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THE FAILURE OF FREEDOM: CLASS, GENDER, AND THE EVOLUTION OF SEPARATED TRANSIT LAW IN THE NINETEENTH-CENTURY SOUTH

PATRICIA HAGLER MINTER*

On August 27, 1881, the Reverend W. H. Gray, a black Baptist minister travelling to Cincinnati from his home in Lexington, Kentucky, purchased roundtrip first-class tickets over the Cincinnati Southern Railway. His wife Silena and their small child accompanied him. Their trip to Cincinnati proved uneventful; on their return, however, the brakeman stopped Mrs. Gray as she and her child attempted to board the first-class coach containing ladies and their gentlemen escorts. Instead, he directed her toward the forward car containing only men, most of whom were smoking. Her husband appealed to the conductor to let his wife and child into the ladies’ car, to no avail, and when pressed for the reason, the conductor cited her race. While her husband returned home in the smoking car, Mrs. Gray refused to travel under such circumstances, and upon returning to Cincinnati, filed suit in federal court against the railroad. The suit, Gray v. Cincinnati Southern Railroad Co., charged that the plaintiff was unlawfully and forcibly prevented from entering the first-class coach “solely because she was a woman of color,” and as a result was “greatly hindered and delayed in her trip, and deprived of her lawful rights as a citizen” to accommodations substantially equal to those offered other female passengers of her status. A Cincinnati jury agreed, awarding her one thousand dollars in damages.

The “strange career of Jim Crow,” as historian C. Vann Woodward first called the peculiar history of segregation, raises questions that have been the center of debate for years among scholars. While

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3. 11 F. at 687.
historians have long agreed that Jim Crow ruled the South by 1900, they have yet to reach consensus on the reason for its eventual triumph. Woodward argued in his classic work, *The Strange Career of Jim Crow*, as well as in *Origins of the New South*, that *de jure* or legalized segregation had roots firmly planted in the 1890s, with the major thrust for codification coming from upper- and middle-class Democrats to appease lower-class whites. Revisionists, led first by Joel Williamson and later Howard N. Rabinowitz, contend that *de facto*, or customary, segregation was widespread in the South from the time of emancipation and never lost strength. These two sides generally dominated the debate on the origins of Jim Crow.


6. Legal historians have added a third dimension to the debate—the body of case law—yet they have fallen short in integrating the judge-made evolution of “separate but equal” into the social, economic, and political context of the region. *See Charles A. Lofgren, The Plessy Case: A Legal-Historical Interpretation* (1987) and Stephen J. Riegel, *The Persistent Career of Jim Crow: Lower Federal Courts and the Separate but Equal Doctrine, 1865-1896*, 28 AM. J. LEGAL Hist. 17 (1984). Even business historians have taken little notice of segregation on Southern railroads, leaving many questions about the costs of separate cars and company policies unanswered. *See Maury D. Klein, History of the Louisville and Nashville Rail-
The legal separation of the races, however, resulted not only from changes in statutory law, but also from the evolution of cases, railroad company rules, and the common law. An examination of several leading cases challenging railroad segregation further suggests that both class and gender played key roles in the evolution of the judge-made "separate but equal" doctrine in the 1880s.7

This Article examines the complex interactions of race, class, and gender in the New South and their impact on the evolution of segregated railroad transit in the South. By virtue of their class and gender, many black women successfully secured legal precedents that, for a short time, protected their sisters from the squalor of the Jim Crow car. The codification movement of the 1890s, however, effectively abrogated what I have termed "judicial paternalism"—the efforts of white male judges to protect middle-class black women from the indecencies of male riders of both races. Once states enacted separate coach statutes, the judiciary could no longer use class and gender as distinctions for seating patrons on Southern railroads. The elevation of the idea of race, and its use as the sole determinant for classifying passengers, relegated all blacks to segregated coaches, regardless of their gender or social status. A study of these cases also probes the larger question of why Southern lawmakers perceived the need to codify Jim Crow, despite the well-established "separate but equal" doctrine.8 This new body of statutory law, making racial caste instead of social class or gender the standard for public accommodations, truly represented the failure of freedom for African Americans little more than a generation removed from the shackles of slavery.

