

Color-Blind Justice: Albion Tourge and the Quest for Racial Equality From the Civil War to Plessy v. Ferguson

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Review

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Elliott, Mark *Color-Blind Justice: Albion Tourg  and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson*. Oxford University Press, \$30.00 hardcover ISBN 195181395

One Man's Search for Equality in America

The irascible and indefatigable Albion Tourg  Reconstruction judge, political satirist, novelist, civil rights strategist has long deserved a full-scale biography. Given that his most significant contributions to history were intellectual, in the form of novels, legal opinions, editorials and speeches, he is well-suited for an intellectual biography. Neither an intellectual biography nor an intellectual history, *Color-Blind Justice* is an amalgam of the two genres. Rather than approaching the man through his ideas, Mark Elliott has approached the idea of color-blind justice through the man who coined the term who, Elliott reassures us on page 4, is worth studying because he was a particularly relevant figure in the study of the historical roots of this important principle.

Elliott's announced goal in the book is to reassess the origins of the concept of color-blind citizenship (13). The search for origins can be a sticky business as C. Vann Woodward remarked rather defensively, the title of *Origins of the New South* was not his choice. Elliott does not really trace the intellectual or legal origins of the concept of color-blind citizenship (the phrase derives from Justice John Marshall Harlan's famous dissent in *Plessy v. Ferguson* [1896], using language he appropriated from Tourg , who argued the case before the Supreme Court on behalf of the New Orleans Citizens' Committee). What he does is follow the idea by following Tourg . Reared in the radical abolitionist stronghold of the Western Reserve section of Ohio, married to a bookish girl met at the co-educational Kingsfield Academy, and wounded severely in the chaotic Union retreat at First Manassas, Tourg  was a likely candidate to journey south and help define the nation's postwar reality. Whether motivated by secret sympathies for abolitionism, as the author suggests on page 56, or by a political

conscience forged in the fire of the war, Tourg  settled in Greensboro, North Carolina in 1866.

Always aware of the political power of representation his historical novels of Reconstruction were the principal targets for Thomas Dixon's alternative history in such books as *The Clansman* and *The Leopard's Spots* Tourg  was one of the first to recognize the danger of social and political revanchism during Reconstruction. As Elliott quotes Tourg , The word [reconstruction] itself was one of ill-omen . . . by its very force, it accustomed the people to the idea that the work which was to be done was but the patching up of an old garment; that it was an act of restoration rather than one of creation (102). Tourg  became an active participant in the creation of a New South as a member of the North Carolina constitutional convention, where he was an ardent and successful advocate for public education. Ironically, in light of his permanent association with the *Plessy* decision's seeming validation of the concept of separate but equal, Tourg  alleviated conservative fears about interracial schools in North Carolina by proposing a constitutional clause that allowed separate schools for any class of citizens in the state '*Provided, That in all cases where distinct schools shall be established, there shall be as ample, sufficient and complete facilities afforded for the one class as for the other, and entirely adequate for all, and in all districts where schools are divided, the apportionment to each shall be equal*' (129).

Albion Tourg  is remembered in standard histories of the United States and the South for three things: his actions as a Superior Court Judge in North Carolina during the rowdiest days of Reconstruction there; his sophisticated legal assault on segregation and racial discrimination in the *Plessy* deliberations; and his fictional representations of Reconstruction and race relations in the post-emancipation South in such books as *A Fool's Errand. By One of the Fools* (1879), *Bricks Without Straw* (1880) and *An Appeal to Csar* (1884). To this Elliott adds Tourg 's pioneering and life-long civil rights activism (he founded the short-lived National Citizen's [sic] Rights Association, a predecessor to the NAACP; in 1891 he framed the nation's first comprehensive anti-lynching law in Ohio; and he gave the eulogy at Frederick Douglass' 1895 funeral in Boston). He also offers a glimpse into the complicated man behind these activities. For example, in 1869 Tourg  and his wife Emma adopted thirteen-year old Adaline Patillo, a mixed-race former slave who was light enough to pass for white (and who did on occasion). Local conservatives were appalled and delighted by this, and made the expected charges of unworthy motivations. The reasons for Addie's

adoption remain unclear Elliott speculates on page 137 that Tourg e wanted to secure an education for the girl. One is left to wonder what role if any the presence of a light-skinned African American woman in his family influenced Tourg e's later meditations on the absurdity of racial classification systems and the bankruptcy of the idea of race at all.

