

## Call for Papers

*RSF: The Russell Sage Foundation Journal of the Social Sciences*

Issue on:

“The Legacy of ‘Separate but Equal’: Policy Implications for the 21st Century”

The 125th Anniversary of *Plessy v. Ferguson*

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Editors

### Scope of the Volume

The occasion of the 125th anniversary of *Plessy v. Ferguson* offers the opportunity for a general retrospective consideration of the legacies of state-sanctioned racial oppression as well as specific inquiries into plausible causal connections between the Supreme Court’s approval of state-imposed racial segregation/hierarchy and ongoing racial disadvantages and inequities. The co-editors of this edition of *RSF* invite proposals that offer novel interpretations and new insights about the legacy of “Separate but Equal” and/or offer specific explorations into connections between “Separate but Equal” during the first half of the 20<sup>th</sup> century and observed racial disparities in the 21<sup>st</sup> century. Recognizing that establishment of a causal linkage between a single Supreme Court decision and contemporary social and economic outcomes is fraught with limitations, the co-editors invite papers from across disciplines that might shed new light on the mechanisms by which something that happened 125 years ago might influence and perpetuate racial inequalities today. As the title implies, the focus of the volume is on the legacy of *Plessy v. Ferguson* and not necessarily on the direct impacts of causal effects of the Supreme Court decision.

*Plessy v. Ferguson* (1896) is perhaps the most significant U.S. Supreme Court decision affecting race relations in America. In its decision in *Plessy v. Ferguson*, the Court enshrined the doctrine of “Separate but Equal,” that arguably has left a lasting impact on race relations. The legacy of *Plessy v. Ferguson* is anything but neat. “Separate but Equal” public policies shaped the seating in movie theaters, the building of public swimming pools, the location of telephone booths, the

placement of water fountains, the location and financing of housing, and the creation of racially segregated schooling, buses, hospitals, restaurants, and public parks.<sup>1</sup> The decision permeated virtually all aspects of the social order in very complex and nuanced ways. The legacy of *Plessy v. Ferguson* is messy and perhaps uneven across different domains. Perhaps the neglect of the importance of *Plessy v. Ferguson* in recent generations of social science scholarship stems from the apparent reversal of the tenets of the decision in *Brown v. Board of Education*. Yet in virtually every sphere of social and economic life in the 21<sup>st</sup> century, racial disparities persist despite the putative removal of the constitutionality of one of the main mechanisms for maintaining racial inequality throughout the first half of the 20<sup>th</sup> century: separate but equal policies.<sup>2</sup> A central motivation for revisiting the legacy of *Plessy v. Ferguson* and the impacts of state-enforced racial segregation is to question how or whether something that happened 125 years ago might have left a lasting impact on social and economic outcomes facing racial and ethnic minority group members.

We seek papers that acknowledge the multiple causes of ongoing race-based disadvantage across many domains. The volume is not limited to any particular interpretation of *Plessy*.

Legal scholars have pointed out that the decision itself has implications for more than just the issue of whether separate but equal is constitutional.<sup>3</sup> Related issues that are part and parcel to the decision include: definitions of whiteness and the relationship between white spaces and black bodies; the creation and sustaining of state-supported institutions; definitions of race and citizenship; and the role of the court in creating, sustaining and/or reversing social systems that reproduce racism, racial discrimination and/or racial inequality.<sup>4</sup>

The co-editors envision that papers in this volume will address one or more of the following five broad themes tangentially related to the *Plessy v. Ferguson* Supreme Court decision and its legacy:

1. Long-term effects of Segregation on the social and economic status of African Americans
2. Legacy of *Plessy v. Ferguson* and the persistence of colorism and disparities by skin tone in market vs. non-market contexts
3. The legacy of *Plessy v. Ferguson* and its relationship to state laws, racial covenants, and institutions
4. Impacts of *Plessy v. Ferguson* on the definition of race and citizenship in a legal and policy framework

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<sup>1</sup> Klarman, Michael J. (2004). *From Jim Crow to Civil Rights: The Supreme Court and the struggle for racial equality*. New York: Oxford University Press.

<sup>2</sup> Popescu, I., Duffy, E., Mendelsohn, J., Escarce, JJ. (2018). Racial residential segregation, socioeconomic disparities, and the white-black survival gap. *PLOS ONE*, 13(2).

<sup>3</sup> Davis, Thomas J. (2004). More than segregation, racial entity: The neglected question in *Plessy v. Ferguson*, *Washington & Lee Journal of Civil Rights & Social Justice*, 10(1).

