

## **"To Maintain Our Self-Respect": The Jacksonville Challenge to Segregated Street Cars and the Meaning of Equality, 1900-1906**

*By Shira Levine*

“Jim Crow Law is Unconstitutional” declared an Associated Press headline on June 30 th 1905.<sup>1</sup> The Florida Supreme Court, explained the article, had struck down segregation on streetcars.<sup>2</sup> The Jacksonville community of color had challenged Jim Crow legislation through a boycott and litigation; the decision in *Florida v. Patterson* overturned the law.<sup>3</sup> Yet segregation was not dead; the U.S. Supreme Court would not declare it unconstitutional for another half century.<sup>4</sup> Across the South, statutes mandating streetcar segregation would soon be followed by legislation that extended segregation to all spheres of life.<sup>5</sup> Nevertheless, the 1905 decision had national significance; the *New York Times* that day declared “ Florida ‘Jim Crow’ Law Void” and contained brief articles on the successful challenge to streetcar segregation in Jacksonville . The lawsuit had been brought by Andrew Patterson, a fifty-five year old African American minister, who had intentionally subjected himself to arrest in order to challenge the legality of segregated streetcars. The courts ruled in favor of Patterson, finding that the law violated the Fourteenth Amendment.

Ultimately *Patterson v. Florida* would not even end segregation on streetcars in Jacksonville . Within the year, city councils across Florida wrote their own local statutes mandating segregated cars. Patterson again had himself arrested in order to challenge the city ordinances; in neighboring Pensacola , L.B. Crooms was also jailed for violating the city's streetcar laws. Six months after *Florida v. Patterson* two new cases were brought before the Florida Supreme Court. Yet these cases, which were argued by the same lawyers, presided over by the same justices, and involved the original plaintiff, would come to a different ruling on the legality of segregated street cars. Whereas *Florida v. Patterson* (1905) voided the Jim Crow legislation, the decisions in *Patterson v Taylor*

(1906) and *Crooms v Schad* (1906) upheld the constitutionality of new segregation laws.<sup>6</sup> The 1906 cases would undo the celebrated 1905 decision.

The three cases have not been previously studied; nevertheless, legal challenges such as these are central to understanding the civil rights activism of the turn of the century. Eric Foner suggests that rights became less central to the African American community in the post-Reconstruction era. He argues that after Reconstruction, “blacks' conceptions of their “rights” turned inward” and they concentrated on surviving the injustice “rather than directly challenging the new status quo.”<sup>7</sup> However, all three legal challenges were— notwithstanding their failure to alter Jim Crow laws—an outward assertion of rights. Rationalized by the sense that African Americans would become ‘permanent wards’ of the state, the federal government in the last decades of the nineteenth century retreated from Reconstruction and gave the states permission to nullify the Reconstruction amendments and civil rights laws.<sup>8</sup> But the government's retreat was not always paralleled by a similar retreat among African Americans. Challenging streetcar segregation provided hope that non-racial citizenship still had meaning despite increasingly hostile laws and practices.

The 1905 decision of the Florida Supreme Court in *Florida v. Patterson* represented a victory for the cause of equal citizenship. While courts around the country were upholding segregation, the Florida segregation law was ruled unconstitutional; through newspapers, the reverberations of the exceptional decision were felt nationwide. The case had capitalized on political mobilization of the African American community in Jacksonville, lack of uniform support for the law from the white community, amenable judges, and the law's especially egregious wording. Nevertheless, success would be short-lived; in 1906, the same court affirmed segregation in *Patterson v. Taylor* and *Crooms v. Schad*. While the losses legitimated segregation, all three cases helped to develop a popular rhetoric of rights. Examining the interactions of individuals, the community, and the law around these cases reveals a continuing challenge to the new status quo. The cases' legacy surfaced both in later political actions of African Americans in Jacksonville and in other court cases that confronted inequality.

## **Ideology of Segregation: Rationalization and Resistance**

The legal backdrop to the Jacksonville civil-rights activism was the recent Supreme Court decision in *Plessy v Ferguson* (1896) that established the constitutionality of state mandated segregation on common carriers. The decision was justified on the grounds that “laws permitting and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other.” <sup>9</sup> Despite such assurances, defeating segregation on public carriers remained vitally important to many African Americans precisely because of implications of segregation. The writer and activist James Weldon Johnson, a Jacksonville native and childhood friend of the attorney in the Jacksonville streetcar cases, wrote in his autobiography that his first experience with Jim Crow transportation did not make him feel inferior but rather humiliated, and that all of his experiences with Jim Crow “stirred bitter resentment and even darker passions in my heart.” <sup>10</sup> Segregation was seen as an attempt to humiliate African Americans into their place; as George Washington Cable wrote in 1885, segregation denied African Americans the ability “to earn the indiscriminate and unchallenged civil--not social--rights of gentility by the simple act of being genteel.” <sup>11</sup>

Historian Barbara Fields quotes Du Bois' assertion that a black man “is a person who must ride ‘Jim Crow’ in Georgia ” to support her thesis that race is historically constructed and inherently implies inferiority.<sup>12</sup> During the Florida court challenges to segregated streetcars, two opposing interpretations of segregation would emerge. Rationalizing segregation, the court would eventually argue that that separation of the races was nothing more than reasonable regulation instituted for the common good.<sup>13</sup> Under this assumption, segregation conformed to the trend of increasing governmental regulation and mediation of corporate power during the progressive era.<sup>14</sup> The attorney Wetmore, in contrast, would argue that segregation statutes were class legislation intended to subjugate. <sup>15</sup> Without slavery to fix legal status, shared public space threatened the superiority of whites, especially when that space was occupied by well dressed, independent blacks traveling first class.<sup>16</sup> As an act of political power,

segregation created an ideology of racial inferiority by giving separation the weight of natural law.<sup>17</sup> These cases would thus try not only the constitutionality of segregation statutes, but also the meaning of those laws.