Not all plaintiffs fared so well in court as Silena Gray. In September 1881, Mrs. Belle Smoot purchased a first-class ticket at the depot in Paris, Kentucky, on the Kentucky Central Railroad for its regular passenger train south to Lexington.9 Despite her physical appearance, described by the *Louisville Bulletin* as "a well-educated, refined black

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7. Unless otherwise noted, these cases were all brought in federal courts under the Civil Rights Act of 1875, and after it was declared unconstitutional in the Civil Rights Cases, 109 U.S. 3 (1883), under the Fourteenth Amendment.
lady in every sense of the term . . . as fair in complexion as nine out of ten ladies of Anglo-Saxon origin," both the conductor and the brakeman refused to allow her to enter the ladies' coach. Instead, they ordered her into the racially mixed smoking car. When she demanded admission to the first-class accommodations for which she had paid, the conductor stopped the train between stations and put her off. The Bulletin, a black newspaper, called her treatment "a high-handed outrage," urged her husband to fight the case in court, and suggested all Kentuckians support their cause. Many of Lexington's black middle-class citizens heeded this call, holding a meeting on September 13 at the Lexington Court House to raise funds for Mrs. Smoot's suit against the railroad that refused her entry in the ladies' car.

With black public sentiment behind them, the Smoots sought remedy in federal court, suing for damages under the Civil Rights Act of 1875. In the absence of state laws spelling out the rights of black passengers, the success or failure of equalization suits in the 1880s frequently turned on the legal strategies employed by counsel for the aggrieved travellers. For example, Silena Gray's attorney wisely decided to sue on common law grounds instead of the Civil Rights Act. The issue at law in Gray, therefore, was not a civil or a social rights claim, but whether or not the plaintiff was afforded proper seating as dictated by the common law concept of reasonableness. However, the Smoot court held that the prohibitions of the Civil Rights Act applied only to state action, not to those of individuals such as the conductor or the policymakers of the Kentucky Central. Congress, therefore, had no authority to protect a black woman's right to a seat in the ladies' coach after the railroad forcibly ejected her.

The divergent results of Smoot and Gray show that by the late 1880s and 1890s, the judge-made doctrines of the common law could no longer address the tensions caused by interracial contact on trains.

11. Id.
12. LEXINGTON DAILY TRANSCRIPT, Sept. 13, 1881 (quoted in HAMBLETON TAPP & JAMES C. KLOTTER, KENTUCKY: DECADES OF DISCORD, 1865-1900, at 91 n.42 (1977)).
13. Smoot, 13 F. at 341. In addition to citing the state action doctrine articulated implicitly in the Slaughterhouse Cases, 83 U.S. (16 Wall.) 36 (1873) and explicitly in United States v. Cruikshank, 92 U.S. 542 (1876), the opinion draws heavily upon the Charge to the Grand Jury by Judge Halmer H. Emmons who believed the 1875 Civil Rights Act to be unconstitutional because Congress had no power under the Fourteenth Amendment to protect the right to "full and equal enjoyment of accommodations" against violation by individuals in a private capacity. Smoot, 13 F. at 344.
14. See Gray, 11 F. at 685-86.
15. Id.
Antebellum judges, applying a balancing test concerning the "reasonableness" of each case, usually compelled black men to ride in racially mixed second-class smoking cars. Generally, antebellum courts held that the common law required carriers to provide black passengers only with a means of transit. The individual railroad companies determined the type of accommodation provided and, in practice, this almost always meant that blacks occupied separate facilities from white passengers. The leading antebellum case, *Day v. Owen*, used the doctrine of "reasonableness" in 1858 to uphold the legality of steamboat regulations excluding blacks from riding in the boat's cabin and forcing them onto the deck.

Black women, however, benefitted from judicial paternalism and usually rode in a separate ladies' coach, protected from the offensive smoke and whiskey that proliferated in the male-dominated second-class car. The flexible seating practices afforded by the concept of reasonableness, reflecting the white majority's persistent concern with caste relations, permitted black servants (most often female nurses) travelling with their masters to ride in the traditionally all-white first-class coaches. The 1861 company rulebook for the Memphis and Ohio Railroad gave conductors no instructions on how to seat male passengers, but explains at length how to make "ladies," presumably white and free black women, more comfortable during their journey. The rules, however, emphatically state that "conductors are positively forbidden to carry slaves without passes" signed by their owner and countersigned by the station agent giving them permission to travel. This policy dictated similar restrictions for free blacks, requiring a pass signed by "some respectable white person known to the Station Agent." On the eve of the Civil War, Southern railroad officials, like many others in the region, clearly exhibited more concern that a slave would use their line to flee to freedom than they were about any black passenger, slave or free, occupying a seat near a white customer.


18. 5 Mich. 520 (1858).

19. *Id.* at 526-27.

