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Historians generally study the role of the U.S. Supreme Court in late nineteenth century race relations from the perspective of the mid-twentieth century. *Brown v Board of Education* (1954), one of the key civil rights court decisions of the twentieth century, is thus understood through a study of the *Plessy v Ferguson* case of 1896, which gave constitutional sanction to 'separate but equal' on public accommodations. Whilst such a framework was necessary for scholars of the 1960s and 1970s as a way of understanding the civil rights movement, given the significance of *Brown* in overturning *Plessy*, this approach minimises the importance of the historical context. How we get to *Plessy*, in the crucial years between post-war Reconstruction and the onset of widespread legal segregation in the 1890s, has not been widely explored beyond the story of Homer Plessy. Even though C. Vann Woodward provided the much needed historical context for the origins of segregation in *The Strange Career of Jim Crow* – arguing that segregation was a product of the 1890s and not of the immediate post-emancipation years – he still interpreted the 1880s largely by reading back from the 1890s.[1]

This essay, by contrast, argues that the 1880s was an important decade in black civil rights activism. This point is only realised when we read forward from the end of the Reconstruction era, a brief period of biracial political activity in the South when advances were made in the promotion of civil rights. It is important, therefore, is to assess what continued beyond Reconstruction, rather than simply focus on what had changed by the 1890s. A good place to start in understanding this earlier context lies in the study of local reaction to the 1883 *Civil Rights Cases* – the U.S. Supreme Court decision that rendered unconstitutional the 1875 Civil Rights Act. This decision – based on a series of five different cases from across the United States – had far-reaching consequences since it

threw into question African Americans' status as equal American citizens. The issue at stake here was their equal access to public space and the public rights of citizenship, and nowhere more was this evident than in the southern state of Alabama.[2]

The 1883 *Cases* deserve further study: not simply as a precursor to the *Plessy v Ferguson* case of 1896, which constitutionally sanctioned Jim Crow segregation, but as a window into how black political activism functioned locally in the late nineteenth century. Indeed, the ways in which African Americans interpreted the Constitution requires far more scholarly attention, given that this document had become meaningful to them in a transformative way with the passage of the Reconstruction amendments between 1865 and 1870. The 1883 decision re-ignited a national debate over the very meaning of citizenship in the United States: one in which Southern black leaders were active participants. This debate was particularly heated in Alabama, where the Supreme Court's decision exacerbated existing tensions between whites and blacks on the state's railroads. An analysis of how African American leaders in the South responded to a single Supreme Court decision, one that provoked far more attention than any other from black Americans in the nineteenth century, reveals much about how black leaders thought about citizenship. It also says a lot about their relationship with the federal and state government, which furthers our understanding of what we mean by black agency in the post-Reconstruction South.[3]

African Americans in Alabama, and across the United States, regarded the 1883 decision as a major setback in the struggle for equal rights: the highest court in the land ruled that Congress had no power to protect individual acts of discrimination. Although the decision did not cause states to immediately implement Jim Crow laws, it

nevertheless significantly undermined the democratic legacy of Reconstruction, and gave constitutional legitimacy to the efforts of Southern white Conservatives to maintain their conception of the 'correct' social hierarchy. Yet what these white Conservatives had not counted on was a sustained counter-attack by African Americans in asserting their constitutional rights. Opportunities were available for African American leaders to participate in the public sphere during the 1880s, more than we realise, and their participation reveals the limitations of white Conservative rule in the South. African Americans articulated a clear political message that spoke to local debates about social choices and the role of black agency. As we will see, the local context mattered and influenced the strategies pursued by black leaders, not least those of Alabama-based Booker T. Washington, who became the leading African American spokesperson at the turn of the twentieth century. Placing Washington within his local context thus reveals the significance of local conditions to his leadership strategy more broadly. Indeed, black Alabamians' responses to the 1883 decision echoed responses in other states. As the noted African American editor T. Thomas Fortune observed immediately after the court's decision:

> The colored people of the United States feel to-day as if they had been baptized in ice water. From Maine to Florida they are earnestly discussing the decision of the Supreme Court declaring the Civil Rights law to be unconstitutional. Public meetings are being projected far and wide to give expression to the common feeling of disappointment and apprehension for the future.[4]

The decision handed down by the Supreme Court in October 1883 consisted of five cases that originated from across the country: from California, Kansas, Missouri,

New York and Tennessee. The litigants filed suit under the 1875 Civil Rights Act, which had made segregation in public accommodations illegal. The *Civil Rights Cases* were thus the test case that many whites had hoped for, ever since Congress had passed the act in March 1875 as a replacement to an earlier, 1866 act. Many considered the law a dead letter even before it finally passed given its watered-down measures, for the bill that finally passed focused mainly on places of public accommodation and made no provision for Congress to ensure the integration of public schools.[5]

In 1883, the majority opinion – read by Justice Joseph P. Bradley – ruled that Congress only had power under the Fourteenth Amendment to protect citizens from discriminating acts carried out by states, not acts carried out by individuals. The first and second sections of the 1875 act, which gave Congress the power to protect all citizens from discriminatory acts on public accommodations, was therefore declared null and void. Furthermore, the majority ruling declared that barring an individual from equal enjoyment of a public accommodation, such as a restaurant, did not infer any badge of inferiority or servitude on that person. This was an argument that would be repeated in the *Plessy* decision thirteen years later.[6]