### **Boycotts Challenge Local Segregation: Jacksonville 1901-1905**

Jacksonville at the turn of the century embodied the contradictions of a modern southern city; at the same time, its African American residents were uniquely positioned to resist inequality. The city had been completely destroyed by Union forces during the Civil War . Following the war, the city became a center of tourism, citrus, and the timber industry in Florida . In 1900 it had a population of 28,000, 57 percent of whom were African American. It was also commonly regarded as a good place for African Americans. James Weldon Johnson wrote that “ Jacksonville is regarded by colored people all over the country as the most liberal town in the South.”<sup>18</sup> While most African Americans in Jacksonville were laborers, there were also a significant number of skilled workers, tradesman, and business men. <sup>19</sup>

Jacksonville 's changing administrative geography was important to the development of the streetcar cases. Part of the African American community in Jacksonville was centered in LaVilla, a neighboring municipality that had been independent from Jacksonville for the twenty years between 1867 and 1887. Lured by inexpensive housing and proximity to jobs, former slaves had moved to LaVilla after the Civil War. Black veterans of the Union army also settled there at the war's end. Although restricted to lower level urban occupations, African American in LaVilla organized black civic institutions and were a powerful force in the integrated local government; an African American mayor was elected in 1876. However, LaVilla was also beset with governmental corruption, unemployment, and crime. Jacksonville 's interest in expanding its tax base, combined with anxieties of LaVilla property owners, resulted in the town's annexation in 1887. The annexation severely reduced the participation of African Americans in local government.<sup>20</sup> Nevertheless, it also pushed African Americans into the majority in

Jacksonville where they retained a strong civic and political ethos . In this environment, prejudice and inequality were all the more glaring; opposition to streetcar segregation would galvanize African Americans at the turn of the century.

In 1901, a local ordinance for segregated transportation in Jacksonville was met with both sporadic violence and organized boycotts. The ordinance was passed amid “a storm of protest from the colored people, who held a mass meeting the next night and resolved to boycott the streetcar system as a means of showing their indignation.”<sup>21</sup> The boycott began as an attempt to force the mayor into vetoing the ordinance, and the threat of a boycott caused the railway company to oppose giving the conductors police power to determine race, an especially contested aspect of the ordinance.<sup>22</sup> Even before the ordinance was signed by the mayor, newspapers reported that violence broke out in an attempt to stop the operation of the streetcars: shots were fired through windows and conductors were threatened.<sup>23</sup>

However, most resistance was organized and peaceful; following the pattern of Jim Crow boycotts across the south, these boycotts were advocated by ministers and widely followed by church members, as evidenced by the organization of alternative transportation networks consisting of carriages and wagons.<sup>24</sup> While ministers proclaimed boycotts from the pulpit, the *Indianapolis Freeman* credited women with the streetcar company's decision not to enforce the law, writing that “[t]he backbone of the opposition originated with the women, who threatened a boycott of the men of the race if they dared to ride in the separate cars...Too much praise cannot be given these women.”<sup>25</sup>

Women's opposition may have resulted from the gendered roots of transportation segregation. Before Jim Crow, trains traditionally had a ladies' car and a male smoking car. When what had once been the ladies' car was legally defined as the white car, African American women were restricted to the former smoking car. Based on an ideology of protecting white womanhood, Jim Crow legislation denied African American women “the right to be recognized as ladies.”<sup>26</sup> The *Florida Times-Union* , Jacksonville 's daily newspaper, printed a cartoon entitled “Proved Herself a Lady.” It pictures two

stereotyped black women and the following dialogue: “An' what did you do to him when he tole you dat you wasn't no lady?” “I smashed him in de moof, dat's what I'd done.”<sup>27</sup> Denying equality rested on a denial of femininity; segregation would define not only race but gender and class as well. Regardless of whether opposition originated with ministers or with women, it is clear that resistance came from diverse factions of Jacksonville African Americans. Ultimately, local enforcement of the ordinance was lax, perhaps resulting from the strength of the boycotts.<sup>28</sup>

The streetcar companies were also opposed to the segregation.<sup>29</sup> While white company owners resented the regulation, the intersection of streetcar business and racial politics is most evident in the North Jacksonville Street Railway company, which prided itself on only having African American motormen and conductors. The company was founded by African American businessman in the wake of the 1901 boycott and bought out in 1905.<sup>30</sup> By 1903, the line had gained a mythical status; the *Eve Journal of New York* reported that “The Negroes of Jacksonville believe in self help” and had demonstrated this by putting their money together and building a street railway of their own in which “there is not a white man in the company” but which permitted whites to ride.<sup>31</sup> Regardless of the eventual takeover, the temporary existence of an African American-owned streetcar company bolstered the belief that segregation could not be foisted upon the community. It also reveals the existence of an affluent African American community that could directly challenge white dominance.

The boycotts are crucial to understanding the court cases for two reasons. First, they show that segregation was widely opposed by African Americans in Jacksonville . Despite the fact that the cases would be brought by a minister and a wealthy lawyer, the issues of rights and citizenship were central to the community as a whole. Second, the history of resistance also shows that the Jacksonville legal challenges were not isolated endeavors but rather had their roots in a history of political action.

### **The 1905 Elections: Disenfranchisement, Streetcars, Conflict and Contradiction**

The history of political action was not limited to resistance to segregation. Jacksonville's African Americans had been especially active in electoral politics, and full disenfranchisement came later to Jacksonville than to many other cities across the South. Between Reconstruction and the first years of the twentieth century, African Americans in Jacksonville held every political office except mayor.<sup>32</sup> Both disenfranchisement and the streetcar segregation ordinance were central issues in the June 1905 election. The electoral politics reveal that even while other forms of inequality became entrenched, segregated transportation was not a foregone conclusion in Jacksonville at the turn of the century.

