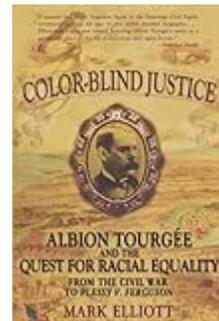




Mark Elliott. *Color-Blind Justice: Albion Tourg e and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson.* Oxford: Oxford University Press, 2008. 400 pp. \$17.95 (paper), ISBN 978-0-19-537021-8.



Reviewed by Martin Hardeman (Eastern Illinois University)

Published on H-Law (July, 2009)

Commissioned by Christopher R. Waldrep (San Francisco State University)

A Commitment to the Majesty of the Law

Who was Albion W. Tourg e and why does it matter? These are the primary questions that Mark Elliott tries to answer in his award-winning study, *Color-Blind Justice*. Elliott's book is not simply a biography, but rather an attempt to place a specific man within the intellectual and political context of the last two-thirds of the American nineteenth century.

Tourg e was born on May 2, 1838, in Ohio's Western Reserve, a district known for its religious enthusiasm and reformist zeal. This environment together with a contentious family life produced a young man committed to self-improvement, education, and Emersonian individualism. Overcoming paternal disapproval and financial difficulties, Tourg e was enrolled at New York's University of Rochester by the fall of 1859. His studies were interrupted, however, by the outbreak of the Civil War.

Although he would deny it in later years, a desire to marry as well as personal ambition caused Tourg e to hesitate before enlisting, but by mid-May 1861, he wrote to his fianc e, Emma Kilbourne, that he had joined a

company of dragoons. Suffering a crippling injury to his back on the retreat following First Bull Run, he was subsequently discharged. A year and a month later he reenlisted, this time in the 105th Ohio. Rising to the rank of lieutenant, but following four months of captivity in Libby prison and the reinjury of his back, Tourg e was compelled to finally leave the army in December 1863.

Restless and disappointed in his own military career, he passed the Ohio bar and briefly practiced law, wrote articles for a local newspaper, and served as the principal of a private academy. Having left the army before the last eighteen months of increasing brutality, dreary resignation, and slow disillusionment may have accounted for Tourg e's continued fervor and his desire to accomplish something meaningful, as Elliott speculates. Unsurprisingly, Tourg e's gaze was drawn to the South.

Tourg e was an unapologetic carpetbagger, and, at least in part, his initial impulse to venture into North Carolina's piedmont was economic. Along with two friends from college, he began a nursery farm and established a

law practice in Guilford County. He believed that hard work and Yankee knowhow would provide his family, his friends, and him with a comfortable living. It took less than two years to disabuse him of this notion. The partnership ended in acrimony and the nursery failed—in part, because of Tourg e’s increasingly public radicalism.

In August 1866, Tourg e was one of the two representatives sent by Guilford County to the Southern Loyalist convention in Philadelphia. Upon his return, he founded a radical Republican newspaper, the *Union Register*. And, in 1868, he was elected as a delegate to North Carolina’s Black and Tan constitutional convention. Tourg e was the youngest member of the convention and one of its most dominant voices. Particularly in areas of education, social justice, and the reform of the state’s legal code, he fought against racial and class prejudice as well as the entrenched interests of North Carolina’s elite. Synthesizing his beliefs in a February 21 speech, Tourg e declared “man is man; and combining themes of natural rights, God’s retribution for the national sin of slavery, and the manly self-sacrifice of black men as soldiers, he produced an egalitarian credo. Too radical for many of his Republican colleagues, in the aftermath of the convention and the ratification of North Carolina’s new constitution, the party passed over Tourg e as a nominee for Congress. Instead, he was selected as a candidate for a six-year term as a state superior court judge.

Victorious in his campaign, Tourg e distinguished himself in this position as a fair and evenhanded jurist, but neither fairness nor evenhandedness mollified his enemies. Tourg e continued to be a target of social isolation, vituperative newspaper editorials, and threats of physical violence. Although the judge remained true to his principles of equality before the law, the constant tension took a toll on his relations with his wife, culminating in several extended separations. By 1878, after completing his term as superior court judge, serving briefly as a federal petition officer, and unsuccessfully running for Congress, Tourg e left the South.

The collapse of Reconstruction was the end of an epoch. But explaining what had happened and why had just begun. Although full-blown southern revisionism was at least a decade away, a seriously depressed Tourg e feared that the story of Reconstruction would be left in the hands of its enemies. As a result, he wrote *A Fool’s Errand* (1879). The reception of his defense of the idealism and honest effort of men like him was sur-

prisingly positive in the North, convincing him that there was still life in the cause. The North might still be awakened to the defense of black rights. His positive contacts with politicians and others made him hope that particularly in the case of a national program of education, reformist troops could still be rallied.