20. See *Memphis and Ohio Railroad Company, Rules and Regulations of the Memphis and Ohio Railroad Company, Effective February 25, 1861* (1861) (available in Louisville and Nashville Railroad Collection, University Archives and Records Center, University of Louisville, Louisville, Kentucky).

21. *Id.* (emphasis added).

22. *Id.*
The antebellum common law of carriers and the authority of companies to make distinctions on account of race drew its power from judge-made law. As such, it was subject to legislative change at any given time. The revolutionary emancipation of slaves in 1865, as the Thirteenth Amendment suddenly changed thousands of blacks from chattel to freedmen, had forced the transformation of the law of carriers in regard to passenger accommodations. Once blacks became citizens after ratification of the Fourteenth Amendment and its equal protection clause, the judge-made law of common carriers began to move from mere racial separation to the concept of "separate but equal." Class and gender, however, continued to influence both railroad company policy and opinions from the bench, reflecting the persistence of paternalism in Southern race relations. During Reconstruction, railroad conductors usually grouped black men into separate first-class coaches if they paid the higher fare, while black females rode in the ladies' coach, mirroring the gender-based seating arrangements available for white travellers. The "separate but equal" doctrine continued to evolve in a series of decisions between 1867 and 1880: *Westchester and Philadelphia Railroad Co. v. Miles* (1867), *Chicago and North Western Railroad Co. v. Williams* (1870), *Hall v. DeCuir* (1878), *United States v. Dodge* (1877), and *Green v. City of Bridgeton* (1879).

Litigation by black female plaintiffs suggests that the 1880s were characterized by divergences in racial custom that varied not only across the region but within the institutions themselves. Silena Gray's experience on the Cincinnati Southern was probably typical—she sat
in the first class ladies' coach without incident on her trip from Kentucky to Ohio, but encountered hostility from railroad employees and, ultimately, exclusion on her return. Stories told by other black travellers from the period describe similar inconsistencies in racial etiquette. Mary Church Terrell, one of the most prominent African-American women of the late-nineteenth and early-twentieth centuries, described a crazy-quilt of railroad seating policies in her autobiography. Travelling home to Memphis from Oberlin College when she was "about sixteen" (probably 1879 or 1880), Terrell had to change trains in Bowling Green, Kentucky, and asked the railroad porter which car she should take to Memphis. Neither Tennessee nor Kentucky had enacted Jim Crow car laws at that point, and according to Terrell, blacks who purchased first-class tickets could get first-class accommodations if they insisted on their rights. As soon as I had entered the one to which he directed me," she wrote, "I observed that it was different from any coach I had ever seen . . . Instantly I knew this was the Jim Crow coach which I had never seen but about which I had heard."

According to her description, the car was partitioned into two parts—the front used as a smoker for white men and the rear serving as a coach for black passengers of both sexes. The angry young woman tried to move to the forward first-class coach for which she had purchased a ticket, but the conductor sternly told her and several other unhappy black passengers that "this is first class enough for you." As night fell and the passengers reached their destinations, however, Terrell found herself alone in the Jim Crow section "at the mercy of the conductor or any man who entered." "As young as I was," she recalled, "I had heard about awful tragedies which had overtaken colored girls who had been obliged to travel alone on these cars.

28. Critics of the Woodward thesis have accused him of treating the 1880s as a "golden age" of race relations. While this is a misreading, the evidence presented in this paper, particularly for Tennessee, suggests that the race relations were far less fluid than Woodward believes. In Strange Career, he describes a train ride that T. McCants Stewart, a black attorney, took down the South Atlantic seaboard. Stewart remained in a racially mixed first-class coach for the entire journey without incident, even when white passengers filled the aisles due to crowding. Strange Career, supra note 4, at 38. Howard Rabinowitz has suggested that Stewart's exceptionally light skin tone may explain the comfort of his trip. More than the Woodward Thesis, supra note 5, at 846-47. An alternate explanation attributes his ease to railroad company policy committed to equal accommodations for all first-class passengers, or more likely, the absence of aggressively racist employees on that particular line.

30. Id. at 298.
31. Id. at 296.
32. Id.
33. Id.
at night," dangers that had originally led railroads to introduce a separate ladies' coach. Frightened, she once again begged the conductor to allow her to move to a ladies' coach, only to be angrily rebuffed. In desperation, she told the conductor that she would get off at the next stop to wire her father about her plight, assuring the conductor that her father would sue the railroad for making his daughter ride alone all night in a Jim Crow car. Fortunately, her tactics proved successful, and the conductor ushered Terrell to the ladies' car. She spent the remainder of the trip exhausted and on the verge of tears, but in the first-class coach.