The elections began with a white only primary to nominate the Democratic slate.<sup>33</sup> Against this background of disenfranchisement, the mayoral campaign would focus on the issue of segregated streetcars. The two challengers accused Mayor Nolan of failing to enforce the ordinance. His response reveals the complexity of the issue; instead of denying the accusation, he asserted that “it was not attempted to be rigidly enforced” because it was “vague, indefinite, incomplete, and impractical.”<sup>34</sup> Resistance to segregation on streetcars, it seems, came from both white and black segments of Jacksonville. The two challengers to Nolan, E.G. Blaire and W.G. Toomer, attempted to mobilize opposition around the issue. E.G. Blaire argued that the previous mayor had enforced the ordinance, that Nolan did not even try, that segregation benefited both races and that if Nolan thought the law was unconstitutional, he should have put it before the court.<sup>35</sup> While this debate was in progress the Florida legislature passed a law mandating segregation on streetcars throughout the state. W. G. Toomer argued that since Nolan had not enforced the city law, he would likely not enforce the state law either.<sup>36</sup> In 1905, it was still unclear whether segregated transportation would ever become firmly entrenched.

Mayor Nolan, who had defended his lax enforcement of the local ordinance, was elected to a second term of office. Reporting election results, the *Florida Times-Union* triumphantly announced that “All Democratic Candidates Won.” The white primary had succeeded; at the same time, mayoral candidates campaigning on a platform of segregation on streetcars had been defeated. Even with disenfranchisement, two African

American candidates were elected from the sixth ward to city council, which had no candidates for the Democratic primary and the lowest number of white voters.<sup>37</sup> In this ward six African American candidates competed and J. Douglas Wetmore, who would soon challenge the state's new law on streetcar segregation, was among the winners. Despite Wetmore's election, disenfranchisement dominated the contest. An African American candidate was disqualified when it was discovered that he was not eligible to vote. He had paid his poll taxes but the county supervisor ruled that he had paid too late and was therefore barred from voting or running for office.<sup>38</sup> Describing the incident as a “peculiar feature of the contest,” the *Florida Times-Union* wrote with the same dismissive attitude that it used for all its reports of racial discrimination.

The 1905 local elections reveal the complex base from which the *Patterson* challenge would be launched. While disenfranchisement was established through the white primary and disqualification of African American voters/candidates, at least eight African American candidates ran for city council and two were elected. On the one hand, during the campaign the Florida legislature passed a law mandating segregation; on the other hand, the man elected mayor had described the local segregation ordinance as unenforceable and even unconstitutional. Between 1901 and 1905, streetcar segregation had been successfully resisted. Looking around Jacksonville in 1905 before bringing the cases to court, Wetmore had cause for concern. Although he had just been elected to city council, he could not deny the reality of disenfranchisement and no doubt wondered whether this would be his last term in office. However, for Wetmore, Jim Crow could still be defeated. He took up the issue both because it was crucial to African Americans in Jacksonville and because victory seemed possible. As a man of color elected during disenfranchisement, Wetmore would fight a legal challenge to stop the creeping injustices. His choice of streetcar segregation was as pragmatic as it was ideological.

### **Challenges to State Mandated Segregation**

In May the conflict over streetcar segregation was elevated from local to state importance

with the passage of the “Avery streetcar law.” Named for the representative who had introduced it, it established the separation of “white passengers from Negro passengers by separate cars or fixed divisions, or movable screens or other method of division in the cars of such lines.”<sup>39</sup> During the legislative proceedings an amendment was added which exempted “colored nurses having the care of white children or sick white persons.”<sup>40</sup>

The exemption of colored nurses stemmed from the history of transportation segregation. During slavery, African American women had accompanied their mistresses onto the ladies' cars. When the ladies' car evolved into the white car, African American women would continue to ride them as nurses to white children.<sup>41</sup> The Florida law differed in its exemption of nurses from other state laws by specifically mentioning *colored* nurses. In comparison, the Louisiana separate car law validated in *Plessy* exempted all nurses caring for children of the opposite race. Hypothetically, the Louisiana statute would have permitted a white nurse caring for a black child to ride in the black car. While the actual effect of both the Florida and Louisiana law was the same because of social realities, the explicit use of race in the Florida law would prove critical to its future.

Like the city ordinance, the state law faced opposition from its inception. Immediately, the interdenominational ministers' meeting of Jacksonville and Duval County instituted a boycott. Historian Hendrik Hartog argues that groups learn to articulate personal and communal aspirations in the language of rights, to associate a denial of those rights with the badges of slavery, and to create a vision of citizenship and the constitution that takes precedence over transitory constitutional interpretations.<sup>42</sup> The minister's declaration reveals how ideas of rights and citizenship were used to oppose the degradation of segregation:

[We] do most unqualifiedly denounce said law as unjust, barbaric and promotive of caste distinctions; and we condemn the spirit which prompts this and all similar legislative measures as being contrary to the ‘golden rule,’ and opposed to the principles upon which the American Government is founded, and is calculated only to engender ill will and strife between the races... in order to retain our self-respect and to show our utter condemnation of the above-mentioned unjust and cowardly measure, and in order to

preserve the peace of the community and avoid possible clashes between our people and the streetcar conductors and motormen, we advise the members of our race not to ride on the streetcars.<sup>43</sup>

The overarching message of the resolution was that segregation on streetcars violated the core rights of citizenship. The spirit that they condemn was one which attempted to strip people of color of the dignity of citizenship. They called on transcendent principles of American Government to supplant cowardice and thereby elevate the importance of their claim. Their accusation that the law intended to engender strife was in direct opposition to the common assertion that segregation was a reasonable use of police powers because it promoted “public peace and good order.”<sup>44</sup>

The boycott faced resistance from segments of the community of color, as some of the middle class attempted to bribe black newspaper editors into mollifying the populace. However, the community reacted by holding public boycott tribunals to censor opposition.<sup>45</sup> The *Florida Times-Union* reported that the boycott “was one of the most complete in the history of this, or perhaps any other city in the South.”<sup>46</sup> Rights were popularly claimed through the boycotts, but the law was still in effect.