<sup>4</sup> Klarman, Michael J. (2004). *From Jim Crow to Civil Rights: The Supreme Court and the struggle for racial equality*. New York: Oxford University Press.

5. Persistent and intractable racial inequalities created by *Plessy v. Ferguson*, and not necessarily reversed by *Brown v. Board of Education*, the Civil Rights Act of 1964, or other anti-discrimination legislation.

The co-editors invite abstracts that appreciate the messiness of “Separate but Equal” and the *Plessy v. Ferguson* decision using appropriate methodologies from the social sciences, and historical and legal scholarship. Papers are invited from both established and emerging scholars who can provide convincing linkages between their proposed undertaking and the ramifications of *Plessy v. Ferguson*.

### **Background on *Plessy v. Ferguson***

In 1892, Homer A. Plessy was arrested for refusing to leave a “Whites Only” railway car in Louisiana. With a racial heritage of 7/8 white and 1/8 black, he was considered black and was required to sit in a “Blacks” railway car under Louisiana law. He, his allies, and his lawyers argued that his rights had been denied under the 13th and 14th Amendments. Judge John H. Ferguson sided with the State of Louisiana and convicted Plessy. The case was appealed and made its way to the United States Supreme Court.<sup>5</sup>

On May 18, 1896, the U.S. Supreme Court issued its landmark decision in the case of *Homer A. Plessy v. John H. Ferguson*. The Court ruled that the “Separate but Equal” laws created by many states were constitutional, and that such laws that promoted segregation did not violate the 13th or 14th Amendments. The decision stated that each state can define race and its mechanism of segregation individually. Thus, it was not a matter for the federal government to define. The decision also recognized and justified the power of individual states to enforce state segregation laws. As a result, the decision has implications for such issues as the definition of blackness, the acknowledgment of gradients of whiteness, the significance of citizenship, and the interpretation of the state’s regulatory role in the separation of races.

Plessy’s goal for the case was to end segregation for multi-racial people with predominantly white heritage. He believed his proximity to whiteness allowed him more privileges than those granted to him at the time. Some scholars propose that had he succeeded in his case, the United States would have more resembled Latin American countries or Apartheid South Africa, where there is a class of mixed-raced people, separated from those considered “Black”.<sup>6</sup>

The strongest and most long-lasting impact of *Plessy v. Ferguson* is the creation of Blackness as an identity that is defined by the state, absent of enslavement.<sup>7</sup> The U.S. Government has always had a vested interest in defining Blackness in relation to citizenship and rights. When the U.S. Constitution was written, it explicitly defined those who were eligible to be citizens, along with the parameters for who was to be counted a person in the decennial census. Free persons were to

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<sup>5</sup> Woodward, C. Vann, (1964). *Plessy v. Ferguson: The birth of Jim Crow. American Heritage, 15*(3) *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>6</sup> *Census 2011: Census in brief*. Pretoria: Statistics South Africa. 2012.

Sérgio, Antonio, Guimarães, Alfredo. (2012). The Brazilian system of racial classification. *Ethnic and Racial Studies, 35*(7), 1157-1162.

<sup>7</sup> Woodward, C. Vann, (1964). *Plessy v. Ferguson: The birth of Jim Crow. American Heritage, 15*(3).

be counted as a whole person while slaves were to be counted as 3/5ths of a person, at a time when the majority of blacks in the United States were enslaved.<sup>8</sup>

Plessy, like many Louisiana creoles, had a family legacy of being free.<sup>9</sup> Freed blacks had more rights than enslaved blacks, and in some communities, more citizenship privileges. After slavery was fully abolished, all Blacks were given equal rights with the ratification of the 13th and 14th Amendments - although segregation was emerging as a practice. Ideologies of Blackness were in flux, due to the changing status of blacks as a whole. *Plessy v. Ferguson*'s decision was used to justify segregation, anti-black ideologies, and the creation of a white identity. Once it was used to create the parameters of whiteness and blackness, it was used to regulate black bodies in white spaces, through state enforced segregation<sup>10</sup>.

What *Plessy* represents is much more than a decision. It was actually the foundation of the idea of white supremacy at a time when white supremacy was being challenged. After *Plessy*, white supremacy was institutionalized and crystallized all over the country, but especially in the South. Although the specific complaint that produced the decision involved seating on a train, the Supreme Court's decision went far beyond racial segregation in transportation. It had implications for education, housing, public health, employment and many forms of public access, including some little known but profound impacts.

In the 1940s, President Truman pushed for universal healthcare, which included his support for desegregated hospitals. The South, fearing a challenge to segregation, would not support it. And, we had to wait another 60 years to achieve even a semblance of universal healthcare.