The court thus took a narrow interpretation of the Thirteenth and Fourteenth Amendments. This was the basis of the argument made by the one dissenting voice from the majority decision, Justice John Marshall Harlan. He argued that the decision rested on 'narrow and artificial' grounds that were not in line with the original 'intent' of the amendments: that is, to protect the constitutional rights of all citizens, regardless of race. By reasoning that owners of hotels or railroad companies were *not* agents of the state, and that the federal government had no authority to act against individuals (only state acts of

discrimination), Harlan argued that this decision left African Americans powerless against acts of discrimination by 'individuals and corporations' who were providing a public service. It is perhaps no wonder that Harlan's dissenting opinion was republished in full in the black press, given that it laid out what was at stake by this decision. The 1883 decision was significant because it revealed the contested nature of citizenship: how blacks had to negotiate between claims of state citizenship on the one hand, and federal citizenship on the other. Moreover, African Americans' response to the decision reveals how a protest tradition continued beyond Reconstruction: a concerted effort on the part of blacks to defend their rights as enshrined in the Constitution. Only now, rather than appealing to federal law, they had to resort to seeking redress from state authorities concerning individual acts of discrimination.[7]

African Americans throughout the country realized immediately the significance of the Supreme Court's decision. Speaking at a mass meeting at Lincoln Hall, Washington D.C., Frederick Douglass vocalized African Americans' sense of betrayal toward the Republican Party. 'We have been, as a class, grievously wounded, wounded in the house of our friends,' he said, 'and this wound is too deep and too painful for ordinary measured speech.'[8] The decision was widely reported in the black press. The *Cleveland Gazette*, a northern-based paper, immediately saw the likely impact of the decision for southern blacks:

> In the South, it [the decision] will make matters worse in every way, if such a thing be possible. It is there our people will feel the full weight of this decision, because the barriers protecting the freedmen there from some of the most

> damnable and humiliating phases of persecution are thrown down. There every white can carry social ostracism to any extent without *fear* of law.[9]

A correspondent writing to the *Southwestern Christian Advocate* called on African Americans to remain calm, and not to hold 'indignation meetings', to make 'great and imperious demands without power,' arguing that such action 'has ever been a means of more fully exhibiting our impotence…' Instead, the black clergy 'should be consulted' and 'familiarize themselves with the question and lay it before each congregation in a calm, dispassionate manner.'[10] The correspondent recognised the difficult balance required: a full acknowledgement of discrimination on the one-hand, yet also in full knowledge that in order to seek address, African Americans had to appeal to state authorities.

Be that as it may, African Americans were angry, insulted, and felt betrayed by their white, Republican Party allies. A mass meeting in Birmingham, Alabama, considered the court's decision as a 'surrender of principles', and in line with the correspondent to the *Christian Advocate*, judged that their rights would only be secured by developing stronger ties with southern whites. Responding to the common misapprehension that civil rights meant 'social equality', those present at the meeting were keen to reiterate that African Americans had no desire to socially mix with whites. Instead, they reiterated, all they demanded was the equal enjoyment of public accommodations due them as citizens. In doing so, they made clear the distinction between civil rights (codified by law) and social privileges (which were not codified by law).[11]

This argument was hardly unprecedented in Alabama. While attempts to pass state civil rights legislation in 1873 had floundered, the debate had resumed in the election year of 1874, which now focused on the pending federal civil rights bill. African Americans in Alabama created their own civil rights organisation, the Equal Rights Association, to push forward the debate outside of the Republican Party which at time was splintering along racial lines. The sticking point was over the proposed integration of the public schools. Opponents to this idea based their argument on political expediency, all-too-aware of the fracturing then taking place within the state Republican Party. This had become all-too-apparent in the state's northern districts, where the party was trying to hold on to white supporters who were opposed to further civil rights legislation and avoid the issue of integrated schools.[12]

The Birmingham civil rights meeting of 1883 was therefore a form of popular politics that was by no means new. Nor was it the first by black Southerners to challenge civil rights infringements. African Americans continued to meet and challenge racial discrimination well beyond the end of post-war Reconstruction. A mass meeting in New Orleans met in 1881 to deliberate and raise funds in prosecuting cases against civil rights infringements. 'Let the leading men of the race come forward with energy and zeal,' wrote the editor of the *Weekly Louisianian*, an African American newspaper, 'and solve this question upon a legal basis.' The paper's stress on the 'leading men' reveals an often over-looked point: that African Americans looked to their local (and implicitly male) leaders to take the initiative and use their status for the benefit of their constituents, whether they were voters or members of a congregation. This editorial, however, overlooked the significant role played by women local civil rights activism, a point that

will be discussed later in this essay. Black leaders, therefore, provided a crucial protest channel through which African Americans could voice their discontent, building on the relationships that such leaders had developed with leading whites.[13]

The mass meetings held in New Orleans in 1881 and Birmingham in 1883, thus defended African Americans' rights as defined by the U.S. Constitution. Southern blacks increasingly realised that they could no longer rely on the federal government for protection. The result was that African Americans turned to state authorities to defend their rights. The Birmingham meeting is a useful case study here. By carefully framing their argument in terms of defending existing rights, in other words equal access to public accommodations rather than seeking full integration, black leaders presented their case in such a way as to ensure that the ruling white elite would listen to their grievances. They did so by drawing up a petition using moderate language that was signed by the city's black spokesmen. The petition was a tried-and-tested political strategy – a strategy used by African Americans since the antebellum period, and which continued to be used after the Civil War at both the state and national levels. As in the case of the antislavery petitions drawn up and signed by white women, African American petitions were accepted by those in authority as a political right held by blacks. And it was favoured by African Americans because it removed any doubt that they were somehow 'tainted', to use Susan Zaeske's term, 'with personal interest and party spirit.' The petition also reinforced the subservient position that African Americans found themselves in, reinforced by a petition's 'humble tone and an acknowledgement of the superior status of the recipient.' This was, of course, strategic on the part of black leaders: a way to influence public opinion within the bounds prescribed.[14]