### **Andrew Patterson's Arrest**

On July 19, Andrew Patterson, a 50 year old minister, was arrested for riding in the white section on one of the black-operated streetcars.<sup>47</sup> This arrest marked the second attempt to create a legal challenge to segregated streetcars in Jacksonville ; the first had been thrown out when it was decided that the streetcar company was not enforcing the law to begin with. The *Florida Times-Union* reported the arrest as “a comedy of errors”: on these cars, the white section was in the back, and Patterson was jeered by fellow passengers for going against what seemed to some to be a good situation; the angry African American conductor, endowed with police powers, delivered the belligerent passenger directly to the justice of the peace; the whole incident was instigated by attorney J. Douglas Wetmore.<sup>48</sup> Wetmore was central to the case throughout; but despite

the newspaper's pejorative description, the legal challenge was not the isolated fancy of one troublemaking politician. The case had wide support; attempting to show that the streetcars were not behind the challenge, Wetmore proclaimed that “[t]he case has been instigated by the colored people of Jacksonville , through the colored pastors of Jacksonville , who are furnishing money to fight the case.”<sup>49</sup> The pastors, who had advocated the boycott in their congregations, were now supporting the case, and its progression would be carefully watched by the community.

### **The Habeas Corpus Petition: Establishing the Argument**

Patterson refused to post bail and was locked in the common jail of Duval County . The next day Wetmore filed a writ of Habeas Corpus which stated that the law, and therefore the imprisonment, was “null and void.” The law, Wetmore wrote, was unconstitutional for seven reasons, including that it violated the Fourteenth Amendment by denying equal protection and due process, afforded colored nurses rights and immunities denied to other colored people, abridged rights and privileges of citizens, and gave to white citizens privileges and immunities not granted to colored citizens.<sup>50</sup> The colored people of Jacksonville , reported the *Florida Times-Union* , expected to pursue the case to the U.S. Supreme Court; Wetmore explained that “we are going to make a fight for principle and we are going to take the case to the highest tribunal in the land.”<sup>51</sup> He planned to challenge both the *Plessy* ruling and segregation nationwide. Just as in the minister's proclamation of a boycott, principle was central to Wetmore's framing of the case; the case was never merely about one particular law in one particular place.

Across the south, court cases were brought challenging the constitutionality of Jim Crow segregation; the *Patterson* case is only one of many examples of how the courts were being used to claim rights and citizenship.<sup>52</sup> However, no case had overturned a Jim Crow law, and County Solicitor W. J. Bryan, a Democrat and future U.S. senator, used this fact to oppose the legal challenge.<sup>53</sup> He told the *Florida Times-Union* that the law will stand because there were decisions in the U.S. Supreme Court and in every court in

the South “to bear out the claim that the Avery law is constitutional.”<sup>54</sup> Representing the state of Florida in court, Bryan would argue that the Avery law was valid.

### **The Case Goes to Court**

Judge R.M. Call would hear the case. James Weldon Johnson had met Call a few years earlier when he applied to be the first African American admitted to the bar in Florida . He later wrote that the one fact reassuring him was that he was “to be examined before Judge R.M. Call, a very fair man.” He then described Call by writing that “I myself have yet to know a Southern white man who is liberal in his attitude toward the Negro and on the race question and is not a man of moral worth. Judge Call, in the estimation of the colored people of Jacksonville , was a ‘good man,’ and he was a good man.”<sup>55</sup> Wetmore and Patterson had every reason to be optimistic.

After hearing the opposing arguments, Judge Call declared the act unconstitutional class legislation and discharged Patterson from custody.<sup>56</sup> He also granted an appeal; the case would be heard by the Florida Supreme Court in three days.<sup>57</sup> Hearing the decision, African Americans rushed from the court room, boarded streetcars and sat in the front; signs designating white and colored seating were removed by the company; cases accusing the streetcar companies of ignoring the law were postponed; ministers spread the word that the boycott was over.<sup>58</sup> Judge Call's ruling was profoundly validating. The case came to court shortly after a local election in which, through the implementation of a white only primary, more Jacksonville African Americans had been disenfranchised than any time since the Civil War. Writing in 1910 on a similar challenge to Jim Crow laws in transportation, the editor of the *Richmond Planet* commented that “[n]ext to the disenfranchisement laws, the “Jim Crow” laws of the South are of vital importance to the negro.”<sup>59</sup> With large numbers of African Americans barred from the polls, the court was one of the few places where they could assert their rights; the victory suggested that those rights still meant something. Labeling the law “class legislation,” Call also affirmed Wetmore's assertion of the law's intent.

## Before the Florida Supreme Court

The arguments made before the Florida supreme court reveal the case's relevance to national issues. In their brief for the Florida Supreme court, County Solicitor W.J. Bryan and state Attorney General William Ellis cited *Plessy* among host of other cases to show that statutes for the separation of races were upheld in the Supreme Court and all State Courts. They asserted that “[n]o citizen has a civil right to sit in any particular place in a car. No discrimination.” By framing Wetmore's argument as the right to a particular seat, they separate it from the transcendent rhetoric on which he based the case. Ultimately, the case would hinge on the law's exemption of nurses and that section's effect on the rest of the act. Bryan and Ellis attempted to use realities of racial relations to legitimate the law's explicitness. They boldly stated that “though negro nurses are mentioned this in reality applies to all nurses because [there is] no such thing as white nurses of negro children in this State.”<sup>60</sup> Bryan and Ellis implied that the law's wording is immaterial because in practice the Florida laws are no different from laws across the South which exempted all nurses caring for children of the opposite race. However, no doubt aware that most states wrote segregation and disenfranchisement into their laws in seemingly race-neutral ways, Bryan and Ellis also argued that the amendment on nurses could be removed from the otherwise valid law, if the section was deemed unconstitutional.