Thus, *Plessy* was a watershed moment in how Americans lived and saw themselves. Its impact permeated our definitions of identity, family, marriage, and community. Ultimately, we have a decision that was so broad that it was not just about segregation on trains, but rather an ideological representation of who we would become as a nation.

*Plessy* has implications for such issues as skin color and colorism as a marker for race and racial hierarchy. It can be seen as a turning point in the changing social construction of race in America. It occurred at a time when the U.S. Census had extended its list of "races" to include Mulattos, Quadroons and Octoroons. *Plessy* has implications for notions of citizenship, whiteness, and deviations from the binary of black vs. white. The 125<sup>th</sup> Anniversary of *Plessy v. Ferguson* in 2021 provides an appropriate forum to bring a magnifying glass to race and segregation in the United States – past and present, along with a robust conversation around citizenship, colorism and civil rights.

## Proposed Volume

The proposed volume of the *RSF: The Russell Sage Foundation Journal of the Social Sciences* will serve as a platform for a wider discussion among scholars, policymakers, and community

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<sup>8</sup> Finkleman, Paul (editor). (2002). *Slavery and the Law*. Boston: Rowman and Littlefield.

<sup>9</sup> Davis, Thomas, J. (2012). *Plessy v Ferguson*. Westport, CT: Greenwood Publishers.

<sup>10</sup> Rothstein, Richard. (2017). *The color of law: A forgotten history of how our government segregated America*. New York: Liveright Publishing Corporation.

leaders to explore the intersection of race, color, whiteness and citizenship along with the historical impacts of state enforced segregation. This volume will bring together the best scholarly research on the long-term and perhaps uneven impacts of *Plessy v. Ferguson*. We anticipate interdisciplinary legal scholarship along with perspectives that embrace feminist and critical race theories will inform many of the papers. We anticipate that research and methodologies from economic history, stratification economics, and the psychology and sociology of identity and colorism will inform many of the papers in the volume.

The submitted papers will provide comprehensive reviews of what we know while reporting original empirical research findings about progress made, successes and failures, and implications for the future.

Most importantly, the editors hope to answer the overarching question: **How is it that something that happened 125 years ago—and was presumably reversed more than 50 years ago—still has an enduring impact on racial disparities?**

Preference will be given to papers that address one or more of these questions using original empirical or historical research.

All papers must demonstrate a clear connection between the core themes and specific consequences of *Plessy v. Ferguson*.

### **1. Long-term effects of *Plessy v. Ferguson* on the social and economic status of African Americans**

Often policy interventions have impacts that persist long after those policy interventions have been reversed. Arguably, some of those impacts have been negative, but there may be positive impacts as well. In the case of *Plessy v. Ferguson*, state-enforced segregation was sanctioned. Although various forms of reversals occurred throughout the Civil Rights era, the core conceptual question we ask writers to address is whether there were lingering or persistent impacts of state-enforced segregation on the status of African Americans that can be causally established.

This might require careful use of historical data linked to current information on indicators of racial and ethnic economic inequalities using appropriate empirical methodologies and acknowledgement of the mechanisms that might produce the observed relationships. Whenever possible, authors should address legitimate questions of multiple sources of causality and threats to the validity of the empirical findings.

Questions that might be addressed include:

- Are current patterns of residential segregation linked to local racial covenants from the early 20th century?
- Are current patterns of access to public amenities—such as public swimming pools—and contemporary racial disparities associated with a lack of access—such as racial disparities in drowning – traceable to patterns and practices legitimized by *Plessy v. Ferguson*?

- Has white residential segregation been ignored in the segregation debate? Are there long-term effects of largely white segregated neighborhoods on the accumulation of wealth among whites and widening overall intergroup and intragroup inequality?<sup>11</sup>
- Are there positive unintended outcomes associated with *Plessy v. Ferguson* that helped produce a separate black middle class via membership in elite organizations with long lasting impacts on the mobility of African Americans? Such segregated organizations might include credit and savings associations, lodges, secret societies, black professional and fraternal organizations, and segregated legal groups (National Bar Association), physicians (National Medical Association), and other elite organizations.

## 2. Legacy of *Plessy v. Ferguson* and the persistence of colorism and disparities by skin tone in market vs. non-market contexts

Much of the social science scholarship in the past half-century on racial disparities has ignored skin color and has focused on conventional racial classifications, such as those found in the U.S. Census.<sup>12</sup> While this literature appropriately characterizes “race” as a social construct rather than as a biological or genetic determination, the roots of official designations of race run much deeper and include designations that reflect gradients of whiteness. For example, the 1850 Census included just three categories (White; Black; Mulatto). By 1890, the U.S. Census included eight categories (White, Black, Mulatto, Quadroon, Octoroon, Chinese, Japanese, Indian). Then, after *Plessy v. Ferguson*, in the 1900 census, the gradients of whiteness had disappeared, replaced with the binary of white and Negro, along with categories for Chinese, Japanese and Indians. The category of “Mulatto” re-emerged in the 1910 and 1920 censuses, but thereafter never appears again as a census classification.<sup>13</sup> Some researchers argue that although racial classifications may have changed, the concept of colorism and differentiation by skin tone have persisted.

