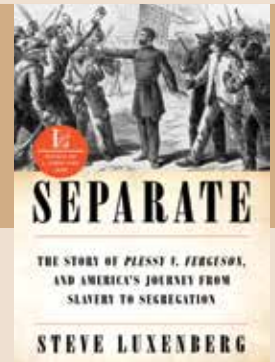


# Separate: The Story of *Plessy v. Ferguson*, and America's Journey from Slavery to Segregation

By Steve Luxenberg, published by W. W. Norton & Company, Inc. (2019), hardcover, 624 pages, \$35 [www.wwnorton.com](http://www.wwnorton.com)



Reviewed by James A. Johnson

**P**lessy v. Ferguson, the United States Supreme Court case synonymous with “separate but equal,” was decided on May 18, 1896.<sup>1</sup> Steve Luxenberg, a native of Detroit and a Harvard University alum, is the author of a new book on the decision entitled *Separate: The Story of Plessy v. Ferguson, and America's Journey from Slavery to Segregation*. Luxenberg is also the author of the critically acclaimed *Annie's Ghost: A Journey into a Family Secret* and an associate editor at *The Washington Post*.<sup>2</sup>

*Plessy v. Ferguson* is one of the most compelling and dramatic cases of the nineteenth century. The Supreme Court's decision protected a system of segregation whose reverberations are still being felt. *Separate* tells the story of slavery, segregation, and racism in America. Luxenberg revisits this critical era in our history and illuminates the origins of the attitudes we live by today.

Luxenberg begins this outstanding work with “Where should I sit?,” a simple question that confronts him every time he boards the commuter train that shuttles him back and forth to his job in Washington, D.C. He tries to imagine what passengers encountered on a train at the end of the nineteenth century—complying with the new requirement in many southern states for whites and blacks to sit in separate cars. For the uninformed, Jim Crow and separate railroad cars began in Massachusetts around 1838, as described in detail in *Separate*. The answer to Luxenberg's simple question about where to sit was not difficult in the nineteenth century: the law gave conductors the authority of a judge and the power of a police officer.

Luxenberg tells the story of *Plessy v. Ferguson* through the eyes of the people caught

up in the case. The cast of characters included Henry Billings Brown, a scion of New England elite and author of the Supreme Court's majority opinion; Albion W. Tourgee, a Northerner and the country's best-known white advocate for civil rights recruited to argue the case on behalf of Plessy; and James C. Walker, a New Orleans lawyer hired as local counsel. Another person interested in testing the constitutionality of separate cars was Eli Freeman, a Louisiana native living in Manhattan, Kansas, and principal of that city's colored school. He wrote a letter to Tourgee, seeking his advice and help: “And now in behalf of the 7,999,999 of my race whose interest and whose rights you have championed I thank you.... An early reply would be greatly obliged.”

## New York

New York has a special place in *Separate*. Luxenberg addresses the Niagara Movement, a black civil rights organization founded near Niagara Falls in 1905 and led by W. E. B. Du Bois, the first African American to earn a Ph.D. from Harvard University in 1895.<sup>3</sup> A Declaration of Principles was written to vigorously protest the color line in all its manifestations. Luxenberg vividly describes the feelings of the 29 participants, who firmly believed that any discrimination based on race was barbarous, no matter how halloved it may be by custom, expediency, or prejudice.<sup>4</sup>

## Louisiana

In New Orleans, a historical plaque marks the place where Homer Plessy boarded the East Louisiana Railroad in June 1892. In

2009, descendants of Plessy and Ferguson led the group that unveiled the marker that reads, “Plessy's act of civil disobedience was a test case.”<sup>5</sup> Ironically, the genesis of this United States Supreme Court case of separation of the races begins in New Orleans and is challenged as a test case in the same city.

Luxenberg's book reveals many surprising facts underlying the Supreme Court's decision: Homer Plessy was a light-skinned black man with Caucasian features—so much so that not even black people could definitively determine that he was African American. Plessy could easily have passed for white. According to the Supreme Court's decision, Plessy argued that he was of mixed descent, in the proportion of seven-eighths Caucasian and one-eighth African blood, so 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.”<sup>6</sup>

Arresting Homer Plessy for refusing to move to the Jim Crow railroad car reserved for blacks was *prearranged*. Tourgee had selected Plessy because of his mixed descent. Plessy was a constitutional test case and he intended to be arrested for refusing to move, violating the Separate Car Act, an 1890 Louisiana statute. These facts alone should arouse the intellectual curiosity of the reader to turn the pages of Luxenberg's richly detailed prose. Even the railroad had agreed to participate in a test case to settle the constitutional question before spending money on extra cars. Luxenberg's vivid account of how the legal strategies were developed from the Louisiana courts to the United States Supreme Court should be of great interest to lawyers and lay persons alike.

Of particular interest to Michiganders is the case of *Day v Owen*,<sup>7</sup> the first public accommodation case in Michigan that affirmed the practice of segregation.<sup>8</sup> On October 1, 1855, Day, a person of color, and his wife boarded the steamer Arrow in Detroit. Day asked for an indoor cabin for the overnight journey to Toledo, Ohio, and was refused because of his color. Day sued the steamboat's captain and owner, John Owen. Owen's defense "was well understood that Day, because of his color was excluded from ordinary social and familiar intercourse by the custom of the country."<sup>9</sup> The Michigan Supreme Court held that a steamboat operator could refuse passage to a Negro. The Court held that while a common carrier could not have refused to transport Day, it could require him to conform to *reasonable regulations* of the vessel. It is interesting to note that the Michigan legislature passed the Civil Rights Act in 1885 that prohibited racial discrimination aboard public conveyances, in public accommodations, and public amusements.<sup>10</sup>

Although overruled by the Supreme Court's 1954 decision in *Brown v Board of*

*Education*,<sup>11</sup> *Plessy* remains relevant today. Black people will tell you without hesitation that "racism in America is alive and well"—manifested economically, socially, educationally, and in many other ways. Racism is enforced both consciously and unconsciously and is maintained by legal and cultural institutions in our society. The author emphasizes that dealing with institutional racism—like the Jim Crow laws of the past—is a constant battle. Luxenberg brings to life the complex notions that dominate conversations about race in America today. *Separate* gives readers intimate knowledge about how we got to where we are today and what the future might hold. ■

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## ENDNOTES

1. *Plessy v Ferguson*, 163 US 537; 16 S Ct 1138; 41 L Ed 256 (1896).
2. For more information about the author, see <<https://www.steveluxenberg.com/>>. All websites cited in this review were accessed October 12, 2019.
3. For more information about this movement, see *Niagara Movement*, The History Channel (August 21, 2018) <<https://www.history.com/topics/black-history/niagara-movement>>.
4. The reader is directed to pages 497–498 of *Separate*, reflecting the Niagara Movement's great opposition to Jim Crow laws.
5. Reckdahl, *Plessy and Ferguson unveil plaque today marking their ancestors' actions*, The Times-Picayune (February 11, 2009) <[https://www.nola.com/news/article\\_a11a310a-0f86-54f6-9a34-89372abf0c91.html](https://www.nola.com/news/article_a11a310a-0f86-54f6-9a34-89372abf0c91.html)>.
6. *Plessy*, 163 US at 538.
7. *Day v Owen*, 5 Mich 520 (1858).
8. *Separate*, text and notes for pp 140–142 in the sources section.
9. *Day*, 5 Mich at 522.
10. 1855 PA 130.
11. *Brown v Board of Education*, 347 US 483; 74 S Ct 686; 98 L Ed 873 (1954).

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