The petition was presented to the Alabama Railroad Commission, which had been set up in 1880 in response to growing anti-railroad attitudes in the state, and provided a means of regulating the various railroad companies. Its purpose was primarily to control railroad rates, as well as a forum for complaints made against the companies. It was over the matter of not receiving adequate accommodations for the ticket paid – in other words, an economic case against the railroads, that lay at the centre of the Birmingham petitioners' complaint. They reminded whites that all they wanted was for their existing rights to be protected, and sought to assuage their audience – the state governor, as well as the state railroad commission – by reinforcing their point that they did not wish for social mixing between blacks and whites. They argued that they did not want to use the 'white' coach because white people used it, but rather because the smoking car was inadequate to say the least. Indeed, they pointed to the fact that whites routinely used the 'black' section of the smoking car, which destroyed the need of the separate compartments. 'Our people do not care whether they are put in the front of the train or in the middle or at the tail end,' one of the petitioners later remarked, 'so long as they have proper accommodations and proper protection.' By enabling African Americans to have access to equal accommodations on the state railroads, and therefore willing to *accept* segregation, the petition stated that this would encourage the 'friendly feeling' between the two races. The petitioners claimed they were 'satisfied' that they spoke for 'our people'.[15]

The identity of the petitioners is worthy of note. They were members of Birmingham's black elite: educated and (relatively) financially secure. The spokesman for this 'Committee on behalf of Colored People' was J.H. Welch, a clergyman with the

African Methodist Episcopalian (A.M.E.) Church. Other members of the committee included the following: newspaper editors J.H. Thomason and James A. Scott; James E. Bush, a 27 year-old labor agent, who also acted as a local housing agent for the largely 'transitory population' of African Americans; and William Reuben Pettiford, a free-born African American who was pastor at the Sixteenth Street Baptist Church in the city, and who would become a leading figure in Birmingham's African American community by the early 1890s.[16]

The commission found in favour of the petitioners, proposing, among other things, that railroad companies have separate cars for black and white passengers, and giving railroad companies thirty days to comply. Black leaders met in the state capital – Montgomery – soon after to thank the commission, for what one black newspaper termed, the decision 'in favor of separate but equal' railroad cars. Local black leaders, in turn, thanked the black delegation for their work, including Booker T. Washington, who thought the commission made a 'just decision'.[17]

Yet, the Alabama Railroad Commission had no real means to enforce the 'equal' part of their decision. By the mid-1880s, the commission had 'assumed the role of a mere fact-finding group leniently supervising the roads,' as Allen Johnson Going puts it, 'rather than an active agency anxious to increase its own power or to curb that of the railroads.' As a result, African Americans continued to protest against railroad discrimination throughout the rest of the decade in what would become an increasingly hostile environment. 'The mere thought of a trip on a railroad brings to me a feeling of intense dread,' wrote a candid Booker T. Washington in 1885, 'and I never enter a railroad coach unless compelled to do so.' Reinforcing the message from the Birmingham

delegation, Washington reasoned that if African Americans were not allowed in the first-class car, then the railroad companies should provide a separate first-class car for them. Concluding his letter with a sentiment that would be made famous a decade later, 'We can be separate as the fingers, yet one as the hand for maintaining the right.' Washington's remarks were part of a campaign he conducted both publically (with a letter to the white press) and privately (directly with the commissioners) in a bid to improve conditions on the railroads for African American passengers. As he wrote to the *Montgomery Advertiser*, a white-owned newspaper: 'It is not a subject with which to mix social equality or anything bordering on it. To the negro it is a matter of dollars and cents'. Washington, therefore, not only built on the momentum generated by the Birmingham petitioners, but he also echoed their rationale – in other words, making the economic case for fair treatment.[18]

However, from our post-Civil Rights movement perspective the Birmingham petition appears to be a 'surrender of principle', much in the same way as the Republicans' stance on civil rights was considered 'a surrender of principle'. This also raises the question as to whether petitions of this kind may have misled some whites about black aspirations – that they were willing to narrow the boundaries of what constituted 'equality' – a view only reinforced by the public comments of leaders such as Washington. Moreover, while black leaders in Alabama were happy to state in 1883 that they did not want 'social equality', and that they were satisfied with separate facilities so long as they were equal, by 1886 the implications of such a stance were becoming clearer to many leaders. This was as a result of a comment made in the *Montgomery Daily Advertiser* about introducing state legislation to prevent either race from going into each

other's railroad cars. Jesse Duke, a Montgomery-based black newspaper editor spoke out against this, regarding such a move as 'absurd.' He asked instead for 'passage of such laws…as will compel the railroad companies to comply with their obligations to the colored and white passengers alike,' adding that this would lead to 'no more trouble as that complained of.'[19]

Despite the conservative aspiration of the Birmingham petition, it did set a precedent, at least in Alabama. African Americans petitioned state authorities concerning educational facilities and reform of the criminal justice system. The Birmingham petitioners, for example, appealed to the state governor for the law selecting juries to be honoured by allowing 'qualified' black jurors to serve, 'especially when one is on trial.' Their petition, which was reprinted in the leading white daily, was remarkably bold in its assertions. 'The present application of the law deprives him of the rights of trial before a jury of his peers;' yet at the same time it was softer in tone. 'We humbly pray this matter may be amicably adjusted,' the petition noted, 'and that the convict system of our State be made more reformatory in these matters.' Reform was the key word here, and they used the language of respectability that Booker T. Washington would later use. 'Punish men for crime, reform him, give him a trade, and a tendency to indolence, theft, and vice will be destroyed.' The result would be a 'return to civil life improved, elevated, industrious, and temperate.' Petitioning thus became a key strategy for the continued black political participation in the public sphere, influencing the public debate over civil rights, and reinforcing the point that the black voice was not going to be silenced.[20]

