

Time, Space, Place, and the Body: Black Women's Transportation Segregation Cases in the
Wake of the Civil War

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Segregation in public accommodations, including schools, hotels, restaurants, and transportation, was the norm in many parts of the United States for over one hundred years of U.S. history. While associated mainly with the South, segregation began in the 1840s and 1850s in the North as a way to control the rapidly growing population of formerly enslaved people. While slavery at this point was illegal in most of the North, the legacy of slavery lived on in racist attitudes about African Americans' intelligence, sexuality, and proclivity to violence. Threatened by the presence of black bodies in formerly white spaces as more freed blacks reached middle-class or elite status, segregation created an avenue by which white Americans could continue to cling to their hegemonic status and prevent intermingling that might lead to deep and meaningful interracial relationships, potentially giving more power to black communities. Trains, streetcars, and train stations/waiting platforms were all segregated so as to reinforce the ultimate power of whites to control black citizens' freedom of movement. Segregation was protested across the North, and had disappeared in most Northern states by the end of the Civil War. In the South before the Civil War, while blacks and whites were typically separated by the tickets that they held (a slaveowner would not buy a first-class ticket for an enslaved person), free blacks were allowed to sit in first-class cars, and segregation did not become the standard until after the Civil War, when it was similarly used as a tool to control the newly freed black population. In 1896, the Supreme Court's decision in *Plessy v. Ferguson* effectively enshrined segregation into Southern law codes.¹

Segregation in public transportation was confronted nationwide by different forms of protest, including within the courtroom. African Americans ejected from public accommodations sued railway and streetcar companies for their ejections, claiming they had a right to equal

¹ Blair Murphy Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship During the Era of Plessy v. Ferguson* (Chapel Hill, NC: University of North Carolina Press, 2010), 3.

accommodations given they had paid the same price to ride as white passengers. Both men and women participated in these efforts, and the contributions of women were integral to the existence and success of anti-segregation movements. Black women were able to use assaults on their physical safety and respectability by ejections to expose segregation's inconsistencies. Arguments for segregation's necessity, for example, often relied on the myth of the "black male rapist" and his threat to white women, an argument which could not apply to black women. In addition, black women made up the majority of domestic workers, who were employed to exist in white spaces with children and elderly people for whom they were caretakers. Further, the existence of "ladies' cars," often the only first-class cars available, made it easier for black women to challenge segregation, and in fact the majority of court cases filed by black plaintiffs between 1870 and 1889 were brought by women. The most effective protest leaders were lighter-skinned, elite black women, whose prominent places in the community and known respectability made the barbarity of their physical and often violent removal from street- and railroad cars more easily visible to judges and juries.²

The success of these endeavors, however, relied on time and place: while in the North, especially after the onset of the Civil War, black Americans could argue their right to equal citizenship rights due to their participation in the Union war effort, in the South segregation came as a response to the results of the Union's war victory; neither the bravery nor the sacrifice of black Americans "for their country" could suffice as an argument to white juries when it had resulted in the emancipation of all of the South's slaves. With that in mind, this paper will analyze two anti-segregation court cases with black women plaintiffs to argue for the importance

² Judith Giesberg, "Right to Ride: Women's Streetcar Battles and the Theaters of War." In *Army at Home*, (Chapel Hill, NC: University of North Carolina Press, 2009), 94-95.; Kelley, *Right to Ride*, 4, 9-11, 42.

of body politics in determining the case's outcomes, and examine the effects of historical and cultural contexts on perceptions of the body.³

In early April 1865, a black woman, referred to in court documents and reports as "Mrs. Derry," boarded a Lombard and South Street line streetcar in Philadelphia at around 11:00 PM after spending the evening nursing wounded Union soldiers. In Philadelphia, people of color were made to stand on the platforms outside of the cars. Upon confrontation from the conductor, Mrs. Derry begged to stay in the car as it was so late at night, and argued she had a "right to ride." She was roughly ejected from the streetcar by the conductor with the help of two other white men pulled off the street. Mrs. Derry sued the conductor who ejected her from the streetcar, named Lowry, in Philadelphia court, seeking damages for physical injury. The court ruled in her favor, stating that conductors did not have the right to remove passengers from streetcars based on race, regardless of official company regulations. A report on the court proceedings, originally published in the *Philadelphia Legal Intelligencer* and reprinted in many other legal journals, including the *Local Courts' and Municipal Gazette*, describes the event and the court ruling.⁴