Proposed papers in this area might address how colorism or skin tone discrimination might have persisted despite the elimination of the gradients of whiteness in the official categorization of races and the mechanisms that may have produced unequal social or economic outcomes based on skin tone.

Questions that might be addressed:

- What is the history behind the rise and fall of gradients of whiteness in the U.S. Census and how has the reversion to a binary measure of blackness translated into how colorism is understood by social science researchers? Is it possible that

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<sup>11</sup> This question is inspired by the fact that perhaps one of the enduring features of “Separate but Equal” and state-enforced racial segregation is not so much the adverse consequences for non-whites, but the unearned benefits accruing to whites.

<sup>12</sup> Dixon, Angela R. and Telles, Edward E. (2017), Skin color and colorism: Global research, concepts, and measurement. *Annual Review of Sociology*, 43(1), 405-424.

<sup>13</sup> Nobles, M. (2000). History counts: A comparative analysis of racial/color categorization in United States and Brazilian censuses. *American Journal of Public Health*, 90(11), 1738-45.

retrenchment in the use of “color” as a marker of social and economic status in favor of “race” produces underestimates of the degree of market discrimination faced by darker skinned persons? Illustrations might come from studies of labor market or educational outcomes using data from 1880 to 1920 (when designations for light skinned persons were implied).

- To what extent have differences in wages and earnings between light-skinned blacks vs. dark-skinned blacks narrowed or widened in past 125 years? How have these differences persisted in the presence of legally sanctioned interracial marriages? What mechanisms might explain any linkages found between skin tone in the 21<sup>st</sup> century and skin tone during the late 19<sup>th</sup> century?
- What if any differences exist in arrests, incarceration, and sentencing between light-skinned blacks vs. dark-skinned blacks? How might any observed differences reflect conceptualizations of whiteness since the late 19<sup>th</sup> century?

### **3. Impacts of *Plessy v. Ferguson* on state laws, racial covenants, and institutions**

*Plessy v. Ferguson* legitimized state-sanctioned racial segregation and separation. The range of laws and conventions is surprisingly enormous and some of them may have persisted unwittingly into the 21<sup>st</sup> century. Well-known and well-documented examples include early 20<sup>th</sup> century racial covenants and 21<sup>st</sup> century patterns of racial segregation.<sup>14</sup> Papers falling into this category need to focus on specific and narrowly defined aspects of “separate but equal” legislation, rulings, conventions, practices or institutional structures that plausibly have effects on current measures of inequality.

Questions that might be addressed include

- Are there state laws and practices that persist into the 21<sup>st</sup> century that emerged from *Plessy v. Ferguson*? What are those laws? What is the geography of those practices and patterns? How have they managed to survive the apparent de-legitimization of state-enforced racial separation? What, if any, relationship do those laws, practices or institutional structures have with current measures of racial inequality?
- Are loan denial rates or homeownership rates higher for blacks in census tracts that once had racial covenants or in states that enforced racial covenants before and after the Great Migration? What would loan denial rates be had blacks not faced racial covenants in home ownership?

### **4. Impacts of *Plessy v. Ferguson* on the definition of race and citizenship in a legal and policy framework.**

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<sup>14</sup>Rose, Carol M. and Brooks, Richard R. W. (2015). Racial covenants and housing segregation, yesterday and today. In Adrienne Brown and Valerie Smith (editors). *Race and Real Estate*. New York: Oxford University Press.

There is a vigorous debate among legal scholars about whether *Plessy* was about race, citizenship or whiteness.<sup>15</sup> Much of this debate arises from the dissent of Associate Justice John Marshall Harlan, a Kentucky slave owner with a wealthy half-brother who was black. The Harlan dissent famously stated:

"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 colorblind, 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 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."<sup>16</sup>

The Harlan dissent explicitly raises the issue of citizenship and the counting of persons who are neither white nor black:

"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."<sup>17</sup>

Questions that might be addressed

- Is there a disconnect between how race and citizenship are defined by the census (and Office of Management & Budget) and how they are defined by the courts?
- How did the definition of race and citizenship implied by *Plessy v. Ferguson* influence subsequent censuses?

