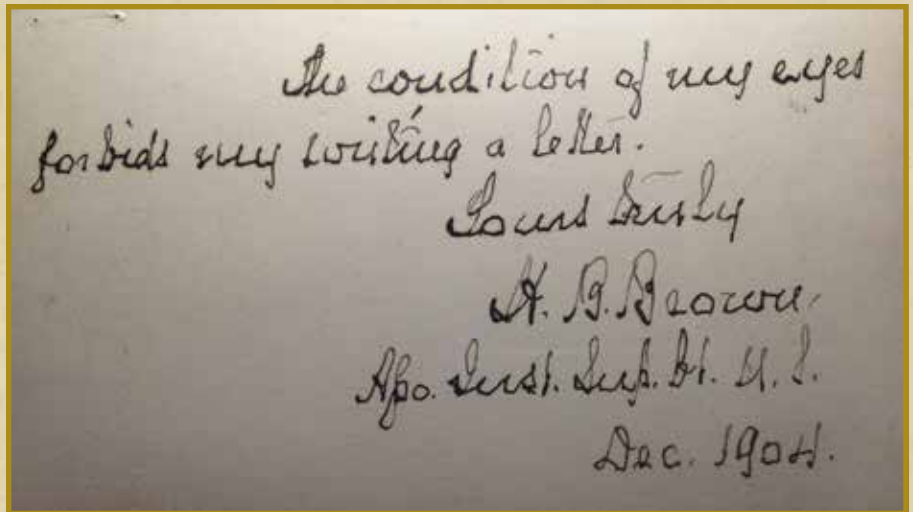
Brown joined a firm along with John S. Newberry and Ashly Pond and taught classes on admiralty law at the University of Michigan Law School. He began working on what would become *Brown's Admiralty Reports*—a book that would solidify his standing as "an expert in admiralty jurisprudence"¹⁴—and picked up some courses on medical law at Detroit Medical College¹⁵ while waiting for his next opportunity.

Approximately 10 years after his appointment to the Wayne County bench, Brown received another judicial post, this time as a federal district judge for the Eastern District of Michigan, replacing John W. Longyear. The job didn't pay as much as he could have made as a practicing attorney, but the Pitt inheritance alleviated that worry. In fact, one of Brown's colleagues later noted that "[h]is great distinction was that he had a great ambition to be a judge, and was able to accept the position with the small salary then paid."¹⁶

By 1876, Brown's book had been published and his docket was dotted with admiralty cases.¹⁷ His court was well-run and he aimed "to help other judges complete their workload."¹⁸ He was well-liked and respected and, when a vacancy arose at the United States Supreme Court in 1890, his colleagues successfully lobbied for his appointment.

At the time Brown was appointed to the federal court, Homer Plessy, approximately 30 years Brown's junior, was living in New Orleans, working as a "shoemaker, laborer, clerk, and insurance agent."¹⁹ He became involved in a local civil rights group, and less than two years into Brown's Supreme Court term, was arrested for refusing "to sit in the 'blacks-only' car."²⁰

Much has been written about the Fuller Court (Melville W. Fuller was chief justice from 1888 to 1910) and *Plessy v. Ferguson*. The opinion certainly wasn't the only one



Henry Billings Brown, handwritten card referring to his failing eyesight (1904); Frank Helminski taken January 14, 2013.

It is the height of irony that in his later years, when he could see that the Constitution was indeed color blind, Henry himself was essentially blind.

Brown wrote—his general focus was on admiralty and patent law²¹—but it's what he's remembered for. If you do a Google search for "Henry Billings Brown," the search bar automatically suggests you include "*Plessy v. Ferguson*."

Approximately 10 years after *Plessy's* arrest and 6 years after Brown retired from the Supreme Court, Brown wrote an article about Justice Harlan's dissents, noting that his colleague had been right that "the Louisiana law was designed not to protect blacks from the hostility of whites, but was to keep blacks from associating with whites."²² In its opinion on *Plessy v. Ferguson*, the Court had failed to "secure the equality of the two races in all places affected with a public interest."²³ Brown's name was forever connected with that decision. He died September 4, 1913. ■

Carrie Sharlow is an administrative assistant in the Executive Office of the State Bar, assisting Governmental Relations. She has a BA in English and a master's in literature. If you are interested in State Bar history or have a suggestion for "Michigan Lawyers in History," please e-mail her at csharlow@michbar.org.

ENDNOTES

1. *Plessy v. Ferguson*, 163 US 537; 16 S Ct 1138; 41 L Ed 256 (1896).
2. *Id.* at 540.
3. *Id.* at 548.

4. *Id.* at 560 (Harlan, J., dissenting).
5. Kent, *Memoir of Henry Billings Brown, Late Justice of the Supreme Court of the United States, Consisting of an Autobiographical Sketch with Additions to His Life* (New York: Duffield & Company, 1915), p 4.
6. Bersey, *Cyclopedia of Michigan: Historical and Biographical, Comprising a Synopsis of General History of the State, and Biographical Sketches of Men Who Have, in Their Various Spheres, Contributed Towards Its Development* (New York and Detroit: Western Publishing and Engraving Co., 1900), p 73.
7. *Memoir of Henry Billings Brown*, p 5.
8. *Id.* at 9.
9. *Id.* at 35.
10. *Cyclopedia of Michigan*, p 73.
11. *Memoir of Henry Billings Brown*, p 46.
12. *Id.* at 61.
13. *Id.* at 20.
14. Broad, *What Was Really at Stake in Plessy v. Ferguson*, 16 The Court Legacy 7 (November 2009).
15. Wikipedia, *Henry Billings Brown* <https://en.wikipedia.org/wiki/Henry_Billings_Brown>. All websites cited in this article were accessed May 23, 2017.
16. *Memoir of Henry Billings Brown*, p 73.
17. *What Was Really at Stake*, p 7.
18. Broad, *Forgotten man in Tumultuous Time: The Gilded Age as Seen by United States Supreme Court Associate Justice Henry Billings Brown* (2005) <https://michiganjournalhistory.files.wordpress.com/2014/02/broad-trevor_a_forgotten_man_in_a_tumultuous_time.pdf>.
19. Wikipedia, *Homer Plessy* <https://en.wikipedia.org/wiki/Homer_Plessy>
20. *Id.*
21. *Memoir of Henry Billings Brown*, p 78.
22. *What Was Really at Stake*, p 9.
23. *Id.*
24. *Id.*