Asserting that “[t]he principle of equality pervades the entire constitution” Wetmore, joined by his law partner Purcell, wrote that the section on nurses is “class legislation of the most vicious nature.” To win, he had to convince the court that the segregation on streetcars meant more than just separation. In order to distinguish the case from *Plessy*, he highlighted the explicitness of race in the Florida law. Whereas the 1890 Louisiana separate car act stated that “nothing in this act shall be construed as applying to nurses attending children of the other race,” the 1905 Florida law specifically exempted colored nurses.<sup>61</sup> Although he wrote that “[i]n one case there is no discrimination, while in our statute the discrimination is apparent,” the substantive objection to the nurse section in both *Plessy* and *Patterson* was actually the same. The debate over nurses exposes the

ideological motivation behind both *Plessy* and *Patterson*. In his brief for Homer Plessy, attorney Albion Tourgee wrote that the exemption of nurses revealed that the true evil lay in the “relation the colored person sustains to the white” and not in the color of the skin.<sup>62</sup> Wetmore argued that the exemption of nurses “tends to encourage the servant class of colored people and discourage the more progressive and intelligent class.”<sup>63</sup> This assertion echoes Tourgee's accusation that the law requires subservience and not just segregation.<sup>64</sup> Not only did segregation strip African Americans of non-racial citizenship, it enforced the stigma of slavery.

In both cases, the section on nurses was not the fundamental object of opposition. Rather, the exemption was argued to reveal the laws' intent to degrade. While his brief acknowledges that legally a segment of the law can be voided without striking the law itself, Wetmore argued that the section on nurses in this law invalidated the law entirely and could not merely be excised from it. His legal argument is that law would not have passed without the amendment on nurses because white mothers would not have agreed to be separated from their children when traveling. Both Bryan and Wetmore's brief put two questions in front of the court; the first was whether the section on nurses was unconstitutional and the second was whether that section invalidated the entire act.

### **Avery Law is Overturned**

In his decision, Chief Justice Taylor wrote that the court was entirely clear that the section of nurses violated the fourteenth amendment by abridging the privileges and immunities of citizens. He then lists all the groups who were unduly discriminated against, including the “african mistress” and the “african invalid” who cannot be cared for by a “caucasian nurse,” and the “caucasian” nurse who, unlike the “african” nurse, is not given space in both compartments. The strong language directly confronts Bryan and Ellis' argument that the law is acceptable because in practice no white nurses were caring for black children. Through the examples of white nurses caring for blacks, the court showed the class undertones of the entire law. Wetmore had asserted that “[a]ll class

legislation is void” and the court had agreed with his definition of the law as class legislation.<sup>65</sup> Accepting Wetmore's arguments, Taylor 's decision diverged from those of his colleagues in other states as well as from established interpretations of the fourteenth amendment. Since *Slaughter House* (1878), privileges and immunities had been interpreted as applying only to those rights that are specific to national U.S. citizenship and not to those rights that accompany state citizenship.<sup>66</sup> Taylor asserted that the section on nurses yielded the entire act “unconstitutional and void” because, as Wetmore had argued, its removal would cause effects not intended by the legislature.

The *Florida Times-Union* announced on July 30, 1905 that the Avery Law was “killed” by Supreme Court.”<sup>67</sup>Legal challenges to segregation, it seemed, could still overturn state laws. William Ellis, the future Florida Supreme Court Justice, and W.J. Bryan, the future U.S. Democratic senator, had been defeated by attorney J Douglas Wetmore and Minister Andrew Patterson.

### **1906 Cases: Segregation Re-Established**

However, the seeds of new segregation laws were already planted; city council members had declared their intent to pass a new streetcar ordinance that complied with the constitution.<sup>68</sup>The following fall, both Jacksonville and neighboring Pensacola city councils mandated separate accommodations for white and colored passengers.<sup>69</sup> While the Jacksonville ordinance had no mention of nurses, the Pensacola city ordinance exempted “nurses attending children or invalids of the other race.”<sup>70</sup>

Two cases would challenge the new segregation ordinances. In December Andrew Patterson again intentionally had himself arrested for riding in the white section of a streetcar. This time, the writ for habeas corpus, also filed by Wetmore and Purcell, asserted that the ordinance's implementation denied Patterson equal protection by compelling him to sit in the rear. In Pensacola , L.B. Crooms was also arrested for violating the ordinance. In his writ, Wetmore and Purcell argued both that the ordinance's

section on nurses was illegal class legislation and that the seating requirement violated equal protection.

With the same unwavering clarity that he had used to strike down the “Avery streetcar law,” Justice Taylor dismissed both challenges to the city ordinances. He justified segregation by saying that “the natural tendency of bringing large numbers of them promiscuously together... is to create between the races antagonism and discord.”<sup>71</sup> With this statement, he conformed to the predominant rationalization of segregation. In response to the argument that African Americans were forced to sit in the back of the cars, he ruled that no passenger has a *right* to any particular seat in the car. Like Bryan and Ellis' argument the previous summer in *Florida v Patterson* , Taylor trivialized the right being defended as a right to a certain seat in order to mask the law's true implications. Upholding the exemption of nurses, he argued that it is reasonable to allow children and invalids their needed care and cited *Plessy* to support its legality. In this decision, there is no mention of the summer's *Patterson (1)* opinion. It is almost as if Judge Taylor had never ruled against segregation.

How can the split between the June victory and the January loss be reconciled? In the June case, Taylor invalidated the entire segregation act because of its section on colored nurses. His opinion made no mention of *Plessy* and rejected the possibility of striking only the section on nurses. In the January cases he definitively upheld segregation and his decision echoed the language of other courts. These two cases present opposite interpretations of segregation's meaning. Do the 1906 cases reveal a shift from Taylor 's earlier attitude on streetcar segregation? Justice Taylor's biography suggests that he defies labeling. Taylor had volunteered in the Confederate army and was also described as “[o]ne of the most faithful workers in the Democratic ranks.”<sup>72</sup> At the same time, he resisted some of the reactionary laws being instituted during the first years of the twentieth century. He opposed the clamor for faster and harsher criminal proceedings that were clearly racially biased. Jefferson Browne, a fellow Supreme Court justice, wrote of Taylor that “[h]e has not heeded the popular demand for more convictions, but has stood firm for constitutional rights of life and liberty...[w]here hate and fanaticism have run riot...he has stood unmoved and unshaken.”<sup>73</sup>