Tourg e’s hope, however, proved a chimera. The Gilded Age was no place for an outspoken radical. Increasingly, he and a handful of others found themselves isolated from the contemporary current of popular and elite thought. Tourg e’s view of life and literature were built on the reformist Protestant morality of the middle decades of the century; life and literature without a moral center and point of view were worthless. Individuality and social (specifically racial) justice remained his touchstones. There had been a higher reason for the Civil War and the sacrifice it required. Reconstruction was a continuation of that cause. The social Darwinism and cynicism of the period appalled him—and even Christian socialism seemed to undermine the personal responsibility and meritorious effort he admired.

Yet Tourg e persisted. In the 1880s alone, he published nine novels, three novellas, one collection of short stories, and four books of essays. Elliott writes, “add to this dozens of newspaper, magazine, and journal articles, and the volume of writing he produced is almost staggering” (p. 211). Tourg e also campaigned for Republican presidential candidates, wrote chiding letters to public luminaries, and spoke constantly at forums from one end of the North to the other. His attacks at every venue on the growing racial consensus of the time made him an outcast. Yet he persisted. He successfully fought for an anti-lynching law in Ohio; founded the anti-Jim Crow organization, the National Citizens Rights Association; and immediately denounced Louisiana’s 1890 “Separate Car Act.”

Plessy v. Ferguson would be Tourg e’s last significant fight in the civil rights arena. As lead counsel for the plaintiff, he was aware of the rising tide of white supremacy and the resignation embodied in African Americans in accommodationism. By October 1, 1893, he was unsure even of pursuing the case before the Supreme Court. Given its composition, he wrote that his only hope for success was in rallying support from the general public. His National Citizens Rights Association and its publications were to be the vehicles for such an awakening, but his own personal health, the financial and physical problems of his family, conflicts with black leaders, and the collapse of the association ulti-

mately dashed this hope. In the end, Tourg e was left with the only logic and eloquence of his Supreme Court brief.

On Monday morning, April 13, 1896, Plessy s lawyers submitted their oral argument to an eight-member Court. As lead attorney, Tourg e s presentation was central. Urging the Court to ignore existing precedence, he declared that the impact of the Thirteenth and Fourteenth Amendments effectively cancelled any deference due decisions rendered before the ratification of those amendments. They had broadened both the scope of the national government and the meaning of citizenship. In this, Tourg e agreed with other proponents of civil rights, but he also attacked the prevailing idea that race had a scientific definition. If it had not, he argued that laws prescribing racial segregation were arbitrary and, thus, unconstitutional.

Speaking for a seven-man majority, Justice Henry Billings Brown rejected Tourg e s conclusions. Brown declared that the Separate Car Act was a reasonable exercise of state police power provided that accommodations were substantially equal. He went on to suggest that a definition of  race  could be easily decided under the laws and traditions of each state, that the statute implied only a legal distinction between the  white and colored races  and not the inferiority of either, and that such an implication did not arise from anything in Louisiana s law, but only in the minds of those members of the  colored race  who chose to place that construction on it (p. 291).

In the aftermath of *Plessy*, Tourg e saw himself as a beaten man.  Thank God,  he wrote,  the supreme court is not omnipotent  (p. 295). Bewildered and despairing over his inability to persuade the American people that their nation s health depended on the adoption of color-blind and evenhanded justice, he made his peace with the leaders of the Republican Party. Appointed as American consul at Bordeaux in 1900, Elliott writes,  Tourg e promised [President William] McKinley that he would restrict the  free utterance of truth  that had been the hallmark of his career  and that he would resign his position if this proved impossible (p. 300). Five years later, Tourg e died still in office.

Elliott s *Color-Blind Justice* is a fascinating study of a man and his principles against the rapidly changing background of the nineteenth century s second half. Imbued virtually from his birth with the belief of Christian perfectionism and what the author calls  radical individualism,  Tourg e was an active participant in his times. As a Union soldier in the Civil War; as a carpet-bagger in Reconstruction; and as a novelist, public agitator, and lawyer in the 1880s and 1890s, Tourg e, Elliott writes, retained a commitment to the majesty of the law, evenhanded justice, and color-blind egalitarianism. The foundation of all three, however, was the core conviction that the individual conscience mattered, that the uncompromising dictates of that conscience compelled its possessor to right action. Tourg e s tragedy and that of the nation as a whole, Elliott concludes, was that the determinisms of social Darwinism, turn-of-the-century science, and the laissez-faire ethos made Tourg e s view of individual moral agency an anachronism.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-law>

Citation: Martin Hardeman. Review of Elliott, Mark, *Color-Blind Justice: Albion Tourgee and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson*. H-Law, H-Net Reviews. July, 2009.

URL: <http://www.h-net.org/reviews/showrev.php?id=23851>



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.