**5. Persistent and intractable racial inequalities created by *Plessy v. Ferguson*, not necessarily reversed by *Brown v Board of Education*, the Civil Rights Act of 1964 or other anti-discrimination legislation**

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<sup>15</sup> Aleinkoff, T. Alexander. (1992). Re-Reading Justice Harlan's dissent in *Plessy v. Ferguson*: Freedom, antiracism, and citizenship. *University of Illinois Law Review*, 961.

<sup>16</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>17</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

An enduring feature of *Plessy v. Ferguson* is the finding of the constitutionality of state-sanctioned segregation of races. The notion of “Separate but Equal” prevailed as the law of the land for at least 50 years. Although some legal authorities contend that this Supreme Court decision was technically reversed in *Brown v. Board of Education* and de-legitimized in the Civil Rights Act of 1964, others argue that one still observes persistent and intractable patterns of racial segregation and separation institutionalized by *Plessy v. Ferguson*. The point here is that even with an apparent reversal by the courts or the legislature, it is possible for the legacy of *Plessy v. Ferguson* to live on.

Papers under this theme are invited to explore these intractabilities and persistent patterns of racial inequality, and to make attempts to establish linkages and define mechanisms by which existing patterns and practices might be causally linked to the long-standing practice of separate but equal.

Questions might include

- Are test score gaps in school districts that had high performing segregated schools during the post-*Plessy v. Ferguson* era (e.g., M Street School in Washington, DC or Colored High School in Baltimore) larger or smaller than those in school districts that did not have high performing segregated schools?
- Did the response to state-enforced segregation from *Plessy v. Ferguson* produce a "talented tenth" through segregated institutions? Did that segregation-induced educational elite disperse after *Brown v. Board of Education*?

The co-editors will contribute an introductory chapter that provides context on *Plessy v. Ferguson* and its importance and relevance today, as well as about the recurring themes across policy domains and the structural inequalities that impede progress. They will also discuss innovative strategies that offer significant promise.

This introductory chapter by the co-editors will include the following sections:

1. An overview of why a retrospective analysis of *Plessy v. Ferguson* is warranted given the persistence of racial segregation in America.
2. Statistical evidence of the persistence of racial separation using census data from 1900 to 2017.
3. A review of the competing explanations for the persistence of racial segregation in America, and some trends and patterns suggestive of the impacts that racial segregation has had on social-economic outcomes.
4. A detailed review and summary of the *Plessy v. Ferguson* decision and the Harlan dissent, with a review and synthesis of the legal scholarship about the meaning and implications of the decision for (a) the definition of whiteness and gradients of color, and (b) the meaning and understanding of “separate but equal.”

This section will also revisit the argument that technically speaking *Plessy v. Ferguson* has never been overruled,<sup>18</sup> justifying and explaining why and how it is possible for the decision to have had a long-lasting impact on the social and economic fabric of America.

5. A summary of the five key themes of the volume.
6. A summary of the papers organized along the five themes.
7. Policy implications for the 21<sup>st</sup> century.

## Anticipated Timeline

Prospective contributors should submit a CV and an abstract (up to two pages in length, single or double spaced) of their study along with up to two pages of supporting material (e.g., tables, figures, pictures, etc.) no later than **5 PM EST on April 4, 2019** to:

[rsf.fluxx.io](http://rsf.fluxx.io)

All submissions must be original work that has not been previously published in part or in full. Only abstracts submitted to [rsf.fluxx.io](http://rsf.fluxx.io) will be considered. Each paper will receive a \$1,000 honorarium when the issue is published. All questions regarding this issue should be directed to Suzanne Nichols, Director of Publications, at [journal@rsage.org](mailto:journal@rsage.org) and not to the email addresses of the editors of the issue.

A conference will take place at the Russell Sage Foundation in New York City on September 27, 2019 (with a group dinner the night before). The selected contributors will gather for a one-day workshop to present draft papers (due a month prior to the conference **on 8/21/19**) and receive feedback from the other contributors and editors. Travel costs, food, and lodging for one author per paper will be covered by the foundation. Papers will be circulated before the conference. After the conference, the authors will submit their revised drafts by 12/6/19. The papers will then be sent out to three additional scholars for formal peer review. Having received feedback from reviewers and the RSF board, authors will revise their papers by 3/2/20. The full and final issue will be published in the winter of 2020. Papers will be published open access on the RSF website as well as in several digital repositories, including JSTOR and UPCC/Muse.

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<sup>18</sup> Lofgren, Charles A. (1987). *The Plessy case: A legal-historical interpretation*. New York: Oxford University Press.