By the mid-1880s, black women increasingly found themselves relegated to the squalor of the smoking car, or, in rare instances, a Jim Crow first-class car. In an interview with a black newspaper editor in North Carolina, noted black leader and activist Bishop Henry McNeal Turner described two incidents reflecting the fluctuation of seating practices across class and gender lines throughout the region. When asked about the treatment blacks received in the South in the wake of the Civil Rights Cases, Turner noticed no material changes with the exception of railroad and steamboat travel. "It matters not how well dressed we are or how intelligent and refined," he argued. "I know colored ladies who have been treated in the most brutal manner by brakemen for refusing to ride in smoking cars, while white female passengers are treated like queens," regardless of their appearance or social status. Turner described a trip with his wife from Cleveland, Tennessee, to Atlanta. On her way from Washington, D.C., Mrs. Turner rode in the ladies' coach. Once in Cleveland with her husband, however, they were both ordered by the brakeman into the forward smoking car. When Turner protested that tobacco smoke would imperil his wife's delicate health, she was allowed to remain in the first-class coach (the only other passengers were two well-dressed white males), but he rode in the smoker to avert further trouble.

34. Id. at 297.
35. Id.
36. Id. at 298.
37. NORTH CAROLINA REPUBLICAN, May 22, 1884, at 2 (located in Weldon, N.C.). Turner recounted another incident in Tennessee involving the Louisville and Nashville Railroad. After she was refused admission to "any of the first-class cars," Mrs. Sarah Lewis remained on the platform while the train was in motion rather than sit in the smoker. While attempting to pull her into a car, the conductor struck her in the face. According to Turner, she entered suit against the railroad, but I have been unable to find a record of the case.

In addition to Turner's observations, a survey of equalization suits brought in state and federal courts during the 1880s suggests that both the class and gender of a black passenger figured prominently in the selective enforcement of Jim Crow on railroads. In the 1880 federal case of Brown v. Memphis and C. R. Co., Miss Jane Brown was removed from the first-class coach and forced to ride in the racially mixed smoker. In her pleadings, Brown argued that not only was she entitled to ride in the ladies' car by the common law doctrine of reasonableness, but she also claimed that the Memphis and Charleston had a regulation excluding blacks from the better coach. The opinion does not clarify why Brown believed the railroad had such a policy, and the company denied its existence. Instead, the conductor justified excluding her from the first-class car and seating her in the smoker on the grounds that "she was not a respectable person," either a prostitute or a member of a lower class. Despite the negative charges concerning her moral character, the court record indicated that Miss Brown had conducted herself "with propriety." From this evidence, the court determined that the plaintiff's exclusion was based not on her color, but upon her questionable reputation. This, the court held, was not an adequate basis for exclusion from first-class accommodations. Brown recovered $3,000 in damages from the railroad company.

The Brown case demonstrated the confused nature of Southern paternalism and class relations in the 1880s. Exclusions defended on the basis of class or character instead of race would meet with great difficulty in the courts. The adoption of the "separate but equal" standard for accommodations allowed white paternalists to retain their concern for class status without fear of advocating social equality. Many paternalistic judges, while not openly advocating separate-but-equal facilities for blacks, accepted this arrangement as a solution for what they believed to be the popular antipathies of lower-class whites. Instructing a white jury in a civil rights case, a federal district judge in Tennessee found that "those who are sensitive as to contact with colored people, and whose nerves are most shocked by their presence, have little to be proud of in the way of birth, lineage, or achievement." While his opinion upheld the assignment of black men to

38. 5 F. 449 (C.C.W.D. Tenn. 1880).
39. Id. at 503. The case, however, did not provide an effective precedent for the "separate but equal" doctrine because the decision addressed the legality of exclusion based upon social standing, not skin color.
facilities separate from white passengers, the judge insisted that those of “genteel appearance, good repute, and good behavior” who had paid first-class fare could not be assigned to “inferior quarters in a smoking car.” The rule of law would protect the “better” class of blacks from the crude prejudices of lower-class whites while shielding the “better” whites from the perceivedcrudeness of most blacks.

In the absence of statutes mandating segregation, the idea of such laws did hold some appeal for those Southerners concerned about the issues of racial caste and economic class. The contact between the lower-class whites riding in the “smokers” and blacks who, frequently, enjoyed a higher class status than their white fellow-travellers, led many poor whites to agitate for Jim Crow laws that would prevent such uncomfortable racial confrontations. One black middle-class observer bemoaned the demise of the close interracial contact that had existed during slavery, asking “Now that we are free, why give us worse treatment?” This writer recognized, however, that some whites thought it would be a mistake to “treat a decent Negro right” for fear “others would want to be treated the same way.” To these whites, he argued that “all we want is the treatment we merit”—that refined, well-educated citizens would be accorded the accommodations they could afford which would then distinguish them from servile members of both races.