The concept of "respectability" may have had a strong influence in the court's decision, as shown by the kinds of details the *Philadelphia Legal Intelligencer* report included. Not only is Mrs. Derry explicitly described as "respectable," but the legal defense and the judge, Allison's, direction to the jury seem to have relied largely on the idea of respectability. Mrs. Derry's lawyers, of the firm Earle and White, argued that "the company were common carriers and had no right to exclude from their cars any person, otherwise unobjectionable, because of their race

³ Kelley, *Right to Ride*, 10.; Giesberg, "Right to Ride," 95.

⁴ *Local Courts and Municipal Gazette* 1 (1865), 109.

or complexion.” The argument concedes that the Lombard and South Street line did have the right to eject certain, “objectionable” people from its cars, and even concedes, by use of the word “otherwise,” that race and skin color could perhaps be objectionable qualities, though legally not enough so to be the sole grounds for ejecting a person from their streetcars.⁵

Judge Allison, in his direction to the jury, reaffirmed Earle and White’s assertion, stating that the company had “a perfect right to exclude any one not a fit person to ride in their cars [...] but the mere prejudice of one class against another cannot be allowed to subvert or overthrow the cardinal doctrine of equality of all before the law, in the maintenance of the sacred rights of citizenship.” Again, the right of the company to eject certain, assumedly *unrespectable* individuals from its cars is upheld, but the legality of the exclusive determining of respectability based on race is rejected, and the concept of citizenship is noted as proof that race cannot exclusively determine respectability.⁶

Allison goes on, asserting that while the exclusion of an “entire class of persons, as a class” from a streetcar had always been illegal,

The logic of events of the past four years has in many respects cleared our vision and corrected our judgement; and no proposition has been more clearly wrought out by them than that the men who have been deemed worthy to become the defenders of the country, to wear the uniforms of the soldier of the United States, should not be denied the rights common to humanity, and this is not only without law, but against law and the plainest principles of right and justice.

Allison asserts the respectability of *all* black Americans because black men had put their bodies and lives on the line, as the decision was made and for the previous four years, as soldiers of the Union Army. Participation in the war effort as soldiers—“wearing the uniforms of the soldier of the United States”—displayed the capacity for first-class citizenship of black men. Black men’s

⁵ Ibid.

⁶ *Local Courts and Municipal Gazette*, 110.

actions were sufficient to represent the first-class citizenship rights of black women and children as well. The sacrifice of one's body for one's country was seen as the ultimate show of respectability, and the ultimate justification for the humanity, and therefore entitlement to "rights of humanity," of all black Americans. The importance of body politics in determining respectability, and therefore entitlement to rights, was clearly important to the court's decision in the case.⁷

Mrs. Derry's appearance and positionality, and therefore her respectability, is repeatedly referenced in the report. Mrs. Derry is immediately described as "a very respectable woman, almost white." Not only is this the first description of Mrs. Derry (or of the court proceedings at all) described in the report, but it directly links Mrs. Derry's respectability to her skin color. A description of "almost white" not only means Mrs. Derry was light skinned, but that it is possible she could have passed as white in certain settings. In addition, whiteness is described not only as a *color*, but as a *manner*. Mrs. Derry's respectability is nearly of the caliber of a white woman's; she *acts* almost as "white" as a white person. Mrs. Derry's almost-whiteness is equated to her being "very respectable," suggesting that whiteness was seen as the highest level of respectability obtainable. Later in the document, a quote from Judge Allison states that "the act of the defendant was in clear violation of the rights of the plaintiff when he put her out of the car, because her skin was a few shades darker than his own." While elsewhere Allison asserts the equal respectability of black and white people, here he implies that the relative lightness of Mrs. Derry's skin adds to her respectability and her claim to the right to bodily safety and autonomy (and her "right to ride").⁸

⁷ Ibid.

⁸ *Local Courts and Municipal Gazette*, 109-110.