What can account for the difference between the 1905 and 1906 decisions? In light of Taylor 's complexity, it is unclear whether he opposed the substance of segregation in the Avery Streetcar law, or just its explicit wording. It is possible that he objected to the term “colored nurses” but not to segregation in general. However, in *Patterson (1)* , he struck down the entire law because of the section on nurses. If he had only objected to the racial explicitness, it seems that he would have just ruled the section unconstitutional while upholding the rest of the act. At the same time, his decisions in 1906 essentially maintained the law without the section on nurses. However, the stark contrast between the two decisions leaves open the possibility that Taylor did oppose segregation. If this is the case, he either decided that he was powerless to halt segregation or was pressured to uphold it. Between the view that he opposed segregation but wouldn't stop it and the view that he merely opposed the explicit use of race is the possibility that his objection to the Avery Streetcar Law but not the city ordinances stemmed from his traditionalism; in this light, his decisions reflect a conservatism that condoned segregation if it was framed acceptably.

After Taylor 's decision, official support for segregation became more entrenched. Wetmore and Purcell appealed Taylor 's ruling on the Jacksonville case to the U.S. Supreme Court, but the case was dismissed and Taylor 's decision was upheld.<sup>74</sup> In 1907, the Florida legislature wrote a streetcar segregation law that mandated “separate but equal” accommodations and exempted all nurses.<sup>75</sup> The law employed language that had been accepted by courts nationwide and it would stay on the books. Ironically, the 1919 general statutes of Florida cite *Patterson v. Taylor* and *Crooms v. Shad* , the 1906 losses, to show that a passenger has no right to any particular seat and that an exception of nurses is reasonable classification.<sup>76</sup> Court cases in other states would also cite the 1906 losses in order to affirm the legality of Jim Crow.<sup>77</sup> The failed cases were used to legitimate segregation. Patterson and Wetmore tried to overturn segregation on streetcars; in the end, their cases were used to support the very Jim Crow laws they opposed.

### **J. Douglas Wetmore: Rights at any Price**

After losing the cases, J. Douglas Wetmore moved to New York and eventually chose to live as white. This could be seen as the ultimate capitulation to the status quo; unable to change a hopeless situation, he changed himself. However, the arc of Wetmore's life reveals the complexity of his decisions. By bringing far-reaching legal arguments to the issue of streetcar segregation, he elevated the issue and legitimated the already active community struggle. But Wetmore's interest in the law was not limited to Jacksonville ; Wetmore attended the University of Michigan law school for one year in 1897. Several years later, he wrote to Booker T. Washington that students and faculty at Michigan had believed him to be white and that he had not corrected them.<sup>78</sup> In 1905, after his victory in the Florida Supreme Court, he communicated with Booker T. Washington regarding the possibility of instigating a test case to challenge all-white juries. Washington responded that Alabama or some other state “where some colored man charged with crime, might serve as a test case for not putting of colored people on the juries...a white lawyer could be hired to lead the way if necessary.”<sup>79</sup>

Wetmore was born in 1870 in Florida to two ‘mulatto’ parents. His personality and political outspokenness caused him to fall out of favor with Washington . Describing him as “pestiferous,” Washington writes that Wetmore embarrassed President Theodore Roosevelt during his visit to Jacksonville in 1905. Roosevelt 's visit coincided with the conflict over segregated streetcars. Anticipating his visit, the *Florida Times-Union* wrote that “[t]he President would hardly say anything to offend the white people of the South, who are giving him such a warm and cordial reception, even in discussing the race problem.”<sup>80</sup> While he was there, Roosevelt advised whites to breed more prolifically and blacks to develop morality and avoid placing too much hope on entering the professions.<sup>81</sup> Washington did not specify how Wetmore embarrassed Roosevelt, but it seems that Washington attempted to down play Wetmore's political critiques of the President.

Against Washington 's wishes, Wetmore also criticized Roosevelt's actions in the Brownsville incident. Residents of Brownsville Texas had framed members of the African-American 25 th infantry stationed nearby, saying that they had shot up the town and returned to their base. Roosevelt authorized dishonorable discharges for all the 167

members of the infantry, causing them to lose both their pensions and their dignity. Wetmore publicly condemned Roosevelt's decision at the "Brownsville Protest."<sup>82</sup>

Wetmore's rocky relationship with Washington would undermine his later engagement with rights and politics. By 1909, Wetmore had left Jacksonville and was living in New York City where Washington actively blocked Wetmore's political aspirations. Part of the animosity no doubt relates to Wetmore's alliance with W.E.B. DuBois, but Washington also commented on Wetmore's opportunism, writing that he "plays on every side of every question."<sup>83</sup> In contrast, Wetmore cited substantive differences as the source of their alienation; he wrote to Washington that he regretted that "differences of opinion as to public affairs had so far estranged us."<sup>84</sup>

Opposing Wetmore's candidacy for a political position in 1912, Washington wrote: "[w]e are trying to defeat Manning on the ground that no white man should control the Negro bureau. Why then take a Negro who passes for white?"<sup>85</sup> While this comment rings of political mud-slinging, the accusation may hold up. The 1930 New York census lists the fifty-nine year old Wetmore as white, living with his thirty-year old white wife and two young children, and still working as a lawyer.<sup>86</sup>

Wetmore's biography sheds light on the cases he litigated when he was thirty-five. After the loss in 1906, he in no way abandoned politics. In fact, he may have become more outspoken. However, Wetmore left Jacksonville, and when his political aspirations were stymied, he chose to live as white. A deep rights consciousness motivated him to fight streetcar segregation and law gave him the language and forum to do so. Later, when injustice seemed insurmountable, whiteness insulated him from the stings of inequality. His decision to live as white can be seen as an extension of his insistence on rights. Unable to attain full citizenship through one mode, he chose another. Wetmore had the possibility of geographic and social mobility that many others did not. The streetcar cases represented both success and failure for a man who would go to great lengths to ensure his own rights, even when he was unable to advocate for the rights of others.