Indeed, the civil rights debate provoked by the *Civil Rights Cases* was also argued in the national popular press in 1885, influenced by what was happening at the local

level. The white Conservatives champion was Henry Grady, the young editor of the *Atlanta Constitution*, and promoter of the 'New South.' He argued that civil rights meant social equality: that integration in places of public accommodation would inevitably lead to social mixing between white and black Southerners, and distort the established Southern social hierarchy. Such a view was challenged by white Louisianan, George Washington Cable, who argued that white Southerners, in conflating civil rights with social privileges, were making a fundamental mistake. Cable argued that civil rights were 'impersonal' rights defined by law. Social privileges were defined by 'personal choice'.[21]

Cable used the conditions on Southern railroads to make his point. He claimed that segregation was unnecessary and gave evidence to support his case. In his widely read essay of 1885, entitled 'The Silent South', Cable wrote that: 'In Virginia they [African Americans] may ride exactly as white people do and in the same cars.' He added that this was also the case in South Carolina where, according the Charleston *News and Courier*, it was far more pleasant to ride 'with respectable and well-behaved colored people than with unmannerly and ruffianly [sic] white men.' By contrast, Cable observed that in Alabama, 'the majority of [white] people have not made this discovery, at least if we are to believe their newspapers.'[22]

Cable touched on an important point here: not simply that conditions varied across the South, but that the southern white press were key shapers of public opinion on this issue, both for and against black civil rights. A very different story emerged from the pages of the black press, which publicised incidents of racial discrimination on the railroads, particularly incidents involving women. Clara DuVall from Greensboro, Alabama, was dragged from the first-class car and forced to ride in the smoking car. She

then proceeded to file suit against the railroad. As the Alabama *Southern Independent* reported, 'The conductor who did this cruel deed has been discharged and the company wants a compromise.' The paper hoped that DuVall would stand firm and 'push the case'.[23]

Black women, however, faced prejudice not only as African Americans, but also as women. The most publicized example of this, one of which southern blacks would have been all-too-aware, was Ida B. Wells' legal fight against the railroads a few years earlier. In 1883 Wells had refused to leave the ladies car while on board a train between Holly Springs, Mississippi and Memphis, after purchasing a first class ticket. As she later noted in her autobiography, her case had been 'the first…in which a colored plaintiff in the South had appealed to a State court since the repeal of the Civil Rights Bill by the United States Supreme Court.' Wells acknowledged that ever since the 1883 ruling 'there had been efforts all over the South to draw the color line on the railroads.' Her case reached the local federal court where she was awarded $500 in damages. Yet the railroad appealed; the case went to the state Supreme Court, and in April 1887 it reversed the lower court's decision, arguing that the railroad company had provided equal accommodations on the railroad.[24]

Wells' case provides us with an insight into the race and gender considerations made by southern whites. By sitting in the ladies car, Wells was claiming her right as a woman to sit in this car. She had every reason to be there, given that she was a teacher and well dressed: the personification of middle-class respectability. Women were provided with a ladies' car away from the male smokers; yet to the white conductor who ordered Wells out of the ladies car, and the white audience who looked on as Wells stood

her ground, Wells' identity as an African American woman over-rode her identity as a middle-class woman. This was the view of the white passengers around her, and shared by others on many of the railroads in the South.[25]

Indeed, Cable reported on his observations of how black women were treated on the railroads, especially in Alabama.[26] In his earlier essay, 'The Freemen's Case in Equity,' Cable singled the state as one where African Americans faced constant discrimination on the railroads, undermining the strategy of Welsh and the Birmingham petitioners. Barely six months after the Alabama Railroad Commission ordered separate and equal railroad accommodations for all first-class passengers, the following piece appeared in the *Selma Times,* and was reprinted by Cable.

> A few days since, a Negro minister, of this city, boarded the eastbound passenger train on the E.T., V. & G. Railway and took a seat in the coach occupied by white passengers. Some of the passengers complained to the conductor and brakemen, and expressed considerable dissatisfaction that they were forced to ride alongside of a Negro. The railroad officials informed the complainants that they were not authorized to force the colored passenger into the coach set apart for the Negroes, and they would lay themselves liable should they do so. The white passengers then took the matter in their own hands and ordered the ebony-hued minister to take a seat in the next coach. He positively refused to obey orders, whereupon the white men gave him a sound flogging and forced him to a seat among his own color and equals. We learned yesterday that the vanquished preacher was unable to fill his pulpit on account of the severe chastisement inflicted upon him. Now [says the delighted editor] the query that puzzles is, 'Who did the flogging?'[27]

This editorial is suggestive because it demonstrates the fact that in 1884 railroad workers were still prepared to adhere the ruling of the commission – in other words, that if a black passenger bought a first-class ticket, and no separate provision was made, they were entitled to first-class accommodations. Yet it also suggests that the commission's ruling was ineffective, because while seeking to take into account popular (white) feeling, it failed to realize that prejudice would not stand for any kind of integration. And this was made evident by the language used by the editor of the *Selma Times*: that the preacher refused to 'obey orders' and therefore received a 'severe chastisement' in the form of a 'sound flogging' highlighted that whites' perceptions of how southern society should function had not moved beyond slavery.