For those whites who supported segregation, this was exactly the point.

The increased class tensions cut both ways—one black minister advised “decent” blacks to accept first-class Jim Crow accommodations since “I would prefer a seat . . . with those by whom I could be

The idea that poor whites were the group most concerned with the increased social and political presence of the growing black middle-class is at the heart of the “Woodward Thesis.” Both in ORIGINS OF THE NEW SOUTH and STRANGE CAREER, C. Vann Woodward places poor white Southerners squarely in the middle of racial tensions in the New South. He argues that segregation laws, and later disenfranchisement provisions, were gifts given to the white yeomen by their more affluent counterparts who controlled the state legislatures. See generally ORIGINS, supra note 4; STRANGE CAREER, supra note 4.

While I do not doubt that the elite white men of the Southern bench sincerely believed that poor whites “who have little to be proud of” were the group who most resented the presence of well-dressed black travellers, my work on segregation law shows that they were not the only white Southerners who harbored these antipathies. Furthermore, poor whites did not assume leadership in the movement to enact Jim Crow laws. Instead, a new generation of middle-class white politicians created the specter of “Negro Supremacy” and used it with great effectiveness to regain dominance in Southern legislatures in the 1890s. Jim Crow, then, may have had the support of lower-class white Southerners but it was a distinctly middle-class creation, not a movement from the bottom up. See Minter, supra note 8, at chs. 3-5 and conclusion.

41. Murphy, 23 F. at 640. See also CARTWRIGHT, supra note 5, at 167-68.
42. CARTWRIGHT, supra note 5, at 187 (quoting NASHVILLE AM., Oct. 6, 1881).
cordially entertained.\textsuperscript{43} He deeply resented being "crowded upon by base and reckless beings" in the racially mixed smoker, his erudition ignored in favor of his skin color.\textsuperscript{44} In 1881, one year after \textit{Brown}, the Tennessee legislature passed the first law mandating separate-but-equal railroad cars for first-class passengers, the initial codification of Jim Crow in the South. The law was in large part a reaction to \textit{Brown} and other cases in which variations in company seating policies on common carriers made clear the need for one definitive rule. In fact, the legislature viewed this law as a step forward for race relations in the state. By requiring railroads to supply first-class accommodations for blacks, legislators hoped to prevent situations like those described by Brown and the black minister.\textsuperscript{45}

The Supreme Court’s 1883 decision in the \textit{Civil Rights Cases}\textsuperscript{46} further complicated the matter of separate coaches and the issue of equality. In this decision, the Court struck down the 1875 Civil Rights Act as unconstitutional. Writing for the majority, Justice Joseph Bradley held that the Fourteenth Amendment prohibited only state abridgement of individual rights.\textsuperscript{47} The 1875 Act, because it reached into the realm of public accommodations such as railroad cars, restaurants, and inns, was an impermissible attempt to regulate the private conduct of individuals in the area of racial discrimination.\textsuperscript{48} Bradley argued that to interpret the Thirteenth and Fourteenth Amendments otherwise would be to make blacks “the special favorite of the laws.”\textsuperscript{49} The Court had now created a firmer legal base for Tennessee’s pioneering separate coach statute.

The racial climate in the state during the 1880s, however, would be characterized more by the fluidity of race relations rather than by the hardening of the color line. The idea that black middle- and upper-class women would be forced to endure these indignities weighed heavily not only upon black men, but also on the paternalistic white judges of the state and federal benches. Furthermore, the continued

\textsuperscript{43} Riegel, \textit{supra} note 6, at 26. See generally \textit{RACE RELATIONS supra} note 5, for a description of black relegation to smoking cars.
\textsuperscript{44} Riegel, \textit{supra} note 6, at 26.
\textsuperscript{45} An \textit{Act to prevent discriminations by railroad companies among passengers who are charged and paying first class passage, and fixing penalty for the violation same}, ch. 155, 1881 Tenn. Pub. Acts 211. For a detailed discussion of the framing and context of the region’s first Jim Crow railroad law, see Minter, \textit{supra} note 8, ch. 3.
\textsuperscript{46} 109 U.S. 3 (1883).
\textsuperscript{47} \textit{Id.} at 11.
\textsuperscript{48} \textit{Id.} at 18-19.
\textsuperscript{49} \textit{Id.} at 25. The case is also discussed in \textit{OXFORD COMPANION TO THE SUPREME COURT} 149 (Kermit L. Hall ed., 1992).
use of a ladies' coach as the primary form of first-class railroad accommodation facilitated equalization suits filed by female plaintiffs instead of their male counterparts. Accordingly, the majority of successful lawsuits during this period involved middle-class black women whose reputations were above reproach.