Mrs. Derry's literal light skin color is directly connected to the report's implication that she *acted* "white" as meaning "very respectable." As historian Blair Murphy Kelley explains in her book *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson*, passing as white was often a clear indicator of class status: middle-class and elite black Northerners were of consistently lighter skin color than lower and working-class *due* to historical prejudice against darker-skinned people. Darker-skinned people were seen as closer to blackness, and therefore more likely to possess the supposed characteristics of black people, such as heightened emotional passion or lewdness. As they were clearly descendents of whites, and thus high on the color hierarchy, white people more likely did business with them or created friendly relationships with them, giving them a societal "boost" and making social mobility a bit easier. Therefore, "passing was a weapon retained by a few light-skinned African Americans to battle the strictures of segregation." Mrs. Derry's particularly light skin color may not only have helped her escape the most racist assumptions about dark-skinned individuals in terms of her simple *right* to respect, but it may have served as an indicator of middle-class or elite status, adding to the court's perception of her respectability, or how much they believed she *deserved* respect.⁹

The physical features confirming Mrs. Derry's respectability are backed up further in the report by the details of her night prior to boarding the Lombard and South line streetcar. Mrs. Derry is described as having boarded the car "about 11 o'clock at night, being then on her way home from a church, where, with others of her race, [she] had been engaged in providing comforts for the wounded soldiers." This description establishes two points: that Mrs. Derry was

⁹ Kelley, *Right to Ride*, 46-47.; Giesberg, "Right to Ride," 95.

churchgoing, and that she was involved in the war effort. From Mrs. Derry's involvement in her community, it can be inferred that she was at least middle-class; given the time Mrs. Derry had to devote to helping soldiers, she would not have been at home to keep house in the evenings, implying her family may have had help. In addition, Mrs. Derry's womanly involvement in the war effort affirms her particular claim to the "right to ride" as a citizen. Judge Allison's claim about black men risking their bodily safety and their lives for their country could not apply to a woman like Mrs. Derry in 1865, but by "providing comforts" to wounded soldiers, she fulfilled her duty as a female citizen to nurture and comfort—or "mother"—young men while also putting her body on the line in other ways, as spending time in such close proximity to soldiers who were very often sick or had infected wounds that threatened her own health. While in very different ways, it seems that the willingness of both men and women to risk their bodies for "country" validated their claims to citizenship rights, such as the "right to ride," which was posited as such by both Mrs. Derry's lawyers and Judge Allison.¹⁰

Given Mrs. Derry's established high level of respectability, Lowry's rough ejection of her from the streetcar would have been all the more horrifying to the jury. Lowry is described as having called her a "n****r" twice, a term usually reserved for less "white," less respectable black people. Then, Lowry's violence towards Derry is described in detail: "The conductor, thereupon, called in the aid of two friends standing upon a street corner, took off his coat, seized hold of her, struck, kicked, and finally ejected her from the car with great violence, tearing her clothes and inflicting some personal injuries." The image of three men beating and tearing the clothes of a respectable woman would have been shocking enough, but, worse, the act is

¹⁰ *Local Courts and Municipal Gazette*, 109.; Giesberg, "Right to Ride," 109.

described as premeditated. Before beating Mrs. Derry, Lowry removed his coat, indicating he had every intention of beating and perhaps even bloodying her and did not wish for his coat to be in the way or to become dirty or stained. The tearing of Mrs. Lowry's clothes is especially inexcusable; as a respectable woman, Mrs. Derry would never have been seen outside of the home as anything but perfectly well-dressed and covered-up. By tearing her clothes and putting her body on display to all on the street—especially at the late hour of 11:00—Lowry physically stripped her of her dignity, and made her respectability harder for an outsider to determine. The image of a half-dressed woman on the street late at night no doubt evoked an image of poverty or even prostitution, tearing down Mrs. Derry's delicately respectable appearance. The jury may have noted that tearing her clothes and leaving her on the street with injuries also likely increased her risk of further assault, and perhaps even sexual assault, on her long walk the rest of the way home, meaning that Lowry's actions could potentially have had further consequences than just Mrs. Derry's embarrassment and her evacuation from the streetcar.¹¹

While the court's decision affirmed the illegality of *all* racial segregation, Mrs. Derry's position as an elite, respectable black woman performing civic duties likely gained the court's sympathy and helped the jury to rule in her favor. Lowry's complete disrespect for this "very respectable, almost white" woman's body must have seemed all the more horrific in the eyes of a white jury. It is important to note that the report does not include the exact date of the incident besides that it was "early" in April—the ejection of Mrs. Derry from the car could have been a response to the Confederate surrender at Appomattox. However, it does note that the court proceedings took place in July, after both General Lee's surrender and the assassination of

¹¹ *Local Courts and Municipal Gazette*, 109.