Yet Cable knew that the debate had not yet been decided. As he wrote in the 'Silent South', both sides knew 'that the fate of the national Civil Rights bill has not decided and cannot dismiss the entire question of the Freedman's relations; but that it puts upon a trial in each Southern state a voluntary Reconstruction which can never be final till it has established the moral equities of the whole case.' While not acknowledging the role played by African Americans in this debate Cable had unpicked the essential point: that the debate was still open for discussion.[28]

Nevertheless, this was a debate that Cable and other white liberals like him would ultimately lose. Indeed, Cable was forced out of the South shortly after the publication of what would be three essays on the 'Negro Question', as the tide was turning decidedly in favour of the white Conservatives' approach as articulated by Grady. 'On the railroads, as elsewhere, the solution of the race problem is, equal advantages for the same money, - equal in comfort, safety, and exclusiveness, - but separate,' wrote Grady. 'Race instinct'

kept blacks and whites apart, for if there was 'not such instinct, the mixing of the races would mean amalgamation, to which the whites will never submit, and to which neither race should submit.' It was obvious for all to see, argued Grady. 'If instinct did not make this plain in a flash,' he stated, 'reason would spell it out letter by letter.'[29]

Such an argument, however, assumed that whites would uphold their side of the bargain. But as the 1880s wore on, it was clear this was not the case. 'We are robbed, swindled, cheated, assassinated, falsely imprisoned, lynched, told to stand back and every indignity heaped upon us,' Selma-based clergyman black clergyman and local Republican activist, Mansfield Edward Byrant, told his audience at an Emancipation Day celebration in 1887. He called on African Americans to 'organize leagues' so that they could 'raise money to prosecute railroads, steamboats, stores, hotels, and every one who tries to abridge our rights.' In addition, Bryant argued that African Americans had to provide a counter-narrative to the racism evident in the white press by supporting their 'own newspapers, and never those who seek every opportunity to throw mud at us.'[30]

But as one black newspaper put it: 'Unfortunately for the Negro in the South, 'public sentiment' is *law*.' African Americans were all-to-aware of this, which made the need to be part of the civil rights debate all the more important. If this is a story of what black political activism could achieve, or potentially achieve, in the 1880s, it is also a story of the full force of white prejudice. Intimidation and violence were never far away in the 1880s Alabama: this was the decade, after all, that witnessed a significant increase in the number of lynchings that occurred south of the Mason-Dixon line. Newspaper presses became a particular target, as did their editors. Over the course of the decade, a number of black newspaper editors were silenced in the South, especially in Alabama,

usually forced to leave by a white mob. In 1884, for instance, C.M. Brown of the Montgomery *Weekly News*, was forced to leave the city after he spoke out against the increasing prevalence of blacks being killed at the hands of whites. Black editors were thus forcing into the public sphere issues with which whites simply did not want to engage. Such a strategy can be observed at both the national and local levels. In 1887, T. Thomas Fortune of the *New York Age*, called for new national civil rights organization to pursue 'peaceful methods of agitation, through the ballot and the courts' to defend black civil rights. What would eventually become the Afro-American League, Fortune's proposed organisation would also promote self-defence if necessary: 'if others use the weapons of violence to combat our peaceful arguments, it it not for us to run away from violence.' [31]

Yet a study of African American editorial pages also reveals the significant disconnect between what African Americans thought about their situation, and whites' perception of community relations. In an editorial piece the previous year in the *Selma Independent*, Mansfield Bryant spoke of the widespread dissatisfaction among Southern blacks over their political, social and economic situation, something whites refused to acknowledge. 'You were raised with the Negro, but you do not understand him,' he noted, challenging the notion that Southern whites understood African Americans better than white Northerners. Bryant called on whites to treat blacks with the respect due all citizens, thereby challenging the widespread white conception of black Southerners' 'place' as political dependents. Yet he also smoothed over the deal with whites: that by securing African Americans their rights, so they would be encouraged to educate their children and work toward 'the prosperity of the country', for they would have a stake in

its success. His message was clear: if whites wanted blacks to stay in the South, then they had to respect them as equal citizens. A young W.E.B. Du Bois, later an influential African American scholar-activist, echoed Bryant's challenge to whites. Writing in 1887:

> It is not against particular acts that I inveigh, but against the spirit that prompts them: it is not that I care so much about riding in a smoking-car, as the fact that behind the public opinion that compels me to ride there, is a denial of my *manhood*. Against *such* a sentiment laws or force *cannot* avail. It lies *wholly* with you [white people].[32]

Yet for whites, civil rights were the short cut to social equality: ultimately, to racial mixing. Southern whites had their own propaganda campaign, and in many respects they won the debate on how white Americans, nationally, would think about civil rights. Southern white politicians succeeded in their campaign by enacting 'Jim Crow' laws on the railroads, which received sanction from the United States Supreme Court. On March 3, 1890, the court handed down its decision in *Louisville, New Orleans and Texas Railway Company v. Mississippi*. The railroad company had taken the state of Mississippi to court following the passage of a state railroad segregation law there two years earlier, arguing that the law placed an unfair burden on the company given that company operated interstate. This new law, the company argued, was unconstitutional since only Congress could regulate interstate commerce. The court ruled in favour of the state, arguing that the law did not impinge on the constitution since it was applicable only to travel that occurred intrastate. The decision contradicted a previous ruling from 1877 which had argued that Louisiana's 1873 Civil Rights Act (an integration law) *did* interfere with interstate commerce, despite the fact that law only applied *intrastate*. This

contradiction was not lost on the one dissenting opinion written by Justice John Harlan, a repetition of the ruling in the *Civil Rights Cases* six and a half years earlier.[33]

The result of this decision was not necessarily a new wave of segregation laws, although some states would pass them (such as Louisiana in 1890, which would be later challenged in the 1896 *Plessy* case), but more a renewed discussion across the South over the idea of 'race separation.' Whilst the state of Virginia would not pass any Jim Crow laws until 1900, segregation on its state railroads was discussed as early as 1891. In its fifteenth annual report, the Virginia Railroad Commission advocated segregation. 'If there be a well-founded reason for separate schools and colleges for the two races, and separate churches and hotels,' the report read, 'why should there not be separate coaches for travellers...We should be consistent.' In reference to the Mississippi law, and others, the report stated that such laws had met 'with the approval of the conservative people'. This is an important point in itself, because it underscores how the actions of individual states interacted with one another: that a certain domino effect did occur. Moreover, as in other states, the report confused separation through choice (the church), and by discrimination (hotels). Despite this encouragement, the political situation was such that while a segregation law was discussed in Virginia, and included in the Governor's annual message to the state legislature in December 1891, a proposed bill never went beyond the committee stage.[34]