The 1883 case of Wells v. Chesapeake, Ohio, and Southwestern R.R. Co. is illustrative. Miss Ida B. Wells, a young Memphis schoolteacher who later gained national prominence as a journalist and militant crusader against lynching, purchased a first-class ticket from Memphis to Woodstock, Tennessee, and took a seat in the ladies' coach. The conductor then asked her to move to the forward car, occupied by members of both races. When she refused, the conductor attempted to force her from her seat, "a mistake he quickly realized when he felt a vice-like bite on the back of his hand."50 The conductor, enlisting the aid of two other white males, dragged the petite young woman out of the car.51

Two contemporary accounts of the incident emphasize the importance of class issues to Wells. In her autobiography, Wells expressed disgust at the thought of riding in a car "filled with colored people and those who were smoking," since the better class of whites sat elsewhere.52 A later retelling in a black newspaper gave an angry description of her ejection by "three rough white men."53 When Shelby County Circuit Court Judge James O. Pierce, finding that the smoking car did not constitute equal accommodations to the first-class ladies coach, awarded Wells five hundred dollars in damages, the Memphis Daily Appeal ran the headline, "A Darky Damsel Obtains a Verdict for Damages . . . What It Cost to Put a Colored School Teacher in a Smok-

51. Cartwright, supra note 5, at 189-91; see also Crusade for Justice: The Autobiography of Ida B. Wells 18-20 (Alfreda Duster ed., 1970) [hereinafter Crusade]. By Wells's account, there were no Jim Crow cars as such in 1884, but there were sporadic efforts throughout the region to draw the color line on railroads. Id. at 18.
52. Crusade, supra note 51, at 18-19.
53. Indianapolis Freeman, July 20, 1889, at 4. The use of the phrase "three rough white men" in the 1889 retelling shows the way stories reflect the views of those who tell them: nowhere in the case files does anyone, including Wells, testify that the three men who removed her were "roughs" or even of a lower social class. Given the beliefs that middle-class blacks such as the editor of the Freeman held about class solidarity between the black and white "better classes," it is not surprising that they would make such an assumption about the men who mistreated Wells. This mistaken trust in their white counterparts represents one of the greatest tragedies in the saga of the codification of Jim Crow. This theme is explored in depth in Minter, supra note 8. See also Janette Thomas Greenwood, Bittersweet Legacy: The Black and White Better Classes in Charlotte, North Carolina (1994) for a detailed analysis of class formation and the disillusionment of Charlotte's black "better" class.
ing Car.” While condescending in tone, the Daily Appeal expressed dismay at the violent treatment an educated young woman received at the hands of white men.\(^{54}\)

Wells’s attorneys, two of whom were white, further addressed the class issue in their appellate brief. Accepting the principle of racial separation as mandated by state law, but insisting on equality of accommodation, they urged the court not to pander to popular prejudices. If a Negro had to be a servant or nurse in order to obtain first-class accommodations, blacks faced the ludicrous prospect of finding that their privileges increased as they sank lower on the social scale.\(^{55}\)

Two witnesses in Wells also raised the issue of servitude in their depositions. Virginius and Allene Kimbrough, a white couple traveling on the ladies’ car to Memphis, occupied seats adjacent to Wells at the time of her ejection. The Kimbroughs testified that when they boarded the train they noticed Wells sitting next to Mrs. Wendell, a white woman they recognized. When asked if he objected at first to sharing the ladies’ coach with “a colored woman,” Mr. Kimbrough replied that he did not because he “thought she was Mrs. Wendell’s nurse until the controversy arose about the seat.” Once they realized that Wells was not in the service of a white passenger, however, Mrs. Kimbrough recalled telling her to “get away . . . I was not in the habit of sitting on the seat with negroes.”\(^{56}\)

In April 1887, the Tennessee Supreme Court handed down its decision in Wells, and the opinion clearly showed that judicial paternalism on gender issues had its limits. The state’s highest court reversed the lower court’s decision, finding in favor of the railroad and requiring Wells to pay court costs.\(^{57}\) Believing that Wells’s goal was integration instead of equalization, Chief Justice Peter Turney concluded that “the purpose of the defendant in error was to harass with a view to this suit, and that her persistence was not in good faith to obtain a comfortable seat for the short ride.”\(^{58}\) Turney’s language in the opin-