President Lincoln, and that the court's rule in Mrs. Derry's favor could have been influenced by the jury's anger about the President's death. The denial of equal rights as an American would have been poignant given the backdrop of the Civil War, where black Americans seemed to be proving their right to citizenship by putting their lives on the line for the Union Army. Mrs. Derry had been putting her own body on the line by nursing injured and sick Union soldiers. By attempting to sit in a white car when she was supposed to stand outside on the streetcar platform, she also put her body on the line to prove and to protect her citizenship rights—making her assailant, Lowry, comparable in this analogy to a Confederate. Mrs. Derry's physical appearance and positionality along with the particular historical circumstances under which she brought her case to court allowed her to win \$50 in damages from Lowry (or his employer in his place), but, more importantly, enabled a victory for *all* black streetcar riders by setting the precedent: “a conductor of a passenger car has no right to eject a passenger on account of color or race. No regulation of the company will justify such a proceeding, or protect him from liability in damages.”¹²

The significance of the time and place of Mrs. Derry's streetcar ejection and subsequent court victory becomes clearer upon looking into similar court cases in different historical moments. *Smith et al. v. Chamberlain*, a case which made it to the South Carolina Supreme Court in early 1893, is one such case. Between the two cases, while the 14th Amendment was passed and ratified, legally guaranteeing equal citizenship rights to “all persons born or naturalized in the United States.” *Derry v. Lowry*, however, decided *before* the 14th Amendment's ratification, seems to respect the equal citizenship of African Americans more

¹² Ibid.

than *Smith et. al v. Chamberlain*. The plaintiff, Rebecca Smith, was asked to leave a white waiting room in a railway station in Graniteville, South Carolina, while trying to buy a train ticket. She refused to leave the room, and stated her belief that the two waiting rooms were not equally comfortable and that the South Carolina Railway Company had no specific rule on segregation, the station agent could not separate the waiting rooms by race. After being physically ejected from the waiting room, Smith sued Daniel H. Chamberlain, receiver for the South Carolina Railway Company, for damages. Smith lost her case, and the court's opinion and rationale largely reveals the greater justification for racial segregation. Rebecca Smith's positionality as a South Carolinian woman nearly thirty years after the Civil War and *Derry v. Lowry* was very different than Mrs. Lowry's in Philadelphia in 1865. The opinion sheds light on theories of racial difference thirty years removed from the *Derry v. Lowry* case, and indeed cites *Derry v. Lowry* as proof that directly after the Civil War African Americans were afforded *superior* rights to whites because of the "different needs" of black and white individuals. Additionally, its notable absence of mention of Smith's age, class, or color seems to indicate the degree to which these considerations no longer mattered, and racial lines had been more clearly defined: respectability was no longer important.¹³

The opinion, written by Judge McGowan assisted by Owen Wister, relies on analogies between race and sex to argue that "natural difference" justifies segregation. McGowan states that the "classification" of different people in public places had long existed and was perfectly culturally acceptable, specifically citing sex-segregated schools, separate entrances for men and women at hotels, ladies' cars on trains and waiting rooms in stations, ladies' rooms on ferries,

¹³ *The American Law Register and Review* 41, no. 8 (1893), 747.

and sex-segregated restaurants. He writes that this kind of classification and segregation does not “render the classified people unequal before the law or in their liberty to pursue happiness. They are based upon the hitherto marked difference between the sexes in nature, habits, and tastes.”