Yet that same year, Alabama *would* pass a railroad law with little if any debate, and local black leaders had barely enough time to call a conference to discuss their position. The wording of the new bill that would very quickly become law was verbatim of the Louisiana law of the previous year (the act from which the *Plessy v. Ferguson* case

would emerge the following year). Using the argument of the Birmingham petitioners – that is, all they were seeking was equal and comfortable accommodation on the railroads – the new bill threw the petitioners' argument back at them with the title: 'To promote the comfort of passengers on Railroad Trains.' Racial discrimination was now openly endorsed under law, since it was stipulated in the new law that it would be left it to the whim of the (white) conductors to decide who should sit in which car.[35]

Despite the best efforts of African Americans to petition the state legislature, time ran out for them to prevent the segregation bill becoming law. It passed the state House of Representatives on 20 January 1891, and no sooner had black leaders met on 3 February than the state Senate passed the bill on 5 February. The petition that blacks had wished to present to the legislature was now worthless. The new law appalled the *Huntsville Gazette*. Reiterating comments made by Washington and others throughout the 1880s, the paper stated flatly: 'The railroads should be made by the officers of the law, to obey the law and furnish every passenger, whether white or colored, first class accommodation for first class fare.'[36]

If white public sentiment was *law* in the South, then the 1883 Supreme Court decision played a dual role in shaping such sentiment. It provided legitimacy to white Conservatives in preserving their version of 'good' relations, by arguing that the federal government had no right to interfere, while at the same time mobilising African Americans to argue their own case. For African Americans reaction to the 1883 decision reveals not only the continuity of black political participation in the public sphere beyond the Reconstruction years, but also the active involvement of African Americans in the civil rights debate that spoke to local concerns. In the North, African Americans sought to

pass new civil rights legislation with little success. In the South, it was about maintaining a presence in the public sphere. It was in the 1880s, therefore, and not in the 1890s, when the debate over black civil rights was really played out in the South. African Americans were determined to do all they could to challenge white Conservatives, to influence the debate, in the hope of at least tempering the more excessive nature of Southern racism, and appeal to the 'better class' of white Conservatives. They did this through holding meetings, petitioning, and framing their arguments in such a way so as 'win over' as best they could the Southern Conservatives. This was the strategy on which Washington built, which forces us to reconsider Washington's political stance as one rooted in the civil rights politics of the 1880s, not of the 1890s. As this essay has shown, we need to acknowledge the significance of the local context of Washington's strategy.[37]

Yet white southerners controlled the terms of the debate, and in so doing, found any opportunity to silence any kind of dissent, white or black. By the time white Alabamians wished to settle the civil rights debate once and for all, by implementing Jim Crow laws for the railroads, some black leaders realised that alternative strategies needed to be sought. As a result, competing strategies did emerge by the mid-1890s. Some black leaders accepted the new definition of citizenship and withdrew from the public sphere and concentrated on black uplift through education. Others refused to accept this new definition, and continued to participate in the public sphere. There was interest from some local leaders in participating in the Afro-American League, a civil rights organisation founded by the New York-based journalist, T. Thomas Fortune, in 1890. Yet there is little to indicate how extensive or lasting local leagues in Alabama actually were. Indeed, the civil rights/social privileges argument did not have the impact that it once

had, given that most of white America no longer wanted to engage in the civil rights debate. Those African Americans who chose this path were often members a new generation of black leaders who challenged their 'place' as set out by white Conservatives and used higher education as a weapon in their fight to protect their civil rights in the courts.[38]

The 1880s can be regarded, then, as a distinct phase in the history of black civil rights activism in the South: when African Americans were attempting to defend their constitutional rights through their right to petition government, and win the debate over civil rights. Once the Jim Crow laws began to be passed, then new strategies would be sought, such as the boycotting of segregated streetcars at the turn of the twentieth century. The 1883 *Civil Rights Cases* can thus be seen as initiating a new phase in civil rights activism; the *Plessy* case marked the beginning of another once the Supreme Court had sanction the very idea of 'separate but equal'. All of this reinforces the point that black resistance to white supremacy, while nuanced, persisted in the South well beyond the Reconstruction era. The *Civil Rights Cases* also remind us that Booker T. Washington's strategy of accommodation with white Southerners changed over time, in response to the changing political climate in the 1890s South. Thus Washington's private funding of civil rights cases at the turn of the twentieth century built on a legacy of civil rights activism which in the 1880s he had been able to pursue in public. Finally, a study of local responses to this court decision reminds us that in the politics of race in America, the Supreme Court and its decisions matter.[39]

[1] The most recent example of this trend can be found in Blair L. M. Kelley's excellent work, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy V. Ferguson* (Chapel Hill, NC, 2010). Other significant works include: Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge, MA, 2005); Charles A. Lofgren, *The Plessy Case: A Legal-Historical Interpretation* (New York, 1987); and Otto H. Olsen (ed.), *The Thin Disguise: Turning Point in Negro History. Plessy V. Ferguson, A Documentary Presentation* (New York, 1967). The Woodward thesis was the pioneer of this trend. See, C. Vann Woodward, *The Strange Career of Jim Crow*, 3rd edn. (1974; reprinted New York, 2002).