\(^{54}\) Memphis Daily Appeal, Dec. 25, 1884, at 4.
\(^{55}\) Brief for Plaintiff, Chesapeake, Ohio & Southwestern R.R. Co. v. Wells, 85 Tenn. 613 (1887) (located in Supreme Court Case Files, Tennessee State Library, Nashville, Tennessee).
\(^{56}\) Statements of Virginius and Allene Kimbrough, Wells, 85 Tenn. 613, at 50-52. (located in Wells case files).
\(^{57}\) See generally Wells, 85 Tenn. 613.
\(^{58}\) Wells, 85 Tenn. at 615. In 1881, Tennessee enacted the South’s first separate coach law, and in the initial Wells decision, the court found that the railroad had not met its obligation under the law to provide equal accommodations for black women. On appeal, Wells questioned the constitutionality of an 1875 state law abrogating the common law of public accommodations, a statute designed to circumvent the 1875 Civil Rights Act. See An Act to define the rights,
ion also suggests his displeasure with Wells’s aggressive, even un-ladylike, conduct in pursuing the case. Despite this reversal, Wells’s persistence in pursuing the case established an important precedent—no other black plaintiff had appealed a separate coach case to a Southern state supreme court since the U.S. Supreme Court invalidated the Civil Rights Act in 1883. What Wells made abundantly clear, however, was that the separate-but-equal standard was by no means a guarantor of legal redress for black plaintiffs.

By the mid-1880s, as Tennessee’s Jim Crow law (the region’s only separate coach statute until 1887) remained unevenly enforced and the U.S. Supreme Court’s invalidation of the 1875 Civil Rights Act removed the spectre of federal intervention on social rights, class tensions continued to fester between the growing black middle class and the poor whites with whom they shared the smoking cars. An editorial in 1885 charged that black railroad patrons were usually “shoved into filthy smoking cars, where decent colored women and their children are strangled by tobacco smoke and insulted by white loafers.”

The 1885 case of Logwood v. Memphis and C. R. emphasizes the importance that members of both the black community and the elite white men of the federal bench placed on protecting middle- and upper-class women from those persons of questionable character. Their judicial paternalism, drawing its power from the common law standard of reasonableness, found expression in the affirmation of the “separate but equal” doctrine. Logwood also indicates that during the 1880s many blacks were more concerned with sitting in comfortable first-class accommodations and avoiding second-class passengers of both races than they were with sitting with whites.

The plaintiff was a “proper black woman” who chose to get off the train rather than sit in the racially mixed car where “swearing and smoking and whiskey drinking” proliferated. Taking Mrs. Log-
wood's race, gender, and economic position into consideration, a federal judge decreed that if "a car with special privileges of seclusion and other comforts" existed for white ladies, the same rights must be established for proper black ladies to shield them from the crudeness of the lower classes of both races. In his charge to the jury, the judge outlined the basic assumptions of the separate but equal doctrine—that "races and nationalities, under some circumstances, to be determined on the facts of the case, may be reasonably separated; but in all cases the carrier must furnish substantially the same accommodations to all, by providing equal comforts, privileges, and pleasures to every class."64 Lower federal court rulings in other public accommodations cases showed a uniformity of principle summed up by a phrase from Logwood: "Equal accommodations do not mean identical accommodations."65

The cases discussed here show that class struggles further exacerbated the strains created by racialist ideology, and these two forces frequently collided on passenger cars travelling through the New South. Many rural lower-class whites experienced close contact with prosperous urban blacks for the first time on racially mixed smoking cars. Their anger and discomfort over their economic plight translated into the language of white supremacy in the late 1880s and 1890s. Even old-line Bourbon Democrats, formerly the paternalistic patrons of freedmen and women, were growing uncomfortable with the struggle by upwardly mobile blacks to achieve power in Southern society. This sentiment echoed throughout the New South. One South Carolina state senator supported the separate coach law to protect whites not from "good old farm hands and respectable Negroes" but from "that insolent class of Negroes who desired to force themselves into first class coaches."67

63. Id. at 319.
64. Id.
65. Id.

66. The term "racialist" is used here instead of "racist." In her insightful essay, "Ideology and Race in American History," Barbara J. Fields argues persuasively that race should be, like class, treated as an ideology of varying importance across space and time. See Barbara J. Fields, Ideology and Race in American History, in Race, Region, and Reconstruction: Essays in Honor of C. Vann Woodward (J. Morgan Kousser & James M. McPherson eds., 1982).