By using the analogy of sex segregation and justifying it by the different “nature, habits, and tastes” of the sexes, McGowan implies that a similar natural difference exists between members of different racial groups. The idea of natural difference between those of different skin colors is a recurring theme of the opinion. The opinion lists specific court cases relating to both sex and racial segregation, including *West Chester & Philadelphia Railroad Co. v. Miles* (1869), a racial segregation case which ruled in favor of the railroad company. The opinion of that case stated that while no individual could be excluded from public transportation on account of race, “at the time of the alleged injury, there was that natural, legal, and customary difference between the white and the black races which made their separation as passengers in a public conveyance the subject of a sound regulation to secure order, promote comfort, preserve the peace and maintain the rights both of carriers and passengers.” The idea of a natural difference between black and white people is clearly stated in this passage, and, while the implications of that difference are left to be assumed, the fact that such a difference would prompt segregation to “secure order, promote comfort, [and] preserve the peace” suggests that the noted natural difference would cause black passengers to be a danger to white passengers.¹⁴

The safety of passengers is most often cited as a justification for segregation. By drawing comparisons between racial and sex segregation, McGowan and Wister are able to argue that as men were often excluded from ladies’ rooms, cars, and other gendered spaces for the safety of

¹⁴ *The American Law Register and Review*, 748, 752.

women (and were only allowed in the capacity of an escort), it was legal to exclude African Americans from white spaces for the safety of white Americans, excluding in the capacity of a caretaker (such as a nurse or nanny). In the listed examples of segregation court cases used to argue in favor of the court's opinion, segregation (and the power of conductors and other transport "police powers" to arbitrarily segregate or exclude) is described as in the "public interest," in "the best interests of both races," for the "best convenience and safety of all passengers," and "a safeguard against disturbance." McGowan writes that "the relations between the two races are of such a character that a compulsory herding of them together is likely to result in breaches of the peace or discomfort." While the opinions of the courts in the listed cases make an effort to claim that segregation is for the safety of *all*, and McGowan implies that it is the existence of racism that would cause the violence for which segregation would be the protection. However, though the rationale attempts to draw connections with sex segregation, it includes no cases in which a white customer or passenger was refused access to a black space. While unsaid, the danger is implied: it is the existence of black people in white space that is seen as the threat to the peace. The safety of all white people would be at stake, according to the worldview of McGowan, Wister, and the majorities in the opinions they cite, if African Americans were to gain access to white space. While bad feeling might go both ways, as McGowan tries to argue, the only physical violence that would ensue would be that instigated by black people.¹⁵

While clearly the racism inherent in McGowan and Wister's opinion has no justification, white Americans of the historical moment had a complex reasoning behind their belief that all

¹⁵ *The American Law Register and Review*, 750, 752-756.

people of color—those of African descent at the bottom of the hierarchy—may be naturally more violent. In the late 1800s, ideas of human evolution were rooted in conceptions of race and biological and cultural “evolution” were seen as intimately connected. Only white people were seen as truly civilized (Anglo-Saxons being the most civilized of the civilized). People of color were seen as moving through a series of stages towards civilization through “savagery” and “barbarism,” shown by seemingly less advanced societies of color around the world. This lack of civilization in black Americans was supposedly shown by a proneness to emotional passion, violence, and a general lack of self-restraint. Evidence for this line of thinking in the South Carolina Supreme Court’s decision is shown by their inclusion of a direct quote from the opinion of an 1861 case on segregated rail cars (*Grines v. McCandless*), which stated that “a nation suffers [...] from the misfortune of having two races within its bosom, one long civilized and the other emerging from the shades of barbarism, and each indelibly marked by diversities of manners [...] the regulation now before us is a wise one.” The language of this decision clearly demonstrates the dominant attitude of the time that African Americans were less “evolved” and thus violent. Since a simple lack of “evolution” would clearly not be a threat to anyone, and therefore would not be grounds for segregation by that logic, it is the violence coded in the word “barbarism” that poses the risk to whites. By including this decision in their rationale—and directly quoting this particular portion of the decision—McGowan and Wister connect the “barbarism” of black Americans with a threat to the safety of white people in white-only spaces, including the waiting room from which Rebecca Smith was ejected.¹⁶

¹⁶ *The American Law Register and Review*, 751-752.; Bederman, Gail. *Manliness & Civilization* (Chicago, IL: The University of Chicago Press, 1995), 11-12.