Albion Tourg e was practically unique in the steadfastness of his belief in racial equality and his public expression of his views during the thirty years following the Civil War years that saw a systematic assault on African Americans' citizenship rights and persons, as well as the growing acceptance of biological racism among white Americans formerly sympathetic to the difficulties of the former slaves. When it became clear that the state would not become, as Elliott puts it on page 8, the ultimate protector and enforcer of individual rights, Tourg e maintained his faith in the possibility and desirability of color-blind democracy and attacked conservative interpretations of the Thirteenth and Fourteenth Amendments that upheld state-supported segregation and discrimination by race. An idealist, he was under no illusions about the violent potential of American white supremacists: while serving as the American consul in Bordeaux, the old radical compared the 1898 massacre and expulsion of African Americans in Wilmington, N.C. with the current anti-Semitic hysteria surrounding the Dreyfuss trial in France. In a letter to President William McKinley, Tourg e confided his belief that the United States would just as readily approve the massacre of the colored race throughout her borders, as France would approve by the verdict of her masses, the slaughter of the Jews (301).

In his 1895 eulogy for Frederick Douglass, Tourg e declared that A white skin is the greatest blessing that has been enjoyed on American soil. (44) He was, as Elliott notes, decades ahead of the Critical Race Theorists who would develop the whiteness as property argument in the 1990s. The arguments Tourg e put forward against segregation in the *Plessy* deliberations were made immortal by Justice Harlan's appropriation of them, and the usefulness of Harlan's dissent for future generations of jurists. As both a legal thinker and a political strategist, Tourg e represented an intellectual as well as personal link between the world of Reconstruction and the twentieth century black freedom struggle. It was not by chance that Tourg e was included in the civil rights pantheon by the founders of the Niagara Movement (the predecessor to the NAACP), or that the chief eulogist upon his death in 1905 would be anti-lynching champion Ida B. Wells-Barnett. Sympathetic to both Tourg e and

his cause, Elliott makes a strong case for the historical and contemporary relevance of Tourg e and his ideas. But we need not think in rigidly linear terms to understand the importance of his legacy; it is not necessary to insist, as Elliott does on page 314, that [A]n unbroken line to final victory can be detected, stretching from the memorials for Tourg e in 1905, and the parallel founding of a new civil rights movement that took inspiration from his life, to the pronouncement of the Warren Court that racial segregation is inherently unequal' and that any language in *Plessy v. Ferguson* contrary to this finding is rejected.' Tourg e's legal reasoning and his version of the post-emancipation era were there for those who looked in years to come, and informed revisionist histories of Reconstruction as well as important legal decisions. For example, when he justified the California Supreme Court's 1948 decision overturning that state's restrictive marriage law, Justice Roger Traynor drew on Tourg e's and not Harlan's arguments in *Plessy*.

A book as sweeping in its ambitions as *Color-Blind Justice* is bound to disappoint on some levels. A history of the concept of color-blind citizenship ought to continue past the *Plessy* decision to at least the post-World War Two era; bounding it by Tourg e's life truncates its history artificially. At the same time, viewing Tourg e's life through the prism of this concept makes for intellectual and political coherence but leaves out too much of the man. A complete biography of Tourg e of the sort that we have for Charles Sumner and W. E. B. Du Bois would be a massive undertaking, and cannot be expected of a dissertation-book. No one has completed a more thorough, penetrating study of Tourg e and his multiple legacies than Mark Elliott; one cannot help but hope that he will build on strength, and continue his tale of the strange career of Albion W. Tourg e.

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