[2] Civil Rights Cases, 109 U.S. 3 (1883). A pioneer of reading forward from the Reconstruction era is Rayford W. Logan's classic work, *The Betrayal of the Negro: From Rutherford B. Hayes to Woodrow Wilson* (1965; reprinted New York, 1997) [originally published in New York as *The Negro in American Like and Thought: The Nadir, 1877-1901*]. See, also, the more recent work by Michael Rudolph West, *The Education of Booker T. Washington: American Democracy and the Idea of Race Relations* (New York, 2006), which looks at the significance of Reconstruction to Washington's later 'idea' of race relations, and Robert Cassanello, *To Render Invisible: Jim Crow and Public Life in New South Jacksonville* (Gainesville, FL, 2013), which looks at the political legacy of Reconstruction in one southern city.

[3] There have been a few state-level studies of the relationship between civil rights and the railroads in this period. See, for example, John Oldfield, 'State Politics, Railroads, and Civil Rights in South Carolina, 1883-89', *American Nineteenth Century History* 5/3 (2004), pp. 71-91. The broader significance of the railroads in this period is argued in

Edward L. Ayers, *The Promise of the New South: Life after Reconstruction* (1992; reprinted New York, 2007) and Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York, 1998).

[4] *New York Globe*, 20 October 1883, reprinted in Shawn Leigh Alexander (ed.), *T. Thomas Fortune, the Afro-American Agitator: A Collection of Writings, 1880-1928* (Gainesville, FL, 2008), pp. 15-17 (p. 15). The significance of black agency in the 1880s was first suggested by Howard Rabinowitz in his *Race Relations in the Urban South, 1865-1890* (1978; reprinted Athens, GA, 1996). See, also, Cassanello, *To Render Invisible*.

[5] Civil Rights Cases, 109 U.S. 3 (1883). For more on the 1875 Act see, for example, John Hope Franklin, 'The Enforcement of the Civil Rights Act of 1875,' *Prologue* 6 (1974), pp. 225-35, reprinted in John Hope Franklin, *Race and History: Selected Essays, 1938-1988* (Baton Rouge, LA, 1989), 116-131 and William Gillette, *Retreat from Reconstruction, 1869-1879* (Baton Rouge, LA, 1979), chapter 11.

[6] Civil Rights Cases, 109 U.S. 3 (1883).

[7] Civil Rights Cases, 109 U.S. 3 (1883), at p. 28 (first two quotations) and p. 37 (third quotation)

[8] *Proceedings of the Civil Rights Mass-Meeting held at Lincoln Hall, October 22, 1883* (Washington, D.C., 1883), reprinted in Philip S. Foner (ed.), *Life and Writings of Frederick Douglass*, Vol. 4 (New York, 1954), p. 393.

[9] *Cleveland Gazette*, 20 October, 1883

[10] *Southwestern Christian Advocate*, 8 November, 1883

[11] *Huntsville Gazette*, 17 November 1883

[12] Coverage of these debates can be found in Sarah Woolfolk Wiggins, *The Scalawag in Alabama Politics, 1865-1881* (Tuscaloosa, AL, 1977) and Michael W. Fitzgerald, *Urban Emancipation: Popular Politics in Reconstruction Mobile, 1860-1890* (Baton Rouge, LA, 2002).

[13] New Orleans *Weekly Louisianian*, 30 July 1881

[14] Susan Zaeske, *Signatures of Citizenship: Petitioning, Antislavery, and Women's Political Identity* (Chapel Hill, NC, 2003), p. 3

[15] *Huntsville Gazette*, November 17, 1883; 'Complaint – J.H. Welch, et al. against the accommodations furnished the colored people by R.R.'s in Alabama,' forwarded by the Alabama Railroad Commission [hereinafter ARC] to all railroad company superintendents, 16 November 1883, ARC, Letterbook E (1883-84), p. 536, Alabama Department of History and Archives, Montgomery. The petition was reprinted in U.S. Congress, Senate Committee on Education and Labor, *Report of the Committee of the Senate upon the Relations between Labor and Capital and Testimony Taken by the Committee*, 48th Cong., 2d sess., S. Rept. 1262, 4 (Washington, 1885), pp. 457-58. For African Americans push for separate *and* equal facilities to be upheld during the 1880s, see Rabinowitz, *Race Relations*, epilogue.

[16] Biographical information on the petitioners can be found in Senate Committee on Education and Labor, *Report,* at p. 372 (for Welch); p. 458 (for Bush, including quotation); p. 396 (for Thomason) and p. 380 (for Scott). For Pettiford, see: William J. Simmons, *Men of Mark: Eminent, Progressive and Rising* (1887; reprinted New York, 1968), pp. 460-65.

[17] The new rules were issued by the ARC in a letter to all railroad company superintendents, 14 December 1883, ARC, Letterbook E (1883-84), pp. 601-602, Alabama Railroad Commission, Alabama Department of History and Archives, Montgomery, Alabama; *Huntsville Gazette*, December 22, 1883; Booker T. Washington, 'A Speech before the National Educational Association', 16 July 1884, in Louis Harlan et al (eds.) *The Booker T. Washington Papers* [hereinafter as *BTW Papers*], Vol. 2 (Urbana, IL, 1972), pp. 255-262, at p. 259.

[18] Allen Johnson Going, *Bourbon Democracy in Alabama, 1874-1890* (1951; reprinted Tuscaloosa: AL, 1992), 51; Washington to the Editor, *Montgomery Advertiser*, April 24, 1885, reprinted in *BTW Papers*, Vol. 2, pp. 270-274, at pp. 271, 273, and 270

[19] *Montgomery Herald*, 25 September 1886

[20] Senate Committee on Education and Labor, *Report*, Vol. 4, pp. 456-57. In 1887, for example, African Americans in Marion County, Alabama, presented a petition to Governor Thomas Seay calling on him to veto a bill regarding the removal of a black college out of the county. Petitioners to Governor Seay, 22 February 1887, Governor Thomas Seay Administration, Correspondence Files, Alabama State Department of Archives and History, Montgomery, Alabama. For more on the removal of the Marion college, see Louis R. Harlan, *Booker T. Washington: The Making of a Black Leader, 1856-1901* (New York, 1972), pp. 166-67.