The 1890s have been noted by historians as one of the worst decades for race relations in American history. According to historian Blair Murphy Kelley, black Americans—especially men, for perceived advances on white women, but women and even children as well—were “hunted like a sport” between 1890 and 1910, and lynchings were the main result of such “hunts.” Mostly occurring in the South (although not exclusively), lynchings and other murders of black citizens happened often with the full knowledge or collusion of the police force, and nearly always the police at least turned a blind eye. Commemorative postcards circulated by the United States Postal Service even included photographs of the corpses of African Americans, which were displayed charred, beaten, or mutilated with their white murderers smiling beside them, reminiscent of pictures of trophy hunters with big game. Lynchings were seen as a way to control the black population, and were therefore largely acceptable in much of the United States, especially in the South. This is the backdrop against which Rebecca Smith lost her case and the segregation of transportation accommodations—in this case, waiting rooms—was upheld. As Judge Allison emphasized in his instruction to the *Derry v. Lowry* jury in 1865, integrated accommodations in transportation were a citizenship right for African Americans, being the only way to treat all equally. Rebecca Smith’s case represents the denial of full citizenship rights that was becoming the norm in the South, where, by the end of the decade, nearly every Southern state had effectively disenfranchised its black population. Three years later, *Plessy v. Ferguson* would reach the Supreme Court, and segregation—a symbol of the second-class citizenship status of black Americans—would become concretely legal for nearly sixty years, erasing protections intended by the 14th Amendment.¹⁷

¹⁷ Rayford Logan, *The Betrayal of the Negro from Rutherford B. Hayes to Woodrow Wilson* (New York, NY: Da Capo Press, 1997).; Kelley, *Right to Ride*, 3-4.

The different historical moments and places of *Derry v. Lowry* and *Smith v. Chamberlain* greatly affected the outcomes of these cases. While both cases were brought to court by women who had been roughly ejected from public transportation accommodations, the different historical backdrops were incredibly important. Mrs. Derry's case was decided in a Northern city with a large, vibrant free black population just after General Lee's surrender at Appomattox, while the jury's members were likely celebrating the Union victory and when black *men's* contribution to the Union's success seemed to support the African American right to first-class citizenship status, though the 14th Amendment had not yet been ratified. While all members of the jury may have held racist attitudes about black Americans and their right to equal accommodations, Mrs. Derry's presentation as an elite, light-skinned black woman involved in the war effort served to remind all of black citizen's potential for a "respectability" equated with "whiteness." Meanwhile, Rebecca Smith's case was decided in the first Southern state to secede in 1860, during one of the worst periods in race relations in America history. By the time her case made it to the Supreme Court of South Carolina, many cases had been decided in lower courts upholding segregation and rejecting ejectees' demands for damages. Lynchings were a regular and frequent occurrence intended to control black minds and bodies, an intention also pursued politically by white legislators who stripped black citizens of their voting rights. The anti-segregation movement in transportation was largely class-driven, as no class lines existed in spaces set aside for black passengers, so it can be assumed (though not for certain) that Rebecca Smith was of a higher class than most Southern blacks. However, this fact could have worked *against* her, as it threatened the entire Southern social order and would have made her family

more difficult to control. In each case, body politics intersects with location and historical moment to create a very different result.¹⁸

Cases like *Derry v. Lowry* and *Smith v. Chamberlain* are reminders of women's consistent presence and participation in "history." While they are not always credited, honored, or even given space in mainstream historiography, their work—in the home, in the streets, or in the courtroom—has laid the foundation for the historical narratives that make their way into the hands of students and scholars. The politics of the body, overlaid with historical and cultural contexts, has made black women's attempts to fight for equal citizenship more or less successful at different times. Mrs. Derry's victory helped to end Philadelphia's streetcar segregation and support black Union veterans' fight for universal male suffrage, while Rebecca Smith's loss unfortunately bolstered the later *Plessy v. Ferguson* decision, which legalized "Jim Crow" segregation until the Supreme Court's 1954 *Brown v. Board of Education of Topeka* overturned the doctrine of "separate but equal." While one moment was positive and the other devastating, both stories contributed to the course of American history. Though many stories will remain unknown, the "behind-the-scenes" work of women in historical narratives is increasingly being discovered, written about, and acknowledged.

Word Count: 4877

¹⁸ Kelley, *Right to Ride*, 6.

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