The term "Bourbon" in Southern history was usually used as an epithet, referring to conservative Democrats who eschewed the changes the New South disciples pushed. The name refers to the royal House of Bourbon in post-revolutionary France who refused to recognize the changes that the Revolution had wrought. See Ayers, supra, note 4; Origins, supra note 4.
Conversely, members of the emerging black middle class felt degraded and confused by the refusal of white society, particularly those with whom they equated themselves, to recognize the station they had worked hard to attain. One black minister referred to Kentucky’s 1891 Jim Crow bill as “the worst species of class legislation which he did not believe the better class of white people would sanction.”

A plea from the editor of the *New Orleans Crusader* concerning the Louisiana separate coach bill indicates how many Southerners, both black and white, conflated segregation with class and gender status. Not only would the members themselves be relegated to the Jim Crow car, the editor warned, but their families would become social outcasts and their daughters would be doomed to prostitution. Although this writer’s fear of debauchery would prove unfounded, his gravest fears about separate coach laws would soon be realized.

The codification movement of the 1890s both in Tennessee and in other Southern states effectively nullified judicial paternalism as statutes replaced common law balancing tests. This relegated all black passengers to segregated coaches regardless of their gender or social status. The ladies’ car continued to be the preferred seating area for white females; however, the railroad accommodations available for black “ladies” continued to vary across the South. First-hand accounts from Virginia in the early 1890s indicate that black women rode in the ladies’ coach without incident, an observation consistent with the relatively late passage of the state’s separate coach law.

By contrast, in 1889 an anonymous black resident of Birmingham, Alabama, described seeing conductors and brakemen assisting white ladies onto a train, while black female passengers had to scramble up by “the best way they could, and were driven into the smoking car afterwards.” According to the same writer, a black man travelling on a through ticket from Cincinnati was welcome to ride in the ladies’ coach until he reached the Alabama state line. He would then be told “by the ruffian of a brakeman” to go to the “cullud car, and a cullud

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68. *The History of the Anti-Separate Coach Movement of Kentucky* (S.E. Smith ed., 1895) (located in Special Collections, Kentucky State University Library, Frankfort, Kentucky). Smith’s book provides a detailed first-hand account of black middle class outrage over the Jim Crow law he describes as an “uncalled for, unjust, and prejudiced piece of class legislation.”

69. *Indianapolis Freeman*, May 31, 1890, at 6 (reprint from *New Orleans Crusader* editorial).

70. *Wynes, supra* note 4, at 73. Virginia enacted its Jim Crow law in 1900, the last former Confederate state to do so.
car it is, for every complexion, nationality, and odor greets the eyes, nose, and ear.”

By 1896, all but three states of the former Confederacy had enacted separate coach laws, and the United States Supreme Court’s affirmation of the “separate but equal” doctrine in *Plessy v. Ferguson* effectively removed any judicial impediment to their enforcement. By the turn of the century, Jim Crow was firmly entrenched in every Southern state. Because many of these statutes mandated stiff penalties for non-compliant railroads, companies tightened their enforcement policies throughout the region. The company rulebook issued to conductors on the Louisville & Nashville railroad shows that by 1909 no black woman, regardless of fare paid, could ride in a separate ladies’ coach; instead, the L&N authorized only one passenger car per train for use by “all colored passengers.” The ladies’ car, however, still remained available for white women.

The advent of the Jim Crow era then, signified the failure of freedom for African-Americans. It marked the beginning of oppression based on race and color—on racial caste instead of social class or gender. With all vestiges of protection they had possessed stripped away by the codification of Jim Crow, the black middle-class women of the New South would suffer more acutely than ever from the hardening of the color line.

71. *Indianapolis Freeman*, Sept. 28, 1889. Alabama did not enact a separate coach law until 1891.

72. The remaining three, South Carolina, North Carolina, and Virginia, enacted Jim Crow laws in 1898, 1899, and 1900, respectively.

73. Louisville and Nashville Railroad Company, *Rules for the Government of the Operating Department* 156 (1909) (located in Rare Books, Alderman Library, University of Virginia). The Southern Railway System Rulebook of 1899 does not contain a separate coach regulation, nor does the Chesapeake & Ohio rulebooks of 1899 and 1907. The Alabama & West Point Railroad Company and The Western Railway of Alabama are the only other railroads to include a Jim Crow regulation for conductors to follow.