[21] George W. Cable, 'The Freedman's Case in Equity', *Century* (January 1885), in Arlin Turner (ed.), *The Negro Question: A Selection of Writings on Civil Rights in the South* (New York, 1958), pp. 56-82; Henry W. Grady, 'In Plain Black and White: A Reply to Mr. Cable', *Century* (April 1885), in LaWanda Cox and John H. Cox (eds.),

Reconstruction, the Negro, and the New South (Columbia, SC, 1973), pp. 151-56; Cable, 'The Silent South', *Century* (September 1885), in Turner, pp. 85-131. For a good overview of the Cable-Grady debate as part of a broader Conservative/Liberal debate, see *Joel Williamson, The Crucible of Race: Black-White Relations in the American South since Emancipation* (New York, 1984), pp. 79-110.

[22] Cable, 'Silent South,' in Turner, p. 113.

[23] Selma *Southern Independent*, reprinted in the *Cleveland Gazette*, 9 October 1886.

[24] Alfreda M. Duster (ed.), *Crusade for Justice: The Autobiography of Ida B. Wells* (Chicago, 1970), pp. 18-20, at p. 20.

[25] My thoughts on the Wells case have been influenced by the many excellent biographies of Wells, especially Mia Bay's *To Tell The Truth Freely: The Life of Ida B. Wells* (New York, 2009). For the centrality of gender to these railroad cases, see: Barbara Y. Welke, 'When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914', *Law and History Review*, 13/2 (1995), pp. 261-316.

[26] Cable, 'Freedman's Case,' in Turner, pp. 74-75

[27] Ibid., p. 72.

[28] Cable, 'Silent South,' in Turner, p. 88.

[29] Henry W. Grady, 'In Plain Black and White: A Reply to Mr. Cable,' *Century Magazine*, 29 (April 1885), pp. 909-917; reprinted in LaWanda Cox and John H. Cox (eds.), *Reconstruction, the Negro, and the New South* (Columbia, SC, 1973), pp. 151-6, at pp. 164 and 158.

[30] Mansfield Edward Bryant, 'How shall we get our rights?', *The Christian Recorder*, 19 January 1888, extract in Philip S. Foner (ed.), *The Voice of Black America: Major*

Speeches by Negroes in the United States, 1797-1971 (New York, 1972), pp. 510-514, at pp. 512 (first quotation) and 513 (second quotation). Despite an extensive search, I have been unable to find the original complete article. For details of Bryant's political activity in the mid-1880s, see, for example: *The Southern Independent*, reprinted in the *Montgomery Herald* [Africa-American newspaper], 16 October 1886. For an example of Bryant's opinion pieces in the religious press, see, for example, *The Christian Recorder*, 6 November 1884. Bryant would eventually be run out of the state for allegedly writing an editorial that advocated for African Americans to rise up against whites. For the newspaper controversy surrounding this, see the *Tuscaloosa Times*, 21 August 1889; *Tuscaloosa Gazette*, 22 and 29 August 1889; and for his arrest, see the *Southwestern Christian Advocate*, 19 September 1889. This controversy also reached an international audience through the pages of W. Laird Clowes work, *Black America: A Study of the Ex-Slave and His Late Master* (Cassell, London, 1891). For an obituary of Bryant, see

[31] Allen W. Jones, 'The Black Press in the "New South": Jesse C. Duke's Struggle for Justice and Equality', *Journal of Negro History*, 64/3 (1979), pp. 215-228, at pp. 219-220. Fortune quoted in Shawn Leigh Alexander, *An Army of Lions: The Civil Rights Struggle Before the NAACP* (Philadelphia, PA, 2012), p. 27

[32] *The Southern Independent*, 8 May 1886; W.E.B. Du Bois, 'An Open Letter to the Southern People (1887)', in Herbert Aptheker (ed.), *Against Racism: Unpublished Essays, Papers, Addresses, 1887-1961*, by W.E.B. Du Bois (Amherst, MA, 1985), pp. 1-4, at p. 4.

[33] Louisville, New Orleans and Texas Railway Company v. Mississippi, 133 U.S. (1890)

[34] *Fifteenth Annual Report of the Railroad Commissioner of the State of Virginia* (Richmond, 1891), viii; Virginia Legislature, *House Journal*, pp. 22-23; *Washington Bee*, 13 February 1892

[35] H119, *Acts of the General Assembly of Alabama passed at the Session of 1890-91* (Montgomery, 1891), pp. 412-13, at p. 412.

[36] *Huntsville Gazette*, 10 January 10 1891; Sheldon Hackney, *Populism to Progressivism in Alabama* (Princeton, NJ, 1969), p. 45; *Huntsville Gazette*, 8 August 1891

[37] For more on the efforts of African Americans in the North to pass civil rights legislation, see Alexander, *An Army of Lions*, pp. 30-34, 38-39. For general discussion on civil rights activity in the North, see Chapter 2 of this book. For more on the local context in the 1880s, see Stephen R. Robinson, 'Rethinking Black Urban Politics in the 1880s: The Case of William Gaston in Post-Reconstruction Alabama', *Alabama Review*, 66 (January 2013), pp. 3-29.

[38] Interest was shown from leaders in Selma and Montgomery, Alabama. *New York Age*, 30 November 1889. For African American boycotting at the turn of the twentieth century, see Kelley, *Right to Ride*; the best account of voting rights activism at the turn of the twentieth century, see R. Volney Riser, *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890-1908* (Baton Rouge, LA, 2010).

[39] For more on Washington's private civil rights activism, which revolved around the funding of legal cases against civil and voting rights infringements, see Riser, *Defying Disfranchisement*.