## **The legacy of loss: *Patterson* and *Plessy* and the community's use of law**

For those who remained in Jacksonville, the rights consciousness central to Wetmore's mobilization of the streetcar cases would be challenged by institutionalized discrimination. By legitimating the status quo, the courts had shown that equal citizenship was fictitious. Because the cases were used to validate future Jim Crow laws, it could even be argued that African Americans in Florida would have been better off if the cases had never come to court.<sup>87</sup> Legal challenges can force a court to acknowledge that a law violates equality, but what happens when the court decides that equality is less central to the constitution than Wetmore had asserted? When the Florida Supreme Court disregarded constitutionally mandated equality, it validated not only Jim Crow laws, but a narrowly defined citizenship as well.

African Americans in Jacksonville had lost the case and now had to live with segregated streetcars and all that they implied. Nevertheless, this would not be the community's last experience with either political action or with failure of civil-rights mobilization. For those who remained in Jacksonville, the challenge to streetcar segregation was one piece of an ongoing, and often unsuccessful, movement for rights. Paul Ortiz writes that the Jacksonville boycotts formed part of the popular political resistance that culminated in a widespread campaign for voter registration in Florida in 1919 and 1920. For him, this ongoing resistance challenges the notion that African Americans at the turn of the century backed away from direct political confrontation. Like the streetcar challenges, the 1920 voter registration campaign was also a loss. Rampant Klan violence combined with political manipulation to prevent votes from being cast. In reaction, the NAACP asked Congress to reduce the representation of Southern states with such disenfranchisement; Congress rejected the arguments, extra-judicial violence increased in Florida, and the organizers of the campaign returned defeated.<sup>88</sup> Failure, when so much was at stake, was profoundly demoralizing. Nevertheless, in both the streetcar cases and the voter registration campaign, examining political actions from the perspective of their outcome alone hides the significance of ongoing organizing. Trans-racial citizenship remained salient for the Jacksonville community of color. While the courts and legislature would repeatedly reject assertions of rights, the political action forced the nation to continually

confront the moral costs of Jim Crow and the true intent of segregation.

Although white supremacy gained the legal force of law, there developed strategies to, in the words of one Howard graduate, “bend the law to the needs of blacks.”<sup>89</sup> Court cases are central to the development of a community's popular language of rights and alternative legal interpretations. Conceived as cases that would overturn *Plessy*, the three streetcar challenges joined *Plessy* in the ranks of failed litigation. However, the substantive similarities of the cases reveal how their significance transcends court opinions. Both *Plessy* and the streetcar challenges resulted from a test case in which the future plaintiff rode in the white section of a car; each was funded and mobilized by a well-organized and politically active community of color. The arguments put forward by Wetmore echo those found in Tourgee's brief for *Plessy*. Ultimately, the cases formed a part of an ongoing legal struggle for equal citizenship. The losses developed strategies and rhetoric that remained viable.

The continued importance of such cases, despite a loss in court, can be seen in the attitudes of the *Plessy* organizers. As the case wore on, the *Plessy* organizers became increasingly aware that their chances for victory were slim. However, it is precisely the continued vision of a non-racial citizenship that spurred the *Plessy* case; the case was intentionally fit into the historical struggle for racial equality. Although the fight at times seemed unwinnable, Tourgee believed that “(t)he colored man and those white men who believe in liberty and justice--who do not think Christ's teachings a sham--must join hands and hearts and win with brain and patience and wisdom and courage.”<sup>90</sup> The case could not be pursued against such odds without a vision that went beyond the immediate issue of the Separate Car Act and Jim Crow legislation; Tourgee had such a far reaching vision.

Writing in 1911, Rodolphe Desdunes, one of the *Plessy* organizers, described the reasons that some, after the *Plessy* case, chose not to continue and but then proclaimed his belief in the importance of a continued struggle: “We think that it is more noble and dignified to fight, no matter what, than to show a passive attitude of resignation.”<sup>91</sup> Even after the loss and the creation of more Jim Crow laws, Desdunes upheld the value of the case as a

message to history. As a narrative of opposition, *Plessy* became part of how people understand the law and their relationship of struggle with the law. The losing litigation allows a community to create its own perception of the law which “exists in tension with the state's law.”<sup>92</sup> In *Plessy* and the streetcar challenges, this alternative legal interpretation asserted both the importance of transcendent constitutional principles and the degrading intent of segregation. By praising Harlan's dissent in the case, the African American Washington Ministers' Union used *Plessy* to construct an alternative legal interpretation. In response to the case they wrote that Harlan brought: “the justice of man into the fullest accord with that everlasting justice which springs from the throne of God.”<sup>93</sup> They used the dissent as a legitimizing tool to further their cause.

The streetcar segregation cases validate the argument that *Plessy* developed and maintained an opposing legal interpretation. Without cases such as *Plessy*, there might not have been anti-Jim Crow boycotts, and Wetmore might never have gone before Judge Call. Wetmore hoped to win, but even as losses, the cases challenged the status quo. McCann argues that law not only confronts injustices, but also helps movements build agendas and identify their aims.<sup>94</sup> The Jacksonville boycott movement was engaged with the law; through the court cases, the boycotts were framed within a unified, legal discourse. Instead of focusing exclusively on success or failure, McCann emphasizes the need to analyze long term effects of legal struggle on movement constituents and relations with dominant groups. Although the cases do not result in the end of streetcar segregation, they do develop rights in ways that can be seized upon in future trials.

The 1906 losses of *Patterson v. Taylor and Crooms v. Schad* would be used to legitimate other segregation laws and would be cited in other court cases that upheld Jim Crow. However, their citation also reveals a continued challenge to segregation. In Tennessee, following an established pattern, Mary Morrison had herself arrested on the white section of a streetcar to challenge that state's new Jim Crow law. Her case came before the Tennessee Supreme Court two months after the Florida Supreme Court had re-affirmed segregation. Unsurprisingly, the Tennessee Supreme Court ruled against Morrison. The decision quotes heavily from both the *Patterson v. Taylor* and *Crooms v. Schad* opinions to undermine the fourteenth amendment arguments made by Morrison's lawyers.<sup>95</sup>

Clearly, the courts were unreceptive. However, by quoting other examples of failed litigation, the opinions hint both at segregation's true intent and the continued importance of rights-based arguments. Such opinions simultaneously embody the impotence and salience of those rights. Arguments would be brought to court even if those courts refused to listen.

Because the idea of rights remained popularly available, previously unsuccessful strategies would be re-attempted. In 1926, with the aid of the NAACP, Blanche Brookins was awarded \$2,750 after being arrested for riding in the white car of a train leaving Jacksonville on an interstate route. Also arrested for riding in the white section of a train, Berta Mae won her court case against the city of Jacksonville in 1946.<sup>96</sup> These cases, which seem to not have progressed beyond the lower courts, show how legal arguments against segregation which were developed in the 1905 and 1906 cases continued to be accessed and used in Jacksonville . The original streetcar segregation cases fortified opposition to segregation by labeling it as legally illegitimate.

### **Legal Language for a Wider Audience**

Barbara Welke, who studies Jim Crow-era transportation litigation, writes that “(t)he constitutional narrative of the law of race has obscured the fact that in the years between 1890 and ....the beginning of the 1940s, African Americans kept up relentless pressure on carriers.”<sup>97</sup> Rights were being continually placed in front of the court. Most of these cases did not follow the *Plessy / Patterson* test case model, but encounters with the law during that era challenged its unjust nature even if that was not their original intent. In 1900, Winnie Smith filed a suit for \$10,000 claiming that she was discriminated against because of her color and that her right to equal accommodations was violated when a group of white men entered the Negro car.<sup>98</sup> In defending her right to be left alone, she sought to protect her respectability.

The May 1900 *Augusta Chronicle* tells of Mr. Dicks who was arrested for refusing to sit

in the front, Negro section of the streetcar. Testifying before the court, he explained the reason for his refusal: “(w)hen I got off work yesterday afternoon I was feeling tough and looking tough... I saw some ladies I knew up ahead and did not want to sit next to them looking as I was.”<sup>99</sup> Dirty and in his work clothes, Dicks either did not want to make the women uncomfortable or did not want to embarrass himself. When the women disembarked, he was willing to move up front, but by then the conductor had already decided to arrest him. Daily interactions such as those of Winnie Smith and Mr. Dicks embodied these conflicts of class, race, and gender. When those interactions resulted in trials, the central conflicts and contradictions were put on the stand. Rights-based arguments were necessary for all who were confronted with the everyday conflicts of a segregated society.

## **Conclusion**

While Florida legislators would later rewrite segregation laws, the news on July 30<sup>th</sup> 1905 that Jim Crow had been defeated would only reinforce Wetmore's assertion that “[t]he principle of equality pervades the entire constitution.”<sup>100</sup> Nationally, the memory of the case would permanently bolster the arguments of those harmed by segregation. People like Winnie Smith and Mr. Dicks could point to the case to show that segregation was not only a personal affront, but was also contrary to American ideals. Donald Nieman argues that African American s' insistence in an ‘equalitarian constitution’ eventually caused a fundamental shift in the constitution from a document concerned with property rights and federal relations to “a charter that guaranteed equality.”<sup>101</sup>

While Nieman may be overestimating modern-day interpretations of the constitution, it is true that legal challenges build layers of changed understanding. Part of this is from the tangible records that cases produce. Litigation creates written archives that can speak to the future.<sup>102</sup> Just as Wetmore's arguments echo Tourgee, his own briefs remained a source of rhetoric and ideology. The clerk who composed the transcript copied Wetmore's arguments into the official court documents. Even Justice Taylor's opinions

that decided against Wetmore summarized some of his points. This material record would be important not only to everyday encounters with the law, but also to the strategic, ongoing litigation for rights and equality.

Such court records gain importance when the streetcar cases are examined within the frame of major legal challenges. The streetcar cases form part of the bridge between *Plessy* and *Brown*; while *Brown* repudiates the decision in *Plessy*, the rights-based legal tradition that formed the two cases continued during the sixty years between them. Mark Tushnet discusses how the NAACP's legal strategies against segregated education culminated in *Brown* without linking the *Plessy* challenge to those strategies.<sup>103</sup> While he describes *Plessy* for the sake of background, he begins his history of the road to *Brown* with the rise of the NAACP in 1909 and its development of litigation strategies.

The eleven years between *Plessy* and the rise of the NAACP are largely missing from his history and the history of litigation in general. Cases against segregated transportation, such as those argued in Florida, form the one of the crucial links between *Plessy* and *Brown*. Before the Florida Supreme Court, Wetmore argued that the segregation laws were “class legislation of the most vicious nature.”<sup>104</sup> Although his class conception of Jim Crow conflicted with the court's in the 1906 losses, the degradation implied by segregation is precisely what led to its eventual invalidation.<sup>105</sup> In the now-iconic *Brown* decision, Chief Justice Warren wrote that “[s]eparate educational facilities are inherently unequal.”<sup>106</sup> The U.S. Supreme Court thus decided that Wetmore had been correct about segregation's true meaning.

When he asserted that “equality pervades the entire constitution,” Wetmore was not saying anything original.<sup>107</sup> Andrew Patterson was neither the first nor last plaintiff to challenge segregated transportation. The significance of the streetcar cases actually lies in their commonness; the arguments of the cases already existed because they were one piece of an ongoing legal tradition. In 1911, Desdunes wrote “[a]bsolute submission augments the oppressor's power and creates doubt about the feelings of the oppressed.”<sup>108</sup> The streetcar story leaves no doubt about feelings of African Americans in Jacksonville at the turn of the century. The failure of rights based claims in the short-

term belies their significance as elements of a tradition on which the longer struggle for non-racial American citizenship drew.

## End Notes

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108. Randolphe Lucien Desdunes, *Our People and Our History* , translated and edited by Dorothea Olga McCants (Montreal, 1911; Eng. ed., Baton Rouge, 1973) 14.

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